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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/18/2024 at 01:48:18 PM
Clerk of the Superior Court
By Yuan Chiang, Deputy Clerk

Attorneys for Plaintiff CARLA BALLESTEROS; and HAILEY DUARTE, in a Representative capacity only, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CARLA BALLESTEROS; and HAILEY
DUARTE, in a Representative capacity only,
and on behalf of other members of the
general public similarly situated

Plaintiffs

v.

GREAT CLIPS, INC., a Minnesota
Corporation; CLIPPER SHIP, INC., D.B.A.
GREAT CLIPS, a California Corporation,
and DOES 1-10, inclusive

Defendants

CASE NO. 37-2024-00002218-CU-OE-CTL

COMPLAINT FOR:

- 1. MEAL AND REST PERIOD VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
- 2. MINIMUM WAGE VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
- 3. OVERTIME VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
- 4. W A G E S T A T E M E N T VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
- 5. FAILURE TO REIMBURSE PURSUANT TO LABOR CODE § 2698 *et seq.***
- 6. IMPROPER TIP POOLING VIOLATIONS PURSUANT TO LABOR CODE §§ 351 AND 353**
- 7. FAILURE TO PAY WAGES UPON SEPARATION PURSUANT TO LABOR CODE § 2698 *et seq.***

COMES NOW Plaintiffs CARLA BALLESTEROS and HAILEY DUARTE ("Plaintiffs"), in a Representative capacity only, on behalf of all aggrieved employees, and on behalf of other members of the general public similarly situated, and alleges for their complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA") may **not** be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiffs' injuries occurred in the County of San Diego, State of California.
3. Plaintiffs are informed and believe and thereon allege that at all relevant times mentioned herein, Defendant GREAT CLIPS, INC., (Referred to herein as "Defendants" or "GREAT CLIPS"), was and is a Minnesota Corporation doing business throughout the state, including the County of San Diego, State of California. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant CLIPPER SHIP, INC., D.B.A. GREAT CLIPS (Referred to herein as "Defendants" or "GREAT CLIPS"), was and is a California Corporation doing business throughout the state, including the County of San Diego, State of California.
4. Plaintiffs are presently unaware of the true names, capacities and liability of Defendants named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiffs will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.

- 1 5. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named
2 Defendants is responsible in some manner for the wrongs and damages as herein alleged, and
3 in so acting was functioning as the agent, servant, partner, and employee of the co-defendants,
4 and in doing the actions mentioned below, was acting within the course and scope of his or her
5 authority as such agent, servant, partner, and employee with the permission and consent of the
6 co-defendants. Plaintiffs' injuries as herein alleged were proximately caused by said
7 defendants. Wherever it is alleged herein that any act or omission was done or committed by
8 any specially named Defendant or Defendants, Plaintiffs intend thereby to allege and do allege
9 that the same act or omission was also done and committed by each and every defendant
10 named as a DOE, both separately and in concert with the named Defendant or Defendants.
- 11 6. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them,
12 including DOES 1 through 10, are and at all times herein mentioned were either individuals,
13 sole proprietorships, partnerships, registered professionals, corporations, alter egos or other
14 legal entities which were licensed to do and/or were doing business in the County of San
15 Diego, State of California at all times relevant to the subject matter of this action.

16 **FACTUAL BACKGROUND**

- 17 7. Plaintiff BALLESTEROS was employed by Defendants from approximately 2001 through
18 October 12, 2023; and Plaintiff DUARTE was employed by Defendants from approximately
19 February 2021 through October 16, 2023. Throughout their employment with Defendants,
20 Plaintiffs performed their jobs in a capable, and competent manner.
- 21 8. Plaintiff maintains that Defendants CLIPPER SHIP, INC., D.B.A. GREAT CLIPS and GREAT
22 CLIPS, INC. are acting as co-employers pursuant to California law. Specifically, California
23 law holds multiple entities may be employers where they control different aspects of the
24 employment relationship. *Castaneda v. Ensign Group, Inc.* (2014) 229 Cal.App.4th 1015,
25 1020. "The parties' use of a label to describe their relationship does not control and will be
26 ignored where the evidence of their actual conduct establishes a different relationship exists."
27 *Id.* at 1021. Joint-employer liability will be imposed where each entity can exercise control
28 over wages, hours, or working conditions, directly or indirectly, or through an agent or any

- 1 other person; or suffer or permit employees to work. *Martinez v. Combs*, (2010) 49 Cal.4th 35.
- 2 9. GREAT CLIPS, INC. is imposing control over numerous aspects of the aggrieved employees’
- 3 employment in this matter, through the use of required franchise agreements. For example,
- 4 GREAT CLIPS, INC. requires that any employee who is hired in a “Great Clips” franchise
- 5 must take mandatory training created by GREAT CLIPS, INC. As another example, GREAT
- 6 CLIPS, INC. provides the employees of any franchise with counseling and information on how
- 7 to use the “Great Clips System” and telephone.
- 8 10. Throughout the term of their employment, Plaintiffs and all other aggrieved employees were,
- 9 and currently are, denied the benefits and protections of the Labor Code due to Defendants’
- 10 institutionalized pay practices, standard as to all of Defendants’ California-based employees.
- 11 11. On November 7, 2023, counsel for Plaintiff prepared and submitted via online filing a letter
- 12 to the California Labor & Workforce Development Agency (“LWDA”). A copy of the letter
- 13 was mailed to Defendants, via USPS Certified Mail. The letter contained the specific
- 14 provisions of the California Labor Code and Business and Professions Code violated by
- 15 Defendants, as well as the facts and theories in support of Plaintiffs’ claims. (Please see
- 16 **Exhibit 1**, a true and correct copy of this letter.)
- 17 12. The statutory time period for the LWDA to investigate and/or respond, and for the employer
- 18 to respond, has concluded.

19 REPRESENTATIVE ALLEGATIONS

- 20 13. As more specifically set forth below, Plaintiffs bring this action in a representative capacity on
- 21 behalf of all current and former aggrieved employees of Defendants who performed work for
- 22 Defendants in California only. Code Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal.
- 23 4th 969, 980-981. Throughout the operative limitations period, Plaintiffs and all other
- 24 aggrieved employees were denied the protections and benefits of the Labor Code due to
- 25 Defendants’ standard practices. Throughout their employment, Plaintiffs and all other
- 26 aggrieved employees were and are denied full and accurate compensation, including overtime
- 27 compensation, in violation of, *inter alia*, Labor Code sections 510, 1194, and 1197. Plaintiffs
- 28 and the other aggrieved employees were and are denied Meal and Rest Periods and Meal and

1 Rest Period payments, in violation of, *inter alia*, Labor Code sections 226.7 and 512.
2 Defendants failed to furnish accurate itemized wage statements in violation of, *inter alia*,
3 Labor Code section 226. Defendants failed to reimburse Plaintiffs and other aggrieved
4 employees for necessary business expenditures in violation of, *inter alia*, Labor Code section
5 2802. Defendants failed to provide all compensation due at termination of employment in
6 violation of, *inter alia*, Labor Code sections 201 through 203.

7 14. Plaintiffs bring this action on the grounds that they and other current and former aggrieved
8 employees of Defendants were and are improperly denied the mandated wages resulting from
9 the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The
10 number of current and former aggrieved employees is believed to exceed Five Hundred (500)
11 members.

12 15. The approximately Five Hundred (500) aggrieved employees are comprised of Defendants'
13 current or former California-based employees.

14 16. The questions of law and fact common to all aggrieved employees arising from Defendants'
15 actions include, among others, the following:

- 16 a. Whether Defendants failed to pay its employees the proper straight-time, overtime, and
17 double time wages due and owing to them;
- 18 b. Whether Defendants failed to pay its employees all compensation due and owing at
19 termination of employment;
- 20 c. Whether Defendants failed to provide its employees with statutorily-compliant Meal
21 and/or Rest Periods, in violation of, *inter alia*, California Labor Code section 512 and
22 226.7, in that Defendants' written policies are not compliant with California law, and
23 Defendants do not allow its employees duty-free Meal and/or Rest Periods on occasion;
- 24 d. Whether Defendants failed to properly provide Meal and Rest Period Premiums in
25 accordance with law;
- 26 e. Whether Defendants failed to properly calculate and pay its employees overtime
27 compensation or Meal and Rest Period Premiums in accordance with law by failing to
28 properly calculate, into the Regular Rate of Pay, the value of all employee benefits and

- 1 other non-discretionary compensation; and
- 2 f. Whether Defendants failed to properly reimburse its employees for necessary business
- 3 expenditures for, *inter alia*, cell phone costs and other work supplies, in violation of
- 4 Labor Code section 2802.
- 5 17. At all times mentioned herein, Defendants were subject to the Labor Codes and Industrial
- 6 Welfare Commission Wage Orders of the State of California, including, but not limited to,
- 7 California Labor Code section 2698 *et seq.*
- 8 18. At all times mentioned herein, Defendants are and were “employers” as that term is used
- 9 within the relevant sections of the California Labor Code.
- 10 19. Plaintiffs have exhausted their administrative remedies and pre-filing requirements pursuant
- 11 to California Labor Code section 2699.3, and has also fulfilled all notice requirements under
- 12 the statute.
- 13 20. Throughout the operative limitations period, Plaintiffs and all other aggrieved employees were
- 14 denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to
- 15 Defendants’ standard practices. Said violations are set forth below.

16 **FIRST CAUSE OF ACTION**

17 **Meal and Rest Period Violations Pursuant to Labor Code § 2698 *et seq.***

18 **Representative Action**

19 **(By Plaintiff against Defendants and DOES 1 through 10)**

- 20 21. Plaintiffs hereby incorporate by reference paragraphs 1 through 20 as though fully set forth
- 21 herein.
- 22 22. Labor Code section 1198 states:
- 23 The maximum hours of work and the standard conditions of labor fixed
- 24 by the commission shall be the maximum hours of work and the
- 25 standard conditions of labor for employees. The employment of any
- 26 employee for longer hours than those fixed by the order or under
- 27 conditions of labor prohibited by the order is unlawful.
- 28 Defendants violated this section by establishing working conditions below the standard of the
- applicable Wage Order.
23. Under applicable California law, “An employer may not employ an employee for a work period
- of more than five hours per day without providing the employee with a Meal Period of not less

- than 30 minutes [...] An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second Meal Period of not less than 30 minutes” Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11020 (11)(A).
24. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an “on duty” Meal Period and counted as time worked. 8 Cal. Code Regs. § 11020 (11).
25. California law requires employers to provide nonexempt employees with a 10-minute Rest Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs. § 11020 (11).
26. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee’s regular rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11020 (11), (12).
27. Within the operative time period, Defendants failed to possess compliant Meal and Rest Period policies.
28. For example, Defendants do not possess a legal Meal Period policy or legal Rest Period policy, and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods or Rest Periods.
29. Defendants would also pressure employees to either skip, or cut short, Meal Periods and Rest Periods, based on customer volume and coverage issues.
30. In addition, Defendants had notice of Plaintiffs working outside of their scheduled and/or reported hours, as well as within their Meal and Rest Periods, but failed to provide any compensation for this work-time.
31. Defendants willfully failed and refused to pay Plaintiffs and all other aggrieved employees one additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period was not provided, as required by Labor Code section 226.7 and IWC Wage Order 2 § (11), (12).
32. Any payments made by Defendants for non-compliant Meal Periods were not paid at the

1 employee's regular rate in violation of Labor Code section 226.7 and the operative IWC Wage
2 Orders. Instead, these payments were made at an employee's base rate and did not include the
3 value of, *inter alia*, all actual compensation owed, and/or all employee benefits such as, for
4 example, non-discretionary compensation and other employee benefits.

5 33. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
6 Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be
7 proven at trial.

8 34. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
9 on behalf of themselves and all other aggrieved employees by and through Labor Code section
10 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover
11 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
12 Prayer For Relief.

13 35. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants
14 pursuant to Labor Code sections 2699(a) for each of these employees.

15 36. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code
16 section 2699(g)(1).

17 **SECOND CAUSE OF ACTION**
18 **Minimum Wage Violations Pursuant to Labor Code § 2698 et seq.**
19 **Representative Action**
20 **(By Plaintiff against Defendants and DOES 1 through 10)**

21 37. Plaintiffs hereby incorporate by reference paragraphs 1 through 36 as though fully set forth
22 herein.

23 38. Defendants failed to pay its employees all compensation due in violation of, among other
24 statutes, Labor Code section 1197. California law holds that the failure to pay for any work
25 time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.*, (2005) 135 Cal.
26 App.4th 314, 323. These violations were caused by and through Defendants' failure to
27 maintain accurate Time Records (as required by California law), to the detriment of the
28 employees. Specifically, although Defendants would receive "to-the-minute" start and end
times (from their employees' mandated timekeeping practices), Defendants would thereafter

1 alter - and deduct time from - the Time Records, prior to payment of compensation to the
2 employees. Additionally, the right to receive the proper minimum wage compensation was
3 impacted by Defendants knowingly failing to consider other work performed by the employees,
4 including all time employees were under Defendants' control. These actions, and instructions,
5 caused the employees to lose compensation, including proper minimum wage compensation
6 and overtime compensation.

7 39. As a result of Defendants' failure to comply with the provisions of the Labor Code, Plaintiffs
8 and all other aggrieved employees have been damaged in an amount to be proven at trial.

9 40. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
10 on behalf of themselves and all other aggrieved employees by and through Labor Code section
11 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiffs may recover
12 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
13 Prayer For Relief.

14 41. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants
15 pursuant to Labor Code sections 2699(a) for each of these employees.

16 42. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code
17 section 2699(g)(1).

18 **THIRD CAUSE OF ACTION**
19 **Overtime Violations Pursuant to Labor Code § 2698 et seq.**
20 **Representative Action**
21 **(By Plaintiff against Defendants and DOES 1 through 10)**

22 43. Plaintiffs hereby incorporate by reference paragraphs 1 through 42 as though fully set forth
23 herein.

24 44. Defendants failed to pay Plaintiffs and all other aggrieved employees all compensation,
25 including overtime compensation, due in violation of, among other statutes, Labor Code
26 section 510. These violations occurred due to Defendants' illegal policies, referenced above,
27 whereby employees experienced monetary under-compensation. The systematic failure to
28 provide proper overtime compensation is a violation of California law.

45. Additionally, Defendants also failed to provide the actual Overtime Rate of Pay by ignoring

certain compensation when calculating the Regular Rate of Pay including, but not limited to, shift differentials, various forms of bonus and/or incentive pay, and the value of employee benefits and employee discounts, in violation of Labor Code section 510.

46. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be proved at trial.

47. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

48. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

49. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

FOURTH CAUSE OF ACTION
Wage Statement Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

50. Plaintiffs hereby incorporate by reference paragraphs 1 through 49 as though fully set forth herein.

51. Defendants failed to provide Plaintiffs and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code section 226. These violations include, but are not limited to, Defendants' failure to accurately identify all applicable regular and overtime (including double-time) rates of pay in violation of section 226(a)(9), and providing inaccurate representations of both "gross" and "net wages." Defendants also failed to accurately list "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate," in violation of 226(a)(9). Defendants also failed to provide an accurate showing of the "total hours worked,"

1 in violation of Labor Code section 226(a)(2).

2 52. Further, the Defendants' wage statement listings are confusing and employees cannot readily
3 ascertain their total hours worked, applicable rates, and all gross and net wages. As one
4 example, Defendants are apparently using a time calculating system other than "minutes", but
5 without explanation to the employees within the wage statement.

6 53. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
7 Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be
8 proven at trial.

9 54. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
10 on behalf of themselves and all other aggrieved employees by and through Labor Code section
11 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover
12 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
13 Prayer For Relief.

14 55. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants
15 pursuant to Labor Code sections 2699(a) for each of these employees.

16 56. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code
17 section 2699(g)(1).

18 **FIFTH CAUSE OF ACTION**
19 **Failure to Reimburse Pursuant to Labor Code § 2698 et seq.**
20 **Representative Action**
(By Plaintiff against Defendants and DOES 1 through 10)

21 57. Plaintiffs hereby incorporate by reference paragraphs 1 through 56 as though fully set forth
22 herein.

23 58. Defendants failed to reimburse their employees for all necessary business expenditures
24 incurred in direct consequence of the discharge of their duties in violation of, among other
25 statutes, Labor Code section 2802. These expenditures are the result of, *inter alia*, Defendants'
26 standard policies which require its employees to incur mileage, purchase work supplies, and
27 to use their own cell phones for work-related purposes, without reimbursement.

28 59. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor

Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be proven at trial.

60. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

61. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

62. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

SIXTH CAUSE OF ACTION
Improper Tip Pooling Violations Pursuant to Labor Code sections 351 and 353
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

63. Plaintiffs hereby incorporate by reference paragraphs 1 through 62 as though fully set forth herein.

64. Throughout the applicable time period, Plaintiffs and other aggrieved employees were denied the benefits and protections of the California Labor Code and IWC Wage Order(s) and were damaged thereby.

65. Defendants failed to provide Plaintiffs and other nonexempt employees with all tips due and owing to them, in violation of Labor Code section 351. The violations were caused, in part, by Defendants illegal "tip pooling" system, whereby Defendants and their agents would improperly collect, with-hold and/or take a portion of the gratuities from the gratuities paid, given to, or left for the employees. Defendants and their agents would also fail to timely provide for the remuneration of gratuities provided via credit or debit card. Defendants also failed to keep accurate records of all gratuities received, in violation of Labor Code section 353.

66. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor

1 Code, Plaintiffs and all other employees have been damaged in an amount to be proven at trial.
2 67. Plaintiffs have incurred and continue to incur legal expenses and attorneys' fees. Plaintiffs are
3 presently unaware of the precise amount of these expenses and fees and pray for leave of court
4 to amend this Complaint when the amounts are more fully known.

5 **SEVENTH CAUSE OF ACTION**
6 **Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 et seq.**
7 **Representative Action**
8 **(By Plaintiff against Defendants and DOES 1 through 10)**

9 68. Plaintiffs hereby incorporate by reference paragraphs 1 through 67 as though fully set forth
10 herein.

11 69. Defendants failed to provide Plaintiffs and other aggrieved employees with all wages earned
12 and unpaid at termination in violation of, among other statutes, Labor Code sections
13 201 through 203. These violations resulted from, among other unlawful actions, Defendants'
14 willful failure to provide accurate and complete compensation to aggrieved employees under
15 Labor Code sections 226.7, 510, 512, 1197, and 2802, as set forth above.

16 70. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
17 Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be
18 proven at trial.

19 71. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
20 on behalf of themselves and all other aggrieved employees by and through Labor Code section
21 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover
22 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
23 Prayer For Relief.

24 72. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants
25 pursuant to Labor Code sections 2699(a) for each of these employees.

26 73. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code
27 section 2699(g)(1), and interest, pursuant to Labor Code section 218.6.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of all aggrieved employees, pray for judgment as follows:

1. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code section 2699(g)(1);
2. For an award of statutory civil penalties pursuant to Labor Code section 2699(f)(2); and
3. For such other relief as the Court deems just and proper.

Dated: January 18, 2024

SULLIVAN & YAECKEL LAW GROUP, APC



Eric K. Yaeckel
Ryan T. Kuhn
Karoline D. Kitlowski
Attorneys for Plaintiff CARLA BALLESTEROS;
AND HAILEY DUARTE, in a Representative
capacity only, and on behalf of other members of the
general public similarly situated

Exhibit 1

SULLIVAN & YAECKEL

LAW GROUP

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2330 THIRD AVENUE
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PHONE 619-702-6760
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November 7, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: Carla Ballesteros and Hailey Duarte v. Great Clips, Inc.; and
Clipper Ship, Inc., D.B.A. Great Clips
Our File No.: 7386

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Great Clips, Inc.; and Clipper Ship, Inc., D.B.A Great Clips (hereinafter collectively referred to as “Great Clips”), in the above referenced matter. This “written notice” is filed on behalf of Carla Ballesteros (hereinafter “Ms. Ballesteros”); Hailey Duarte (hereinafter “Ms. Duarte”); and all current and former non-exempt employees employed by Great Clips. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Great Clips are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226(a),
226.7, 510, 512, 1194, and 2802, as well as IWC Wage Order 2,
codified as Title 8, California Code of Regulations, section 11020 *et*
seq., or any other applicable wage orders.

Facts and theories supporting the allegations: Ms. Ballesteros was employed as a non-exempt employee for Great Clips from approximately 2001, through October 12, 2023. Ms. Duarte was employed as a non-exempt employee for Great Clips from approximately February 2021, through October 16, 2023.

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PLEASE NOTE: Pursuant to *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903 (Cal. 2018) and *Vasquez v. Jan-Pro Franchising International, Inc.* 939 F.3d 1045 (9th Cir. September 24, 2019) Ms. Ballesteros and Ms. Duarte have standing to bring a representative claim under PAGA as to “Great Clips, Inc.”, using the established three point “ABC” test which confirms their status as employees.

Throughout the term of Ms. Ballesteros’ and Ms. Duarte’s employment, Great Clips required Ms. Ballesteros, Ms. Duarte and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

- Great Clips failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 510, IWC Wage Order 2, and/or any other applicable wage orders. This illegal action is due, in part, to Great Clips’s policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Great Clips would instruct Ms. Ballesteros and Ms. Duarte to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Additionally, Great Clips would often require Ms. Ballesteros and Ms. Duarte to work extended hours (beyond scheduled hours), without compensation. Ms. Ballesteros and Ms. Duarte were routinely required to stay 10-20 minutes after she clocked out for the day to complete cleaning duties. Further, Great Clips would regularly contact Ms. Ballesteros and Ms. Duarte outside of normal work hours (*i.e.*, “after hours” or during lunch) without compensation.
- Additionally, among other issues, Great Clips has notice of Ms. Ballesteros and Ms. Duarte, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but fails to provide any compensation for this work-time. Ms. Ballesteros and Ms. Duarte were frequently scheduled to be “On Call” outside of when their work shifts ended, but were never compensated for this time. Further, Great Clips failed to properly calculate and pay overtime at the actual overtime rate of pay, as Great Clips ignores certain compensation when calculating the Regular Rate of Pay.

Failure to Provide Compliant Meal Periods

- Great Clips failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 2, and/or any other applicable wage orders. For example, Great Clips does not possess a legal Meal Period policy and makes no attempt to ensure

that its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely, or be provided a short or untimely Meal Period. Whether or not an employee was provided a Meal Period was often contingent upon the how busy the employees were on a given day.

- Great Clips would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to supervisors and/or customers at all times. Great Clips has never provided a compliant Meal Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions when employees *were* paid Meal Period penalties (*i.e.* California Meal Period Premiums), such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of section 226.7.” *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, italics added. Even more recently, a 2020 California Supreme Court ruling stated that, “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a section 226.7 violation.’” *Kim v. Reins International California, Inc.*, (2020) 9 Cal.5th 73. To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, Great Clips failed to pay Meal Period Premiums at the proper rate, as Great Clips fails to either (1) pay a full hours worth of pay, or (2) properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal.5th 858.
- Great Clips required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Meal Periods. On occasion, Great Clips would interrupt, or cut short, its employees’ Meal Periods and require them to return to work.
- Great Clips illegally retained control over its employees during Meal Periods. For example, Great Clips required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their phones) at all times, including during Meal Periods.

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Failure to Provide Compliant Rest Periods

- Great Clips failed to provide compliant Rest Periods or requisite Rest Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 2, and/or any other applicable wage orders. For example, Great Clips does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Great Clips makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. Great Clips would pressure its employees to either skip, or cut short, a Rest Period as employees were expected to respond to customers at all times. Great Clips has never provided a compliant Rest Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions in which Great Clips would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.
- Great Clips required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Rest Periods. On occasion, Great Clips would interrupt, or cut short, its employees’ Rest Periods and require them to return to work. Ms. Ballesteros and Ms. Duarte were required to respond to supervisors and customers during their Rest Periods.
- Finally, Great Clips illegally retained control over its employees during Rest Periods. For example, Great Clips required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their telephones) at all times, including during Rest Periods.

Wage Statement Violations

- Great Clips violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Ms. Ballesteros received hand written pay checks on occasion that did not indicate the hours she worked or the rate of pay she received. (Please see **Exhibit A**). Ms. Ballesteros, and Ms. Duarte and other employees were not compensated for all hours worked (due in part to Great Clips’s requirement that employees list only *scheduled* work-times, not actual work-times.)
- Great Clips violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, Great Clips (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or

Rest Period penalties when due. Further, on the rare occasions in which Great Clips would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.

- Great Clips violated Labor Code section 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Great Clips does not explain how its system describes “time worked” on the Wage Statement itself. As such, Ms. Ballesteros and Ms. Duarte cannot “readily ascertain” what these figures mean. This is because Great Clips is apparently using a time-calculating system other than “minutes,” but without explanation to the employees within the wage statement. As minutes are measured on a scale of 1 through 60, it is not apparent what these figures (*i.e.* “.76”) are meant to represent. Without an explanation for how these figures were arrived at, employees cannot “readily ascertain” their total hours worked. Therefore, Great Clips failed to provide an accurate showing of the “total hours worked” by its employees pursuant to section 226(a)(2), due to all the aforesaid reasons.

Failure to Provide Compliant Expense Reimbursement Payments

- Great Clips failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for expenses incurred by Ms. Ballesteros, Ms. Duarte and other non-exempt employees, including expenses for cell-phone costs, work supplies, and mileage.

Willful Failure to Provide All Compensation to Ex-Employees

- Great Clips failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due, in part, to the fact that Great Clips failed to provide proper compensation for all hours worked, and failed to pay full Meal or Rest Period penalties, as discussed above.

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Failure to Provide Compensation for Gratuities Earned

- Great Clips failed to ensure that its nonexempt employees fully received the gratuities left for the nonexempt employees by Great Clips' patrons, in that Great Clips and its agents would collect and/or take a portion of the gratuities for themselves. For example, Great Clips and its agents would often use an illegal "tip pool" to illegally with-hold tips from the nonexempt employees, in violation of Labor Code section 351. Evans also fails to keep accurate records of all gratuities received, in violation of Labor Code section 353.

To confirm, Great Clips is a "person" as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Karoline D. Kitlowski, Esq.

Via Certified U.S. Mail

Darren Eugene Daly
Agent of Service of Process for
CLIPPER SHIP, INC, d.b.a. Great Clips
1103 Camino Cantera
Chula Vista, CA 91913

NATIONAL REGISTERED AGENTS, INC.
Agent of Service of Process for
GREAT CLIPS, INC.
330 N. Brand Blvd, Suite 700
Glendale, CA 91203

Exhibit A

CLIPPER SHIP, INC
1103 CAMINO CANTERNA
CHULA VISTA, CA 92011-1447

1747

on 10-13-2013

Pay to the order of Carla Ballesteros \$821.48/100
Eight Hundred Twenty One 48/100

CHASE

ATM/Debit Card Pay - A/C

from 10/13/13

Daniel Alfaro

123222715271

4591347901747

CLIPPER SHIP, INC
1103 CAMINO CANTERNA
CHULA VISTA, CA 92011-1447

1748

Oct 12-2013

Pay to the order of Carla Ballesteros \$1128.33/100
One Thousand One Hundred Twenty Eight 33/100

CHASE

ATM/Debit Card Pay - A/C

from 10/12/13

Final Pay + Vacat Sick

Daniel Alfaro

123222715271

4591347901748