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VIA ELECTRONIC MAIL – UPLOAD

California Labor and Workforce Development Agency
800 Capitol Mall, Suite 5000 MIC-55
Sacramento, CA 95814

Re: Jose Guzman v. Monterey Peninsula Country Club Corp.

To Whom It May Concern:

Please be advised that this law firm represents Jose Guzman (also referred to herein as an “Aggrieved Employee”) in claims arising from his employment with Monterey Peninsula Country Club Corp. (“MPCC”), and DOES 1 through 20 (“Defendants”). Mr. Guzman is an “aggrieved employee” as defined by Labor Code Section 2699 *et seq.*, due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3(a)(1), which requires aggrieved employees to notify their employer and the Labor Workforce and Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

Mr. Guzman was employed by Defendants as a non-exempt employee with job responsibilities that included, but were not limited to, engaging in and supporting Defendants’ Private Golf Resort and Country Club, including but not limited to greens-keeping, landscaping and other related duties. During Mr. Guzman’s employment with Defendants, he and similarly aggrieved employees received forms of non-discretionary pay including, but not limited to, non-discretionary bonuses and/or other forms of pay which are not excludable under California Law and the FLSA when calculating an employee’s regular rate (hereinafter the aforementioned forms of pay are collectively referred to as “Incentive Pay”).

Despite Defendants’ payment of Incentive Pay to Mr. Guzman, Defendants failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing him to be underpaid all required overtime wages. Rather, Mr. Guzman was only

paid one and a half times the base rate, which was not equal to the regular rate, as Defendants failed to include the various forms of Incentive Pay earned during corresponding periods that were required to be included in the regular rate but were not.

At all times relevant herein, Defendants were required to properly compensate hourly non-exempt employees, including Aggrieved Employee, for all overtime hours worked pursuant to California Labor Code § 1194 and applicable IWC Wage Orders. Applicable Wage Orders require an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of 8 hours per work day and/or in excess of 40 hours of work in the workweek. The Wage Orders also require an employer to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours each work day and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. As a result of Defendants’ policies and/or practices, Mr. Guzman was not paid for all hours worked. Defendants’ policy and practice of requiring overtime work and not paying at the proper overtime rates for said work violates California Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198, and applicable IWC Wage Order(s), which may include, but is not limited to, Wage Order 5 and others as applicable.

At all times relevant herein, Defendant maintained a policy and/or practice of failing to pay for time worked by Aggrieved Employee and similarly aggrieved employees, which resulted in Aggrieved Employee and similarly aggrieved employees not receiving any pay for working hours. Mr. Guzman is informed and believes that Defendants’ utilized a time rounding, unilateral time entry and/or adjustment to record hours worked, and “auto-deduct” procedure to account for, or unilaterally adjust employee’s lunch breaks whether compliant meal periods were in fact taken, or not, resulting in non-payment for time worked. In other instances, employees were required to clock out for meal periods, then continue working off-the-clock without being provided with a meal period premium payment. As a result, of Defendant’s policies and/or practices, Mr. Guzman and members of the Classes were not paid for all hours worked. Defendant was obligated to pay Aggrieved Employee an hourly rate at least equal to the minimum wage for each hour worked. *See* Labor Code §§ 1182.12, 1194, 1194.2, 1197; IWC Wage Order (see applicable Wage Order(s)), § 3. As a result, Defendant has violated the aforementioned Labor Code sections.

In addition, Mr. Guzman and similarly aggrieved employees were directed by Defendants to perform work while off-the-clock, and were not paid reporting time pay when applicable, resulting in Mr. Guzman and members of Aggrieved Employees not being paid for all hours worked.

Moreover, Mr. Guzman and similarly aggrieved employees were not provided with all statutorily-mandated meal and/or rest periods, and on those occasions where a legally compliant meal period and/or rest period was not provided, Defendants failed to pay him, and them, one hour of pay at the regular rate of pay. *See* Labor Code §§ 226.7

and 512, 516. As a result, they are owed an additional hour of pay at the regular rate for each meal period violation. *See* Labor Code § 226.7.

Mr. Guzman is informed and believes, and based thereon alleges that, Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish him and similarly aggrieved employees with accurate and complete wage statements regarding regular rates of pay, rates of overtime pay, total gross wages earned, meal and rest period premiums and total net wages earned, among other things, in violation of Labor Code § 226. Defendants' failure to furnish complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime wages, and deprived him of the information necessary to identify the discrepancies in Defendants' reported data.

As a result of Defendants' failure to pay overtime and minimum wage pay, failure to provide legally compliant meal and rest periods and/or pay meal/rest period premiums, whether at the regular rate of pay or other rate, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Guzman and similarly aggrieved employees.

During all relevant times herein, Defendants exercised control over the wages, hours, or working conditions of Mr. Guzman and other similarly aggrieved employees. Furthermore, Defendants committed the following violations of the Labor Code, and applicable Industrial Welfare Commission Wage Order:

Overtime Wage Violations

Defendants were obligated to pay Mr. Guzman and similarly aggrieved employees overtime wages for all hours worked in excess of 8 per workday and/or 40 hours per workweek. *See* Labor Code §§ 1194(a) and 1198; IWC Wage Order at § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and their first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." It further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Minimum Wage Violations

Defendants were obligated to pay Mr. Guzman an hourly rate at least equal to the minimum wage for each hour worked. *See* Labor Code §§ 1182.12, 1194, 1194.2, 1197; IWC Wage Order § 3 (and any other applicable Wage Order(s)). Defendant maintained a policy and/or practice of unlawfully and unilaterally adjusting time and lunch time

records, requiring employees to perform certain work-related tasks, without being clocked-in, which resulted in him not receiving pay for working hours. As a result, Defendant has violated the aforementioned Labor Code sections.

Failure to Reimburse for Necessary Expenses

Defendants required Mr. Guzman and similarly aggrieved employees to provide their own safety and/or security equipment, and other reasonable and necessary work expenditures related to their work. Although Mr. Guzman and similarly aggrieved employees did not earn more than twice the minimum wage during the applicable statutory period, Defendants did not adequately reimburse them for these expenses. At all relevant times herein, Defendants were subject to Labor Code §2802, which states that, “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, and applicable Wage Order(s) at § 9, Mr. Guzman and aggrieved employees were damaged, in an amount according to proof.

Meal Period Violations

Defendants failed to provide Mr. Guzman and similarly aggrieved employees with all statutorily-mandated meal periods, and on those occasions where a legally compliant meal period was not provided, Defendants failed to pay these individuals one hour of pay at the employee’s regular rate. *See* Labor Code §§ 226.7 and 512. As a result, aggrieved employees are owed an additional hour of pay at the regular rate for each meal period violation. *See* Labor Code § 226.7.

Rest and Recovery Period Violations

Defendants failed to authorize and permit all rest periods due Mr. Guzman and similarly aggrieved employees by failing to provide sufficient coverage for employees to take duty-free breaks. As such, Mr. Guzman and similarly aggrieved employees were deprived of all of the rest periods and recovery periods to which they were entitled. Despite these violations, Defendants did not pay an additional hour of pay to Mr. Guzman and those similarly aggrieved employees at their respective regular rates of pay in violation of Labor Code §§ 226.7, 516, 558.

Waiting Time Penalties

Labor Code Sections 201 and 202 require that separating employees timely receive all of their final wages at the time of termination. All aggrieved employees have separated from their employment with Defendants, but Defendants failed to timely pay them all of their final wages including, without limitation, unpaid overtime wages and

premium pay for meal period violations. Defendants' failure to pay all final wages due was willful and, consequently, aggrieved employees are entitled to waiting time penalties under Labor Code Section 203.

Wage Statement Violations

Defendants were obligated to furnish aggrieved employees with complete and accurate itemized wage statements that show, among other things, all gross and net wages earned, all applicable hourly rates of pay and the corresponding number of hours worked at each rate of pay, and premium pay for meal period violations for each pay period that aggrieved employees worked. *See* Labor Code §§ 226(a) and 1174(d); IWC Wage Order at § 7. However, Defendants failed to furnish aggrieved employees with compliant wage statements based on Defendants' failure to pay all overtime and minimum wages earned due to its failure to properly pay overtime wages due, and failure to pay premium wages for meal and rest period violations. Defendants' failure to comply with their wage statement obligations was knowing and intentional, and aggrieved employees and similarly aggrieved employees have suffered "actual injuries" as a result.

Unpaid Earned Wages

By failing to pay all of Mr. Guzman and similarly aggrieved employees' earned overtime and minimum wages and premium pay for meal and rest period violations, Defendants failed to pay all wages earned to her and similarly aggrieved employees at least twice per month. Defendants' failure to pay overtime and meal premium wages violates Labor Code § 204(a) which states, "All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month." Consequently, aggrieved employees are entitled to civil penalties under Labor Code § 210.

Record Keeping Violations

Although aggrieved employees worked as hourly non-exempt employees in the state of California, Defendants failed to properly pay all overtime and minimum wages. Because of Defendants' violations, aggrieved employees received non-compliant wage statements that, among other things, omitted the correct gross and net wages earned by aggrieved employees, the correct and complete amount of overtime and minimum wages earned by aggrieved employees, and all applicable hourly rates of pay. As a result, Defendants failed to maintain accurate records on behalf of aggrieved employees and other similarly aggrieved employees in violation of Labor Code § 1174.

As an "aggrieved employee," Mr. Guzman will initiate a civil action on behalf of himself and other similarly aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on

Mr. Guzman's investigation, and on information and belief, Defendants committed the following violations:

- a. Defendants violated Labor Code §§ 510, 1194(a) and 1198 by failing to pay their hourly non-exempt employees all overtime wages for hours worked in excess of 8 hours per workday and/or in excess of 40 hours per workweek due.
- b. Defendant violated Labor Code §§ 1182.12, 1194, 1194.2 and 1197, by failing to pay reporting time pay and the statutory minimum wage for all hours worked by Aggrieved Employee and the hourly non-exempt employees.
- c. Defendants violated Labor Code §§ 2802 and 2804, and applicable Wage Order(s) at § 9, for their failure to reimburse their hourly non-exempt employees for necessary business-related expenses.
- d. Defendants violated Labor Code §§ 226.7 and 512 by failing to comply with a lawful meal period policy, depriving their hourly non-exempt employees of all statutorily-mandated meal periods and failing to pay additional compensation for the meal period violations at the employees' respective regular rates of pay.
- e. Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all rest periods due (and recovery periods per IWC Wage Order) and/or pay rest period premium payments at the employee's regular rate of pay.
- f. Defendants violated Labor Code §§ 201 and 202 by failing to timely pay all final wages due to separated employees.
- g. Defendants violated Labor Code §§ 226(a), 226(c), 226.3, and 225.5 by failing to furnish their employees with accurate wage statements that accurately report all gross and net wages earned, including unpaid overtime and minimum wages, meal period premium wages, all applicable hourly rates of pay, and the corresponding number of hours worked at each hourly rate.
- h. Defendants violated Labor Code § 1174 by failing to maintain payroll records containing the correct wages earned by Mr. Guzman and other similarly aggrieved hourly non-exempt employees.

(concluded on the following page)

Pursuant to Labor Code Section 2699(a)(2)(A), please notify us and the Defendants whether the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
BURROWS LAW FIRM, APC


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