

**AMENDED JOINT STIPULATION FOR CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT**

Francisco Diosdado Miranda v. The Bay Clubs Company, LLC

Alameda County Superior Court Case No. RG21105433

Samhuri v. The Bay Clubs Company, LLC

Contra Costa Superior Court Case No. C24-01037

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This Amended Joint Stipulation for Class Action and Private Attorney General Act (“PAGA”) Settlement (“Settlement” or “Agreement”) is entered into by and between Plaintiffs Francisco Diosdado-Miranda (“Miranda”), Ferial Samhuri (“Samhuri”), Todd Bartolomeo (“Bartolomeo”), and Fiona Tideman Ball (“Ball”) (collectively “Plaintiffs” or “Named Plaintiffs”), on behalf of themselves, all similarly situated individuals, and the State of California and other aggrieved employees, and Defendant The Bay Clubs Company, LLC (“Defendant”). Plaintiffs and Defendant collectively are referred to in this Agreement as the “Parties,” and each as a “Party.” This Amended Joint Stipulation for Class Action and PAGA Settlement amends and supersedes the Joint Stipulation for Class Action and PAGA Settlement executed by the Parties on April 24, 2026.

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Actions” collectively mean the Miranda Action, Samhuri Action, Bartolomeo PAGA Letter (LWDA Filing No. LWDA-CM-1129606-25, filed October 3, 2025), including any and all complaints filed and any amended complaint necessary to effectuate release of the Released Claims and any and all related letters to the LWDA and any amended letters necessary to effectuate release of the Released Claims.
- B. “Agreement” or “Settlement Agreement” shall refer to this document.
- C. “Class” or “Class Member” or “Settlement Class” means all persons who are employed or have been employed by Defendant as non-exempt employees in the State of California at any time from January 16, 2017 through March 30, 2026.
- D. “Class Counsel” means Marco A. Palau, Joseph D. Sutton, and Eric S. Trabucco – Advocates for Worker Rights LLP, and Jessica Juarez of the Law Office of Jessica Juarez, Counsel for Miranda, Bartolomeo, and Ball; and Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, and Piya Mukherjee of Blumenthal Nordrehaug Bhowmik De Blouw LLP, Counsel for Samhuri.
- E. “Class Counsel Fees and Expenses Payment” means the amount awarded to Class Counsel by the Court to compensate them for their attorneys’ fees and litigation expenses in connection with the Actions, including their pre-filing investigation, their commencement of the Actions and all related litigation activities, this

Settlement, and all post-Settlement compliance procedures.

- F. “Class List” or “Class Member Data” means the list Defendant will provide to the Settlement Administrator, preferably in electronic form, containing for each Class Member, his/her/their: (a) full legal name; (b) social security number; (c) last known mailing address; (d) telephone number and/or e-mail address, if available; (e) the total number of workweeks that each Class Member worked in the State of California during the Class Period; and (f) the total number of pay periods that PAGA Aggrieved Employees worked in the State of California during the PAGA Period. The total number of workweeks and/or pay periods may be determined by reference to weeks worked as reflected in Defendant’s timekeeping, payroll, and/or other records.
- G. “Class Notice” means the court-approved document, substantially in the form attached to this Settlement Agreement as Exhibit A, which will be sent to Class Members following Preliminary Approval of the Settlement Agreement to notify Class Members of the Settlement and explain Class Members’ options.
- H. “Class Notice Packet” means the Class Notice and the Employee Verification Form that will be mailed to each Class Member following the Court’s Preliminary Approval.
- I. “Class Period” means from January 16, 2017 through March 30, 2026.
- J. “Class Released Claims” means all claims and remedies asserted or that could have been asserted in the Actions during the Settlement Class Period against Defendant, based on the factual allegations and legal theories in the Actions, including statutory, constitutional, tort, common law, and/or contract claims and associated relief for alleged failure to pay all compensation due (including but not limited to wages, minimum wage, straight time, overtime, doubletime, premium pay, class premium pay, bonuses, commissions, incentive pay), failure to pay wages for all hours worked (including but not limited to claims regarding off-the-clock work, rest breaks, administrative time, donning and doffing, rounding/time-shaving, travel time, editing/manipulation of time entries, autodeduction of meal periods, training time, temperature checks and symptom questionnaires for COVID-19), failure to pay overtime, doubletime, premiums, sick pay, on-call pay and other compensation at the accurate rate (including but not limited to the failure to include non-discretionary compensation into the regular rate), failure to pay split shift pay and/or reporting time pay and/or shift differentials, failure to properly calculate the regular rate of pay and/or to pay overtime for overtime hours worked, failure to pay meal and/or rest break premium pay, failure to timely pay all wages owed (including but not limited to accrued vacation and/or paid time off wages) on termination of employment, failure to provide sick time and pay sick or COVID sick pay, failure to reimburse business expenses (including but not limited to expenses for alleged uniforms and/or equipment purchases and/or maintenance, internet, music subscriptions, training certifications, personal device usage, and personal vehicle usage), failure to provide meal periods and/or rest breaks (including but not limited to requiring on-duty, on-call or on-premise meal periods or rest breaks), improper uniform deposit/deductions/reimbursement practices,

failure to provide accurate and timely itemized wage statements, failure to maintain and provide accurate records of hours worked, failure to maintain and provide required records, failure to provide a day of rest, failure to pay wages required by contract or statute, failure to provide safe working conditions, failure to provide suitable seating, failure to provide potable water, and failure to timely pay all wages owed during employment failure to comply with Labor Code sections 432.5 and 432.6; engaging in unlawful agreements (including but not limited to background checks, credit checks, applications, separation agreements, offer letters, confidentiality agreements, and PAGA waivers); conducting unlawful background checks in violation of Labor Code sections 432.7 and 1024.5, Civil Code section 1786, *et seq.* at 15 U.S.C. section 1681, and Government Code section 12952; relying on the salary history information on an application for employment in violation of Labor Code section 432.3; prohibiting employees from using or disclosing skills, knowledge, offers, wages, and experience; whistleblower violations; failure to comply with Business and Professions Code section 17200 *et seq.*; and failure to comply with the Wage Theft Protection Act. This release includes all such claims for violations of Labor Code §§ 200-204, 204b, 210, 212, 215, 216, 218, 218.5, 218.6, 221, 222, 223, 225, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 227.3, 246 *et seq.*, 247, 247.5, 248.5, 256, 354, 400-410, 452, 500, 510, 511, 512, 551, 552, 553, 558, 558.1, 1174, 1174.5, 1175, 1182.11, 1194, 1194.2, 1197, 1197.1, 1198, 1198.3, 1198.5, 1199, 1199.5, 2800, 2802 and §§ 2698 *et seq.* (Private Attorneys General Act), Civil Code section 3287(b) and 3289, Government Code section 12952; Business & Professions Code §§ 17200 *et seq.*, California Code of Regulations Title 8, § 11000 *et seq.*, 29 U.S.C. § 211(c), and all other state and local wage/hour and wage payment laws, including wage orders, and common law theories; related premiums, statutory penalties, waiting time penalties, or liquidated damages; interest; punitive damages; costs; attorneys' fees; equitable relief; injunctive relief; declaratory relief; or accounting; whether such causes of action are in tort, contract, or pursuant to a statutory remedy.

- K. "Court" or "Superior Court" means the California Superior Court in and for the County of Alameda, the Honorable Patrick McKinney presiding.
- L. "Defendant's Counsel" means Barbara Antonucci, Sarah Hamilton, Stacy Lall, and Dongying Zhang of Constangy, Brooks, Smith & Prophete, LLP.
- M. "Effective Date" means the date on which the Judgment following Court's order granting Final Approval of this Settlement becomes final. Such Judgment becomes final upon any of the following events: (a) if no Participating Class Member files and serves a timely and valid objection to the Settlement, and if no appeal, motion or petition to review or intervene has been taken with respect to the Final Approval Order and Judgment, then the date upon which the Court grants Final Approval of the Settlement; (b) if all timely filed and valid objections of Participating Class Member are subsequently withdrawn, and if no appeal, motion or petition to review or intervene has been taken with respect to the Final Approval Order and Judgment, then the date upon which the Court grants Final Approval of the Settlement; or (c) if any Participating Class Member files and serves a valid and timely objection, or motion or petition to review or intervene has been taken, then the date which is

sixty-five (65) days after (i) service of notice of entry of the Final Approval Order and Judgment on the Parties to the Actions and all objectors to the Settlement, if any, if no appeals or requests for review have been taken, or (ii) an order affirming the Final Approval Order and Judgment or denying review after exhaustion of all appellate remedies, if appeals or requests for review have been taken.

- N. “Employee Verification Form” means the Court-approved Employee Verification Form that details the number of workweeks worked that each individual Class Member may complete and submit to the Settlement Administrator.
- O. “Employer Payroll Contributions” shall mean those payroll taxes and other monetary contributions required by state and federal law to be made by an employer on wage payments, including but not limited to FICA, Medicare, FUTA, and SUTA, and any federal and state unemployment taxes, payable with respect to amounts treated as wages under this Agreement (*i.e.*, the Wage Portion of Class Member Settlement Shares), but not amounts required to be withheld by an employer in satisfaction of an employee’s share of federal and state income and other taxes and FICA or other mandated employee insurance contributions.
- P. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to finally approve and implement the terms of this Agreement.
- Q. “Judgment” means the judgment entered by the Court upon entering the Order Granting Final Approval of Class Action Settlement.
- R. “Gross Settlement Amount” or “GSA” means the maximum amount to be paid by Defendant as provided by this Agreement, not including the Employer Payroll Contributions on the wage portion of Class Member Settlement Shares, which Defendant shall pay separately. There shall be no reversion of the Gross Settlement Amount to the Defendant.
- S. “Miranda Action” means the action *Miranda v. The Bay Clubs Company, LLC, et al.*, Case No. RG21105433, pending in Alameda County Superior Court including any and all complaints filed and any amended complaint necessary to effectuate release of the Released Claims, including the Operative Complaint referenced in Paragraph II.I.3 below and any and all related letters to the LWDA and any amended letters necessary to effectuate release of the Released Claims, including the Amended PAGA Letter referenced in Paragraph II.I.4 below.
- T. “Net Settlement Amount” means the Gross Settlement Amount, less the following, as approved by the Court: (1) the Representative Service Awards; (2) the Class Counsel Fees and Expenses Payment (which includes all attorneys’ fees and litigation expenses incurred to date and to be incurred in documenting the Settlement, securing court approval of the Settlement, attending to the administration of the Settlement, and obtaining dismissal of the Actions); (3) the PAGA Payment; and (4) the Settlement Administrator’s expenses incurred in administering the Settlement. Any deductions from the forgoing allocations will be retained in the QSF and will be included in the Net Settlement Amount for distribution to the Class, as appropriate. If the Court approves a lesser amount of any of the foregoing amounts, the Net Settlement Amount will increase

proportionately. In other words, any reductions from the above-referenced costs will increase the Net Settlement Amount proportionately.

- U. “Notice Response Deadline” means the last day by which a Class Member may object to the settlement, or submit a Request for Exclusion. The Notice Response Deadline shall be forty-five (45) calendar days following the Settlement Administrator’s mailing of Notice Packets. However, for Class Members whose notice packets are sent to a different address subsequent to the initial mailing, the Notice Response Deadline shall be the earlier of forty-five (45) calendar days from the date of re-sending or the date that is fourteen (14) calendar days before the Final Approval Hearing.
- V. “Objection” means the written statement that a Class Member may submit to the Settlement Administrator in order to object to this Settlement Agreement (as set forth in herein).
- W. “PAGA Aggrieved Employees” is defined as all persons who are employed or have been employed by Defendant as non-exempt employee in the State of California at any time from August 30, 2022 through March 30, 2026.
- X. “PAGA Aggrieved Employee Award” means the 35% of the PAGA Payment to be paid to PAGA Aggrieved Employees pursuant to Labor Code § 2699(m).
- Y. “PAGA LWDA Award” means the 65% of the PAGA Payment paid to the California Labor and Workforce Development Agency pursuant to Labor Code § 2699(i).
- Z. “PAGA Payment” means the payment in the amount of \$50,000 from the Gross Settlement Amount to be paid to the LWDA (65%, or \$32,500.00) and the PAGA Aggrieved Employees (35%, or \$17,500.00) to settle claims for civil penalties pursuant to PAGA.
- AA. “PAGA Period” means the time period from August 30, 2022 through March 30, 2026.
- BB. “PAGA Released Claims” means means all claims and remedies for civil penalties under PAGA asserted or that could have been asserted in the Actions during the Settlement Class Period against Defendant, based on the factual allegations and legal theories in the Actions, including statutory, constitutional, tort, common law, and/or contract claims and associated relief for alleged failure to pay all compensation due (including but not limited to wages, minimum wage, straight time, overtime, doubletime, premium pay, class premium pay, bonuses, commissions, incentive pay), failure to pay wages for all hours worked (including but not limited to claims regarding off-the-clock work, rest breaks, administrative time, donning and doffing, rounding/time-shaving, travel time, editing/manipulation of time entries, autodeduction of meal periods, training time, temperature checks and symptom questionnaires for COVID-19), failure to pay overtime, doubletime, premiums, sick pay, on-call pay and other compensation at the accurate rate (including but not limited to the failure to include non-discretionary compensation into the regular rate), failure to pay split shift pay and/or reporting time pay and/or shift differentials, failure to properly calculate the

regular rate of pay and/or to pay overtime for overtime hours worked, failure to pay meal and/or rest break premium pay, failure to timely pay all wages owed (including but not limited to accrued vacation and/or paid time off wages) on termination of employment, failure to provide sick time and pay sick or COVID sick pay, failure to reimburse business expenses (including but not limited to expenses for alleged uniforms and/or equipment purchases and/or maintenance, internet, music subscriptions, training certifications, personal device usage, and personal vehicle usage), failure to provide meal periods and/or rest breaks (including but not limited to requiring on-duty, on-call or on-premise meal periods or rest breaks), improper uniform deposit/deductions/reimbursement practices, failure to provide accurate and timely itemized wage statements, failure to maintain and provide accurate records of hours worked, failure to maintain and provide required records, failure to provide a day of rest, failure to pay wages required by contract or statute, failure to provide safe working conditions, failure to provide suitable seating, failure to provide potable water, failure to timely pay all wages owed during employment, failure to comply with Labor Code sections 432.5 and 432.6; engaging in unlawful agreements (including but not limited to background checks, credit checks, applications, separation agreements, offer letters, confidentiality agreements, and PAGA waivers); conducting unlawful background checks in violation of Labor Code sections 432.7 and 1024.5, Civil Code section 1786, et seq. at 15 U.S.C. section 1681, and Government Code section 12952; relying on the salary history information on an application for employment in violation of Labor Code section 432.3; prohibiting employees from using or disclosing skills, knowledge, offers, wages, and experience; whistleblower violations; and failure to comply with the Wage Theft Protection Act. This release includes all such claims for violations of Labor Code §§ 200-204, 204b, 210, 212, 215, 216, 218, 218.5, 218.6, 221, 222, 223, 225, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 227.3, 246 et seq., 247, 247.5, 248.5, 256, 354, 400-410, 452, 500, 510, 511, 512, 551, 552, 553, 558, 558.1, 1174, 1174.5, 1175, 1182.11, 1194, 1194.2, 1197, 1197.1, 1198, 1198.3, 1198.5, 1199, 1199.5, 2800, 2802 and §§ 2698 et seq. (Private Attorneys General Act), Civil Code section 3287(b) and 3289, Government Code section 12952; California Code of Regulations Title 8, § 11000 et seq., 29 U.S.C. § 211(c), and all other state and local wage/hour and wage payment laws, including wage orders, and common law theories; related premiums, waiting time penalties, or civil penalties; interest; costs; attorneys' fees; equitable relief; injunctive relief; declaratory relief; or accounting.

- CC. "PAGA Share" means the amounts to be distributed to each PAGA Aggrieved Employee from the PAGA Aggrieved Employee Award on a pro-rata basis based on the respective number of pay periods worked by each PAGA Aggrieved Employee during the PAGA Period.
- DD. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- EE. "Plaintiffs' Released Claims" means the claims being released as described in Paragraph II.H.1. below.
- FF. "Preliminary Approval" means the Court's Order granting preliminary approval of

the Settlement without material changes, or with material changes to the Settlement to which the Parties agree.

- GG. “Preliminary Approval Date” means the date on which the Court enters an Order granting preliminary approval of the settlement terms set forth in this Settlement Agreement, or such modified terms as may be agreed to by the Parties in order to obtain preliminary approval.
- HH. “Preliminary Approval Hearing” means the hearing held on the Motion for Preliminary Approval of this Settlement.
- II. “Qualified Settlement Fund” or “QSF” means the interest-bearing bank account established under this Agreement from which all monies payable under this Settlement shall be paid, as set forth herein.
- JJ. “Released Claims” means Class Released Claims and PAGA Released Claims and Plaintiffs’ Released Claims (as set forth in Paragraph II.H.1).
- KK. “Released Parties” means Defendant and any of their past and present affiliated and related entities, and all of their past and present partners, members, parents, subsidiaries, trustees, affiliates, divisions, insurers, re-insurers, predecessors, successors and assigns, joint-employers and any of their past and present directors, officers, owners, shareholders, investors, board members, principals, attorneys, trustees, heirs, administrators, agents, auditors, accountants, contractors, experts, representatives, partners, employees or assigns (whether acting as agents for any other Released Party or in their individual capacities), any employment benefit plan, and such plans’ administrators, fiduciaries, trustees, insurers, and re-insurers, as well as any individual or entity that could be liable for any of the Released Claims.
- LL. “Representatives Enhancement Awards” means the payments of up to \$25,000 to Plaintiff Francisco Diosado Miranda, up to \$25,000 to Plaintiff Ferial Samhour, and \$7,500 each to Plaintiffs Todd Bartolomeo and Fiona Tideman Ball in addition to their respective Settlement Shares, made to the Representative Plaintiffs in their capacity as Class Representatives, to compensate them for initiating and pursuing the Actions, and undertaking the risk of liability for attorneys’ fees and litigation costs in the event they were unsuccessful in the prosecution of the Actions.
- MM. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member no later than the Notice Response Deadline in order to request exclusion from the Settlement. However, if a Class Member who submits a valid Request for Exclusion is also a PAGA Aggrieved Employee, they will still receive a PAGA Aggrieved Employee Award.
- NN. “Samhour Action” means Samhour v. The Bay Clubs Company, LLC, Case No. C24-01037, pending in Contra Costa County, including any and all complaints filed and any amended complaint necessary to effectuate release of the Released Claims, including the Operative Complaint referenced in Paragraph II.I.3 below and any and all related letters to the LWDA and any amended letters necessary to effectuate release of the Released Claims, including the Amended PAGA Letter referenced in

Paragraph II.I.4 below.

- OO. “Settlement” means the terms and conditions set forth in this Agreement to resolve the Actions.
- PP. “Settlement Administrator” means the administrator proposed by the Parties ILYM Group, Inc., and appointed by the Court, tasked with administering the Settlement.
- QQ. “Settlement Administrator’s Expenses” means the fees, costs, and expenses relating to the administration of the settlement of these Actions, including without limitation, printing and mailing the Notice Packets, receiving and processing Objections, Requests for Exclusion, calculating and determining payments and percentages, regularly updating counsel on the status of administration, and the accounting and maintenance of the Qualified Settlement Fund.
- RR. “Settlement Share” means the gross amounts to be distributed to each Participating Class Member from the Net Settlement Amount on a pro-rata basis based on the respective number of workweeks worked by each Participating Class Member during the Class Period.

II. RECITALS

- A. **Plaintiffs’ Class and Representative Action Complaints.** On May 4, 2021, Francisco Diosdado Miranda provided notice on behalf of the State of California and other aggrieved employees pursuant to the Private Attorney General Act (“PAGA”), California Labor Code section 2699.3(a)(1)(A). On July 13, 2021, Miranda filed a class action Complaint (Alameda Court Case No. RG21105433) against Defendants CourseCo, Inc. and Black Point Golf, LLC, on behalf of himself and all others similarly situated, asserting causes of action for (1) Failure to Pay Minimum Wages; (2) Overtime Wages; (3) Meal Period Violations; (4) Rest Break Violations; (5) Waiting Time Penalties; (6) Wage Statement Penalties; and (7) Unfair Competition, Business and Professions Code §§ 17200, *et seq.*) (the “*Miranda* Action”). The CourseCo/Black Point portion of this case settled via mediation with Steven Serratore in mid-2024, which recently received final approval in Sonoma County Superior Court on September 10, 2025. Plaintiff Miranda’s original complaint alleged the following claims: (i) minimum wages; (ii) overtime wages; (iii) failure to provide lawful meal periods, or pay premium wages in lieu thereof; (iv) failure to provide lawful rest breaks, or pay premium wages in lieu thereof; (v) failure to timely pay final wages at resignation or termination; (vi) failure to furnish accurate itemized wage statements; (vi) failure to timely pay final wages at resignation or termination; (vii) violation of UCL; and (viii) civil penalties pursuant to PAGA. In August 2024, Miranda dismissed his eighth cause of action for civil penalties pursuant to PAGA due to his inclusion in a prior Bay Clubs PAGA settlement in *Garcia v. The Bay Clubs Company, LLC*, San Diego County Superior Court, Case No. 37-2018-00029247-CU-OE-CTL.

On August 30, 2023, Ferial Samhouri provided notice on behalf of the State of California and other aggrieved employees pursuant to PAGA. On September 18, 2023, Samhouri filed a class action complaint against TBCC in Contra Costa Superior Court (later dismissed on November 17, 2023, due to an arbitration

agreement). On April 17, 2024, Plaintiff Samhouri filed a separate PAGA lawsuit in Contra Costa County Superior Court, Case No. C24-01037 (the “*Samhouri Action*”). On July 22, 2024, at her request, the Court dismissed the individual portion of Samhouri’s PAGA claim. On April 16, 2025, Bay Clubs filed a demurrer on the basis that Samhouri cannot not maintain a PAGA action without also alleging an individual PAGA claim. On July 29, 2025, Samhouri and Bay Clubs entered into a stipulation staying the action pending the California Supreme Court’s guidance in *Rodriguez v. Packers Sanitation Servs. Ltd.*, — P.3d —, No. S290182, 2025 WL 1404550, at *1 (May 14, 2025) (granting review).

- B. **No Admission.** Defendant denies the allegations in the Actions; denies it has engaged in any wrongdoing; denies that Plaintiffs’ allegations constitute valid claims; denies that a litigation class could properly be certified in the Actions; denies that Plaintiffs’ claims could properly be maintained as a PAGA representative actions; asserts that the arbitration agreements of Plaintiffs and Class Members are valid and enforceable; and states it is entering into this Settlement Agreement solely to eliminate the burden, expense, and delay of further litigation, and on the express conditions and agreement with the Plaintiffs that (a) if for any reason the Settlement is not finalized according to the terms of this Agreement, the Settlement and the documents generated as a result of the Settlement shall not be usable for any purpose in the Actions, and (b) this Settlement and the documents generated as a result of the Settlement are not admissible or usable in any other civil or administrative proceeding or any arbitration, except to the extent necessary to enforce this Settlement and the orders, judgment and agreements arising from this Settlement.
- C. **Bona Fide Dispute.** The Parties agree a bona fide dispute exists as to whether any amount of wages and/or penalties are due from Defendant to Plaintiffs, Settlement Class Members, PAGA Aggrieved Employees or to the LWDA.

Based on these Recitals, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount is the maximum non-reversionary amount that Defendant is obligated to pay in connection with the Settlement of the Actions in the gross sum of four million dollars and zero cents (\$4,000,000.00). Payment of the Gross Settlement Amount, as approved by the Court, will cover all monetary benefits and payments to the Settlement Class and all claims for interest, fees, and costs, and will include: (1) the Representative Service Awards; (2) the Class Counsel Fees and Expenses Payment; (3) the PAGA Payment; (4) the Settlement Administrator’s Fees; and (5) Settlement Shares paid to Participating Class Members. The Gross Settlement Amount does not include the required Employer Payroll Contributions on the Wage Portion of Class Member Settlement Shares, which Defendant shall pay separately. There shall be no reversion of the Gross Settlement Amount to Defendant. The Parties agree that Defendant will have no obligation to pay any amount in connection with this Settlement agreement apart from the Gross Settlement Amount and Defendant’s employer’s portion of payroll

taxes on Settlement Shares to Participating Class Members.

- B. **Funding the QSF.** Within sixty-five (65) calendar days after the Effective Date, Defendant shall fully fund the QSF with the Gross Settlement Amount, including the employer-side payroll taxes for the portion of the settlement shares characterized as the Wage Portion. Defendant shall also provide any tax information that the Settlement Administrator may need to calculate each Participating Class Members' Settlement Shares.
- C. **Payments to Plaintiffs, Class Counsel, and Settlement Administrator.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:
1. **To Plaintiffs:** In addition to their respective Settlement Shares, Representative Plaintiffs Francisco Diosdado Miranda, Ferial Samhour, Todd Bartolomeo, and Fiona Tideman Ball will apply to the Superior Court for a Representative Enhancement Award in consideration for initiating and pursuing their respective Actions, undertaking the risk of liability for attorneys' fees, expenses and litigation costs in the event they were unsuccessful in the prosecution of their Actions. Plaintiffs Francisco Diosdado Miranda will seek an award of not more than twenty-five thousand dollars (\$25,000), Plaintiff Ferial Samhour will seek an award of not more than twenty-five thousand dollars (\$25,000), and Plaintiffs Todd Bartolomeo, and Fiona Tideman Ball will seek an award of up to seventy-five hundred dollars (\$7,500.00) as their respective Representative Enhancement Awards. Defendant agrees to not oppose Plaintiffs' request for Representative Enhancement Awards. The Settlement Administrator will pay the Representative Enhancement Awards, as approved by the Court, out of the Gross Settlement Amount. If the Court approves Representative Enhancement Awards of less than the requested amounts, the remainder will be retained in the Net Settlement Amount. Neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested here and the amount ultimately approved by the Court. Tax deductions and withholdings will not be taken from the Representative Service Awards, and instead a Form 1099 will be issued to Plaintiffs with respect to these payments.
 2. **To Class Counsel:** Class Counsel will apply to the Superior Court for an award of (a) attorneys' fees of not more than one-third of the Gross Settlement Amount, or one million three hundred and thirty three thousand dollars and thirty-three cents (\$1,333,333.33), and (b) litigation costs not to exceed one hundred and ten thousand dollars (\$110,000) incurred in this action by Class Counsel. Defendant will not oppose Class Counsel's request for a Class Counsel Fees and Expenses Payment of these amounts. The Settlement Administrator will pay the amount approved by the Court out of the Gross Settlement Amount. If the Superior Court approves Class Counsel fees and litigation costs of less than the amounts requested herein, the

remainder will be retained in the Net Settlement Amount. Tax deductions and withholdings will not be taken from the Class Counsel Fees and Expenses Payment, and instead a Form 1099 will be issued to Class Counsel. In the event the Court does not approve the entirety of the application for the Class Counsel Fees and Expenses Payment, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested here and the amount ultimately awarded as recoverable attorneys fees' and litigation costs. The award of attorneys' fees shall be allocated among Class Counsel as follows: 75% to Advocates for Worker Rights and 25% to Blumenthal Nordrehaug Bhowmik De Blouw LLP.

3. **To the Settlement Administrator.** The Settlement Administrator will pay to itself out of the Gross Settlement Amount its reasonable fees and expenses as approved by the Superior Court, estimated to be less than \$49,950. If the Court approves Settlement Administration Costs of less than \$49,950 total, the remainder will be retained in the Net Settlement Amount.

D. **PAGA Payment.** Fifty thousand dollars (\$50,000.00) of the Gross Settlement Amount is allocated to settle claims for civil penalties under California's Private Attorney General Act, Labor Code sections 2698, *et seq.*, as follows:

1. **PAGA LWDA Award.** Sixty-five percent (65%) of the PAGA Payment, or no less than thirty-two thousand and five hundred dollars (\$32,500.00), shall be paid to the LWDA, as required by Labor Code § 2699(m).
2. **PAGA Aggrieved Employee Award.** Thirty-five percent (35%) of the PAGA Payment, or no less than seventeen thousand and five hundred dollars (\$17,500), shall be paid to PAGA Aggrieved Employees as PAGA Shares, as required by Labor Code § 2699(m).
3. **PAGA Share.** Each PAGA Share will equal the PAGA Aggrieved Employee Award amount times the ratio of (a) the number of pay periods worked by each respective PAGA Aggrieved Employee during the PAGA Period, and (b) the total number of pay periods worked by all PAGA Aggrieved Employees during the PAGA Period.
4. **Treatment.** Each PAGA Aggrieved Employee's PAGA Share shall be characterized as penalties and reported on an IRS Form 1099.
5. **Effect of PAGA Aggrieved Employees Who Request to Be Excluded from the PAGA Payment.** A PAGA Aggrieved Employee may not submit a Request for Exclusion from the PAGA Payment. If a PAGA Aggrieved Employee attempts to request Exclusion from the PAGA Payment, their respective workweeks will continue to be included in the calculations of PAGA Shares for all PAGA Aggrieved Employees, and the Settlement Administrator will still send such person their PAGA Share.

E. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will allocate Settlement Shares from the Net Settlement

Amount to Participating Class Members as follows:

1. **Allocation and Payment of Settlement Shares to Participating Class Members:** The Net Settlement Amount will be allocated and distributed to all Participating Class Members based on the proportion of workweeks each Participating Class Member worked for Defendant during the Class Period compared to all other Participating Class Members. Payments to Participating Class Members will be calculated by assigning a certain dollar value to each workweek the Class Members worked during the Class Period. The dollar value of each workweek will be calculated by dividing the aggregate value of the Net Settlement Amount by the total number of workweeks worked during the Class Period by the Class Members who do not submit valid Requests for Exclusion. Partial weeks will be rounded up to the nearest full week. A Class Member who does not submit a valid Request for Exclusion will receive a Settlement Share determined by multiplying their number of workweeks during the Class Period by the dollar value of each workweek. Weeks “worked” for purposes of this settlement will be determined by reference to timekeeping, payroll, and/or other records.
2. **Treatment of Settlement Shares.**
 - a. **Non-Wage Portion:** Seventy-five percent (75%) of each Settlement Share will be treated as a payment in settlement of the Participating Class Member’s claims for statutory penalties and interest (the “Non-Wage Portion”). The Non-Wage Portion will be treated separately from the remaining Wage Portion for purposes of any tax withholding and deductions in accordance with IRS Rev. Ruling 80-364 and PMTA-2009-035, and shall be reported by IRS Form 1099. The Settlement Administrator will issue the appropriate federal and state tax forms.
 - b. **Wage Portion:** The remaining twenty-five percent (25%) of each Settlement Share (the “Wage Portion”) will be treated as a payment in settlement of the Participating Class Member’s claims for unpaid wages. Accordingly, the Wage Portion shall be subject to all tax withholdings customarily made from employee’s wages and all other authorized and required withholdings and shall be reported by IRS Form W-2. The employees’ share of payroll tax withholdings shall be withheld from each employee’s Wage Portion of the Settlement Share. The Settlement Administrator will issue the appropriate federal and state tax forms.
3. **Class Members Are Not Required to Submit a Claim Form to Receive a Settlement Share.** Class Members will be provided with an Employee Verification Form during the class notice process that states their respective total number of workweeks, as reflected in Defendant’s records during the Class Period, if any, for purposes of calculating their respective Settlement Shares, and the total number of pay periods, as reflected in Defendant’s records during the PAGA Period, if any, for purposes of calculating PAGA Aggrieved Employees’ respective PAGA Shares. If the Participating Class

Member does not dispute the number of workweeks set forth on the Verification Form, then the Settlement Administrator will mail that Participating Class Member's Settlement Share within fourteen (14) days after the Effective Date.

4. **Effect of Class Members Who Request to Be Excluded from the Settlement.** A Class Member who submits a valid and timely Request for Exclusion from the Settlement will not receive a Settlement Share but will still receive a PAGA Share. That Class Member's workweeks will not be included in the calculations of Settlement Shares for those Class Members who do not request exclusion; and the Settlement Share that otherwise would have been payable to such Class Member will be retained in the Net Settlement Amount for distribution to all other Participating Class Members who do not request to be excluded from the Settlement.

- F. **Appointment of Settlement Administrator.** The Parties will ask the Court to appoint ILYM Group, Inc. as Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing to all Class Members the Class Notice Packet; translating the Class Notice Packet from English to Spanish; conducting a National Change of Address search and using Accurant or another reasonable and cost-effective skip trace methods to locate any Class Member whose Class Notice Packet was returned by the U.S. Postal Service as non-deliverable, and re-mailing the Class Notice Packet to the Class Member's new address; setting up a toll-free telephone number to field calls from Class Members in English and Spanish; receiving and keeping track of any challenges to workweeks or Requests for Exclusion in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of challenges to workweeks or Requests for Exclusions; calculating any and all payroll tax deductions as required by law; calculating Settlement Shares; providing a due diligence declaration for submission to the Superior Court prior to the Final Approval Hearing; issuing the checks to effectuate the payments due under the Settlement; calculating and mailing the PAGA LWDA Award to the LWDA; distributing the Class Counsel Fees and Expenses Payment to Class Counsel; printing and providing Class Members and Plaintiffs with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Superior Court upon completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to Court-approved *cy pres* recipient; for such other tasks as the Parties mutually agree; and otherwise administering the Settlement pursuant to this Agreement and its agreement with the Defendant. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of all Class Member's Settlement and PAGA Shares, and all those requesting exclusion from the Settlement Class, subject to the dollar limitations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount. The Parties each represent that they do not have any financial interest in ILYM Group, Inc., or otherwise have

a relationship with ILYM Group, Inc. that could create a conflict of interest.

G. Procedure for Approving Settlement.

1. Motion for Preliminary Approval.

- a. After the Settlement Agreement is signed by Plaintiffs and Defendant, Plaintiffs will file a Motion for Preliminary Approval with the Court for an order granting Preliminary Approval of the Settlement, conditionally certifying the Class, setting a date for the Final Approval Hearing, appointing Plaintiffs as Class Representatives and their counsel of record in the Actions as Class Counsel, and approving the Class Notice. The Parties will agree on the form of any proposed orders filed in conjunction with the motion for preliminary and final approval, and the Class Notice
 - b. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.
 - c. Should the Court decline to preliminarily approve all material aspects of the Settlement, or order material changes to the Settlement to which the Parties do not agree, the Settlement will be null and void and the Parties will have no further obligations under it.
2. Within seven (7) days of the Preliminary Approval Order, Class Counsel will notify the LWDA of the Preliminary Approval Order.
3. **Notice to Class Members.** After the Court enters its order granting Preliminary Approval of the Settlement, every Class Member will be provided with the Notice Packet (which will include the Class Notice completed to reflect the order granting Preliminary Approval of the Settlement, and a Notice Packet stating the total number of work weeks attributed to each Class Member and PAGA Aggrieved Employee, respectively, by Defendant's records) in English and Spanish:
- a. Within thirty (30) calendar days after the Court enters its order granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator Class Member Data, preferably in electronic form, containing each Class Member's: (a) full name; (b) social security number; (c) last known mailing address; (d) telephone number and/or e-mail address, if available; e) the total number of workweeks that each Class Member worked in the state of California during the Class Period; and (f) the total number of pay periods that PAGA Aggrieved Employees worked in the state of California during the PAGA Period. If any or all of the Class Members' Data are unavailable to Defendant, Defendant will use best efforts to deduce or reconstruct the Class Members' Data prior to when it must be submitted to the Settlement Administrator.

- b. Within seven (7) days after receiving the Class Members' Data, the Settlement Administrator will mail the Class Notice Packets (in English and Spanish) to all identified Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
 - c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than seven (7) days from receipt of the returned packet, search for a more current address for the Class Member using Accurint or other reasonable and cost-effective skip trace methods, and re-mail the Class Notice Packet to the Class Member to any new or more current address or addresses discovered. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendant to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties. Class Counsel and Defendant's Counsel will be entitled to receive from the Settlement Administrator any updated address information about a Class Member as the Settlement Administrator obtains such information.
 - d. Each week, the Settlement Administrator will provide Class Counsel and Defendant's Counsel a report showing whether any Class Notice Packets have been returned and re-mailed and the receipt of any requests for exclusion.
 - e. Not later than eighteen (18) court days prior to the Final Approval Hearing, the Settlement Administrator will serve on the Parties and cause to be filed with the Superior Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement, as well as all timely Objections made to the Settlement by Class Members. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.
4. **Class Member Objections to Settlement; Challenges to Number of Workweeks; Requests for Exclusion.**

- a. **Objection to Settlement.** A Participating Class Member who wishes to object to any term of the Settlement may file with the Court and serve on counsel for the Parties a written objection to the Settlement setting forth the grounds for the objection. Further, Participating Class Members, or persons purporting to object on behalf of any Class Members, may be received or considered by the Court at the Final Approval Hearing, regardless of whether a written notice of objection is filed or delivered. Should there be any written objections to the Settlement received by any counsel for the parties or the Settlement Administrator, Class Counsel and Defendant's counsel will file a response to any objection within five (5) days before the Final Approval Hearing. If a Class Member timely submits both a Request for Exclusion and an objection, the Class Member shall be deemed to have submitted only a valid objection, and the opt out shall be deemed null and void. The Settlement Administrator will share all submitted objections with the Parties, and Class Counsel will file a single packet with all objections with the Court.
- b. **Class Member Verification Form.** A Class Member who wishes to dispute the number of workweeks they worked outlined in the Class Member Verification Form sent to the Class Member as part of the Class Notice Packet may do so by notifying the Settlement Administrator in writing by either FAX, email, or mail postmarked no later than five (5) days before the Response Deadline. The Settlement Administrator will make the final determination as to the correct number of compensable workweeks for such a Class Member. In the event that any Class Member's workweeks are adjusted for purposes of their Settlement Share, any such adjustment shall be applied to the workweeks for which they are credited.
- c. **Request for Exclusion.** A Class Member who wishes to exclude themselves from the Settlement must send the Settlement Administrator a written and signed Request for Exclusion which must be postmarked no later than the Response Deadline. To be valid, a Request for Exclusion must contain the name, address, and telephone number of the Class Member requesting exclusion from the Settlement. If a question is raised about the authenticity of any Request for Exclusion, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Class Member who submits a timely Request for Exclusion will not participate in or be bound by the Settlement and the Judgment, will not have standing or the ability to submit a valid Objection to the Settlement, and will not receive a Settlement Share, and will retain the right, if any, they may have to pursue a claim against Defendant. Notwithstanding the submission of a timely Request for Exclusion, Class Members will still be bound by the Settlement and release of the PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Requests for exclusion do not apply to the PAGA Claims, and will not

be effective to preclude the release of the PAGA Claims. The Settlement Administrator shall have no authority with regard to Requests for Exclusions beyond what is provided in this paragraph and may not make any representations to Class Members as whether their Request for Exclusion has been accepted or rejected without the express consent of the Parties and/or the Court.

- d. **Report.** Not later than five (5) days after the deadline to contest the workweeks and request to be excluded from the Settlement, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who have contested the information in their Notice Packet or requested to be excluded from the Settlement.
 - e. **Termination or Revocation of Settlement.** If five percent (5%) or more of the Class Members request exclusion from the Settlement, Defendant may, at its election and in its sole discretion, rescind and nullify the Settlement Agreement. Defendant must exercise this right of rescission in a writing that is provided to Class Counsel within fourteen (14) calendar days after the Settlement Administrator notifies the Parties of the total number of Requests for Exclusion and names of those who submitted Requests for Exclusion received by the Notice Objection/Opt-out Deadline.
5. **No Solicitation of Objection, Appeal, or Election Not to Participate in Settlement.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
6. **Additional Briefing and Final Approval.**
- a. Not later than sixteen (16) court days before the Final Approval Hearing, Plaintiffs will file with the Superior Court a motion for final approval of the Settlement and payment of Plaintiffs' Representative Service Awards, Class Counsel's Fees and Expenses Payment, the PAGA Payment, the Settlement Administrator's reasonable fees and expenses, and any additional payments to be made pursuant to this Settlement.
 - b. Not later than five (5) court days before the Final Approval Hearing, the Plaintiffs may file a reply in support of the motion for final approval of the Settlement and payment of the Settlement Administrator's reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiffs and Class Counsel may file replies in support of their motions for the Representative Service Awards and the Class Counsel Fees and Expenses Payment.
 - c. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement to which the Parties do not agree, then either Party will have the right to

void the Settlement; if that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, except that the Party that exercises the right to void the Settlement under this paragraph will pay the Settlement Administrator's reasonable fees and expenses incurred as of that date. However, an award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the Representative Service Awards or the Class Counsel Fees and Expenses Payment will not constitute a material change to the Settlement within the meaning of this Agreement.

- d. Upon final approval of the Settlement by the Court, Plaintiffs will present to the Court an Order for its approval and entry of Judgment. After entry of the Judgment, the Superior Court will have continuing jurisdiction over the Actions and the Settlement solely for purposes of (1) enforcing this Agreement, (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under court rules or applicable law.
7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the material terms of this Agreement, Plaintiffs, Class Members who did not timely submit an Objection to the Settlement, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings. This paragraph does not preclude Plaintiffs or Class Counsel from appealing a refusal by the Court to award the full Representative Service Award or the Class Counsel Fees and Expenses Payment sought by them, but not the approval of the Settlement otherwise. If the Judgment is appealed, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final, as defined in this Agreement.
8. **Vacation, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal or a petition for certiorari, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material change to the Settlement, as the term "material change" is defined herein, and that court's decision is not completely reversed and the Judgment approving the material terms of this Settlement is not fully affirmed on review by a higher court, then either Plaintiffs or Defendant will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Superior Court not later than thirty (30) days after the reviewing court's decision vacating, reversing, or materially

modifying the Judgment becomes Final. A vacation, reversal, or modification of the Superior Court's award of the Representative Enhancement Award or the Class Counsel Fees and Expenses Payment will not constitute a vacating, reversal, or material modification of the Judgment within the meaning of this Agreement

9. **Timing of Settlement Payments.** Within seven (7) calendar days after receiving the Gross Settlement Amount from Defendant, the Settlement Administrator will, based on how the Court rules at the Final Approval Hearing, pay the following: to Plaintiffs, the Representative Enhancement Awards; to Class Counsel, the Class Counsel Fees and Expenses Payment; to the Settlement Administrator, its reasonable fees and expenses; to the LWDA, the PAGA LWDA Award. Within seven (7) calendar days after receiving the final payment of the Gross Settlement Amount from Defendant, and after making the payments specified above, the Settlement Administrator will, based on how the Court rules at the Final Approval Hearing, calculate and distribute the Net Settlement Amount as follows: to PAGA Aggrieved Employees, their respective PAGA Shares; and to Participating Class Members, their respective Settlement Shares.
10. **Uncashed Settlement Share Checks.** A Class Member and/or PAGA Aggrieved Employee must cash their Settlement Share check within one hundred and twenty (120) calendar days after it is mailed to them. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Class Member at his or her correct address. If any Class Member's Settlement Share check is not cashed within ninety (90) days after its last mailing to the Class Member, the Settlement Administrator will send the Class Member a letter or postcard informing them that unless the check is cashed in the next thirty (30) days, it will expire and become non-negotiable, and offering to replace the check if it was lost or misplaced but not cashed. If one or more Class Members fail to cash the check for their Settlement Shares within one hundred and twenty (120) days after it is mailed to their last known address, and if the aggregate funds represented by the uncashed checks total \$25,000 or more, such remaining funds will be redistributed to each Participating Class Member who cashed their original check, applying the same pro rata formula for the original Settlement Shares. This distribution shall take place within fifteen (15) business days of the check-cashing deadline. If the aggregate funds represented by the uncashed checks total less than \$25,000, or any funds remain after a second disbursement, they will be donated to Legal Services for Children Pursuant to CCP 384(b), prior to any distribution to the *cy pres* beneficiary the Court must approve the final accounting.

H. **Release and Waiver of Claims.**

1. **Plaintiffs' Released Claims.** Upon the Effective Date of this Settlement

and Defendant's full funding of this Settlement, in consideration of their Settlement Shares, PAGA Shares, and the other relevant terms and conditions of the Settlement, Plaintiffs hereby provide a general release of claims for themselves, their spouses, heirs, successors and assigns and forever releases, remises, and discharges any and all claims, charges, complaints, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through the date the Superior Court grants Final Approval, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statutes, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment against Defendant and the Released Parties, their related persons and entities, including but not limited to those raised in the Actions; and those released by Class Members as set forth below (the "Plaintiff's Released Claims"). Plaintiffs' Released Claims include all claims, whether known or unknown. Thus, even if Plaintiffs discover facts in addition to or different from those that he now knows or believes to be true with respect to the subject matter of Plaintiffs' Released Claims, those claims will remain released and forever barred. This release includes, without limiting the generality of the foregoing: any and all claims, demands, causes of actions, obligations, charges, liabilities, interest, attorneys' fees, litigation and other costs, expenses, restitution, equitable and declaratory relief, actual, compensatory and punitive damages, liquidated damages, and all claims for any other type of relief relating to, arising out of, or based upon: all claims of harassment, discrimination, and/or retaliation in violation of local, state or federal law; all claims of violation of employment; all claims based on tort and/or breach of contract, whether written or oral, express or implied, and any covenant of good faith and fair dealing; all claims for misrepresentation, fraud, fraudulent inducement, detrimental reliance, and other similar claims; all claims for unpaid compensation, wages, commissions, bonuses and/or incentive pay, or other benefits, including minimum, straight time, overtime, double time, vacation, sick pay, meal breaks, rest breaks, premium pay, other damages, penalties (including, but not limited to, waiting time penalties); any claim for unlawful or unfair business practices; all claims for emotional distress; any and all claims which were or could have been asserted by Plaintiffs and all claims generally relating to Plaintiffs including any alleged violation of any federal, state or other governmental statute, regulation, ordinance, or executive order.

Therefore, because Plaintiffs are granting a general release, they expressly waive and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to

exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiffs expressly acknowledge this Agreement is intended to include in its effect, without limitation, all claims Plaintiffs do not know or suspect to exist in Plaintiffs' favor at the time of signing this Agreement, and that this Agreement contemplates the extinguishment of any such claims. Plaintiffs warrant that they have read this Agreement, including this waiver of California Civil Code section 1542, and that Plaintiffs have consulted with or had the opportunity to consult with counsel of Plaintiffs choosing about this Agreement and specifically about the waiver of section 1542, and that Plaintiffs understand this Agreement and the section 1542 waiver, and so Plaintiffs freely and knowingly enter into this Agreement. Plaintiffs further acknowledge that Plaintiffs later may discover facts different from or in addition to those Plaintiffs now know or believe to be true regarding the matters released or described in this Agreement, and even so Plaintiffs agree that the releases and agreements contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiffs expressly assume any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies released or described in this Agreement or with regard to any facts now unknown to Plaintiffs relating thereto. Plaintiffs understands that this release does not apply to any claims or rights that cannot be waived as a matter of law, including workers compensation claims. Plaintiffs acknowledges, however, that *they have* no workers' compensation claim pending at the time of signing this Settlement Agreement. Nothing in this Settlement Agreement shall be construed to prohibit Plaintiffs from filing a charge or cooperating with any investigation by any federal, state, or local government agency (including without limitation the United States Department of Labor, the Equal Employment Opportunity Commission, the Securities and Exchange Commission, the Department of Justice, and/or the National Labor Relations Board). However, Plaintiffs understand that *they* will not be entitled to recover any monetary damages or any other form of personal relief in connection with such a claim, investigation or proceeding.

2. **Release of ADEA and OWBPA Claims.** Miranda and Bartolomeo, who are 40 years old or older at the time of this Settlement, agree and understand that they are specifically releasing all claims under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 et seq., the Older Workers Benefit Protection Act, Pub. L. 101-433 ("OWBPA"), and any federal, state or local fair employment acts arising up to the date of each of their execution of this Settlement. Miranda and Bartolomeo affirm that they have read this Settlement in its entirety and have had

- a. a full and fair opportunity to consider and understand its terms and to be advised by Class Counsel. Miranda and Bartolomeo further acknowledge that they are executing this Settlement in exchange for consideration, that Miranda and Bartolomeo understand the Settlement, and have, of their own free will, without coercion, agreed to the terms of the Settlement. Miranda and Bartolomeo further understand that they have been advised herein in writing that: (i) Miranda and Bartolomeo should consult with an attorney before signing this Settlement; (ii) Miranda and Bartolomeo, 40 years old or older at the time of this Settlement, each has twenty-one (21) days to consider the Settlement; (iii) if Miranda and/or Bartolomeo sign this Settlement, Miranda and/or Bartolomeo may revoke it within seven (7) days after signing; and (iv) this Settlement shall not be enforceable, with respect to Miranda and Bartolomeo until the seven (7) day revocation period has expired without the Settlement having been revoked as provided herein. Revocation can be made by delivering a written notice of revocation to: Barbara Antonucci, Esq., Constangy, Brooks, Smith & Prophete LLP, 601 Montgomery Street, Suite 350, San Francisco, CA 94111. The Parties expressly agree that, in the event that Miranda and/or Bartolomeo revoke this Settlement, the Settlement shall be null and void and have no legal or binding effect whatsoever with respect to Miranda and/or Bartolomeo. The Parties to this Settlement recognize that Miranda and/or Bartolomeo may elect to sign this Settlement before the expiration of the twenty-one (21) days day consideration period specified herein.
3. **Class Released Claims.** Upon the Effective Date of this Settlement and Defendant's full funding of this Settlement, in consideration of the Settlement, each Class Member who does not timely request to be excluded from the Settlement (or "Participating Class Member") shall and hereby does release and discharge all Released Parties finally, irrevocably, forever, and with prejudice, from the Class Released Claims as defined in Section I.J. above.
4. **PAGA Released Claims.** Upon the Effective Date of this Settlement and Defendant's full funding of this Settlement, in consideration of the Settlement, Plaintiffs, on behalf of the LWDA and PAGA Aggrieved Employees, shall and hereby do release and discharge all Released Parties, finally, irrevocably, forever, and with prejudice, from PAGA Released Claims as defined in Section I.C.C. above. The Parties agree that there shall be no right for any PAGA Aggrieved Employees to opt out or otherwise exclude themselves from the release of claims pursuant to Labor Code Section 2698. The Parties intend and agree that the Final Approval Order and the Judgment entered as a result of this Settlement shall have *res judicata* and preclusive effect to the fullest extent allowed by law and shall also be effective to adjudicate and release the claims and/or rights of the LWDA to recover civil penalties against the Released Parties on behalf of

the PAGA Aggrieved Employees for any PAGA Released Claims (i.e., the Judgment on this Settlement will have res judicata effect as to those claims of PAGA Aggrieved Employees, the LWDA, and State of the California, whether pursued directly by the LWDA or by a representative pursuant to PAGA).

I. Miscellaneous Terms.

1. **Escalator Clause.** The Parties estimate the Settlement Class Members worked approximately 979,100 workweeks in aggregate from January 16, 2017 through March 30, 2026, and this estimate serves as the basis for Plaintiffs accepting the settlement. If the number of actual workweeks between January 16, 2017 and March 30, 2026 increases by more than 10% of the total estimate stated (i.e., exceeds 1,077,010 workweeks), Defendant may, at their election, opt to (a) increase the GSA in the exact proportionate amount as to any additional workweeks over 10% (i.e., 12% more workweeks than estimated will result in a 2% proportionate increase in the GSA) or (b) end the Class Period on the date that the total work weeks equals 1,077,010 Work Weeks.
2. **Addition of Samhouri to the Miranda Action.** The Parties stipulate and agree that for settlement purposes only, the Parties shall file a stipulation in the Miranda Action to add Samhouri to the Miranda Action. In the event that any of the stipulated requests for consolidation is not granted by the Court, the Parties stipulate and agree that for settlement purposes only, the Parties shall meet and confer regarding a process for approval that is acceptable to and maintains all Parties in the same position as prior to the Settlement. In the event the Settlement is not approved, the Parties agree that the Parties shall be placed in the same position as they were in immediately prior to the Settlement. These agreements will be effectuated through stipulations to be filed with the Court as appropriate.
3. The Parties stipulate and agree that for settlement purposes only, as part of addition of Samhouri to the Miranda Action, and prior to seeking preliminary approval of this Settlement Agreement, to the prompt filing of an amended complaint in the Miranda Action (“Operative Complaint”). The Operative Complaint shall be filed after execution of this Settlement Agreement and it shall consolidate the claims in the Miranda Action and Samhouri Action, including all legal allegations, and factual allegations pled in the Actions, and it shall assert any additional claims, legal allegations, any claims and factual allegations asserted during mediation, and factual allegations necessary to effectuate the Released Claims in this Settlement Agreement. The Operative Complaint shall also add Samhouri, Bartolomeo, and Tideman Ball as Named Plaintiffs and Class Representatives, and assert a PAGA claim for any and all facts and theories contained in their letters to the LWDA. The Operative Complaint will be in the form attached hereto as **Exhibit B** or as stipulated to by the parties prior to Preliminary Approval.

4. **Dismissal of the PAGA Letter in *Miranda v. The Bay Clubs Company, LLC*; Amendment of the PAGA Letter in *Samhoury v. The Bay Clubs Company, LLC*.** The Parties stipulate and agree that for settlement purposes only, Defendants consent to the filing of the Operative Complaint and to personal and subject matter jurisdiction in the Court. On November 7, 2024, the Court entered an order dismissing with prejudice Plaintiff's Eighth Cause of Action under PAGA, as well as all PAGA allegations from the Complaint. The Parties further stipulate and agree that, prior to filing the Operative Complaint, Miranda shall file a dismissal of his PAGA letter with the LWDA, and Samhoury shall file an amended PAGA letter with the LWDA, consistent with this Settlement Agreement to effectuate this Settlement Agreement and the Released Claims in Paragraph II.H.4. The Dismissal Letter will be in the form attached hereto as **Exhibit C**; and the Amendment Letter will be in the form attached hereto as **Exhibit D**. The Settlement is expressly conditioned upon the approval by all Parties of the Operative Complaint and PAGA Dismissal and Amendment Letters.
5. **Stipulation for Class Certification.** Plaintiffs shall move for, and Defendant will not oppose, certification of the Settlement Class as defined herein, including all Class Members for purposes of settlement only, and for appointment of Named Plaintiffs as Class Representatives, and Marco A. Palau, Joseph D. Sutton, and Eric S. Trabucco of Advocates for Worker Rights, LLP, and Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Bloiuw, and Piya Mukherjee – Blumenthal Nordrehaug Bhowmik De Blouw LLP, as Class Counsel. If, however, the Settlement does not become final for any reason, the Parties' Settlement Agreement, including this Stipulation for Class Certification, shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, whether class certification would be appropriate in any other context in this litigation.
6. **No Admission of Liability.** The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement, Defendant does not admit, and specifically deny, violation of any federal, state, or local law; violation of any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breach of any contract; violation or breach of any duty; any misrepresentation or deception; or any other unlawful conduct with respect to its employees or any other person or entity. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violation(s) or failure(s) to comply with any applicable law. Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved.
7. **References.** Defendant agrees that any request for information or a reference related to Plaintiffs' employment with Defendant will be

responded to with only the Plaintiffs' dates of employment, position(s) held, and most recent rate of pay.

8. **Revocation Period.** Plaintiffs understand that, after executing this Agreement, they have the right to revoke it within seven (7) days after execution. Plaintiffs understand that this Agreement will not become effective and enforceable unless and until the 7 day revocation period has expired. The release provided for in this Agreement by Plaintiffs shall become effective and enforceable as of the Effective Date of this Agreement, provided that the Effective Date of this Agreement occurs after the 7 day revocation period has expired.
9. **Enforcement.** The Parties agree that the Alameda County Superior Court shall have continuing jurisdiction to enforce the terms of this Agreement pursuant to California Civil Procedure Code section 664.6. In the event that a motion to enforce this Agreement is required to be filed to a Party's failure to comply with the terms herein, the prevailing party shall be awarded reasonable attorney's fees and costs.
10. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this or other than the representations, warranties, covenants, and inducements expressly stated in this Agreement. The Parties agree that there is no waiver of Defendant's right to compel arbitration by virtue of this Settlement Agreement and settlement process contemplated herein, should the Settlement not be approved. No rights hereunder may be waived except in writing.
11. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Superior Court, and in all cases all such documents, supplemental provisions and assistance of the Superior Court will be consistent with this Agreement.
12. **Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, including any outstanding written discovery, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Superior Court.

13. **Extension of Time to Prosecute.** In the event the Court denies approval of the Settlement or the Settlement becomes void under the terms of this Agreement, the Parties to the Miranda Action agree that the five-year dismissal statute under California Code of Civil Procedure sections 583.310 and 583.360 will be extended to July 13, 2027, and the Parties to the Samhouri Action agree that the five-year dismissal statute under California Code of Civil Procedure sections 583.310 and 583.360 will be extended for a period of time equivalent to the months the actions was stayed beginning July 29, 2025 and ending when the Court denies approval of the Settlement or the Settlement becomes void under the terms of this Agreement.
14. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
15. **Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of each of the Parties.
16. **No Prior Assignment.** Plaintiffs hereby represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
17. **Applicable Law.** All terms and conditions of this Agreement will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
18. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
19. **Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arm's length negotiations, taking into account all relevant factors, current and potential.
20. **No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.

21. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
22. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by U.S. Mail, addressed as follows:

CLASS COUNSEL

Marco A. Palau
Joseph D. Sutton
Eric S. Trabucco
Advocates for Worker Rights LLP
212 9th Street, Suite 314
Oakland, CA 94607
Tel: (510) 269-4200 / Fax: (408) 657-4684

Norman B. Blumenthal
Kyle R. Nordrehaug
Aparajit Bhowmik
Nicholas J. De Blouw
Piya Mukherjee
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel: (858) 551-1223
Fax: (858) 551-1232

DEFENDANT'S COUNSEL

Barbara Antonucci
Sarah Hamilton
Stacy Lall
Dongying Zhang
Constangy, Brooks, Smith & Prophete, LLP
601 Montgomery Street
San Francisco, CA 94111
Tel: (415) 918-3000

23. **Spanish Translation.** Class Counsel represent that they have translated this Agreement into Spanish and made that translation available to Plaintiffs before they executed this Agreement.
24. **Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Superior Court first

attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provisions shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

25. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. Facsimile and electronic signatures will be accepted in accordance with California law. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IV. EXECUTION BY PARTIES

The Parties hereby execute this Agreement.

^{06/03/2026}
Dated: May ___, 2026

By 
Francisco Diosdado-Miranda

Dated: May ___, 2026

By _____
Ferial Samhuri

^{06/02/2026}
Dated: May ___, 2026

By 
Todd Bartolomeo

^{06/01/2026}
Dated: May ___, 2026

By 
Fiona Tideman Ball

^{06/02/2026}
Dated: May ___, 2026

By 
Marco A. Palau
Joseph D. Sutton
Eric S. Trabucco
Advocates for Worker Rights LLP
Counsel for Miranda, Bartolomeo,
and Ball

^{06/01/2026}
Dated: May ___, 2026

By 
Jessica Juarez
Law Office of Jessica Juarez
Counsel for Miranda, Bartolomeo,
and Ball

Dated: May ___, 2026

By _____
Norman B. Blumenthal
Kyle R. Nordrehaug
Aparajit Bhowmik
Nicholas J. De Blouw
Piya Mukherjee
**Blumenthal Nordrehaug Bhowmik
De Blouw LLP**
Counsel for Samhuri

The Bay Clubs Company, LLC

IV. EXECUTION BY PARTIES

The Parties hereby execute this Agreement.

Dated: May ___, 2026

By _____
Francisco Diosdado-Miranda

06/03/2026

Dated: May ___, 2026

By *Ferial Samhour*
Ferial Samhour (Jun 3, 2026 12:25:55 EDT)
Ferial Samhour

Dated: May ___, 2026

By _____
Todd Bartolomeo

Dated: May ___, 2026

By _____
Fiona Tideman Ball

Dated: May ___, 2026

By _____
Marco A. Palau
Joseph D. Sutton
Eric S. Trabucco
Advocates for Worker Rights LLP
Counsel for Miranda, Bartolomeo,
and Ball

Dated: May ___, 2026

By _____
Jessica Juarez
Law Office of Jessica Juarez
Counsel for Miranda, Bartolomeo,
and Ball

6/3/26

Dated: May ___, 2026

By_ 
Kyle Nordrehaug
Aparajit Bhowmik
Nicholas J. De Blouw
Piya Mukherjee
**Blumenthal Nordrehaug Bhowmik
De Blouw LLP**
Counsel for Samhour

The Bay Clubs Company, LLC

Dated: June 2, , 2026

Signed by:
By: Allison Holcombe
C733C912176541D...

Print Name: Allison Holcombe
General Counsel

EXHIBIT A



Superior Court of California of Alameda County

Miranda, et al. v. The Bay Clubs Company, LLC ("TBCC")

Case No. RG21105433

Class Action Notice

Authorized by the Superior Court of Alameda County

Do you or did you work for The Bay Clubs Company, LLC ("TBCC") between January 16, 2017 and March 30, 2026 as a non-exempt employee in the State of California?

There is a \$4,000,000.00 settlement of a lawsuit.

As a Class Member, you are entitled to money and you have options available to you that will affect your rights.

If you object or do nothing, you will receive money and be bound by the class settlement. If you opt out, you will not be bound by the class settlement and you will receive nothing for releasing the class claims.

To learn more about this settlement, read this notice.

Respond by [Date].

Important things to know:

- If you take no action, you will be bound by the class settlement, and your rights will be affected.
- You can learn more at: [\[insert link for settlement administrator\]](#)

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About This Notice

Why did I get this notice?

This notice is to tell you about the settlement of a class action lawsuit, *Miranda, et al. v. The Bay Clubs Company, LLC* involving non-exempt employees who work or have worked for TBCC between January 16, 2017 and March 30, 2026 in the State of California. **You received this notice because you may be a member of the group of people affected, called the “class.”** This notice gives you a summary of the terms of the proposed agreement, explains what rights class members have, and helps class members make decisions about what action to take.

What do I do next?

Read this notice to understand the settlement and to determine if you are a class member. Then, decide which of these actions you want to take:

Options	What each option means:
Do Nothing and Receive Money Under the Settlement	If you do nothing, and if the Court grants final approval of the Settlement, you will receive an estimated \$[amount].
Opt Out	Get no payment. Allows you to bring another lawsuit against TBCC about the same issues.
Object	Tell the Court why you don't like the settlement.

Read on to understand the specifics of the settlement and what each choice would mean for you.

What are the most important dates?

Your deadline to object or opt out: [date]

Learning About the Lawsuit

What is this lawsuit about?

On July 13, 2021, the Lawsuit was initiated by Plaintiff Francisco Diosdado Miranda in Alameda County Superior Court as a putative class action, seeking unpaid wages, penalties, and other monetary relief on behalf of himself, and other current and former non-exempt employees employed by

TBCC for alleged violations of the California Labor Code. The operative Complaint alleges the following causes of action: (i) failure to pay for all hours worked; (ii) failure to pay overtime wages; (iii) failure to provide lawful meal periods or premium wages in lieu thereof; (iv) failure to provide lawful rest breaks or premium wages in lieu thereof; (v) failure to reimburse necessary business expenses; (vi) wage statement penalties; (vii) waiting time penalties; (viii) violation of California's Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.*; and (ix) violation of California's Private Attorney General Act, Lab. Code §§ 2698, *et seq.* [The lawsuit has been consolidated with a related lawsuit, *Samhoury v. The Bay Clubs Company, LLC*, Case No. C24-01037, pending in Contra Costa County, which seeks civil penalties under PAGA.]

Where can I learn more?

You can get a complete copy of the proposed settlement and other key documents in this lawsuit at:
[insert link for settlement administrator]

After engaging in investigation, as well as three full-day mediation sessions before experienced mediators, the Parties agreed on the proposed Settlement that was preliminarily approved by the Court on [DATE OF PRELIM. APPROVAL].

TBCC denies that it did anything wrong.

Why is there a settlement in this lawsuit?

In October 2025 the parties agreed to settle, which means they have reached an agreement to resolve the lawsuit. Both sides want to avoid the cost and risk of continuing the case in court.

The settlement is for workers who were employed by TBCC at any time between January 16, 2017 and March 30, 2026 as a non-exempt employee in the State of California. The Court has not decided this case in favor of either side.

What is a class action settlement?

A class action settlement is an agreement between the parties to resolve and end the case. Settlements can provide money to class members and changes to the practices that caused the harm.

What happens next in this lawsuit?

The Court will hold a Fairness Hearing to decide whether to approve the proposed settlement. The hearing will be held at:

Where: Department 18 of Alameda County Superior Court, Administration Building at 1221 Oak Street, 4th Floor, Oakland, California 94612

When: 1:30 p.m. on [date].

The Court has directed the parties to send you this notice about the proposed settlement. Because the settlement of a class action decides the rights of all members of the proposed class, the Court must give final approval to the settlement before it can take effect. Payments will only be made if the Court approves the settlement.

You don't have to attend the hearing, but you may at your own expense. You may also ask the Court for permission to speak and express your opinion about the settlement. If the Court does not approve the settlement or the parties decide to end it, it will not take effect and the lawsuit will continue. The hearing date may change without further notice to class members.

Learning About the Settlement

What does the settlement provide?

TBCC has agreed to pay \$4,000,000.00 into a settlement fund. This money

will be divided among the class members and will also be used to pay for costs and lawyer fees approved by the Court, and for the cost of administering this settlement. Members of the settlement class will “release” their claims as part of the settlement, which means they cannot sue TBCC for the same issues and legal violations raised in this lawsuit and claims released in the proposed settlement. The full terms of the release can be found at [\[insert link for settlement administrator\]](#).

The settlement also provides up to \$25,000 each to Class Representatives Francisco Miranda and Ferial Samhoury, and \$7,500 each to Representative Plaintiffs Todd Bartolomeo and Fiona Tideman Ball to compensate them for their work on the case. These are called “service payments.”

If one or more Class Members fail to cash the check for their Settlement Shares within 120 days after it is mailed to their last known address, and if the aggregate funds represented by the uncashed checks total twenty-five thousand dollars (\$25,000) or more, such remaining funds will be redistributed to each Participating Class Member who did cash their original check, applying the same pro rata formula for the original Settlement Shares. If the aggregate funds represented by the uncashed checks total less than \$25,000, or any funds remain after a second distribution, they will be donated to Legal Services for Children with approval of the Court.

How do I know if I am part of this settlement?

If you are working or worked for TBCC at any time between January 16, 2017 and March 30, 2026 as a non-exempt employee in the State of California, you are part of this settlement.

If you are unsure of whether you are part of this settlement, contact the Settlement Administrator at [\[phone number\]](#).

How much will my payment be?

You will receive an estimated \$[\[amount\]](#). Your payment amount is based on the following factors:

- The number of workweeks you worked for TBCC during the time period between January 16, 2017 and March 30, 2026 in the State of California.

- The amount of the lawyer fees, costs, and service payments approved by the Court.

Deciding What to Do

How do I weigh my options?

You have three options. You can (1) do nothing, stay in the class settlement and receive money; (2) object, stay in the class settlement and receive money; or (3) opt out of the class settlement and receive no money.

How do I get a payment if I am a class member?

If you wish to receive money, you don't have to do anything. If the proposed settlement is granted approval by the Court your payment will be mailed to the last known address TBCC has for you.

Do I have a lawyer in this lawsuit?

In a class action, the court appoints lawyers to work on the case and represent the interests of all the class members. In this case, the Court has approved the following lawyers as the Class Counsel.

Joseph D. Sutton, Marco A. Palau, and Eric S. Trabucco of Advocates for Worker Rights LLP, Jessica Juarez of The Law Office of Jessica Juarez, and Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, and Piya Mukherjee of Blumenthal Nordrehaug Bhowmik De Blouw LLP. These are the lawyers who negotiated this settlement on your behalf.

If you want to be represented by your own lawyer, you may hire one at your own expense.

Do I have to pay the lawyers in this lawsuit?

Lawyers' fees and costs will be paid from the Settlement Fund. **You will not have to pay the lawyers directly.**

To date, Class Counsel have not been paid any money for their work or the expenses that they have paid for the case. To pay for some of their time and risk in bringing this case without any guarantee of payment unless they were successful, Class Counsel will request, as part of the final approval of this Settlement, that the Court approve a payment of up to \$1,333,333.33 in attorneys' fees plus the reimbursement of out-of-pocket expenses.

Lawyers' fees and expenses will only be awarded if approved by the Court as a fair and reasonable amount. You have the right to object to the lawyers' fees even if you think the settlement terms are fair.

Class Counsel will also ask the Court to approve a payment of \$25,000 each to Representative Plaintiffs Francisco Miranda and Ferial Samhoury, and \$7,500 each to Representative Plaintiffs Todd Bartolomeo and Fiona Tideman Ball for the time and effort they contributed to the case. If approved by the Court, the Service Awards will be paid from the Settlement Fund.

Opting Out

What if I don't want to be part of this settlement?

You can opt out of the class settlement. If you do, you will not receive payment and cannot object to the class settlement. However, you will not be bound or affected by anything that happens in this lawsuit and may be able to file your own case.

Class member may not opt-out of the PAGA settlement. How do I opt out?

To opt out of the class settlement, you must complete the opt out form included with this notice and mail it by [date] to the Settlement Administrator at:

[ILYM Group, Inc.]
[Street address]
[City, State, Zip Code]

[Phone Number]

Be sure to include your name, address, telephone number, and signature.

Objecting

What if I disagree with the settlement?

If you disagree with any part of the settlement (including the lawyers' fees) but don't want to opt out, you may object. If you wish to object to any term of the Settlement, you may file with the Court and serve on counsel for the Parties a written objection to the Settlement setting forth the grounds for the objection. Further, you may still submit your objection to the Court in person at the Final Approval Hearing regardless of whether you filed or delivered a written notice of objection. You must give reasons why you think the Court should not approve the settlement and say whether your objection applies to just you, a part of the class, or the entire class. The Court will consider your views. The Court can only approve or deny the settlement — it cannot change the terms of the settlement. You may, but don't have to, hire your own lawyer to help you.

To object, you may send a letter to the Court that:

- (1) is postmarked by [date];
- (2) includes the case name and number (*Miranda, et al. v. The Bay Clubs Company, LLC*; Case No. RG21105433)
- (3) includes your full name, address and telephone number, and email address (if you have one);
- (4) states the reasons for your objection;
- (5) says whether either you or your lawyer intend to appear at the final approval hearing and your lawyer's name;
- (6) your signature.

Mail the letter to:

[ILYM Group, Inc.]
[Street address]
[City, State, Zip Code]

Superior Court of Alameda
County, Department 18
Administration Building

[Phone Number]	1221 Oak Street Oakland California 94612
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Doing Nothing

What are the consequences of doing nothing?

If you do nothing, you will receive money (your settlement share) and release your right to bring similar claims against TBCC. That means you won't be able to start, continue, or be part of any other lawsuit against TBCC about the issues in this case.

Class Released Claims. Upon the Effective Date of this Settlement and Defendant's full funding of this Settlement, in consideration of the Settlement, each Class Member who does not timely request to be excluded from the Settlement (or "Participating Class Member") shall and hereby does release and discharge all Released Parties finally, irrevocably, forever, and with prejudice, from the Class Released Claims as defined in Section I.J. of the Settlement Agreement. The defined terms in this section and the full terms of the release can be found at [\[insert link for settlement administrator\]](#).

PAGA Released Claims. Upon the Effective Date of this Settlement and Defendant's full funding of this Settlement, in consideration of the Settlement, Plaintiffs, on behalf of the LWDA and PAGA Aggrieved Employees, shall and hereby do release and discharge all Released Parties, finally, irrevocably, forever, and with prejudice, from PAGA Released Claims as defined in Section I.C.C. of the Settlement Agreement. The defined terms in this section and the full terms of the release can be found at [\[insert link for settlement administrator\]](#).

If you are a class member and do not timely and validly opt-out, you will receive your Settlement Award, and will be bound by the settlement of the Class Released Claims. Class members may not opt-out of the PAGA Released Claims. A full description of the claims and persons who will be

released if this settlement is approved can be found at [insert link for settlement administrator]

Key Resources

How do I get more information?

This notice is a summary of the proposed settlement. The complete settlement with all its terms can be found [insert link for settlement administrator]. To get a copy of the settlement agreement or get answers to your questions:

- contact Class Counsel (information below)
- visit the case website at [insert link for settlement administrator]
- access the Court's eCourt Public Portal online (<https://eportal.alameda.courts.ca.gov/?q=Home>) or by visiting the clerk's office of the Court (address below)

Resource	Contact Information
Case website	[insert link for settlement administrator]
Settlement Administrator	ILYM Group, Inc. [Street address] [City, State, Zip Code] [Phone Number]
Class Counsel	Advocates for Worker Rights LLP info@advocatesforworkers.com 212 9 th Street, Suite 314 Oakland, CA 94607 www.advocatesforworkers.com Blumenthal Nordrehaug Bhowmik De Blouw LLP 2029 Century Park East, 14 th Floor Los Angeles, CA 90067 www.bamlawca.com

Court (DO NOT CONTACT)	Superior Court of Alameda County, Department 23 Administration Building 1221 Oak Street Oakland California 94612
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You may access the pleadings and other records in this litigation, including the Settlement Agreement, through the Court's Public Portal online filing system ("eCourt Public Portal"): <https://eportal.alameda.courts.ca.gov/?q=Home>

After arriving at the website, click "Searches." On the next page click "Case Number Search" and then enter RG21105433 as the case number and click "SEARCH." Images of every document filed in the case can be viewed through the 'Register of Actions' for a minimal fee.

These documents may also be examined free of charge by using one of the computer terminal kiosks available at René C. Davidson Courthouse in Oakland, CA and the Hayward Hall of Justice during normal business hours.

REQUEST FOR EXCLUSION/OPT-OUT FORM

Miranda, et al. v. The Bay Clubs Company, LLC

(Alameda County Superior Court Case No. RG21105433)

ONLY RETURN THIS FORM IF YOU DO NOT WANT TO PARTICIPATE IN THE CLASS SETTLEMENT. RETURNING THE FORM AND CHOOSING NOT TO PARTICIPATE MEANS YOU WILL NOT RECOVER ANY SETTLEMENT AMOUNT AND THAT YOU WILL NOT BE COVERED BY THE CLASS RELEASE IN THIS CASE.

DEADLINE TO RETURN THIS FORM TO SETTLEMENT ADMINISTRATOR (POSTMARK, FAX OR EMAIL AT THE ADDRESS PROVIDED AT THE BOTTOM OF THE FORM) BY **[DATE]**.

I do NOT want to participate in the above-described class settlement in connection with the lawsuit against The Bay Clubs Company, LLC.

Signed

Date: _____

Printed Name

(____) _____
Telephone Number

Last 4 Digits of Social Security # or ITIN

Address: _____

Miranda, et al. v. The Bay Clubs Company, LLC

ILYM Group, Inc.

MAILING ADDRESS 1

MAILING ADDRESS 2

PHONE

FAX

EMAIL ADDRESS

CLASS MEMBER VERIFICATION FORM

Miranda, et al. v. The Bay Clubs Company, LLC

(Alameda County Superior Court Case No. RG21105433)

ONLY RETURN THIS FORM IF you believe The Bay Clubs Company, LLC's records of the number of workweeks you worked during Class Period in the Class Notice is inaccurate. If you believe this information is inaccurate you may submit this Dispute Form to the Settlement Administrator by email, FAX, or mail, *including supporting documents* (such as paycheck stubs) to the Settlement Administrator at:

Miranda, et al. v. The Bay Clubs Company, LLC Settlement

ILYM Group, Inc.

MAILING ADDRESS 1

MAILING ADDRESS 2

PHONE

FAX

EMAIL ADDRESS

This Class Member Dispute Form and supporting documents must be postmarked, faxed, or emailed by no later than **[DISPUTE DATE]**. The Settlement Administrator will inform the Class Member regarding the final determination of their total number of workweeks.

Name: _____

Phone Number: _____

Social Security #: _____

Email: _____

I believe the number of workweeks indicated in the Class Notice sent to me is inaccurate. I worked _____ workweeks for Defendant between January 16, 2017 and March 30, 2026 in the State of California.

Signature

Date

Please list supporting documentation that you are attaching to this Form:

NOTICE OF RE-MAILING

Miranda, et al. v. The Bay Clubs Company, LLC
(Alameda County Superior Court Case No. RG21105433)

Class Member's Name
Class Member's Address
Class Member's Address

Dear Class Member,

Earlier, a Class Notice was mailed to you at another address, which was returned to the Settlement Administrator because that address was invalid. Enclosed please find a Class Notice that contains important information, including your rights pertaining to a settlement in the above-referenced case and deadlines for you to act.

EXHIBIT B

ADVOCATES FOR WORKER RIGHTS LLP

MARCO A. PALAU (Bar No. 242340)

marco@advocatesforworkers.com

JOSEPH D. SUTTON (Bar No. 269951)

jds@advocatesforworkers.com

ERIC S. TRABUCCO (Bar No. 295473)

est@advocatesforworkers.com

212 9th Street, Suite 314

Oakland, California 94607

Telephone: (510) 269-4200

Facsimile: (408) 657-4684

Attorneys for Plaintiffs Francisco Diosdado Miranda,

Todd Bartolomeo, and Fiona Tideman Ball

BLUMENTHAL NORDREHAUG BHOWMIK

DE BLOUW LLP

Norman B. Blumenthal (SBN 068687)

Kyle R. Nordrehaug (SBN 205975)

Aparajit Bhowmik (SBN 248066)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858) 551-1223

Facsimile: (858) 551-1232

Attorneys for Plaintiff Ferial Samhouri

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA—OAKLAND

FRANCISCO DIOSDADO MIRANDA, an individual; FERAL SAMHOURI, an individual; TODD BARTOLOMEO, an individual; FIONA TIDEMAN BALL, an individual, on behalf of themselves, the State of California, and others similarly-situated,

Plaintiffs,

vs.

THE BAY CLUBS COMPANY, LLC, a Delaware Company; and DOES 1-20, inclusive,

Defendants.

Case No.: RG21105433

CONSOLIDATED CLASS & PAGA ACTION COMPLAINT FOR:

1. Minimum Wages, LC § 1194;
2. Overtime Wages, LC § 510;
3. Meal Period Violations, LC §§ 226.7, 512;
4. Rest Break Violations, LC § 226.7;
5. Waiting Time Penalties, LC § 203 and Failure to Timely Pay Wages During Employment, LC § 204;
6. Wage Statement Penalties, LC § 226;
7. Indemnification of Necessary Business Expenses, LC § 2802;
8. Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.*; and
9. Civil Penalties pursuant to Private Attorneys General Act, LC 2699, *et seq.*

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1. Francisco Diosdado Miranda, Ferial Samhour, Todd Bartolomeo, and Fiona Tideman Ball (“Plaintiff” or “Plaintiffs”) bring this action for wages, penalties and injunctive relief against The Bay Clubs Company, LLC, and Does 1 through 20 (collectively “Defendants”). The allegations in this complaint are based on Plaintiffs’ personal knowledge and on information and belief. The allegations made on information and belief are supported by evidence or are likely to be supported by evidence obtained through discovery.

2. Plaintiffs bring this action on behalf of a class of individuals pursuant to California Code of Civil Procedure section 382.

3. At all times relevant to this action, Defendants have engaged in systematic wage theft, maintaining policies and practices that violate the rights of Plaintiffs, and the Class, and the PAGA Pool. Defendants have failed to compensate workers for all hours worked, in violation of the state’s minimum wage and overtime and double time laws; failed to provide timely, complete and off-duty meal periods, or otherwise pay premium wages at regular rate of pay in lieu thereof; failed to authorize and permit rest periods in compliance with the Wage Orders and at the requisite rates for the length of shifts, or otherwise pay premium wages at regular rate of pay in lieu thereof; failed to pay all wages owed upon termination of the employment relationship (including but not limited to accrued vacation and/or paid time off wages); failed to timely pay all wages owed during employment; failed to indemnify employees for expenditures; failed to furnish timely each pay period accurate, itemized statements separately stating, among other things, total hours worked, gross and net wages earned, all applicable hourly rates, and all premium wages earned; failure to pay split shift pay and/or reporting time pay and/or shift differentials; and failed to comply with record keeping requirements.

4. Defendants’ acts and omissions, which violate the Labor Code, constitute predicate unlawful and unfair business practices in violation of California’s Unfair Competition Law (“UCL”), Business & Professions Code sections 17200, *et seq.* Defendants’ violations of the California Labor Code are unlawful acts which have afforded Defendants an unfair competitive advantage. Plaintiffs and the Class they seek to represent are therefore entitled to all remedies provided under the UCL, including restitutionary, injunctive, declaratory and/or other equitable relief for a period of four years

from the filing of the original complaint through the date of this action's final disposition. Plaintiffs also seek reasonable attorneys' fees and costs pursuant to, *inter alia*, Labor Code sections 226(e) & (h), 1194(a), 1198.5(l), and Code of Civil Procedure section 1021.5.

5. Plaintiff Ferial Samhoury and Todd Bartolomeo have complied with the administrative requirements of Labor Code section 2699.3 which are a pre-requisite for asserting a Private Attorneys General Act (“PAGA”) claim. Plaintiffs Ferial Labor & Workforce Development Agency (“LWDA”) of the facts and theories supporting the alleged violations described in this complaint on August 30, 2023, a true and accurate copy of which is attached as “Exhibit 1” hereto, and the allegations in such amended notice are incorporated by reference herein. Plaintiff Bartolomeo gave written notice to the employer and the LWDA of the facts and theories supporting the alleged violations described in this complaint on October 27, 2025, a true and accurate copy of which is attached as “Exhibit 2” hereto, and the allegations in such amended notice are incorporated by reference herein. More than 65 days have passed since notice was given and Plaintiffs Ferial and Bartolomeo are entitled to act as a proxy of the state to enforce the labor laws and collect penalties on behalf of the State of California and the workforce, pursuant to Labor Code section 2699, *et seq.* Plaintiffs Ferial and Bartolomeo therefore seek civil penalties pursuant to PAGA for themselves, the workforce and the state, as well as attorney’s fees and cost of suit. On April 13, 2026, Plaintiff Samhoury filed an amended notice online with the LWDA, a true and accurate copy of which is attached as “Exhibit 3” hereto, and the allegations in such amended notice are incorporated by reference herein.

6. At all times relevant to this action, Defendants' conduct has been willful and in reckless disregard of the rights of their workers. Defendants have been on notice of the alleged illegalities but have deliberately continued to exploit workers by enforcing and maintaining the illegal practices described herein. This action is brought not only to recover rightfully earned wages but also to enforce the state's laws, restore ill-gotten gains, and deter Defendants from their illegal conduct. Plaintiffs therefore seek all remedies available to themselves and to the Class and PAGA Pool.

II. THE PARTIES

7. Plaintiff Francisco Diosdado Miranda was employed by Defendant in or around October 2018, and last worked at the club on or about May 24, 2020, and then he was laid off by

1 Defendants on or about November 20, 2020. At all times Plaintiff Diosdado Miranda was classified by
2 Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal
3 and rest periods and payment of minimum and overtime wages due for all time worked.

4 8. Plaintiff Ferial Samhouri was employed by Defendant in California from September of
5 2021 to September of 2023. At all times Plaintiff Samhouri was classified by Defendant as a non-
6 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods
7 and payment of minimum and overtime wages due for all time worked.

8 9. Plaintiff Todd Bartolomeo was employed by Defendant in California from 2023 to May
9 of 2025. At all times Plaintiff Bartolomeo was classified by Defendant as a non-exempt employee,
10 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
11 minimum and overtime wages due for all time worked.

12 10. Plaintiff Fiona Tideman Ball was employed by Defendant in California from 2015 to
13 2020. At all times Plaintiff Tideman Ball was classified by Defendant as a non-exempt employee, paid
14 on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
15 and overtime wages due for all time worked.

16 11. Defendants failed to pay Plaintiffs for all hours worked, including for time the employee
17 was permitted or suffered to permit their work, for time at the start and end of the shift, for time that was
18 recorded, and time that was rounded, shaved, or altered. Plaintiffs allege that the failure to pay for all
19 hours worked violates provisions of the California Wage Order and Labor Code, including minimum
20 wage, overtime and double time wages, PTO/vacation, and sick pay wages at the applicable rate of pay
21 pursuant to California law. Defendants also violated Plaintiffs' right to lawful rest breaks and meal
22 periods by failing to provide rest and meal periods and or premium wages in lieu thereof. Defendants
23 failed to provide timely, complete, uninterrupted, off-duty meal periods that were free of the
24 employer's control, and Plaintiffs were denied premium wages in lieu of lawful meal periods.
25 Defendants unlawfully rounded meal period time and automatically deducted 30 minutes for meal
26 periods that were less than 30 minutes, resulting in minimum wage and meal period violations as a
27 result of this practice. Defendants did not obtain valid and voluntary meal period waivers or on-duty
28 meal period agreements, and instead of providing lawful meal periods Defendants automatically

1 deducted 30 minutes (or more) for meal periods whether they were provided at all or in part.
2 Defendants also failed to authorize and permit paid off-duty rest breaks of at least 10 minutes at the
3 rate of one rest period for shifts greater than 3.5 hours, two rest periods for shifts greater than six hours
4 and up to 10 hours, and three shifts for shifts greater than 10 hours and up to 14 hours, and so on.
5 Plaintiffs were denied premium wages in lieu of proper rest breaks. Further, Plaintiffs were provided
6 inaccurate itemized wage statements that failed to state accurately the gross and net wages owed,
7 applicable rates of pay, total hours, deductions and other statutory items. Defendants also failed to
8 indemnify employees for reasonable business expenditures. Defendants failed to comply with
9 record keeping requirements. Defendants failed to pay split shift pay and/or reporting time pay and/or
10 shift differentials. When Plaintiffs' employment ended, Defendants failed to pay all wages owed
11 timely, entitling him to waiting tie penalties under Labor Code section 203. Further, Defendants failed
12 to timely pay wages during employment under Labor Code section 204.

13 12. On information and belief, The Bay Clubs Company, LLC ("Bay Club") is a Limited
14 Liability Company that is in the business of operating and managing health clubs in California. The
15 Bay Club's principal California office is located in Pleasanton, California, and its health clubs are
16 located throughout the state. The company has employed Plaintiffs and members of the Class and
17 PAGA Pool in California and is liable for the violations alleged herein as the employer. The Bay Club
18 is liable as an employer and as a successor in interest for violations of the Labor Code and Wage
19 Orders committed by Defendant Black Point Golf, LLC with respect to Plaintiffs and the Class.

20 13. At all times relevant to this action, the offending conduct has been willful and in
21 reckless disregard of the rights of workers. Defendants knew or were on notice of the alleged
22 illegalities but deliberately chose to ignore them. The true names and capacities, whether individual,
23 corporate, associates, or otherwise of Defendants sued as Does 1-20, inclusive, are currently unknown
24 to Plaintiff, who therefore sue such Defendants by fictitious names as permitted by law. Plaintiffs are
25 informed and believe that each Doe defendant is legally responsible in some manner for the unlawful
26 acts referred to herein as a joint venturer, alter ego, predecessor, successor, sister, parent, subsidiary, or
27 related or affiliated entity. Plaintiffs will seek leave of court to amend this complaint to reflect the true
28 names and capacities of the Defendants designated as Does when such identities become known.

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15. Venue is proper in the Superior Court of the County of Alameda pursuant to California Code of Civil Procedure sections 395 and 395.5, because (a) Defendants or some of the Defendants reside in Alameda County, (b) the Bay Club has its principal place of business in Alameda County, (c) the company operates clubs in Alameda County, (d) Alameda County is a county where the obligation or liability arises, and (e) non-exempt workers have been harmed by Defendants' conduct in Alameda County.

16. At all times relevant to this action, Defendants maintained unlawful employment, labor and compensation policies and practices that affected Plaintiffs and, on information and belief, other workers who are members of the putative Class.

17. Defendants failed to pay Plaintiffs and, on information and belief, the Class, and the PAGA Pool for all hours worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work, in violation of the state's legal minimum and overtime and double time wage provisions contained in the Labor Code, Wage Orders, and local ordinances.

Defendants failed to pay workers all of their time worked including, but not limited to, the time permitted or suffered to work, the time at the true start and end of work periods and meal periods, the time that was recorded and rounded, shaved, or altered, administrative time, time spent performing pre and post service, making class sales, time spent interacting with customers, scheduling and planning individual and group classes, taking training or certification courses, as well as time spent performing other work activities that were not directly compensated by the piece rate/commission/incentive or similar basis, and waiting/walking time, electing instead to pay less than all hours worked and less than all time recorded. Plaintiff and, on information and belief, members of the Class were denied compensation for all hours worked, including time that was recorded but unpaid and compensable time that was not recorded and was unpaid. Among other things, Defendant requires Plaintiffs to work

1 while clocked out during what is supposed to be Plaintiffs' off-duty meal break. Plaintiffs were from
2 time to time interrupted by work assignments while clocked out for what should have been
3 Plaintiffs' off-duty meal break. Defendant, as a matter of established company policy and procedure,
4 administers a uniform practice of rounding the actual time worked and recorded by Plaintiffs and the
5 other employees, always to the benefit of Defendant, so that during the course of their employment,
6 Plaintiffs and other employees are paid less than they would have been paid had they been paid for
7 actual recorded time rather than "rounded" time. Additionally, Defendant engages in the practice of
8 requiring Plaintiffs and other employees to perform work off the clock in that DEFENDANT, as a
9 condition of employment, required these employees to submit to mandatory temperature checks and
10 symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping
11 system for the workday.

12 18. As a result of Defendants' timekeeping and payroll policies, Plaintiffs and, on
13 information and belief, the Class, and the PAGA Pool were denied compensation for all hours worked
14 and suffered violations of the minimum wage and overtime and double time laws.

15 19. State law provides that employees must be paid overtime and meal and rest break
16 premiums at one-and-one-half times their "regular rate of pay." Plaintiffs and other employees are
17 compensated at an hourly rate plus incentive pay that is tied to specific elements of an employee's
18 performance.

19 20. Another component of Plaintiffs' and other employees' compensation is Defendant's
20 non-discretionary incentive program that paid Plaintiffs and other employees incentive wages based on
21 their performance for Defendant. The non-discretionary incentive program provided all employees
22 paid on an hourly basis with incentive compensation when the employees met the various performance
23 goals set by Defendant. However, when calculating the regular rate of pay in order to pay overtime and
24 meal and rest break premiums to Plaintiffs and other employees, Defendant failed to include the
25 incentive compensation, as well as other non-discretionary remuneration, including, but not limited to,
26 shift differential pay, premiums, commissions, and bonuses, as part of the employees' "regular rate of
27 pay" for purposes of calculating overtime pay and meal and rest break premium pay. Management and
28 supervisors described the incentive program to potential and new employees as part of the

1 compensation package. As a matter of law, the non-discretionary compensation received by Plaintiffs
2 and other employees must be included in the “regular rate of pay.” The failure to do so has resulted in
3 an underpayment of overtime compensation and meal and rest break premiums to Plaintiffs and other
4 employees by Defendant

5 21. Plaintiffs and, on information and belief, the Class were denied off-duty, timely and
6 complete meal periods of at least thirty (30) minutes, and were denied second meal periods for shifts
7 exceeding ten (10) hours. Meal periods are either not authorized or are interrupted or cut short due to
8 work activities that must be performed during breaks and meal periods. Plaintiffs, the Class, and the
9 PAGA Pool have been forced to forego meal periods or discouraged from taking meal periods in order
10 to complete their work. For example, Defendants require Plaintiffs, the Class, and the PAGA Pool to
11 work while clocked out during what is supposed to be Plaintiff’s, the Class’s, and the PAGA Pool’s
12 off-duty meal break. Plaintiffs, the Class, and the PAGA Pool were from time to time interrupted by
13 work assignments while clocked out for what should have been Plaintiff’s, the Class’s, and the PAGA
14 Pool’s off-duty meal break. Defendants unlawfully rounded meal period time and automatically
15 deducted 30 minutes for meal periods that were less than 30 minutes, resulting in minimum wage and
16 meal period violations. Defendants did not obtain valid and voluntary meal period waivers or on-duty
17 meal period agreements, and instead of providing lawful meal periods Defendants automatically
18 deducted 30 minutes (or more) for meal periods whether they were provided at all or in part.
19 Defendants failed to provide timely, complete, uninterrupted, off-duty first and second meal periods.
20 Defendant also engaged in the practice of rounding the meal period times to avoid paying penalties to
21 Plaintiffs and other employees. Plaintiffs are informed and believe that they and members of the Class
22 and the PAGA Pool were denied meal premiums at the regular rate of pay for denied and non-
23 compliant meal periods.

24 22. Plaintiffs and, on information and belief, the Class and the PAGA Pool were denied off
25 duty rest breaks of at least net ten (10) minutes of rest time at the rate of one rest period for shifts
26 greater than three and one-half (3½) hours, two rest periods for shifts greater than six (6) hours and up
27 to ten (10) hours, and three rest breaks for shifts greater than ten (10) hours and up to fourteen (14),
28 and so on. Rest breaks are systematically discouraged, are not completely off duty and are not at least

1 net ten (10) minutes in length. Defendants' policy restricted Plaintiffs, the Class, and the PAGA Pool
2 from unconstrained walks and is unlawful based on Defendants' rule which states Plaintiffs, the Class,
3 and the PAGA Pool cannot leave the work premises during their rest period. Plaintiffs are informed
4 and believe that they and members of the Class and the PAGA Pool were denied rest premiums at
5 regular rate of pay for denied and non-compliant rest periods. In addition, Plaintiffs, the Class, and the
6 PAGA Pool performed work that was activity based for which they were paid a flat fee that was at a
7 higher rate than their normal hourly "Administrative" or "Admin" time, which is paid at the straight
8 rate. Rest breaks are not specifically built into "admin" time and obviously do not take place in the
9 periods during which these class members are providing their "service." Defendants do not pay
10 Plaintiffs, the Class, and the PAGA Pool separately for their rest breaks, triggering liability for rest
11 break premium wages for failure to authorize or permit a lawful rest break pursuant to Labor Code
12 section 226.7(c) and the applicable Wage Orders.

13 23. Defendant intentionally and knowingly failed to reimburse and indemnify Plaintiffs and
14 other employees for required business expenses incurred by the Plaintiffs and other employees in direct
15 consequence of discharging their duties on behalf of Defendant. In the course of their employment
16 with Defendant, Plaintiffs and other employees incurred unreimbursed business expenses which
17 included, but were not limited to, costs related to the use of their personal cellular phones/devices all
18 on behalf of and for the benefit of Defendant; alleged uniforms and/or equipment purchases and/or
19 maintenance, internet, music subscriptions, training certifications, and personal vehicle usage.

20 24. Defendant as a matter of company policy, practice and procedure, intentionally,
21 knowingly and systematically failed to provide Plaintiffs and other employees suitable seating when
22 the nature of these employees' work reasonably permitted sitting. Defendant knew or should have
23 known that Plaintiffs and other employees were entitled to suitable seating and/or were entitled to sit
24 when it did not interfere with the performance of their duties, and that Defendant did not provide
25 suitable seating and/or did not allow them to sit when it did not interfere with the performance of their
26 duties. By reason of this conduct applicable to Plaintiffs and other employees, Defendant violated
27 California Labor Code Section 1198 and Wage Order 4-2001, Section 14 by failing to provide suitable
28 seats.

1 25. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt employees
2 be calculated by dividing the employee's total wages, not including overtime premium pay, by the
3 employee's total hours worked in the full pay periods of the prior 90 days of employment. Defendant
4 violated Cal. Lab. Code Section 246 by failing to pay sick pay at the regular rate of pay. Plaintiffs and
5 other employees routinely earned non-discretionary incentive wages which increased their regular rate
6 of pay. However, when sick pay was paid, it was paid at the base rate of pay for Plaintiffs and other
7 employees, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code
8 Section 246. Defendant underpaid sick pay wages to Plaintiffs and other employees by failing to pay
9 such wages at the regular rate of pay in violation of Cal. Lab. Code Section 246. Specifically, Plaintiffs
10 and other non-exempt employees earn non-discretionary remuneration, including, but not limited to,
11 incentives, shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay
12 Defendant underpays sick pay to Plaintiffs and other employees at their base rates of pay.

13 26. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to
14 collect or receive from an employee any part of wages theretofore paid by said employer to said
15 employee." Defendant failed to pay all compensation due to Plaintiffs and other employees, made
16 unlawful deductions from compensation payable to Plaintiffs and other employees, failed to disclose
17 all aspects of the deductions from compensation payable to Plaintiffs and other employees, and thereby
18 failed to pay these employees all wages due at each applicable pay period and upon termination.

19 27. Plaintiffs, and on information and belief, the Class and the PAGA Pool were required to
20 report for work, but "furnished less than half said employee's usual or scheduled day's work,"
21 Defendants violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiffs, the Class,
22 and the PAGA Pool for at least two (2) hours' worth of work at their regular rate of pay. In addition,
23 when Defendants required Plaintiffs, the Class, and the PAGA Pool to respond to and engage in
24 additional work, this resulted in a second reporting for work in a single workday, and Defendants
25 failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd.
26 5(B).

27 28. Plaintiffs and, on information and belief, the Class, and the PAGA Pool were not
28 provided accurate, itemized wage statements within the meaning of the Wage Orders and Labor Code

1 section 226, in that they failed to state the correct number of total hours worked, gross and net wages
2 earned, and all applicable hourly rates of pay and corresponding hours at each rate, all hours of
3 compensated rest breaks and all nonproductive time, the number of piece-rate units earned and any applicable
4 piece rate deductions and other statutory items, including improper payment of sick leave, which
5 Defendants failed to pay at the regular rate or the average rate in the prior 90 days. Further, Defendants
6 failed to comply with applicable Wage Orders in that Defendants failed to keep time records showing
7 when Plaintiffs, the Class, and the PAGA Pool began and ended each shift and meal period. Plaintiffs,
8 the Class, and the PAGA Pool at all relevant times were subject to the protections of California's labor
9 laws, including, but not limited to, the terms and conditions of employment prescribed by the Industrial
10 Welfare Commission's Wage Orders.

11 29. Plaintiffs, the Class and the PAGA Pool contend that Defendants failed to comply with
12 Labor Code §§1174 and 1174.5 for failing to maintain accurate payroll records. Defendants are
13 required to maintain accurate payroll records pursuant to Labor Code sections 1174, 1174.5 and the
14 Wage Order. For the reasons discussed in this letter with respect to the failure to pay for all hours
15 worked, failure to pay overtime wages, and failure to pay rest break and meal period premiums (these
16 sections are expressly incorporated herein), Defendants failed to keep accurate payroll records showing
17 total hours worked daily, straight and overtime hours worked each day and week, accurate start and
18 end of work periods and meal periods, all true applicable rates of pay and all rest break and meal
19 period premiums owed at their respective rates.

20 30. Plaintiffs and, on information and belief, the Class and the PAGA Pool were entitled to
21 receive all wages owed to them periodically each pay period. Nevertheless, Plaintiffs and, on
22 information and belief, the Class and the PAGA Pool did not receive payment of all wages, including
23 minimum, overtime, and premium rest and meal period wages each pay period, in violation of Labor
24 Code sections 204, 204b, and 210.

25 31. Plaintiffs are informed and believe that members of the Class whose employment with
26 Defendants has ended were not paid all wages owed timely upon separation from employment,
27 including minimum, overtime, and premium rest and meal period wages owed to them, in violation of
28 Labor Code sections 201 and 202. Further, Plaintiffs are informed and believe and based thereon allege

1 that the failure to pay sick pay at regular rate was willful, such that other employees whose
2 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections
3 201-203. Plaintiffs and Class Members not paid timely upon separation from employment, including
4 through layoff, termination of seasonal work, resignation, and discharge, are entitled to waiting time
5 penalties pursuant to Labor Code section 203.

6 32. Additionally, at all times during the term of Plaintiffs' employment with Defendant,
7 Plaintiffs and other employees earned and accrued vested vacation and holiday time on the date of their
8 termination pursuant to Defendant's uniform vacation policies and applicable California law. The
9 amount of vacation pay Plaintiffs and other employees earned and accumulated is evidenced by
10 Defendant's business records. Additionally, Defendant also underpaid accrued vested vacation wages
11 to Plaintiffs and other employees by failing to pay such wages at the regular rate of pay and more
12 specifically the final rate of pay that included all non-discretionary incentive compensation. Rather
13 than pay vacation wages at the regular rate of pay, Defendant underpaid vacation wages to Plaintiffs
14 and other employees at their base rates of pay, instead of including all of Plaintiffs' and other
15 employees' non-discretionary incentive compensation into the vacation wage payment calculations.
16 Defendant failed to specify in Defendant's written vacation policy the rate at which Plaintiffs and other
17 employees would be paid vacation upon leaving employment with Defendant.

18 33. As a result of Defendant's unlawful practice, policy and procedure to deny paying the
19 Plaintiffs and other employees all of their vested vacation and holiday time, Defendant failed to pay
20 the Plaintiffs and other employees all vested vacation time as wages due upon employment
21 termination, in violation of the California Labor Code, Sections 201, 202, 203 and 227.3. Similarly,
22 Defendant underpaid waiting time penalties to Plaintiffs and other employees at their base rates of pay,
23 instead of including all of Plaintiffs' and other employees' non-discretionary compensation into the
24 waiting time penalty calculations. This failure by Defendant is believed to be the result of Defendant's
25 unlawful, unfair and deceptive refusal to provide compensation for earned, accrued and vested vacation
26 and holiday time, as well as the corresponding waiting time penalties that were paid. Defendant
27 perpetrated this unlawful, unfair and deceptive practice to the detriment of Plaintiffs and other
28 employees. Defendant's uniform practice and policy of failing to pay Plaintiffs and other employees

1 for all vested vacation and holiday time accumulated at employment termination violated and
2 continues to violate Section 227.3 of the California Labor Code.

3 **V. CLASS ALLEGATIONS**

4 34. Plaintiffs bring this action as a class action under Code of Civil Procedure section 382
5 on behalf of the following class:

6 All persons who are employed or have been employed by Defendant as non-exempt
7 employees in the State of California at any time from January 16, 2017 through March
8 30, 2026.

9 35. **Reservations of Rights:** Pursuant to California Rules of Court, rule 3.765(b), Plaintiffs
10 reserve the right to amend or modify the class definitions with greater specificity, by further division
11 into subclasses, and/or by limitation to particular issues.

12 36. **Numerosity:** The Proposed Class is so numerous that joinder of all members is
13 impracticable. Plaintiffs are informed and believe, and on that basis alleges, that during the relevant
14 time period, Defendants have employed thousands of workers in California who are potential Class
15 Members. These workers have been employed in various regions of the state, both in Northern
16 California and in Southern California, and potential Class Members are believed to be geographically
17 dispersed throughout the state. The Class Members are so numerous that joinder of all of them is
18 impracticable. The individuals and the identity of such membership is readily ascertainable by
19 inspection of Defendants' records.

20 37. **Typicality:** Plaintiffs' claims are typical of all other Class Members as demonstrated
21 herein. Plaintiffs will fairly and adequately protect the interests of the other Class Members with
22 whom Plaintiffs have a well-defined community of interest.

23 38. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of each class
24 member, with whom they have a well-defined community of interest and typicality of claims, as
25 demonstrated herein. Plaintiffs have no interest that is antagonistic to the other Class Members.
26 Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action
27 discovery, certification, and settlement. Plaintiffs have incurred, and during the pendency of this
28 action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily

1 expended for the prosecution of this action for the substantial benefit of each class member. Plaintiffs
2 have retained competent counsel experienced in wage and hour class action litigation.

3 39. **Predominant Common Questions:** Common questions of law and fact exist as to all
4 members of the Proposed Class and predominate over any questions solely affecting individual
5 members of the Proposed Class.

6 40. Common questions of fact and law predominate, including the following:

- 7 a. Whether Defendants suffered, permitted, and/or required Plaintiffs and the Class to
8 work without compensation at the start and end of shifts, or during unpaid meal periods, and
9 failed to compensate them at the statutory and/or agreed-upon wage rates, in violation of the
10 Labor Code and the Wage Orders;
- 11 b. Whether Defendants failed to compensate Plaintiffs and members of the Class for all
12 “hours worked,” within the meaning of the applicable Wage Orders;
- 13 c. Whether Defendants suffered, permitted, and/or required Plaintiffs and the Class to
14 work in excess of eight (8) hours per day and/or over forty (40) hours per week and/or the first
15 eight (8) hours on the seventh (7th) consecutive workday in a workweek, and failed to pay the
16 legally required overtime compensation, in violation of the Labor Code and the Wage Orders;
- 17 d. Whether Defendants suffered, permitted, and/or required Plaintiffs and the Class to
18 work in excess of twelve (12) hours per day and/or in excess of eight (8) hours on the seventh
19 (7th) consecutive workday in a workweek, and failed to pay the legally required double-time
20 compensation, in violation of the Labor Code and the Wage Orders;
- 21 e. Whether the burden of proof will shift to Defendants for failing to maintain accurate
22 records of the start and end of work periods, meal periods, total daily hours worked and wages
23 earned, in violation of the Wage Orders, Labor Code sections 226 and 1174, and California
24 law;
- 25 f. Whether Defendants failed to relieve Plaintiffs and the Class of all duty for a first net
26 thirty (30) minute meal period before the end of the fifth (5th) hour of work, in violation of the
27 Labor Code, the Wage Orders, and California law;
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- 1 g. Whether Defendants failed to relieve Plaintiffs and the Class of all duty for a second net
2 thirty (30) minute meal period for shifts in excess of 10 hours, in violation of the Labor Code,
3 the Wage Orders, and California law;
- 4 h. Whether Defendants failed to authorize and permit Plaintiffs and the Class to take net
5 ten (10) minute rest breaks for each four (4) hour work period, or major portion thereof, in
6 violation of the Labor Code, the Wage Orders, and California law;
- 7 i. Whether Defendants failed to make good faith efforts to provide Plaintiffs and the Class
8 with rest breaks during the middle of each four (4) hour work period, in violation of the Labor
9 Code, the Wage Orders, and California law;
- 10 j. Whether Defendants failed to pay Plaintiffs and the Class premium wages for all
11 unlawfully provided meal periods and rest breaks, in violation of the Labor Code, the Wage
12 Orders, and California law;
- 13 k. Whether Defendants failed to reimburse Plaintiffs and the Class for all necessary
14 business expenses, in violation of the Labor Code, the Wage Orders, and California law;
- 15 l. Whether Defendants knowingly and intentionally failed to provide Plaintiffs and the
16 Class written wage statements that accurately reflect all gross and net wages earned, total hours
17 worked, applicable hourly rates and corresponding hours at each rate, in violation of the Labor
18 Code, the Wage Orders, and California law;
- 19 m. Whether Defendants' conduct as described herein was willful or reckless;
- 20 n. Whether Defendants are liable for failing to pay all wages owed periodically under
21 Labor Code sections 204 and 204b.
- 22 o. Whether Plaintiffs and members of the class whose employment terminated are entitled
23 to waiting time penalties under Labor Code section 203 for Defendants' failure to pay all wages
24 owed timely upon the separation from employment;
- 25 p. Whether Defendants engaged in unlawful and/or unfair business practices in violation
26 of Business & Professions Code sections 17200 *et seq.* ("UCL"); and
- 27 q. Whether Defendants are liable to Plaintiffs and the Class pursuant to the UCL for
28 restitution of unpaid or underpaid statutory and/or agreed upon regular, minimum, overtime,
double-time, and premium rest and meal period wages.

41. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where an individual Plaintiff lacks the financial resources to vigorously prosecute separate lawsuits against corporate defendants. A class action is superior to other available means for fair and efficient adjudication of class members' claims and offers significant benefits to the parties and the court. A class action will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. The individual monetary amounts due to many class members may not be large enough on their own for individual class members to obtain legal representation and relief. Moreover, a class action will serve important public interests by enabling the non-waivable statutory rights of class members to be effectively asserted, and fundamental public policies to be vindicated, in one proceeding. A class action will also provide a means for vindicating the rights of workers who are less likely to come forward to assert their rights based on fears of reprisal. Finally, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation and address the problems inherent in random and fragmentary enforcement.

42. Plaintiffs intend to send notice to all members of the Class to the extent required by Labor Code section 382. The names and addresses of the Class are available from Defendants.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Failure to Pay Legal Minimum Wage

(Violation of Labor Code sections 204, 210, 1194, 1194.2, 1197, Wage Orders and Local Ordinances)
Plaintiffs, on Behalf of Themselves and the Class, Against Defendant

43. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

44. At all relevant times, Defendants have been subject to Labor Code and Wage Order provisions requiring compensation at no less than the legal minimum wage. Defendants violated the Wage Orders and Labor Code sections 200, *et seq.*, 1194 and 1197 by failing to compensate Plaintiffs and, on information and belief, the Class for all hours worked at the legal minimum rates established in California and various municipalities where employees worked.

45. At all times relevant to this action, Plaintiffs and the Class were entitled to compensation at rates that were not less than the legal minimum wage, pursuant to the Local Ordinance, Wage Orders and Labor Code sections 1182.12, 1194 and 1197. Defendants violated these provisions by failing to compensate for all hours worked.

46. Defendants' conduct violates provisions of Local Ordinances, the Wage Orders and Labor Code. Defendants have violated Labor Code section 223 by secretly paying Plaintiffs and, on information and belief, the Class less than the rates designated by statute or contract while purporting to pay the designated rates and have also violated Labor Code sections 204 and 204b by failing to pay all wages owed weekly or semi-monthly, entitling Plaintiffs and the Class to penalties and damages pursuant to Labor Code section 210.

47. Pursuant to Labor Code section 1194.2, because Plaintiffs seek to recover wages in this action on behalf of herself and the Class resulting from Defendants' payment of a wage less than the minimum wage fixed by an order of the commission or by statute, they are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

48. Wherefore, Plaintiffs seek unpaid wages, interest, costs and attorneys' fees in amounts to be proven at trial on behalf of themselves and the Class.

SECOND CAUSE OF ACTION

Failure to Pay Overtime Wages

(Violation of Wage Orders and Labor Code sections 510, 1194, 1198)
Plaintiffs, on Behalf of Themselves and the Class, Against Defendant

49. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

50. At all relevant times, Defendants have been subject to Labor Code and Wage Order provisions requiring overtime compensation, including the applicable Wage Orders and Labor Code sections 510, 1194, 1198. California law requires overtime compensation at the rate of one and one-half (1.5) times the regular rate of pay for hours in excess of eight (8) in a workday and 40 in a workweek. Similarly, these overtime provisions require overtime pay at the rate of twice the regular rate of pay for hours in excess of 12 in a workday and eight (8) on any seventh day of a workweek (i.e., double-time pay).

51. At all times relevant to this action, Plaintiffs and, on information and belief, the Class

1 have worked in excess of eight (8) hours in a workday and 40 hours in a workweek without
2 compensation for all hours worked at the required overtime rates or applicable regular rate(s) of pay.

3 52. Defendants violated these provisions by failing to compensate for all hours worked in
4 excess of the overtime and double-time thresholds at the required premium wage rates. As a result,
5 Defendants' conduct violates provisions of Local Ordinances, the Wage Orders and Labor Code.

6 53. Wherefore, Plaintiffs seek unpaid wages, interest, costs and attorneys' fees in amounts
7 to be proven at trial on behalf of themselves and the Class.

8 **THIRD CAUSE OF ACTION**

9 **Failure to Provide Meal Periods, or Premium Wages in Lieu Thereof**

10 (Violation of Wage Orders, and Labor Code sections 226.7 and 512)

11 Plaintiffs, on Behalf of Themselves and the Class, Against Defendant

12 54. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

13 55. California Labor Code section 512 and the Wage Orders prohibit employers from
14 employing workers for a work period of more than five hours per day without providing the employee
15 with a meal period of at least thirty (30) minutes, or for a work period of more than ten (10) hours
16 without a second meal period of at least thirty (30) minutes. California law requires the meal periods
17 to be off duty, without interruption, and the first meal period of the day must occur within five (5)
18 hours from the start of the shift.

19 56. California Labor Code section 226.7 prohibits any employer from requiring any
20 employee to work during any meal period mandated by the applicable Wage Orders, and states that an
21 employer that fails to provide an employee with a required meal period in compliance with Section 512
22 and the Wage Orders shall pay that employee one additional hour of pay at the employee's regular rate
23 of compensation (*i.e.*, a meal period premium) for each work day that the employer does not provide a
24 compliant meal period.

25 57. The applicable Wage Orders echo the provisions of Sections 226.7 and 512 of the Labor
26 Code governing meal periods. For example, Wage Order 1(11), provides as follows:

27 (A) No employer shall employ any person for a work period of more than five
28 (5) hours without a meal period of not less than 30 minutes, except that when a
work period of not more than six (6) hours will complete the day's work the
meal period may be waived by mutual consent of the employer and employee.

1 In the case of employees covered by a valid collective bargaining agreement,
2 the parties to the collective bargaining agreement may agree to a meal period
3 that commences after no more than six (6) hours of work.

4 (B) An employer may not employ an employee for a work period of more than
5 ten (10) hours per day without providing the employee with a second meal
6 period of not less than 30 minutes, except that if the total hours worked is no
7 more than 12 hours, the second meal period may be waived by mutual consent
8 of the employer and the employee only if the first meal period was not waived.

9 (C) Unless the employee is relieved of all duty during a 30 minute meal period,
10 the meal period shall be considered an "on duty" meal period and counted as
11 time worked. An "on duty" meal period shall be permitted only when the nature
12 of the work prevents an employee from being relieved of all duty and when by
13 written agreement between the parties an on-the-job paid meal period is agreed
14 to. The written agreement shall state that the employee may, in writing, revoke
15 the agreement at any time.

16 (D) If an employer fails to provide an employee a meal period in accordance
17 with the applicable provisions of this order, the employer shall pay the
18 employee one (1) hour of pay at the employee's regular rate of compensation
19 for each workday that the meal period is not provided.

20 (E) In all places of employment where employees are required to eat on the
21 premises, a suitable place for that purpose shall be designated.

22 58. At all times relevant to this action, Defendants violated the provisions of the Labor
23 Code and Wage Orders regulating meal periods by failing to comply with the requirement of providing
24 to Plaintiff and, on information and belief, the Class with a timely thirty (30) minute meal period
25 within the first five (5) hours of work that was completely off duty, or a second thirty (30) minute meal
26 period when workers worked more than ten (10) hours per day.

27 59. Plaintiffs and, on information and belief, the Class did not waive meal periods, and
28 Plaintiffs are informed and believe and thereon allege that valid meal period waivers were not in place
or were not voluntarily consented to.

60. Defendants are therefore liable for meal period premium wages at the applicable regular
rate(s) of pay, pursuant to Labor Code section 226.7.

61. Wherefore, Plaintiffs seek unpaid wages, interest, and costs in amounts to be proven at
trial on behalf of themselves and the Class.

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FOURTH CAUSE OF ACTION

Failure to Provide Rest Breaks, or Premium Wages in Lieu Thereof

(Violation of Wage Orders and Labor Code sections 226.7)

Plaintiffs, on Behalf of Themselves and the Class, Against Defendant

62. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

63. California Labor Code section 226.7 prohibits any employer from requiring an employee to work during any rest period mandated by the applicable Wage Orders. For example, Wage Order 1(12) provides as follows:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

64. At all times relevant to this action, Defendants failed to authorize and permit rest periods to Plaintiffs and, on information and belief, the Class with of at least 10 minutes of time completely off duty at a rate of one rest period for shifts greater than three and one-half (3 1/2) hours up to six (6) hours, two rest breaks for shifts greater than six (6) hours up to ten (10) hours, and three rest breaks for shifts greater than ten (10) hours up to fourteen (14) hours, and so on.

65. Defendants are therefore liable for rest break premium wages at the applicable regular rate(s) of pay, pursuant to Labor Code section 226.7.

66. Wherefore, Plaintiffs seek unpaid wages, interest, and costs in amounts to be proven at trial on behalf of themselves and the Class.

FIFTH CAUSE OF ACTION

Willful Failure to Pay All Wages Owed Timely Upon Discharge or Resignation

(Violation of Labor Code sections 201 and 202)

Plaintiffs, on Behalf of Themselves and the Class, Against Defendant

67. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

1 68. California Labor Code sections 201 and 202 require immediate payment of all unpaid
2 wages at the time an employee is discharged or resigns from employment.

3 69. Defendants have willfully failed to pay all wages owed to Plaintiffs and, on information
4 and belief, members of the Class timely upon the termination of their employment relationship with
5 Defendants, including wages for all hours worked, overtime wages, meal and rest period premium
6 wages. For Defendants' willful failure to pay all wages timely, Plaintiffs' and the Class' wages
7 continue from the due date for up to 30 days at this daily rate, pursuant to Labor Code section 203.

8 70. Wherefore, Plaintiffs seeks waiting time penalties and costs in amounts to be proven at
9 trial on behalf of themselves and the Class.

10 **SIXTH CAUSE OF ACTION**

11 **Failure to Provide Accurate Itemized Wage Statements**

12 (Violation of Labor Code section 226 and the Wage Orders)

13 Plaintiffs, on Behalf of Themselves and the Class, Against Defendant

14 71. Plaintiffs re-allege and incorporates the above allegations above as if fully stated
15 herein.

16 72. California Labor Code section 226(a) provides, in relevant part, that every employer
17 must furnish each employee with an itemized wage statement that accurately shows the following:

18 (1) gross wages earned, (2) total hours worked by the employee, except as
19 provided in subdivision (j), (3) the number of piece-rate units earned and any
20 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
21 deductions, provided that all deductions made on written orders of the employee
22 may be aggregated and shown as one item, (5) net wages earned, (6) the
23 inclusive dates of the period for which the employee is paid, (7) the name of the
24 employee and only the last four digits of his or her social security number or an
employee identification number other than a social security number, (8) the
name and address of the legal entity that is the employer and, if the employer is
a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
and address of the legal entity that secured the services of the employer, and (9)
all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee....

25 73. At all times relevant to this action, Defendants have failed to provide accurate itemized
26 wage statements, in violation of Labor Code section 226. Plaintiffs and, on information and belief,
27 other members of the class were given wage statements that failed to list the gross and net wages
28 earned, total hours worked, all applicable rates of pay and corresponding number of hours at each rate

1 of pay, inclusive dates of the pay period, the number of piece-rate units earned and any applicable
2 piece rate, all deductions.

3 74. Defendants' failure to comply with the requirements of Labor Code section 226 and
4 provide accurate wage statements was knowing and intentional within the meaning of that provision.
5 Plaintiffs and members of the putative Class are deemed to have suffered injury pursuant to Labor
6 Code section 226(e).

7 75. Pursuant to Labor Code section 226(e), Plaintiffs and Class Members are entitled to
8 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
9 violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not to
10 exceed an aggregate penalty of four thousand dollars (\$4,000).

11 76. Wherefore, Plaintiffs seek damages, penalties, injunctive relief, attorney's fees and cost
12 of suit in amounts to be proven at trial on behalf of themselves and the Class.

13 **SEVENTH CAUSE OF ACTION**

14 **Failure to Indemnify for Necessary Business Expenses**

15 (Violation of Labor Code section 2802 and the Wage Orders)

16 Plaintiffs, on Behalf of Themselves and the Class, Against Defendant

17 77. Plaintiffs re-allege and incorporates the above allegations above as if fully stated
18 herein.

19 78. Under California Labor Code Section 2802, employers are required to indemnify
20 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
21 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
22 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
23 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
24 employee, at the time of obeying the directions, believed them to be unlawful."

25 79. At all times relevant to this action, Defendant willfully failed to reimburse Plaintiffs
26 and the Class for all work expenses, including reimbursement for the costs related to the use of their
27 personal cellular phones/devices all on behalf of and for the benefit of Defendant, alleged uniforms
28 and/or equipment purchases and/or maintenance, internet, music subscriptions, training certifications,
and personal vehicle usage.

80. As a result of Defendant's failure to reimburse Plaintiffs and the Class for their necessary work expenditures, Defendant is liable for reimbursement pursuant to Section 2802 of the Labor Code.

81. Wherefore, Plaintiffs seek reimbursement of expenses under Labor Code section 2802 on behalf of themselves and the Class, as well as attorney's fees, costs, and interest thereon.

EIGHTH CAUSE OF ACTION
California Unfair Competition Law

(Violation of Business & Professions Code sections 17200, *et seq.*)
Plaintiffs, on Behalf of Themselves and the Class, Against Defendant

82. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

83. Business and Professions Code section 17200 defines “unfair competition” to include any unlawful business practice.

84. California Business and Professions Code § 17203 allows a person who has lost money or property as a result of unfair competition to bring an action to recover money or property that may have been acquired from similarly situated persons by means of unfair competition.

85. Defendants unlawful and unfair business practices resulted in the following violations of California Labor Code and Wage Order provisions:

- a. Failing to maintain accurate time records of the start and end of work periods and meal periods;
- b. Failure to compensate for all hours worked within the meaning of the Wage Orders;
- c. Failure to comply with the legal minimum wage set forth under California law and various local ordinances, in violation of the Wage Orders, Labor Code and local ordinances;
- d. Failure to comply with the overtime laws set forth in the Wage Orders, Labor Code and local ordinances;
- e. Failure to pay rest period premiums for non-compliance with the rest period requirements of the Labor Code and Wage Orders;
- f. Failure to pay meal period premiums for non-compliance with the meal period provisions of the Labor Code and Wage Orders;

1 g. Failure to pay all wages owed timely upon termination of the employment relationship, as
2 required by Labor Code section 201 and 202;

3 h. Failure to maintain accurate payroll records in violation of Labor Code section 1174.

4 86. On information and belief, at all times relevant to this action, Plaintiffs and the Class
5 have lost, and Defendants have either acquired, or may have acquired, money or property in the form
6 of earned unpaid wages for all hours worked, unpaid overtime and double-time wages, unpaid meal
7 period and rest break premium wages, and reimbursement of expenses from Plaintiffs and the Class by
8 means of unfair competition as a result of Defendants' unlawful failure to pay those wages, and related
9 failures to maintain accurate records, in violation of the requirements of the Labor Code and the Wage
10 Orders.

11 87. Pursuant to Business and Professions Code section 17203, Plaintiffs seek restitution of
12 all these moneys and property, that Defendants either acquired, and/or may have acquired, from
13 Plaintiffs and the Class by means of unfair competition in amounts subject to proof at trial. Plaintiffs
14 also seeks to prevent Defendants from continuing to engage in the unlawful and/or unfair business
15 practices alleged herein.

16 88. Defendants, by the acts or omissions alleged of herein, have injured and are injuring the
17 interests of the general public in that other employers who exercise honest compliance with applicable
18 wage and hour laws, including the laws violated by Defendants, are at an unfair competitive
19 disadvantage as a result of Defendants' conduct.

20 89. Wherefore, Plaintiffs seek restitution of wages and the economic value of benefits
21 unlawfully denied to Plaintiffs and the Class by Defendants in amounts subject to proof.

22 **NINTH CAUSE OF ACTION**

23 California Private Attorneys General Act

24 (Civil Penalties Pursuant to Labor Code section 2699, et seq.)

25 Plaintiffs Samhour and Bartolomeo, Aggrieved Employees, and the State, Against Defendant

26 90. Plaintiffs re-alleges and incorporates the above allegations above as if fully stated
27 herein and as contained in Exhibits 1-3.

28 91. Plaintiffs Samhour and Bartolomeo are aggrieved employees as defined in California
Labor Code section 2699(a). Plaintiffs Samhour and Bartolomeo bring this cause of action on behalf

1 the State of California with respect to the labor law violations they and other current or former non-
2 exempt employees experienced during the relevant time-period, as alleged in this complaint.

3 92. PAGA permits an individual to recover civil penalties on behalf of themselves and other
4 current or former employees for violations of the Labor Code under section 2699(a).

5 93. Plaintiffs Samhour and Bartolomeo have complied with the administrative
6 requirements of PAGA set forth in Labor Code section 2699.3. Plaintiffs Samhour and Bartolomeo
7 gave written notice to the employer and the LWDA of the facts and theories supporting the alleged
8 violations of the Labor Code and Wage Orders. This notice was mailed by certified mail with return
9 receipt requested. More than 65 days have passed since notice was sent and Plaintiffs Samhour and
10 Bartolomeo are entitled to bring this claim as a matter of right.

11 94. Defendants are liable for PAGA penalties for the Wage Order and Labor Code
12 violations described in this complaint. Plaintiffs Samhour and Bartolomeo allege that Defendants
13 violated: sections 201-202, 256 and 1197.1 subjecting Defendants to liability for waiting time penalties
14 based on willful (section 203) failure to pay all wages owed timely upon separation from employment;
15 sections 200, 204, 204b, and 210 by failing to pay all wages owed weekly, semi-monthly or when due;
16 sections 221, 223, 225.5 for secretly paying less than the statutory or agreed upon rates; sections 226
17 and 226.3 for providing inaccurate wage statements; sections 510, 511, 558 and 1198 for failing to pay
18 overtime premiums; sections 226.7, 512 and the Wage Orders for failing to comply with the rest and
19 meal period provisions of California law or pay additional wages in lieu thereof; sections 1194, 1194.2
20 and 1197.1 for failing to pay for all hours worked in violation of the minimum wage; section 227.3 for
21 failing to pay all vacation time; section 2802 for failing to reimburse for necessary business expenses;
22 sections 1174 and 1174.5 for failing to maintain required payroll records; failure to pay reporting time
23 pay; failure to provide accurate itemized wage statements and comply with record keeping
24 requirements; failure to comply with sick leave requirements; and section 1198 for failing to provide
25 suitable seating. In addition, Defendants violated provisions of the California Industrial Welfare
26 Commission Wage Orders, including provisions governing payment for all hours worked, payment of
27 overtime premiums for work in excess of 8 hours in a workday and 12 hours in a workweek, provision
28 of rest and meal breaks or additional wages in lieu thereof, and accurate record-keeping.

95. The policies, acts and practices heretofore described were and are an unlawful business act or practice because Defendant (a) failed to provide Plaintiffs Samhoury and Bartolomeo and the Aggrieved Employees accurate itemized wage statements, (b) failed to properly record and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable seating, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 et seq., 210, 218, 221, 223, 226(a), 226.3, 226.7, 227.3, 246, 256, 510, 512, 558(a)(1)(2), 1174. 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct

96. Wherefore, Plaintiffs Samhoury and Bartolomeo seek PAGA penalties for themselves, other Aggrieved Employees and the state, plus attorney's fees, costs and interest.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. For an order awarding compensatory damages for all wages earned but not paid, and all overtime wages earned and not paid, in the amount to be proven at trial, pursuant to Labor Code sections 200, *et seq.*, 510, 511, 1194, 1197, 1198;

2. For an order awarding pre-judgment interest of 10 percent on the unpaid wages and overtime compensation owed under Labor Code section 218.6;

3. For an order awarding unpaid overtime, minimum wage and a minimum wage liquidated damages under Labor Code sections 1194 and 1194.2;

4. For an order awarding attorney's fees pursuant to Labor Code section 1194;

5. For an order awarding meal period premium wages pursuant to Labor Code section 226.7;

6. For an order awarding rest break premium wages pursuant to Labor Code section 226.7;

7. For an order awarding reimbursement of all necessary expenditures or losses incurred pursuant to Labor Code section 2802;

8. For an order attorney's fees and costs pursuant to Labor Code section 2802;
9. For an order awarding "waiting time" penalties under California Labor Code section 203;
10. For an order awarding penalties, injunctive relief, attorney's fees and costs pursuant to Labor Code section 226;
11. For an order awarding penalties, injunctive relief and attorney's fees pursuant to Labor Code section 1198.5;
12. For an order awarding earned but unpaid wages as equitable relief to Plaintiffs and the Class under the UCL for a period that extends the statute of limitations or recovery period for wages to four years;
13. For a declaratory judgment that the actions, conduct, and practices of Defendants complained of herein constitute unfair business practices under the UCL;
14. For an injunction and order permanently restraining and enjoining Defendants from engaging in and continuing the unlawful policies and practices complained of herein;
15. For an order certifying a class pursuant to Code of Civil Procedure section 382;
16. For an order appointing Plaintiffs as class representatives;
17. For an order appointing counsel for Plaintiffs as class counsel;
18. For an order awarding reasonable attorney's fees and costs, including expert witness fees, pursuant to Code of Civil Procedure section 1021.5 and other provisions of the Labor Code;
19. For an order awarding interest to the extent permitted by law;
20. For an order awarding costs and expenses of this action;
21. For an award of civil penalties payable to Plaintiffs and other current or former Aggrieved Employees under PAGA for each violation of the Labor Code and Wage Order described in this complaint, including but not limited to penalties under Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 223, 226(a), 226.3, 226.7, 227.3, 246, 256, 510, 511, 512, 558(a)(1)(2), 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s), and other provisions described in this complaint; and

22. For such other and further relief as the Court deems just and proper.

VIII. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on claims so triable.

Dated: April 7, 2026

ADVOCATES FOR WORKER RIGHTS LLP



Marco A. Palau
Joseph D. Sutton
Eric S. Trabucco
Attorneys for Plaintiffs

EXHIBIT 1

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1004

August 30, 2023

CA2874

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

The Bay Clubs Company, LLC
Certified Mail #95890710527001882374040
KEVIN KLIPFEL
7090 JOHNSON DRIVE
PLEASANTON, CA 94588

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by The Bay Clubs Company, LLC in California, including any employees staffed The Bay Clubs Company, LLC by a third party, and classified as non-exempt employees during the time period of August 30, 2022 until a date as determined by the Court. Our offices represent Plaintiff Ferial Samhouri (“Plaintiff”) and other Aggrieved Employees in a lawsuit against The Bay Clubs Company, LLC (“Defendant”). Plaintiff was employed from September of 2021 to September of 2023 by Defendant in California. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly

paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

FERIAL SAMHOURI, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

THE BAY CLUBS COMPANY, LLC, a Limited
Liability Company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB CODE §§201-204, 233, 246.

DEMAND FOR A JURY TRIAL

1 Ferial Samhouri (“PLAINTIFF”), an individual, on behalf of herself and all other
2 similarly situated current and former employees alleges on information and belief, except for
3 her own acts and knowledge which are based on personal knowledge, the following.

4
5 **THE PARTIES**

6 1. The Bay Clubs Company, LLC (“DEFENDANT”) is a limited liability company
7 that at all relevant times mentioned herein conducted and continues to conduct substantial
8 business in California.

9 2. DEFENDANT offers resort-level hospitality and dining, plus the best in health
10 and fitness, along with premier tennis, golf and aquatics.

11 3. PLAINTIFF was employed by DEFENDANT in California from September of
12 2021 to September of 2023 and was at all times classified by DEFENDANT as a non-exempt
13 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
14 payment of minimum and overtime wages due for all time worked.

15 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT in California,
17 including any employees staffed with DEFENDANT by a third party, and classified as non-
18 exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four
19 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
20 (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim
21 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred
24 during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice
25 which failed to lawfully compensate these employees. DEFENDANT’s policy and practice
26 alleged herein was an unlawful, unfair and deceptive business practice whereby
27 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other
28 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the

1 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
2 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA
3 CLASS who have been economically injured by DEFENDANT's past and current unlawful
4 conduct, and all other appropriate legal and equitable relief.

5 6. The true names and capacities, whether individual, corporate, subsidiary,
6 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
7 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
8 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
9 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
10 they are ascertained. PLAINTIFF is informed and believes, and based upon that information
11 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
12 50, inclusive, are responsible in some manner for one or more of the events and happenings
13 that proximately caused the injuries and damages hereinafter alleged.

14 7. The agents, servants and/or employees of the Defendants and each of them
15 acting on behalf of the Defendants acted within the course and scope of his, her or its
16 authority as the agent, servant and/or employee of the Defendants, and personally
17 participated in the conduct alleged herein on behalf of the Defendants with respect to the
18 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
19 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and
20 the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result
21 of the conduct of the Defendants' agents, servants and/or employees.

22 **THE CONDUCT**

23 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
24 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
25 worked, meaning the time during which an employee is subject to the control of an
26 employer, including all the time the employee is suffered or permitted to work.
27 DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to work without
28 paying them for all the time they are under DEFENDANT's control. Among other things,

1 DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to
2 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
3 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal
4 break. DEFENDANT, as a matter of established company policy and procedure, administers
5 a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and
6 CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the
7 course of their employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less
8 than they would have been paid had they been paid for actual recorded time rather than
9 "rounded" time. Additionally, DEFENDANT engages in the practice of requiring
10 PLAINTIFF and CALIFORNIA CLASS Members to perform work off the clocking that
11 DEFENDANT, as a condition of employment, required these employees to submit to
12 mandatory temperature checks and symptom questionnaires for COVID-19 screening prior
13 to clocking into DEFENDANT's timekeeping system for the workday. As a result,
14 PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage, overtime
15 wage compensation, and off-duty meal breaks by working without their time being correctly
16 recorded and without compensation at the applicable rates. DEFENDANT's policy and
17 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time
18 worked, is evidenced by DEFENDANT's business records.

19 9. State and federal law provides that employees must be paid overtime and meal
20 and rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF
21 and other CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive
22 pay that is tied to specific elements of an employee's performance.

23 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
24 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
25 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
26 performance for DEFENDANT. The non-discretionary incentive program provided all
27 employees paid on an hourly basis with incentive compensation when the employees met the
28 various performance goals set by DEFENDANT. However, when calculating the regular

1 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
2 other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
3 compensation as part of the employees' "regular rate of pay" for purposes of calculating
4 overtime pay and meal and rest break premium pay. Management and supervisors described
5 the incentive program to potential and new employees as part of the compensation package.
6 As a matter of law, the incentive compensation received by PLAINTIFF and other
7 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure
8 to do so has resulted in a underpayment of overtime compensation and meal and rest break
9 premiums to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

10 11. As a result of their rigorous work schedules, PLAINTIFF and other
11 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute
12 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
13 and other CALIFORNIA CLASS Members were required from time to time to perform
14 work as ordered by DEFENDANT for more than five (5) hours during some shifts without
15 receiving a meal break. Further, DEFENDANT from time to time failed to provide
16 PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for
17 some workdays in which these employees were required by DEFENDANT to work ten (10)
18 hours of work. DEFENDANT also engaged in the practice of rounding the meal period
19 times to avoid paying penalties to PLAINTIFF and other CALIFORNIA CLASS Members.
20 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks
21 without additional compensation and in accordance with DEFENDANT's corporate policy
22 and practice.

23 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
24 CALIFORNIA CLASS Members were also required from time to time to work in excess of
25 four (4) hours without being provided ten (10) minute rest periods. Further, these employees
26 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
27 least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
28 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to

1 time, and a first, second and third rest period of at least ten (10) minutes for some shifts
2 worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA
3 CLASS Members were also not provided with one hour wages in lieu thereof. Additionally,
4 the applicable California Wage Order requires employers to provide employees with off-
5 duty rest periods, which the California Supreme Court defined as time during which an
6 employee is relieved from all work related duties and free from employer control. In so
7 doing, the Court held that the requirement under California law that employers authorize and
8 permit all employees to take rest period means that employers must relieve employees of all
9 duties and relinquish control over how employees spend their time which includes control
10 over the locations where employees may take their rest period. Employers cannot impose
11 controls that prohibit an employee from taking a brief walk - five minutes out, five minutes
12 back. Here, DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA
13 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule
14 which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work
15 premises during their rest period.

16 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
17 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the
18 actual amount of time these employees worked. Pursuant to the Industrial Welfare
19 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other
20 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
21 employee was subject to the control of an employer, including all the time the employee was
22 permitted or suffered to permit this work. DEFENDANT required these employees to work
23 off the clock without paying them for all the time they were under DEFENDANT's control.
24 As such, DEFENDANT knew or should have known that PLAINTIFF and the other
25 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
26 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by
27 working without their time being accurately recorded and without compensation at the
28 applicable minimum wage and overtime wage rates. To the extent that the time worked off

1 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
2 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
3 1197, and 1197.1.

4 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
5 other members of the CALIFORNIA CLASS with complete and accurate wage statements
6 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
7 Code § 226 provides that every employer shall furnish each of his or her employees with an
8 accurate itemized wage statement in writing showing, among other things, gross wages
9 earned and all applicable hourly rates in effect during the pay period and the corresponding
10 amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS
11 Members were paid on an hourly basis. As such, the wage statements should reflect all
12 applicable hourly rates during the pay period and the total hours worked, and the applicable
13 pay period in which the wages were earned pursuant to California Labor Code Section
14 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other
15 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
16 wage statements failed to identify the accurate total hours worked each pay period. When
17 the hours shown on the wage statements were added up, they did not equal the actual total
18 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from
19 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
20 an itemized wage statement that lists all the requirements under California Labor Code 226
21 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
22 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
23 § 226.

24 15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
25 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
26 the wages are paid not more than seven (7) calendar days following the close of the payroll
27 period. Cal. Lab. Code § 210 provides:
28

1 in [I]n addition to, and entirely independent and apart from, any other penalty provided
2 this article, every person who fails to pay the wages of each employee as provided in
3 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
4 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
each subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.

5 16. DEFENDANT from time to time failed to pay PLAINTIFF and members of
6 the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
7 payroll period in accordance with Cal. Lab. Code § 204(d), including but not limited to for
8 the “Hourly” regular wage payments.

9 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
10 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
11 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
12 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
13 of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS
14 Members at their base rates of pay.

15 18. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
16 employees be calculated by dividing the employee’s total wages, not including overtime
17 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
18 days of employment.

19 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
20 at the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely
21 earned non-discretionary incentive wages which increased their regular rate of pay.
22 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
23 members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay,
24 as required under Cal. Lab. Code Section 246.

25 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
26 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe
27 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is
28 informed and believes and based thereon alleges that such failure to pay sick pay at regular

1 rate was willful, such that PLAINTIFF and members of the CALIFORNIA CLASS whose
2 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
3 Sections 201-203.

4 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
5 to collect or receive from an employee any part of wages theretofore paid by said employer
6 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and
7 other CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
8 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members,
9 failed to disclose all aspects of the deductions from compensation payable to PLAINTIFF
10 and CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to pay these
11 employees all wages due at each applicable pay period and upon termination. PLAINTIFF
12 and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal
13 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

14 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
15 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
16 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct
17 consequence of discharging their duties on behalf of DEFENDANT. Under California
18 Labor Code Section 2802, employers are required to indemnify employees for all expenses
19 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
20 states that "an employer shall indemnify his or her employee for all necessary expenditures
21 or losses incurred by the employee in direct consequence of the discharge of his or her
22 duties, or of his or her obedience to the directions of the employer, even though unlawful,
23 unless the employee, at the time of obeying the directions, believed them to be unlawful."

24 23. In the course of their employment PLAINTIFF and other CALIFORNIA
25 CLASS Members as a business expense, were required by DEFENDANT to use their own
26 personal cellular phones as a result of and in furtherance of their job duties as employees for
27 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
28 associated with the use of their personal cellular phones for DEFENDANT's benefit.

1 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
2 DEFENDANT to use their personal cellular phones. As a result, in the course of their
3 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
4 CLASS incurred unreimbursed business expenses which included, but were not limited to,
5 costs related to the use of their personal cellular phones all on behalf of and for the benefit
6 of DEFENDANT.

7 24. In violation of the applicable sections of the California Labor Code and the
8 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
9 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
10 knowingly and systematically failed to provide PLAINTIFF and the other Aggrieved
11 Employees suitable seating when the nature of these employees' work reasonably permitted
12 sitting.

13 25. DEFENDANT knew or should have known that PLAINTIFF and other
14 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did
15 not interfere with the performance of their duties, and that DEFENDANT did not provide
16 suitable seating and/or did not allow them to sit when it did not interfere with the
17 performance of their duties.

18 26. By reason of this conduct applicable to PLAINTIFF and all Aggrieved
19 Employees, DEFENDANT violated California Labor Code Section 1198 and California
20 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order
21 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on
22 behalf of PLAINTIFF and other Aggrieved Employees as provided herein. Providing
23 suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional
24 disregard of the obligation to meet this burden, DEFENDANT violated the California Labor
25 Code and regulations promulgated thereunder as herein alleged.

26 27. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
27 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage
28 Order and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due

1 to PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-
2 duty meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for
3 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the
4 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties
5 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to
6 provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's
7 business records. The amount in controversy for PLAINTIFF individually does not exceed
8 the sum or value of \$75,000.

9 **JURISDICTION AND VENUE**

10 28. This Court has jurisdiction over this Action pursuant to California Code of
11 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
12 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
13 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

14 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
15 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
16 DEFENDANT (i) currently maintains and at all relevant times maintained offices and
17 facilities in this County and/or conducts substantial business in this County, and (ii)
18 committed the wrongful conduct herein alleged in this County against members of the
19 CALIFORNIA CLASS.

20 **THE CALIFORNIA CLASS**

21 30. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
22 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
23 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
24 California class, defined as all individuals who are or previously were employed by
25 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
26 party, and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
27
28

1 during the period beginning four (4) years prior to the filing of this Complaint and ending on
2 the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount
3 in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
4 million dollars (\$5,000,000.00).

5 31. To the extent equitable tolling operates to toll claims by the CALIFORNIA
6 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
7 accordingly.

8 32. DEFENDANT, as a matter of company policy, practice and procedure, and in
9 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage
10 Order requirements, and the applicable provisions of California law, intentionally,
11 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record all
12 meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members,
13 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
14 this work and permits or suffers to permit this work.

15 33. DEFENDANT has the legal burden to establish that each and every
16 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
17 required by California laws. The DEFENDANT, however, as a matter of policy and
18 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails
19 to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
20 Member is paid as required by law. This common business practice is applicable to each
21 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
22 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
23 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

24 34. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
25 CLASS Members is impracticable.

26 35. DEFENDANT violated the rights of the CALIFORNIA CLASS under
27 California law by:
28

- 1 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
2 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
3 and/or deceptively having in place company policies, practices and
4 procedures that failed to record and pay PLAINTIFF and the other
5 members of the CALIFORNIA CLASS for all time worked, including
6 minimum wages owed and overtime wages owed for work performed
7 by these employees; and,
8 (b) Committing an act of unfair competition in violation of the UCL, by
9 failing to provide the PLAINTIFF and the other members of the
10 CALIFORNIA CLASS with the legally required meal and rest periods.

11 36. This Class Action meets the statutory prerequisites for the maintenance of a
12 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 13 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
14 that the joinder of all such persons is impracticable and the disposition
15 of their claims as a class will benefit the parties and the Court;
16 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
17 issues that are raised in this Complaint are common to the
18 CALIFORNIA CLASS will apply to every member of the
19 CALIFORNIA CLASS;
20 (c) The claims of the representative PLAINTIFF are typical of the claims
21 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
22 the other members of the CALIFORNIA CLASS, was classified as a
23 non-exempt employee paid on an hourly basis who was subjected to the
24 DEFENDANT's deceptive practice and policy which failed to provide
25 the legally required meal and rest periods to the CALIFORNIA CLASS
26 and thereby underpaid compensation to PLAINTIFF and
27 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
28 result of DEFENDANT's employment practices. PLAINTIFF and the

1 members of the CALIFORNIA CLASS were and are similarly or
2 identically harmed by the same unlawful, deceptive and unfair
3 misconduct engaged in by DEFENDANT; and,

- 4 (d) The representative PLAINTIFF will fairly and adequately represent and
5 protect the interest of the CALIFORNIA CLASS, and has retained
6 counsel who are competent and experienced in Class Action litigation.
7 There are no material conflicts between the claims of the representative
8 PLAINTIFF and the members of the CALIFORNIA CLASS that would
9 make class certification inappropriate. Counsel for the CALIFORNIA
10 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
11 Members.

12 37. In addition to meeting the statutory prerequisites to a Class Action, this action
13 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 14 (a) Without class certification and determination of declaratory, injunctive,
15 statutory and other legal questions within the class format, prosecution
16 of separate actions by individual members of the CALIFORNIA
17 CLASS will create the risk of:

- 18 1) Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA CLASS which would establish
20 incompatible standards of conduct for the parties opposing the
21 CALIFORNIA CLASS; and/or,
22 2) Adjudication with respect to individual members of the
23 CALIFORNIA CLASS which would as a practical matter be
24 dispositive of interests of the other members not party to the
25 adjudication or substantially impair or impede their ability to
26 protect their interests.

- 27 (b) The parties opposing the CALIFORNIA CLASS have acted or refused
28 to act on grounds generally applicable to the CALIFORNIA CLASS,

1 making appropriate class-wide relief with respect to the CALIFORNIA
2 CLASS as a whole in that DEFENDANT failed to pay all wages due to
3 members of the CALIFORNIA CLASS as required by law;

4 1) With respect to the First Cause of Action, the final relief on
5 behalf of the CALIFORNIA CLASS sought does not relate
6 exclusively to restitution because through this claim
7 PLAINTIFF seeks declaratory relief holding that the
8 DEFENDANT's policy and practices constitute unfair
9 competition, along with declaratory relief, injunctive relief, and
10 incidental equitable relief as may be necessary to prevent and
11 remedy the conduct declared to constitute unfair competition;

12 (c) Common questions of law and fact exist as to the members of the
13 CALIFORNIA CLASS, with respect to the practices and violations of
14 California law as listed above, and predominate over any question
15 affecting only individual CALIFORNIA CLASS Members, and a Class
16 Action is superior to other available methods for the fair and efficient
17 adjudication of the controversy, including consideration of:

18 1) The interests of the members of the CALIFORNIA CLASS in
19 individually controlling the prosecution or defense of separate
20 actions in that the substantial expense of individual actions will
21 be avoided to recover the relatively small amount of economic
22 losses sustained by the individual CALIFORNIA CLASS
23 Members when compared to the substantial expense and burden
24 of individual prosecution of this litigation;

25 2) Class certification will obviate the need for unduly duplicative
26 litigation that would create the risk of:

27 A. Inconsistent or varying adjudications with respect to
28 individual members of the CALIFORNIA CLASS, which

1 would establish incompatible standards of conduct for the
2 DEFENDANT; and/or,

3 B. Adjudications with respect to individual members of the
4 CALIFORNIA CLASS would as a practical matter be
5 dispositive of the interests of the other members not
6 parties to the adjudication or substantially impair or
7 impede their ability to protect their interests;

8 3) In the context of wage litigation because a substantial number of
9 individual CALIFORNIA CLASS Members will avoid asserting
10 their legal rights out of fear of retaliation by DEFENDANT,
11 which may adversely affect an individual's job with
12 DEFENDANT or with a subsequent employer, the Class Action
13 is the only means to assert their claims through a representative;
14 and,

15 4) A class action is superior to other available methods for the fair
16 and efficient adjudication of this litigation because class
17 treatment will obviate the need for unduly and unnecessary
18 duplicative litigation that is likely to result in the absence of
19 certification of this action pursuant to Cal. Code of Civ. Proc. §
20 382.

21 38. This Court should permit this action to be maintained as a Class Action
22 pursuant to Cal. Code of Civ. Proc. § 382 because:

23 (a) The questions of law and fact common to the CALIFORNIA CLASS
24 predominate over any question affecting only individual CALIFORNIA
25 CLASS Members because the DEFENDANT's employment practices
26 are applied with respect to the CALIFORNIA CLASS;

27 (b) A Class Action is superior to any other available method for the fair
28 and efficient adjudication of the claims of the members of the

1 CALIFORNIA CLASS because in the context of employment litigation
2 a substantial number of individual CALIFORNIA CLASS Members
3 will avoid asserting their rights individually out of fear of retaliation or
4 adverse impact on their employment;

5 (c) The members of the CALIFORNIA CLASS are so numerous that it is
6 impractical to bring all members of the CALIFORNIA CLASS before
7 the Court;

8 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not
9 be able to obtain effective and economic legal redress unless the action
10 is maintained as a Class Action;

11 (e) There is a community of interest in obtaining appropriate legal and
12 equitable relief for the acts of unfair competition, statutory violations
13 and other improprieties, and in obtaining adequate compensation for
14 the damages and injuries which DEFENDANT's actions have inflicted
15 upon the CALIFORNIA CLASS;

16 (f) There is a community of interest in ensuring that the combined assets of
17 DEFENDANT are sufficient to adequately compensate the members of
18 the CALIFORNIA CLASS for the injuries sustained;

19 (g) DEFENDANT has acted or refused to act on grounds generally
20 applicable to the CALIFORNIA CLASS, thereby making final class-
21 wide relief appropriate with respect to the CALIFORNIA CLASS as a
22 whole;

23 (h) The members of the CALIFORNIA CLASS are readily ascertainable
24 from the business records of DEFENDANT; and,

25 (i) Class treatment provides manageable judicial treatment calculated to
26 bring a efficient and rapid conclusion to all litigation of all wage and
27 hour related claims arising out of the conduct of DEFENDANT as to
28 the members of the CALIFORNIA CLASS.

1 39. DEFENDANT maintains records from which the Court can ascertain and
2 identify by job title each of DEFENDANT's employees who have been intentionally
3 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
4 PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of
5 similarly situated employees when they have been identified.

6
7 **THE CALIFORNIA LABOR SUB-CLASS**

8 40. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
9 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members
10 of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in
11 California, including any employees staffed with DEFENDANT by a third party, and
12 classified as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any
13 time during the period three (3) years prior to the filing of the complaint and ending on the
14 date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD")
15 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate
16 claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
17 (\$5,000,000.00).

18 41. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
19 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
20 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
21 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
23 these employees, even though DEFENDANT enjoyed the benefit of this work, required
24 employees to perform this work and permitted or suffered to permit this work.
25 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
26 which these employees are entitled in order to unfairly cheat the competition and unlawfully
27 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
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1 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
2 should be adjusted accordingly.

3 42. DEFENDANT maintains records from which the Court can ascertain and
4 identify by name and job title, each of DEFENDANT's employees who have been
5 intentionally subjected to DEFENDANT's company policy, practices and procedures as
6 herein alleged. PLAINTIFF will seek leave to amend the complaint to include any
7 additional job titles of similarly situated employees when they have been identified.

8 43. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
9 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

10 44. Common questions of law and fact exist as to members of the CALIFORNIA
11 LABOR SUB-CLASS, including, but not limited, to the following:

- 12 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
13 compensation due to members of the CALIFORNIA LABOR SUB-
14 CLASS for missed meal and rest breaks in violation of the California
15 Labor Code and California regulations and the applicable California
16 Wage Order;
- 17 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS with accurate
19 itemized wage statements;
- 20 (c) Whether DEFENDANT has engaged in unfair competition by the
21 above-listed conduct;
- 22 (d) The proper measure of damages and penalties owed to the members of
23 the CALIFORNIA LABOR SUB-CLASS; and,
- 24 (e) Whether DEFENDANT's conduct was willful.

25 45. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
26 CLASS under California law by:

- 27 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
28 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-

1 CLASS all wages due for overtime worked, for which DEFENDANT is
2 liable pursuant to Cal. Lab. Code § 1194;

3 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
4 accurately pay PLAINTIFF and the members of the CALIFORNIA
5 LABOR SUB-CLASS the correct minimum wage pay for which
6 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

7 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
8 the members of the CALIFORNIA LABOR SUB-CLASS with an
9 accurate itemized statement in writing showing the corresponding
10 correct amount of wages earned by the employee;

11 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
12 PLAINTIFF and the other members of the CALIFORNIA LABOR
13 SUB-CLASS with all legally required off-duty, uninterrupted thirty
14 (30) minute meal breaks and the legally required off-duty rest breaks;

15 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
16 when an employee is discharged or quits from employment, the
17 employer must pay the employee all wages due without abatement, by
18 failing to tender full payment and/or restitution of wages owed or in the
19 manner required by California law to the members of the
20 CALIFORNIA LABOR SUB-CLASS who have terminated their
21 employment; and,

22 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
23 and the CALIFORNIA LABOR SUB-CLASS members with necessary
24 expenses incurred in the discharge of their job duties.

25 46. This Class Action meets the statutory prerequisites for the maintenance of a
26 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

27 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
28 are so numerous that the joinder of all CALIFORNIA LABOR SUB-

1 CLASS Members is impracticable and the disposition of their claims as
2 a class will benefit the parties and the Court;

3 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
4 issues that are raised in this Complaint are common to the
5 CALIFORNIA LABOR SUB-CLASS and will apply to every member
6 of the CALIFORNIA LABOR SUB-CLASS;

7 (c) The claims of the representative PLAINTIFF are typical of the claims
8 of each member of the CALIFORNIA LABOR SUB-CLASS.
9 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
10 SUB-CLASS, was a non-exempt employee paid on an hourly basis who
11 was subjected to the DEFENDANT's practice and policy which failed
12 to pay the correct amount of wages due to the CALIFORNIA LABOR
13 SUB-CLASS. PLAINTIFF sustained economic injury as a result of
14 DEFENDANT's employment practices. PLAINTIFF and the members
15 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
16 identically harmed by the same unlawful, deceptive, and unfair
17 misconduct engaged in by DEFENDANT; and,

18 (d) The representative PLAINTIFF will fairly and adequately represent and
19 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and
20 has retained counsel who are competent and experienced in Class
21 Action litigation. There are no material conflicts between the claims of
22 the representative PLAINTIFF and the members of the CALIFORNIA
23 LABOR SUB-CLASS that would make class certification
24 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
25 will vigorously assert the claims of all CALIFORNIA LABOR SUB-
26 CLASS Members.

27 47. In addition to meeting the statutory prerequisites to a Class Action, this action
28 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 1 (a) Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution
3 of separate actions by individual members of the CALIFORNIA
4 LABOR SUB-CLASS will create the risk of:
- 5 1) Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA LABOR SUB-CLASS which
7 would establish incompatible standards of conduct for the
8 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
9 2) Adjudication with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS which would as a
11 practical matter be dispositive of interests of the other members
12 not party to the adjudication or substantially impair or impede
13 their ability to protect their interests.
- 14 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
15 acted or refused to act on grounds generally applicable to the
16 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
17 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
18 whole in that DEFENDANT fails to pay all wages due. Including the
19 correct wages for all time worked by the members of the
20 CALIFORNIA LABOR SUB-CLASS as required by law;
- 21 (c) Common questions of law and fact predominate as to the members of
22 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
23 and violations of California Law as listed above, and predominate over
24 any question affecting only individual CALIFORNIA LABOR SUB-
25 CLASS Members, and a Class Action is superior to other available
26 methods for the fair and efficient adjudication of the controversy,
27 including consideration of:
28

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class

1 treatment will obviate the need for unduly and unnecessary
2 duplicative litigation that is likely to result in the absence of
3 certification of this action pursuant to Cal. Code of Civ. Proc. §
4 382.

5 48. This Court should permit this action to be maintained as a Class Action
6 pursuant to Cal. Code of Civ. Proc. § 382 because:

- 7 (a) The questions of law and fact common to the CALIFORNIA LABOR
8 SUB-CLASS predominate over any question affecting only individual
9 CALIFORNIA LABOR SUB-CLASS Members;
- 10 (b) A Class Action is superior to any other available method for the fair
11 and efficient adjudication of the claims of the members of the
12 CALIFORNIA LABOR SUB-CLASS because in the context of
13 employment litigation a substantial number of individual
14 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
15 their rights individually out of fear of retaliation or adverse impact on
16 their employment;
- 17 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
18 numerous that it is impractical to bring all members of the
19 CALIFORNIA LABOR SUB-CLASS before the Court;
- 20 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
21 Members, will not be able to obtain effective and economic legal
22 redress unless the action is maintained as a Class Action;
- 23 (e) There is a community of interest in obtaining appropriate legal and
24 equitable relief for the acts of unfair competition, statutory violations
25 and other improprieties, and in obtaining adequate compensation for
26 the damages and injuries which DEFENDANT's actions have inflicted
27 upon the CALIFORNIA LABOR SUB-CLASS;
- 28

- 1 (f) There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of
3 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 (g) DEFENDANT has acted or refused to act on grounds generally
5 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
6 making final class-wide relief appropriate with respect to the
7 CALIFORNIA LABOR SUB-CLASS as a whole;
- 8 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
9 ascertainable from the business records of DEFENDANT. The
10 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
11 CLASS Members who worked for DEFENDANT in California at any
12 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 13 (i) Class treatment provides manageable judicial treatment calculated to
14 bring a efficient and rapid conclusion to all litigation of all wage and
15 hour related claims arising out of the conduct of DEFENDANT as to
16 the members of the CALIFORNIA LABOR SUB-CLASS.

17
18 **FIRST CAUSE OF ACTION**

19 **For Unlawful Business Practices**

20 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

21 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

22 49. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
23 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
24 this Complaint.

25 50. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
26 Code § 17021.

27 51. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”)
28 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.

1 Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to
2 unfair competition as follows:

3 Any person who engages, has engaged, or proposes to engage in unfair
4 competition may be enjoined in any court of competent jurisdiction. The court
5 may make such orders or judgments, including the appointment of a receiver,
6 as may be necessary to prevent the use or employment by any person of any
7 practice which constitutes unfair competition, as defined in this chapter, or as
8 may be necessary to restore to any person in interest any money or property,
9 real or personal, which may have been acquired by means of such unfair
10 competition.

11 Cal. Bus. & Prof. Code § 17203.

12 52. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Industrial Wage Order(s), the California Code of Regulations and the California
15 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1,
16 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
17 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
18 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
19 held to constitute unfair competition, including restitution of wages wrongfully withheld.

20 53. By the conduct alleged herein, DEFENDANT's practices were unlawful and
21 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
22 unscrupulous or substantially injurious to employees, and were without valid justification or
23 utility for which this Court should issue equitable and injunctive relief pursuant to Section
24 17203 of the California Business & Professions Code, including restitution of wages
25 wrongfully withheld.

26 54. By the conduct alleged herein, DEFENDANT's practices were deceptive and
27 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
28 meal and rest periods, the required amount of compensation for missed meal and rest
periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
reimburse all necessary business expenses incurred, and failed to provide Fair Labor
Standards Act overtime wages due for overtime worked as a result of failing to include non-

1 discretionary incentive compensation into their regular rates of pay for purposes of
2 computing the proper overtime pay due to a business practice that cannot be justified,
3 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements
4 in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
5 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
6 restitution of wages wrongfully withheld.

7 55. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
8 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and
9 the other members of the CALIFORNIA CLASS to be underpaid during their employment
10 with DEFENDANT.

11 56. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
12 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to
13 provide all legally required meal breaks to PLAINTIFF and the other members of the
14 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

15 57. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
16 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
17 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of
18 pay for each workday in which a second off-duty meal period was not timely provided for
19 each ten (10) hours of work.

20 58. PLAINTIFF further demands on behalf of herself and each member of the
21 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
22 duty paid rest period was not timely provided as required by law.

23 59. By and through the unlawful and unfair business practices described herein,
24 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and
25 the other members of the CALIFORNIA CLASS, including earned wages for all time
26 worked, and has deprived them of valuable rights and benefits guaranteed by law and
27 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to
28 allow DEFENDANT to unfairly compete against competitors who comply with the law.

1 60. All the acts described herein as violations of, among other things, the
2 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the
3 California Labor Code, were unlawful and in violation of public policy, were immoral,
4 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,
5 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et*
6 *seq.*

7 61. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled
8 to, and do, seek such relief as may be necessary to restore to them the money and property
9 which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
10 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
11 unfair business practices, including earned but unpaid wages for all time worked.

12 62. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
13 entitled to, and do, seek a declaration that the described business practices are unlawful,
14 unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT
15 from engaging in any unlawful and unfair business practices in the future.

16 63. PLAINTIFF and the other members of the CALIFORNIA CLASS have no
17 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
18 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
19 unabated. As a result of the unlawful and unfair business practices described herein,
20 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will
21 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained
22 from continuing to engage in these unlawful and unfair business practices.

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1 implementing a policy and practice that denies accurate compensation to PLAINTIFF and
2 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
3 wage pay.

4 71. In committing these violations of the California Labor Code, DEFENDANT
5 inaccurately calculated the correct time worked and consequently underpaid the actual time
6 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
7 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
8 other benefits in violation of the California Labor Code, the Industrial Welfare Commission
9 requirements and other applicable laws and regulations.

10 72. As a direct result of DEFENDANT's unlawful wage practices as alleged
11 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did
12 not receive the correct minimum wage compensation for their time worked for
13 DEFENDANT.

14 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
15 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
16 Members to work without paying them for all the time they were under DEFENDANT's
17 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
18 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
19 that they were entitled to, constituting a failure to pay all earned wages.

20 74. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
21 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
22 CLASS for the true time they worked, PLAINTIFF and the other members of the
23 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
24 economic injury in amounts which are presently unknown to them and which will be
25 ascertained according to proof at trial.

26 75. DEFENDANT knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
28 time worked. DEFENDANT elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
2 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
3 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
4 wages for their time worked.

5 76. In performing the acts and practices herein alleged in violation of California
6 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
7 CLASS for all time worked and provide them with the requisite compensation,
8 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
9 toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 with a conscious and utter disregard for their legal rights, or the consequences to them, and
11 with the despicable intent of depriving them of their property and legal rights, and otherwise
12 causing them injury in order to increase company profits at the expense of these employees.

13 77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
14 CLASS therefore request recovery of all unpaid wages, according to proof, interest,
15 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
16 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
17 extent minimum wage compensation is determined to be owed to the CALIFORNIA
18 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
19 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
20 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
21 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
22 conduct as alleged herein was willful, intentional and not in good faith. Further,
23 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek
24 and recover statutory costs.

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1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

3 **[Cal. Lab. Code § 510]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

6 78. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior
8 paragraphs of this Complaint.

9 79. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
10 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
11 California Labor Code and the Industrial Welfare Commission requirements for
12 DEFENDANT's failure to pay these employees for all overtime worked, including, work
13 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
14 and/or forty (40) hours in any workweek.

15 80. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
16 public policy, an employer must timely pay its employees for all hours worked.

17 81. Cal. Lab. Code § 510 further provides that employees in California shall not
18 be employed more than eight (8) hours per workday and more than forty (40) hours per
19 workweek unless they receive additional compensation beyond their regular wages in
20 amounts specified by law.

21 82. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
22 wages, including minimum wage and overtime compensation and interest thereon, together
23 with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an
24 employee for longer hours than those fixed by the Industrial Welfare Commission is
25 unlawful.

26 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
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1 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
2 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
3 including overtime work.

4 84. DEFENDANT's unlawful wage and hour practices manifested, without
5 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
6 implementing a policy and practice that failed to accurately record overtime worked by
7 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
8 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
9 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
10 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
11 workweek.

12 85. In committing these violations of the California Labor Code, DEFENDANT
13 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
14 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
15 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
16 violation of the California Labor Code, the Industrial Welfare Commission requirements
17 and other applicable laws and regulations. As a direct result of DEFENDANT's unlawful
18 wage practices as alleged herein, the PLAINTIFF and the other members of the
19 CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime
20 worked.

21 86. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
22 from the overtime requirements of the law. None of these exemptions are applicable to the
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
25 subject to a valid collective bargaining agreement that would preclude the causes of action
26 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of
27 herself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
28 of non-negotiable, non-waiveable rights provided by the State of California.

1 87. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
2 the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
3 overtime worked that they are entitled to, constituting a failure to pay all earned wages.

4 88. DEFENDANT failed to accurately pay the PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they
6 worked which was in excess of the maximum hours permissible by law as required by Cal.
7 Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the
8 CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work, overtime
9 as to which DEFENDANT failed to accurately record and pay as evidenced by
10 DEFENDANT's business records and witnessed by employees.

11 89. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
12 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS for the true amount of time they worked, PLAINTIFF and the other members of the
14 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
15 economic injury in amounts which are presently unknown to them and which will be
16 ascertained according to proof at trial.

17 90. DEFENDANT knew or should have known that PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
19 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
20 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
21 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
22 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

23 91. In performing the acts and practices herein alleged in violation of California
24 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
25 CLASS for all overtime worked and provide them with the requisite overtime compensation,
26 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
27 toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
28 with a conscious of and utter disregard for their legal rights, or the consequences to them,

1 and with the despicable intent of depriving them of their property and legal rights, and
2 otherwise causing them injury in order to increase company profits at the expense of these
3 employees.

4 92. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS therefore request recovery of all overtime wages, according to proof, interest,
6 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
7 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
8 extent minimum and/or overtime compensation is determined to be owed to the
9 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
10 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
11 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
12 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS
13 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in
14 good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
15 are entitled to seek and recover statutory costs.

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17 **FOURTH CAUSE OF ACTION**

18 **For Failure to Provide Required Meal Periods**

19 **[Cal. Lab. Code §§ 226.7 & 512]**

20 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
21 **Defendants)**

22 93. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
23 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
24 paragraphs of this Complaint.

25 94. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
26 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
27 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
28 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA

1 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
2 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
3 work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
4 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
5 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
6 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
7 hour of work is evidenced by DEFENDANT's business records from time to time. Further,
8 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
9 second off-duty meal period in some workdays in which these employees were required by
10 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF
11 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
12 breaks without additional compensation and in accordance with DEFENDANT's strict
13 corporate policy and practice.

14 95. DEFENDANT further violates California Labor Code §§ 226.7 and the
15 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
16 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with
17 the applicable Wage Order, one additional hour of compensation at each employee's regular
18 rate of pay for each workday that a meal period was not provided.

19 96. As a proximate result of the aforementioned violations, PLAINTIFF and
20 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
21 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
22 suit.

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1 **FIFTH CAUSE OF ACTION**

2 **For Failure to Provide Required Rest Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

6 97. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 98. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
10 from time to time required to work in excess of four (4) hours without being provided ten
11 (10) minute rest periods. Further, these employees from time to time were denied their first
12 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
13 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
14 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
15 (10) minutes for some shifts worked of ten (10) hours or more from time to time.

16 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
17 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
18 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
19 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

20 99. DEFENDANT further violated California Labor Code §§ 226.7 and the
21 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
22 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with
23 the applicable Wage Order, one additional hour of compensation at each employee's regular
24 rate of pay for each workday that rest period was not provided.

25 100. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
27 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
28 suit.

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1 wage statements should reflect all applicable hourly rates during the pay period and the total
2 hours worked, and the applicable pay period in which the wages were earned pursuant to
3 California Labor Code Section 226(a). The wage statements DEFENDANT provided to
4 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members failed to identify
5 such information. More specifically, the wage statements failed to identify the accurate total
6 hours worked each pay period. When the hours shown on the wage statements were added
7 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
8 Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph,
9 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
10 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
11 to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
12 CLASS with wage statements which violated Cal. Lab. Code § 226.

13 104. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
14 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
15 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
16 expended calculating the correct wages for all missed meal and rest breaks and the amount
17 of employment taxes which were not properly paid to state and federal tax authorities.
18 These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of
19 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
20 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
21 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
22 226, in an amount according to proof at the time of trial (but in no event more than four
23 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
24 CALIFORNIA LABOR SUB-CLASS herein).

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1 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
2 and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
3 these expenses as an employer is required to do under the laws and regulations of California.

4 108. PLAINTIFF therefore demands reimbursement for expenditures or losses
5 incurred by herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge
6 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
7 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

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9 **EIGHTH CAUSE OF ACTION**

10 **For Failure to Pay Wages When Due**

11 **[Cal. Lab. Code §§ 201, 202, 203]**

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
13 **and Against All Defendants)**

14 109. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
15 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
16 paragraphs of this Complaint.

17 110. Cal. Lab. Code § 200 provides, in relevant part, that:

18 As used in this article:

19 (a) "Wages" includes all amounts for labor performed by employees of
20 every description, whether the amount is fixed or ascertained by the
21 standard of time, task, piece, Commission basis, or other method of calculation.

22 (b) "Labor" includes labor, work, or service whether rendered or
23 performed under contract, subcontract, partnership, station plan, or other
24 agreement if the labor to be paid for is performed personally by the person
25 demanding payment.

26 111. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer
27 discharges an employee, the wages earned and unpaid at the time of discharge are due and
28 payable immediately."

112. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his
or her employment, his or her wages shall become due and payable not
later than 72 hours thereafter, unless the employee has given 72 hours
previous notice of his or her intention to quit, in which case the employee
is entitled to his or her wages at the time of quitting. Notwithstanding any
other provision of law, an employee who quits without providing a 72-

1 hour notice shall be entitled to receive payment by mail if he or she so
2 requests and designates a mailing address. The date of the mailing shall
3 constitute the date of payment for purposes of the requirement to provide
4 payment within 72 hours of the notice of quitting.

5 113. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
6 SUB-CLASS Members' employment contract.

7 114. Cal. Lab. Code § 203 provides, in relevant part, that:

8 If an employer willfully fails to pay, without abatement or reduction, in
9 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
10 employee who is discharged or who quits, the wages of the employee shall
11 continue as a penalty from the due date thereof at the same rate until paid
12 or until an action therefor is commenced; but the wages shall not continue
13 for more than 30 days.

14 115. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
15 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
16 owed as required by law. Additionally, at all times during the term of PLAINTIFF's
17 employment with DEFENDANT, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
18 Members earned and accrued vested vacation and holiday time on the date of their
19 termination pursuant to DEFENDANT's uniform vacation policies and applicable California
20 law. The amount of vacation pay PLAINTIFF and the other CALIFORNIA LABOR SUB-
21 CLASS Members earned and accumulated is evidenced by DEFENDANT's business
22 records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to
23 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS MEMBERS by failing to pay
24 such wages at the regular rate of pay and more specifically the final rate of pay that included
25 all non-discretionary incentive compensation. Rather than pay vacation wages at the regular
26 rate of pay, DEFENDANT underpaid vacation wages to PLAINTIFF and other
27 CALIFORNIA LABOR SUB-CLASS Members at their base rates of pay, instead of
28 including all of PLAINTIFF's and CALIFORNIA LABOR SUB-CLASS Members' non-
discretionary incentive compensation into the vacation wage payment calculations.
DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at which
PLAINTIFF and other CALIFORNIA LABOR CLASS Members would be paid vacation
upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful

1 practice, policy and procedure to deny paying the PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS all of their vested vacation and holiday time,
3 DEFENDANT failed to pay the PLAINTIFF and the members of the CALIFORNIA
4 LABOR SUB-CLASS all vested vacation time as wages due upon employment termination,
5 in violation of the California Labor Code, Sections 201, 202, 203 and 227.3. Similarly,
6 DEFENDANT underpaid waiting time penalties to PLAINTIFF and other CALIFORNIA
7 LABOR SUB-CLASS Members at their base rates of pay, instead of including all of
8 PLAINTIFF's' and CALIFORNIA LABOR SUB-CLASS Members' non-discretionary
9 compensation into the waiting time penalty calculations. This failure by DEFENDANT is
10 believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to
11 provide compensation for earned, accrued and vested vacation and holiday time, as well as
12 the corresponding waiting time penalties that were paid. DEFENDANT perpetrated this
13 unlawful, unfair and deceptive practice to the detriment of the PLAINTIFF and the members
14 of the CALIFORNIA LABOR SUB-CLASS . DEFENDANT's uniform practice and policy
15 of failing to pay the LABOR SUB-CLASS Members for all vested vacation and holiday
16 time accumulated at employment termination violated and continues to violate Section 227.3
17 of the California Labor Code.

18 116. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
19 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated
20 and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days
21 of pay as penalty for not paying all wages due at time of termination for all employees who
22 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
23 demands an accounting and payment of all wages due, plus interest and statutory costs as
24 allowed by law.

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1 **NINTH CAUSE OF ACTION**

2 **For Failure to Pay Sick Pay Wages**

3 **[Cal. Lab. Code §§ 201-204, 210, 233, 246]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

5 **and Against All Defendants)**

6 117. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 118. Cal Lab. Code § 233 provides that an employer must permit an employee to
10 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
11 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
12 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
13 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
14 right to sick pay wages, which an employer must calculate and compensate based on one of
15 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
16 same manner as the regular rate of pay for the workweek in which the employee uses paid
17 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
18 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
19 total wages, not including overtime premium pay, by the employee's total hours worked in
20 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
21 233, employees may sue to recover underpaid sick pay wages as damages.

22 119. As a matter of policy and practice, DEFENDANT pays sick pay wages to
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the
24 incorrect rate of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-
25 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
26 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
27 wages to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS
28 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-

1 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
2 employee's total wages, not including overtime premium pay, by the employee's total hours
3 worked in the full pay periods of the prior 90 days of employment. As a result,
4 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the
5 CALIFORNIA LABOR-SUB-CLASS.

6 120. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
7 during each calendar month and are to be paid no later than the payday for the next regular
8 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically
9 requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid
10 no later than the payday for the next regular payroll period after accrued sick leave is used as
11 paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an
12 employee, wages earned and unpaid at the time of discharge are due and payable
13 immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all
14 unpaid wages no later than 72 hours after an employee quits his or her employment, unless
15 the employee has given 72-hour notice of his or her intention to quit, in which case the
16 employee is entitled to his or her wages at the time of quitting. The Labor Code penalizes
17 untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer
18 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the
19 wages of the employee shall continue as a penalty from the due date, and at the same rate
20 until paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal.
21 Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and untimely
22 payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may
23 sue to recover applicable penalties.

24 121. As alleged herein and as a matter of policy and practice, DEFENDANT
25 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
26 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
27 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246,
28 among other Labor Code provisions. PLAINTIFF is informed and believes that

1 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
2 mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the
3 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
4 include those benefits to which an employee is entitled as a part of his or her compensation,
5 including money, room, board, clothing, vacation pay, *and sick pay*." *Murphy v. Kenneth*
6 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
7 willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA
8 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
9 penalties.

10 122. Such a pattern, practice, and uniform administration of corporate policy is
11 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-
12 SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties,
13 attorney's fees, and costs of suit.

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16 **PRAYER FOR RELIEF**

17 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
18 severally, as follows:

19 1. On behalf of the CALIFORNIA CLASS:

- 20 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
21 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
22 B) An order temporarily, preliminarily and permanently enjoining and restraining
23 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
24 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
25 withheld from compensation due to PLAINTIFF and the other members of the
26 CALIFORNIA CLASS; and,

1 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
2 for restitution of the sums incidental to DEFENDANT's violations due to
3 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

4 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

5 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
6 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
7 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

8 B) Compensatory damages, according to proof at trial, including compensatory
9 damages for minimum and overtime compensation due PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
11 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
12 statutory rate;

13 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
14 in which a violation occurs and one hundred dollars (\$100) per each member of
15 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
16 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
17 an award of costs for violation of Cal. Lab. Code § 226;

18 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
19 the applicable IWC Wage Order;

20 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
21 1197;

22 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
23 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
24 costs of suit.; and,

25 G) The wages of all terminated employees in the CALIFORNIA LABOR
26 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
27 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

28 3. On all claims:

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- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

Dated: September 1, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: September 1, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiff