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Attorney for Plaintiff
Kenneth Daniel

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Carlos Terriguez, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

KENNETH DANIEL, on his own behalf and all
similarly situated individuals,

Plaintiff,

v.

DEL MAR COUNTRY CLUB, INC.,
and DOES 1 to 100,

Defendants.

) NO. 37-2023-00047257-CU-OE-NC
) CLASS ACTION
)
) FIRST AMENDED COMPLAINT
) 1. Minimum Wage Violations
) 2. Overtime Violations
) 3. Meal Period Violations
) 4. Rest Period Violations
) 5. Wage Statement Penalties
) 6. Waiting Time Penalties
) 7. Violation of Unfair Competition Law
) 8. PAGA Penalties

PRELIMINARY ALLEGATIONS

1. Plaintiff Kenneth Daniel is a resident of San Diego County.
2. Defendant Del Mar Country Club, Inc. is a corporation based in San Diego County.
3. Plaintiff does not know the true names and capacities of Does 1 to 100 and therefore use fictitious names. Plaintiff will amend the complaint pursuant to Code of Civil Procedure section 474 to allege the true names and capacities when ascertained.
4. The named and Doe defendants are collectively referred to as Defendants.
5. Plaintiffs are informed and believe that each of the Defendants was the agent or employee of the other defendants and acted in the scope of agency or employment.
6. Defendants operate a country club, thus Wage Order 10 applies.

7. Defendants employed Plaintiff and the class members as nonexempt workers; Plaintiff worked as a cook and food preparer.

8. Plaintiff worked for Defendants from June 15, 2022 to January 28, 2023.

9. Plaintiff and the class members were not exempt since they did not customarily and regularly exercise discretion and independent judgment.

10. Throughout Plaintiff's and the class members' employment, they did not receive compliant meal and rest periods since they were interrupted and had to remain on premises.

11. Further, Plaintiff and the class members were not paid overtime at the correct regular rate.

12. On October 24, 2023 Plaintiff sent a PAGA letter to Del Mar Country Club, Inc. and uploaded the letter to the LWDA website. Since it has been more than 65 days, Plaintiff may now request PAGA penalties.

CLASS ACTION ALLEGATIONS

13. The class is defined as the following: "All non-exempt employees who worked for Defendants in California as from four years prior to filing the case to the date of certification or judgment, whichever is earlier."

14. There is a well-defined community of interest, and the proposed class is ascertainable from Defendants' employment records. Further, the following apply to show the viability of a class action pursuant to Code of Civil Procedure section 382:

- a. Numerosity: The members of the class as defined are so numerous that joinder of all class members is impracticable.
- b. Commonality: This action involves common questions of law and fact to the class because the action focuses on Defendants' systematic course of conduct with respect to violating the Labor Code and IWC Wage Order.
- c. Typicality: The claims are typical of the claims of the class. Plaintiff was subjected to the same violations and seeks the same types of damages, restitution, and other relief on the same as those of the members of the class.
- d. Adequacy of Representation: Plaintiff will fairly and adequately represent and

1 protect the interests of the class. Plaintiff understands the obligations as a class
2 representative and is willing and able to fulfill them. Plaintiff's counsel is
3 competent and experienced in litigating large employment class actions and
4 complex litigation matters, including wage and hour cases like this.

- 5 e. Superiority of Class Action: A class action is superior to other available means
6 for efficient adjudication. Class action treatment will allow similarly situated
7 persons to pursue the claims in a manner that is most efficient and economical.

8 15. There are common questions of law and fact including but not limited to:

- 9 a. Whether Defendants did not pay overtime at the correct regular rate in violation
10 of Labor code sections 510 and 1194;
11 b. Whether Defendants violated Labor Code sections 510 and 1194 for not paying
12 at least the minimum wage for work off the clock;
13 c. Whether Defendants violated Labor Code section 512 and the applicable Wage
14 Order by not providing meal breaks;
15 d. Whether Defendants violated the applicable Wage Order for not providing rest
16 breaks;
17 e. Whether Defendants violated Labor Code section 226 by providing inaccurate
18 wage statements;
19 f. Whether Defendants violated Labor Code section 226.7 by not paying premium
20 pay for missed meal and rest breaks;
21 g. Whether Defendants engaged in unfair competition; and
22 h. The amount of damages, wages, and penalties owed.

23
24 FIRST CAUSE OF ACTION

25 Minimum Wage Violations

26 Against All Defendants

27 16. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

28 17. Plaintiff and the class members were not paid for all hours worked.

18. Therefore Plaintiff and the class members are owed payment for unpaid wages and interest.

19. Also, statutory attorney fees apply.

SECOND CAUSE OF ACTION

Overtime Violations

Against All Defendants

20. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

21. Plaintiff and the class members were required to work over eight hours in a day and/or 40 hours in a week without being compensated for all overtime in violation of Labor Code 510.

22. Plaintiff and the class members should have received overtime at the correct regular rate of pay for the overtime work but were not paid overtime at the correct regular rate of pay, since Defendants did not include earned bonuses in the regular rate.

23. The remedy for the overtime violations is payment of the unpaid overtime at the correct regular rate of pay, plus interest and attorney fees, pursuant to Labor Code section 1194.

THIRD CAUSE OF ACTION

Meal Period Violations

Against All Defendants

24. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

25. Pursuant to the applicable Wage Order, every employer shall authorize and permit employees to take meal periods of thirty minutes for every five hours worked.

26. Pursuant to Labor Code section 226.7(c) and IWC Wage Order 4, when the employer does not provide an employee with the required meal period, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that a rest period is not provided.

27. Plaintiff and the class members were denied meal periods as meal periods were either not provided or were on-duty.

28. As a result of Defendants' meal period violations, Plaintiff and the class members are

1 entitled to premium pay which is one additional hour of compensation for each missed break at the
2 correct regular rate.

3
4 FOURTH CAUSE OF ACTION

5 Rest Period Violations

6 Against All Defendants

7 29. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

8 30. Pursuant to the applicable Wage Order every employer shall authorize and permit
9 employees to take rest periods of ten minutes for every four hours worked.

10 31. Pursuant to Labor Code section 226.7(c) and the applicable Wage Order, when the
11 employer does not provide an employee with the required rest period, the employer shall pay the
12 employee one hour of pay at the employee's regular rate of compensation.

13 32. Plaintiff and the class members were denied rest periods as rest periods were not provided
14 or were on-duty.

15 33. As a result of Defendants' rest period violations, Plaintiff and the class members are
16 entitled to premium pay which is one additional hour of compensation for each missed break at the
17 correct regular rate.

18
19 FIFTH CAUSE OF ACTION

20 Wage Statement Penalties

21 Against All Defendants

22 34. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

23 35. Defendants' wage statements issued to Plaintiff and the class members violated Labor Code
24 section 226 since they intentionally did not list premium pay for missed breaks at the regular rate
25 and overtime at the correct regular rate.

26 36. As a result, Plaintiff and the class members are entitled to wage statement penalties up to
27 \$4,000 each and attorney fees.

28 ///

1 SIXTH CAUSE OF ACTION

2 Waiting Time Penalties

3 Against All Defendants

4 37. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

5 38. Plaintiff and the class members who no longer work for Defendants were willfully not paid
6 wages that were still owed after they stopped working for Defendants.

7 39. Therefore Plaintiff and the class members who no longer work for Defendants are owed
8 waiting time penalties under Labor Code section 203, which are 30 days of wages each.

9
10 SEVENTH CAUSE OF ACTION

11 Violation of Unfair Competition Law

12 Against All Defendants

13 40. Plaintiff incorporates by reference paragraphs 1 to 13 of the complaint.

14 41. The Unfair Competition Law prohibits unfair, unlawful, and fraudulent business practices.

15 42. This claim is being brought under the unlawful prong of the UCL.

16 43. Defendants violated the Labor Code and IWC Wage Order by not paying all wages due,
17 including overtime and premium pay at the correct regular rate.

18 44. Plaintiff and the class members are entitled to restitution for the above.

19 45. Under Code of Civil Procedure section 1021.5, Plaintiff is entitled to attorney fees.

20
21 EIGHTH CAUSE OF ACTION

22 PAGA Penalties

23 Against All Defendants

24 46. Plaintiff incorporates by reference paragraphs 1 to 13 of the complaint.

25 47. As explained above, Plaintiff complied with Labor Code section 2699.3.

26 48. The bases for PAGA penalties are the following: minimum wage violations, overtime
27 violations, meal break violations, rest break violations, wage statement penalties, and waiting time
28 penalties.

- 1 49. The PAGA penalties for the minimum wage violations are in Labor Code section 1197.1.
2 50. The PAGA penalties for the overtime violations are in Labor Code sections 558 and 2699.
3 51. The PAGA penalties for meal break violations are contained in Labor Code 558 and 2699.
4 52. The PAGA penalties for the rest break violations are contained in Labor Code 2699.
5 53. The PAGA penalties for the wage statement violations are in Labor Code 226.3 and 2699.
6 54. The PAGA penalties for the waiting time penalties are in Labor Code section 2699.
7 55. Further, Plaintiff is entitled to attorney fees and costs under Labor Code section 2699.
8

9 PRAYER

10 For All Causes of Action

- 11 1. That the court determine that this action may be maintained as a class action
12 2. That Plaintiffs serve as representatives of the class
13 3. That Counsel for Plaintiffs is appointed as class counsel
14

15 First Cause of Action

- 16 1. Payment of all unpaid wages
17 2. Interest
18 3. Attorney fees
19 4. Other relief the court deems proper
20

21 Second Cause of Action

- 22 1. Payment of overtime
23 2. Interest
24 3. Attorney fees
25 4. Other relief the court deems proper
26

27 Third Cause of Action

- 28 1. Premium pay at the correct regular rate of pay plus interest

1 2. Other relief the court deems proper

2

3 Fourth Cause of Action

4 1. Premium pay at the correct regular rate of pay plus interest

5 2. Other relief the court deems proper

6

7 Fifth Cause of Action

8 1. Wage statement penalties

9 2. Attorney fees and costs

10 3. Other relief the court deems proper

11

12 Sixth Cause of Action

13 1. Waiting time penalties

14

15 Seventh Cause of Action

16 1. Restitution of unpaid wages and premium pay

17 2. Attorney fees

18 3. Other relief the court deems proper

19

20 Eighth Cause of Action

21 1. All applicable PAGA penalties

22 2. Attorney fees and costs

23 3. Other relief the court deems proper

24

25 Date: January 3, 2024

FRONTIER LAW CENTER

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Adam Rose

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Adam Rose
Attorney for Plaintiff
Kenneth Daniel

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