EMPLOYMENT RIGHTS LAWYERS, APC
Amir H. Seyedfarshi, (SBN 301656)
amir@employmentrightslawyers.com
6380 Wilshire Blvd., Suite 1602
Los Angeles, California 90048
Telephone: (424) 777-0964

LAW OFFICE OF TATIANA HERNANDEZ, P.C.
Tatiana Hernandez (SBN 255322)
tatiana@thlawpc.com
315 South Beverly Drive, Suite 504
Beverly Hills, California 90212
Telephone: (213) 909-4248

Attorneys for Plaintiff, the Class, the Aggrieved Employees, and the LWDA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LYUDMILA ZAYKA, individually and on behalf of all others similarly situated, Plaintiff, v. THE CALIFORNIA CLUB, a California Unknown Entity, and DOES 1 through 50, inclusive, Defendants.	**Case No.:** 24STCV08055 **PLAINTIFF'S SECOND AMENDED COMPLAINT FOR:** 1. Failure to Provide Compliant Meal Breaks or Pay Premiums (L.C. §§ 226.7 and 512); 2. Failure to Provide Compliant Rest Breaks or Pay Premiums (L.C. §§ 226.7); 3. Failure to Pay Minimum Wages; 4. Failure to Pay Timely Wages (L.C. §§ 204, 210); 5. Failure to Provide and Maintain Accurate Itemized Wage Statements (L.C. §§ 226(a) and 1174(d)); 6. Waiting Time Penalties (L.C. §§ 203); 7. Unfair Business Practices (B&P § 17200 *et seq.*); and 8. PAGA Penalties (L.C. § 2698 *et seq.*). **DEMAND FOR JURY TRIAL**

Plaintiff RAPHAEL BLANCO ("Plaintiff") on behalf of himself, and as a representative of the State of California, the Labor and Workforce Development Agency ("LWDA"), the California general public, and all other similarly situated current and former aggrieved employees hereby complains and alleges as follows:

NATURE OF THE ACTION

1. This action is brought Plaintiff on behalf of himself and all other similarly situated current and former employees against Defendant THE CALIFORNIA CLUB and DOES 1 through 50 (collectively, "Defendant") on a class action basis and a representative action basis pursuant to the Private Attorneys General Act ("PAGA"), Labor Code section 2698, *et seq*.

2. As described in further detail below, during the course of his employment, Plaintiff was subjected to unlawful conduct by Defendant including, *inter alia*, violations of California's wage and hour laws, the Industrial Welfare Commission ("IWC")'s applicable wage order, and California's Unlawful Competition Law, Bus. & Prof. Code section 17200, *et seq*. (the "UCL").

OVERVIEW OF CLAIMS

3. Plaintiff brings this action as a class action and on a representative basis against Defendant for its (1) failure to provide timely and duty-free meal periods within the first five hours and to provide lawful second meal periods for shifts worked in excess of ten hours and/or pay meal period premiums for late meal breaks; (2) failure to provide timely, duty-free rest periods for every four hours of work or major fraction thereof and/or pay rest period premiums; (3) failure to pay minimum wages; (4) failure to provide accurate itemized wage statements within the one year prior to the filing of this Complaint; (5) failure to pay all wages due to former employees based on the foregoing; (6) failure to pay timely wages based on the foregoing; and (7) unfair competition in violation of Business and Professional Code § 17200 based upon the aforementioned unpaid wage and premium claims. As a result of the foregoing, Defendant has violated California statutory laws as described below.

/ /

4. The “Class Period” is designated as the period from four years prior to the filing of this action through the trial date. Defendant’s violations of California’s wage and hour laws and unfair competition laws, as described more fully below, have been ongoing throughout the Class Period.

5. The “PAGA Period” is defined as March 25, 2023 through the present date and on-going. A true and correct copy of the PAGA Notice Letter is attached hereto as **Exhibit 1**. Defendant’s violations of California’s wage and hour laws and unfair competition laws, as described more fully below, have been ongoing throughout the PAGA Period. Plaintiff reserves the right to amend this complaint to reflect a different PAGA Period as further discovery is conducted.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Code of Civil Procedure (“CCP”) section 410.10 because Plaintiff’s damages exceed the jurisdictional minimum of this Court. At all relevant times, Defendant employed individuals who lived and/or worked in Los Angeles County. Defendant’s headquarters and principal place of business is located at 538 South Flower Street, Los Angeles, California 90071. Defendant was and is registered and authorized to conduct business, and does conduct business, within the State of California, including in Los Angeles County. Thus, this Court further has jurisdiction over Defendant because Defendant has obtained the benefits of the laws of the State of California Moreover, Plaintiff asserts no claims arising under federal law. Rather, Plaintiff brings this action based solely on, and only arising from, California law, including, *inter alia*, California’s Labor Code and the UCL.

7. The claims of the Class Members and the Aggrieved Employees (defined below) are also based solely on California law described herein. Furthermore, the total amount at issue in this case, inclusive of attorneys’ fees, is less than $5 million. Therefore, jurisdiction is appropriate in Los Angeles County Superior Court.

/ /

/ /

8. Venue is proper in this Court, pursuant to CCP section 395.5, because the incidents complained of occurred at the location of Defendant's principal place of business, which is located within Los Angeles County. Plaintiff, the Class, and the Aggrieved Employees resided in and/or performed work for Defendant within in Los Angeles County during the Class Period and the PAGA Period.

THE PARTIES

9. At all relevant times, Plaintiff was and is a resident of Los Angeles Los Angeles, California. Plaintiff was hired by Defendant to work as a servant at Defendant's premises, where it operates a private social club. From at least four years from the filing of this complaint through the present, and on-going, Defendant's non-exempt employees, including Plaintiff during his employment, were not provided timely and duty-free meal and rest periods and/or provided meal and rest period premiums; were not provided accurate and/or complete wage statements; did not receive all their wages; did not receive all of their wages due upon termination of employment, and did not receive all wages timely and were subjected to Defendant's faulty rounding policy.

10. By way of this action, Plaintiff also seeks to represent the following Classes:

a. All non-exempt individuals who were employed by Defendant in the State of California during the Class Period ("Class Members" or the "Class");

b. All Class Members who were issued one or more wage statements from Defendant during the period from one year prior to the filing of Plaintiff's initial Complaint and continuing through judgment ("Wage Statement Subclass Members" or the "Wage Statement Subclass");

c. All Class Members who did not receive their timely, ten-minute, duty-free rest breaks while working for Defendant during the Class Period ("Rest Break Subclass Members" or the "Rest Break Subclass");

d. All Class Members who did not receive their timely thirty-minute meal break on or before the fifth hour of work while working for Defendant on shifts greater than five hours during the Class Period ("Meal Break Subclass Members" or the "Meal Break Subclass");

e. All Class Members who did not receive all their minimum wages during the Class Period ("Minimum Wage Subclass Members" or the "Minimum Wage Subclass);

f. All Class Members whose employment with Defendant terminated during the period from three years prior to the filing of Plaintiff's initial Complaint and continuing on through judgment ("Waiting Time Penalty Subclass Members" or the "Waiting Time Penalty Subclass"); and

g. All similarly situated, non-exempt current and/or former employees of Defendant who were employed by Defendant in the State of California during the PAGA Period ("Aggrieved Employees").

11. Plaintiff represents the Class, the State of California, the California general public, the LWDA, and all similarly situated Aggrieved Employees.

12. Defendant is a California corporation with its headquarters located at 538 South Flower Street, Los Angeles, California 90071. Defendant owns and operates a private, members-only social club at its headquarters.

13. To operate its facilities, Defendant employs non-exempt employees, such as the Plaintiff, the Class, and the Aggrieved Employees.

14. DOES 1 through 50 ("DOES Defendants") are sued herein under fictitious names pursuant to CCP section 474. The identity of the DOES Defendants is unknown to Plaintiff as Plaintiff does not, at this time, know the true names or capacities of the DOES Defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege their true names and capacities once ascertained. Plaintiff is informed and believes, and thereon alleges, that each DOES Defendant is highly responsible in some manner for the events and happenings referred to herein, and legally caused the injuries and damages alleged in this Complaint.

/ /

15. Plaintiff is informed and believes and thereon alleges, that each and every Defendant, including the DOES Defendants, was the authorized agent, principal, partner, joint venturer and/or guarantor, actual or ostensible, of each and every other Defendant; and that each and every Defendant had full authority to do as alleged herein, unless alleged otherwise. Furthermore, each and every Defendant was operating within the course and scope of their agency, or in a principal, partner, joint venturer, and/or guarantor, actual or ostensible, relationship with each and every other Defendant during the course of events described herein, unless alleged otherwise.

16. Defendant was and is the employer of Plaintiff, the Class, and the Aggrieved Employees for all relevant time periods. At any one time during the Class Period, Defendant employed approximately 180 non-exempt individuals in California. Due to turnover during the Class Period, the total number of Class Members is estimated to be over 400. At any one time during the PAGA Period, Defendant employed approximately 100 Aggrieved Employees in California. Due to turnover during the PAGA Period, the total number of Aggrieved Employees is estimated to be over 200.

CLASS ACTION ALLEGATIONS

17. Defendant operates a private, members-only social club which provides events, fine dining, social gatherings, accommodations, spa services, and fitness centers for its members and their guests.

18. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a class action pursuant to CCP section 382. Plaintiff seeks to represent the following classes, as defined above: (a) the Class; (b) the Wage Statement Subclass; (c) the Rest Break Subclass; (d) the Meal Break Subclass; (e) the Minimum Wage Subclass; and (f) the Waiting Time Penalty Subclass.

19. This action has been brought and may properly be maintained as a class action under CCP section 382 because there is a well-defined community of interest in the litigation, the proposed Class is easily ascertainable, and Plaintiff is a proper representative of the Class:

/ /

a. Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believe that Defendant has, on average, at any one time during the Class Period employed over 250 Class Members as non-exempt employees who were subject to Defendant's unlawful policies. Due to turnover, the total number of Class Members is estimated to be more than 500. The Class Members are dispersed throughout California. Joinder of all members of the proposed classes is therefore not practicable.

b. Commonality: There are questions of law and fact common to Plaintiff and the Class that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

   i. Whether Defendant violated Labor Code sections 226.7 and 512 and Section 11 of IWC Wage Order No. 5 by failing to provide timely, duty-free meal periods to Plaintiff and the Meal Break Subclass in California during the Class Period;

   ii. Whether Defendant violated Labor Code section 226.7 by failing to provide one hour of premium pay to each member of the Meal Break Subclass for each day that a timely, duty-free meal period was not provided in California during the Class Period;

   iii. Whether Defendant violated Labor Code section 226.7 and Section 12 of IWC Wage Order No. 5 by failing to provide timely, duty-free rest periods to Plaintiff and the Rest Break Subclass in California during the Class Period;

/ /

iv. Whether Defendant violated Labor Code section 226.7 by failing to provide one hour of premium pay to the Rest Break Subclass for each day that a timely, duty-free rest period was not provided in California during the Class Period;

v. Whether Defendant failed to provide Plaintiff and the Wage Statement Subclass accurate, itemized wage statements in violation of Labor Code Section 226(a);

vi. Whether Defendant violated section 203 of the Labor Code by failing to pay members of the Waiting Time Subclass for all wages due to them (including their unpaid meal and rest break premiums) upon their separation of employment from Defendant;

vii. Whether Defendant violated sections 204 and 210 of the Labor Code by failing to pay Class Members all wages due on a timely basis;

viii. Whether Defendant engaged in an unfair practice and violated section 17200 *et seq*. of the California Business and Professions Code by failing to provide Plaintiff and the Meal Break Subclass with timely, duty-free meal breaks during the Class Period;

ix. Whether Defendant engaged in an unfair practice and violated section 17200 *et seq*. of the California Business and Professions Code by failing to provide Plaintiff and the Meal Break Subclass with meal period premiums for each day they were not provided a compliant meal break;

x. Whether Defendant engaged in an unfair practice and violated section 17200 *et seq*. of the California Business and Professions Code by failing to provide Plaintiff and the Rest Break Subclass with timely, duty-free rest breaks during the Class Period;

xi. Whether Defendant engaged in an unfair practice and violated section 17200 *et seq*. of the California Business and Professions Code by failing to provide Plaintiff and the Rest Break Subclass with rest period premiums for each day they were not provided a compliant rest break;

xii. Whether Plaintiff and the Class are entitled to restitution under Business and Professions Code section 17200 *et seq*.;

xiii. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff and the Class Members; and

xiv. The nature and extent of class-wide damages.

c. <u>Typicality</u>: Plaintiff's claims are typical of the claims of the Class. Both Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly belonging to them, arising out of and caused by Defendant's common course of conduct in violation of law as alleged herein, in similar ways and for the same types of unpaid wages.

d. <u>Adequacy of Representation</u>: Plaintiff is a member of the Class and will fairly and adequately represent and protect the interests of the Class and Class Members. Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represents Plaintiff is competent and experienced in litigating large wage and hour class actions, including numerous cases virtually identical to this one (i.e., wage and hour class action cases), and other employment class actions, and will devote sufficient time and resources to the case and otherwise adequately represent the Class and Class Members.

e. <u>Superiority of Class Action</u>: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or practices. Certification of this case as a class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Certifying this case as a class action is superior because it allows for efficient and full disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining its unlawful break and compensation policies and will thereby effectuate California's strong public policy of protecting employees from deprivation or offsetting of compensation earned in their employment. If this action is not certified as a class action, it will be impossible as a practical matter for many or most Class Members to bring individual actions to recover monies unlawfully withheld from their lawful compensation due from Defendant, due to the relatively small amounts of such individual recoveries relative to the costs and burdens of litigation.

<u>FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION</u>

20. Labor Code section 512 requires employers to provide employees with a 30-minute uninterrupted and duty-free meal period within the first five hours of an employee's shift. Moreover, an employee who works more than 10 hours per day is entitled to receive a second 30-minute uninterrupted and duty-free meal period.

21. Under Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit the amount of duty-free mealtime on or before the fifth hour of work as called for under the law (as specified in the applicable Wage Order), "it has violated the wage order and is liable." The *Brinker* Court explained in the context of meal breaks that employer liability attaches from adopting an unlawful policy. *Brinker Rest. Corp. v. Sup. Ct.*

(2012) 53 Cal.4th 1004 (“*Brinker*”), 1018.)

22. Defendant violated and continues to violate Labor Code section 512 and IWC Wage Order 5-2001 section 11 by, among other things, failing to provide and schedule duty-free meal breaks on or before the fifth hour of work to Plaintiff, the Meal Break Subclass, and the Aggrieved Employees; failed to advise them of their meal break rights with respect to the timing of meal breaks, failed to provide them with thirty-minute, uninterrupted meal periods within the first five hours of their shifts, and failed to pay meal break premiums for late meal breaks. Instead, Defendant often required them to take their meal breaks at the end of their shifts without paying any late meal break premiums. As a result of Defendant’s failure to authorize or permit lawful and timely meal periods, Plaintiff, the Meal Break Subclass, and the Aggrieved Employees frequently did not receive compliant duty-free meal periods within the first five (5) hours of their work. Furthermore, Defendant paid missed or late meal break premiums, thereby evidencing section 226.7 and 512 violations.

23. Under Labor Code section 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time on the schedule called for under the law (as specified in Section 12 of the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

> An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.*** (*Brinker, supra*, 53 Cal.4th at 1033.) [emphasis added].

24. Here, Defendant did not authorize Plaintiff, the Rest Break Class Members, and the Aggrieved Employees to take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts. Moreover, Defendant’s scheduling practices were often rest break preclusive for Rest Break Class Members.

/ /

/ /

25. Labor Code section 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

(1) gross wages earned;
(2) total hours worked by the employee;
(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
(4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
(5) net wages earned;
(6) the inclusive dates of the period for which the employee is paid;
(7) the name of the 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,
(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…

26. Due to, *inter alia*, Defendant's failure to pay Plaintiff, the Wage Statement Subclass, and the Aggrieved Employees and the Class Members for all meal and rest break premiums, the wage statements issued by Defendant to Plaintiff, the Wage Statement Subclass, and the Aggrieved Employees do not indicate the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code section 226(a)(1), (2), (5) and (9).

27. Defendant's violation of Labor Code section 226 was knowing and intentional. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement").

28. Defendant's failure to furnish accurate itemized wage statements has caused Plaintiff, the Wage Statement Subclass, and the Aggrieved Employees to incur economic damages in that they were not aware that they were owed and not paid appropriate premiums for their non-compliant statutory rest breaks and meal periods. *See Cicairos v. Summit Logistics,*

133 Cal.App.4th 949, 954 ("If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the total hours worked during the pay period, the requirements of section 226 would not be met"); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by not including, *inter alia*, total hours worked giving rise to claims under both Section 226 and for PAGA penalties); Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the gross or net wages earned by the employee during the pay period).

29. Labor Code section 226(e) provides that an employee is entitled to recover $50 for initial pay period in which a violation of section 226 occurs and $100 for each subsequent pay period, not to exceed $4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

30. Further and in addition to the penalties outlined above, Labor Code section 226.3 provides that "[a]ny employer who violates subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As explained in detail above, Defendant failed to provide Plaintiff, the Wage Statement Subclass, and the Aggrieved Employees with accurate itemized wage statements.

31. Labor Code section 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

/ /

/ /

32. Due to Defendant's faulty policies described above, including its failure to pay for all meal and rest break premiums due, Defendant violated Labor Code section 203, for those employees whose employment ended within the last three years and ongoing (i.e., the Waiting Time Subclass Members) by willfully failing to pay them all wages due upon the termination of their employment.

33. Labor Code section 204 expressly requires that "[a]ll wages…earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Pursuant to Labor Code section 204(d), these requirements are "deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

34. Due to Defendant's failure to pay Plaintiff, the Class, and the Aggrieved Employees all meal and rest break period premiums owed, Defendant violated Labor Code section 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC,* 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016).

35. Labor Code section 210 provides that "in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any initial 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% of the amount unlawfully withheld." As a result of the faulty compensation policies and practices described in detail above, Plaintiff, the Class, and the Aggrieved Employees are entitled to recover penalties under Labor Code section 210.

36. Due to understaffing and high customer demands, Defendant's employees were not permitted to take compliant rest breaks, as they are often forced to take late, short, or interrupted rest breaks, or else skip their rest breaks entirely. For example, Plaintiff, the Class,

and the Aggrieved Employees were never authorized to take a 10-minute rest break when working shifts of longer than 3.5 hours. Despite the foregoing, Defendant never paid any premium wages for shifts that Plaintiff, the Class, and the Aggrieved Employees did not receive compliant rest breaks.

37. For the same reason, Plaintiff, the Class, and the Aggrieved Employees are not permitted to take compliant meal breaks, and are often subjected to late, short, missed, and/or interrupted meal breaks due to understaffing and high customer demands. For example, Plaintiff, the Class, and the Aggrieved Employees often worked shifts of five hours or more during which they was not able to clock out and take a meal break. Defendant required its employees to clock out for meal breaks, if and when they were able to take them.

38. If and when employees were able to take a meal break, Defendant required Plaintiff, the Class, and the Aggrieved Employees to remain on its premises to eat their meals. Despite the foregoing, Defendant never paid any premium wages for shifts that Plaintiff did not receive compliant meal breaks.

39. Defendant also had a policy for advancing its employees the cost of a meal. However, if they did eat this meal, Defendant then deducted the cost from their paychecks.

40. Upon information and belief, Defendant was engaged in an unlawful practice of rounding its employees' actual hours worked in such a manner that was not fair and neutral. As a result, over a period of time, Defendant's rounding practices failed to properly compensate Plaintiff, the Class, and the Aggrieved Employees for all time actually worked. For example, Defendant rounded employees' actual hours worked to the nearest increment of 15-minutes, or fourth (0.25) of an hour. Accordingly, Defendant's was engaged in a practice that systematically undercompensated Plaintiff and its other employees.

41. As discussed above, Plaintiff, the Class, and the Aggrieved Employees were not paid timely wages for all hours worked. Specifically, they were not compensated for unpaid wages due to Defendant's unlawful rounding practices, as well as all meal and rest break premiums owed for days in which they were not permitted to take compliant meal and rest breaks.

42. Based on the foregoing, Defendant also failed to issue accurate, itemized wage statements to Plaintiff, the Class, and the Aggrieved Employees, because the wage statements did not include all wages and premiums owed, as discussed above. The wage statements also included unlawful deductions for advancing costs of a meal. Accordingly, Defendant furnished Plaintiff, the Class, and the Aggrieved Employees wage statements with an inaccurate number of hours worked, inaccurate gross and net wages, unlawful deductions, and inaccurate corresponding number of hours worked at each hourly rate.

FIRST CAUSE OF ACTION

Failure to Provide Compliant Meal Breaks or Pay Premiums in Violation of Labor Code §§ 226.7 and 512

On Behalf of Plaintiff, the Meal Break Subclass, and the Aggrieved Employees Against Defendant

43. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

44. California Labor Code § 516 provides that the IWC may adopt working condition orders with respect to meal breaks for any workers in California. *See also* Lab. Code § 1198.

45. California Labor Code § 226.7(a) provides that no employer shall require an employee to work during a meal period mandated by an applicable statute, regulation, standard, or order of the IWC.

46. Pursuant to Labor Code section 512, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. *Id*. at subd. (a). However, if the total work period for that day is less than six hours, then the meal period may be waived by mutual consent. *Id*.; *see also* section 11(A) and (C) of the applicable wage order.

47. The first meal period must start prior to the end of the employee's fifth hour of work if the employee is working less than ten (10) hours. *Brinker, supra*, 53 Cal. 4th at 1041. During the meal period, the employee is to be completely free of the employer's control and must not be required to perform any work for the employer. *Id*. at 1040-1041.

48. If an employer fails to provide a legally compliant, duty-free meal period, the employee is entitled to one hour of "premium pay," or an additional hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided. *See* Lab. Code § 226.7(c); section 11(B) of the applicable wage order.

49. Here, Defendant violated and continues to violate Labor Code § 512 and IWC Wage Order 5-2001 § 11 by, among other things, failing to provide and schedule duty-free meal breaks on or before the fifth hour of work for Plaintiff, the Meal Break Subclass, and the Aggrieved Employees, failed to advise them of their meal break rights with respect to the timing of meal breaks, failed to provide them with 30-minute, uninterrupted meal periods within the first five hours of their shifts, and failed to pay meal break premiums for late meal breaks. Instead, Defendant often required them to take their breaks at the end of their shifts without paying any late meal break premiums. As a result of Defendant's failure to authorize or permit lawful and timely meal periods, Plaintiff, the Meal Break Subclass, and the Aggrieved Employees frequently did not receive compliant duty-free meal periods within the first five hours of their work.

50. Defendant failed to pay an additional hour of pay to Plaintiff, the Meal Break Subclass, and the Aggrieved Employees when meal periods were interrupted and/or not taken as required by Labor Code section 226.7(c).

51. As a result of the Defendant's policies and practices, Plaintiff, on behalf of himself and the Meal Break Subclass and Aggrieved Employees, seeks to recover damages pursuant to Labor Code section 226.7 in an amount according to proof at trial for one additional hour of pay at their regular rate of compensation for each day in which Defendant failed to authorize and permit them to take meal breaks in compliance with the Labor Code and section 11 of the applicable wage order. Plaintiff also seeks civil penalties, interest, and attorneys' fees and costs pursuant to Labor Code sections 203, 210, 218.5, 218.6, 558(a); section 20 of the applicable wage order; and CCP § 1021.5 for Defendant's unlawful conduct.

/ /

/ /

SECOND CAUSE OF ACTION

Failure to Provide Compliant Rest Breaks or Pay Premiums in Violation of Labor Code § 226.7

On Behalf of Plaintiff, the Rest Break Subclass, and the Aggrieved Employees Against Defendant

52. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

53. California Labor Code section 516 provides that the IWC may adopt working condition orders with respect to rest breaks for any workers in California. *See also* Lab. Code § 1198.

54. Under Labor Code section 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time on the schedule called for under the law (as specified in Section 12 of the applicable Wage Order), "it has violated the wage order and is liable." The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

> An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker*, *supra*, 53 Cal.4th at 1033.) [emphasis added].

55. Here, Defendant did not authorize Plaintiff, the Rest Break Subclass, and the Aggrieved Employees to take compliant rest breaks. Specifically, Plaintiff and the Aggrieved Employees' rest breaks were frequently late, short, missed, or interrupted because Defendant was often understaffed and/or because of high customer demands.

56. Despite the foregoing, Defendant never paid any rest break premiums to Plaintiff, the Rest Break Subclass, and the Aggrieved Employees for every day in which they did not receive a rest break in compliance with the Labor Code and section 12 of the applicable wage order.

57. As a result of the Defendant's policies and practices, Plaintiff, the Rest Break Subclass, and the Aggrieved Employees are entitled to recover damages under Labor Code section 226.7 in an amount according to proof at trial for one additional hour of pay at their regular rate of compensation for each day in which Defendant failed to authorize and permit them to take rest breaks in compliance with the Labor Code and section 12 of the applicable wage order. Plaintiff also seeks civil penalties, interest, and attorneys' fees and costs pursuant to Labor Code sections 203, 210, 218.5, 218.6, 558(a); Wage Order No. 5-2001 § 20; and CCP § 1021.5 for Defendant's unlawful conduct.

THIRD CAUSE OF ACTION

Failure to Pay Minimum Wages

On Behalf of Plaintiff, the Minimum Wage Subclass, and the Aggrieved Employees Against Defendant

58. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged.

59. Any employee receiving less than the legal minimum wage or legal overtime compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys' fees and costs of suit. (Lab. Code, § 1194, subd. (a).)

60. Labor Code section 1182.12 provides for employers who employed 26 or more people from January 18, 2018, to December 31, 2018, the minimum wage rate in California was eleven dollars ($11.00) per hour. From January 1, 2019, to December 31, 2019, the minimum wage rate in California is twelve dollars ($12.00) per hour. From January 1, 2020, to December 31, 2020, the minimum wage rate in California is thirteen dollars ($13.00) per hour. From January 1, 2021, to December 31, 2021, the minimum wage rate in California is fourteen dollars ($14.00) per hour. From January 1, 2022, the minimum wage rate in California, is fifteen dollars ($15.00) per hour. Plaintiff is informed and believes Defendants employed more than twenty-six (26) employees.

/ /

/ /

61. Notwithstanding any other provision of the Labor Code, hourly minimum wage rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay employees no less than minimum wage for each hour worked. (Lab. Code, § 1194.)

62. In any action to recover payment of wages less than the minimum wage an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

63. Defendant failed to compensate Plaintiff, the Minimum Wage Subclass, and the Aggrieved Employees for all wages worked. Specifically, Defendant failed to include all renumeration when calculating their accurate regular hours. Specifically, Defendant had in place a rounding system that prevented Plaintiff, the Minimum Wage Subclass, and the Aggrieved Employees to receive all their compensation. The rounding system put in place by Defendant did not allow them to receive their compensation until after working 15 minutes. This resulted in Plaintiff, the Minimum Wage Subclass, and the Aggrieved Employees to not receive all their wages. “If an employer . . . can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for ‘all the time’ worked.” *Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, 660-661.

64. As a consequence, Defendant failed to pay Plaintiff, the Minimum Wage Subclass, and the Aggrieved Employees all minimum regular wages for all hours worked, including hours in excess of over eight (8) per day and forty (40) per workweek. Pursuant to Labor Code sections, *inter alia*, 204, 510, 1182.12, and 1194, Plaintiff, on behalf of himself, the Minimum Wage Subclass, and the Aggrieved Employees seeks the payment of all minimum wage, and regular wage compensation which they earned and accrued for four years prior to the filing of the initial complaint in this action, according to proof at trial.

65. Additionally, Plaintiff, the Minimum Wage Subclass, and the Aggrieved Employees are entitled to liquidated damages, attorneys’ fees and costs pursuant to Labor Code section 1194 and CCP section 1021.5, as well as prejudgment interest.

/ /

/ /

FOURTH CAUSE OF ACTION

Section 210 Penalties for Failure to Pay Timely Wages for Violation of Labor Code § 204 On Behalf of Plaintiff, the Class, and the Aggrieved Employees Against Defendant

66. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

67. Labor Code section 204 expressly requires that "[a]ll wages…earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays."

68. Premium pay constitutes "wages", as that term is used in the Labor Code. *Naranjo v. Spectrum Security Services, Inc*. (2022), 13 Cal. 5th 93, 118 (premium pay is fairly understood as falling within the Labor Code's general definition of wages).

69. Due to Defendant's failure to pay Plaintiff, the Class, and the Aggrieved Employees applicable wages at the time they were owed, including all minimum wages, regular wages, and all meal and rest break period premiums owed, Defendant violated Labor Code section 204 by failing to pay all wages due within seven days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding that a failure to pay rest period premiums can support claims under Labor Code sections 203 and 204).

70. Labor Code section 210(a) provides that "[i]n addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections…204…shall be subject to a civil penalty as follows: (1) For any initial 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% of the amount unlawfully withheld."

71. As a result of the faulty compensation policies and practices described in detail above, Plaintiff, the Class, and the Aggrieved Employees are entitled to recover civil penalties, interest, and attorneys' fees and costs, in an amount according to proof at trial, pursuant to Labor Code sections 204, 210, 218.5, and 218.6 for Defendant's unlawful conduct.

<u>FIFTH CAUSE OF ACTION</u>

Failure to Provide and Maintain Accurate Itemized Wage Statements in Violation of Labor Code §§ 226(a), 1174(d)

On Behalf of Plaintiff, the Wage Statement Subclass, and Aggrieved Employees Against Defendant

72. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

73. An employer has an affirmative duty to track employee's hours worked and meal periods. *See* Section 7(A) of the applicable wage order ("Every employer shall keep accurate information with respect to each employee including . . . time records showing when the employee begins each work period[,] [m]eal periods[,] and total daily worked shall also be recorded.")

74. Labor Code section 1174 requires employers to keep accurate payroll records. Labor Code section 1174.5 provides:

> Any person employing labor who willfully fails to maintain . . . accurate and complete records required by subdivision (d) of Section 1174. . . shall be subject to a civil penalty of five hundred dollars ($500).

75. Labor Code section 226, subdivision (a), requires that "at the time of each payment of wages," employers must furnish employees with "an accurate itemized statement" that includes, inter alia, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

76. Premium pay constitutes "wages", as that term is used in the Labor Code. *Naranjo v. Spectrum Security Services, Inc*. (2022), 13 Cal. 5th 93, 118, 121 (premiums are wages that can be the basis of derivative claims for wage statement penalties).

77. Labor Code section 226(e) provides that an employee is entitled to recover $50 for initial pay period in which a violation of Section 226 occurs and $100 for each subsequent pay period, not to exceed $4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in which the employer fails to provide accurate itemized statements to the

employee causing the employee to suffer injury.

78. Pursuant to Labor Code section 226.3, any employer who violates section 226(a) shall be subject to a civil penalty in the amount of two hundred and fifty dollars ($250.00) per employee per violation in an initial citation and one thousand dollars ($1,000.00) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

79. An employee is deemed to suffer injury if the employer fails to provide a wage statement containing all of the required information set forth in Labor Code section 226(a). *See* Lab. Code § 226(e)(2).

80. Additionally, as set forth above, Defendant did not compensate Plaintiff, the Class, and the Aggrieved Employees for all hours worked due to its unlawful rounding practices and all meal and rest break premiums they were entitled to. Accordingly, the wage statements issued by Defendant to Plaintiff, the Wage Statement Subclass, and the Aggrieved Employees do not indicate or itemize the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

81. Defendant knowingly and intentionally failed to provide Plaintiff, the Wage Statement Subclass, and the Aggrieved Employees wage statements in compliance with Labor Code section 226, because said statements contained inaccurate gross wages earned, an inaccurate total number of hours worked, inaccurate net wages earned, inaccurate applicable hourly rates in effect during the pay period, and an inaccurate number of hours worked at each hourly rate.

82. Moreover, Defendant willfully failed to comply with section 7 of the applicable wage order and Labor Code section 1174 by failing to maintain the above-mentioned records, including records of all wages and premium wages owed to Plaintiff, the Class, and the Aggrieved Employees.

83. Defendant's failure to furnish accurate and complete itemized wage statements has caused Plaintiff , the Wage Statement Subclass, and the Aggrieved Employees to incur economic damages in that they were not aware that they were owed and not paid appropriate premiums for their non-compliant statutory rest breaks and meal periods. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the total hours worked during the pay period, the requirements of section 226 would not be met"); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by not including, inter alia, total hours worked giving rise to claims under both Section 226 and for PAGA penalties); Lab. Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the gross or net wages earned by the employee during the pay period).

84. Accordingly, because Defendant failed to include accurate and complete information required by Labor Code section 226(a) on the wage statements it issued to Plaintiff, the Wage Statement Subclass, and the Aggrieved Employees, they are deemed to have suffered injury, per Labor Code section 226(e)(2)(B).

85. As a result Defendant's policies and practices, Plaintiff, the Wage Statement Subclass, and the Aggrieved Employees are entitled to recover damages and/or civil penalties, in an amount according to proof at trial, pursuant to Labor Code sections 226(e), 226.3, 1174.5, and section 20 of the applicable wage order for Defendant's unlawful conduct.

<u>SIXTH CAUSE OF ACTION</u>
Section 203 Waiting Time Penalties
for Violation of Labor Code §§ 201 and 202
On Behalf of Plaintiff, the Waiting Time Penalty Subclass, and the Aggrieved Employees Against Defendant

86. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

/ /

87. Pursuant to Labor Code section 201, if an employer discharges an employee, the employer is required to pay all compensation earned and unpaid immediately at the time of discharge.

88. Pursuant to Labor Code section 202, if an at-will employee quits, the employee's wages are due no later than 72 hours thereafter, unless the employee has given 72 hours' notice of his or her intention to quit, in which case the employee is entitled to all wages owed at the time of quitting.

89. Pursuant to Labor Code section 203, if an employer fails to pay the final wages owed of an employee who is discharged or who quits, "the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

90. Premium pay constitutes "wages", as that term is used in the Labor Code. *Naranjo v. Spectrum Security Services, Inc*. (2022), 13 Cal. 5th 93, 117-118 ("missed-break premium pay constitutes wages for purposes of Labor Code section 203, and so waiting time penalties are available under that statute if the premium is not timely paid").

91. Due to Defendant's faulty policies described above, including its failure to pay for meal and rest break premiums, Defendant violated Labor Code section 203 with respect to Plaintiff, the Waiting Time Penalty Subclass, and the Aggrieved Employees by willfully failing to pay them all wages due upon the termination of their employment, including all meal and rest break premiums wages owed and all unpaid wages owed due to Defendant's unlawful rounding practices at the time of their termination and/or 72 thereafter, as required by Labor Code sections 201 and 202.

92. Accordingly, Plaintiff, the Waiting Time Penalty Subclass, and the Aggrieved Employees are entitled to recover from Defendant "waiting time" penalties in the form of accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days, pursuant to Labor Code section 203. Additionally, Plaintiff and the Aggrieved Employees are entitled to recover civil penalties, interest, and attorneys' fees and costs, in an amount according to proof at trial, pursuant to Labor Code sections 210, 218.5, and 218.6 for

Defendant's unlawful conduct.

<u>SEVENTH CAUSE OF ACTION</u>
Unfair Business Practices
in Violation of Business & Professions Code §§ 17200 *et seq*.
On Behalf of Plaintiff and the Class Against Defendant

93. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

94. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor Code § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards. Through its actions alleged herein, Defendant has engaged in unfair competition within the meaning of the UCL, because Defendant's conduct has violated state wage and hour laws as herein described.

95. Beginning at least four years prior to the filing of this Complaint, Defendant committed, and continues to commit, acts of unfair competition, as defined in the UCL by failing to timely pay all wages owed for all time worked, in violation of Labor Code § 204; failing to authorize and permit legally compliant meal and rest breaks and/or pay premium pay in violation of Labor Code §§ 226.7, 512, and sections 11 and 12 of the applicable wage order; unlawful deductions in violation of Labor Code § 221; failing to provide and maintain accurate wage statements in violation of Labor Code §§ 226(a), 1174(d), and section 7 of the applicable wage order; and failing to pay all wages due and owing upon termination in violation of Labor Code §§ 201 and 202.

96. By its actions and omissions, Defendant has substantially injured Plaintiff and the Class. The harm to Plaintiff resulting from Defendant's Labor Code and Wage Order violations outweighs the utility, if any, of Defendant's policies and practices. Therefore, Defendant's actions described herein constitute unfair business practices or acts within the meaning of the UCL.

NINTH CAUSE OF ACTION
PAGA Penalties
Pursuant to Labor Code §§ 2698-2699.5

97. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

98. Plaintiff and all current and former employees who were employed by Defendant during the PAGA Period are "Aggrieved Employees" under PAGA as they suffered Labor Code violations alleged herein; specifically, violations of sections 201, 202, 203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 512, 516, 1174, 1174.5, 1198, and 1199 of the Labor Code. Plaintiff was employed by Defendant during the PAGA Period. As such, he seeks to recover, on behalf of himself and all other Aggrieved Employees of Defendant, the civil penalties provided by PAGA.

99. Under Labor Code sections 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties in an amount to be proven at the time of trial subject to the following formula:

- $100 for the initial violation per employee per pay period; and
- $200 for each subsequent violation per employee per pay period.

100. These penalties will be allocated 75% to the LWDA and 25% to the Aggrieved Employees.

101. The Aggrieved Employees are all individuals who work or worked for Defendant as an hourly-paid, non-exempt employee in California during the PAGA Period. These employees were subject to the aforementioned Labor Code violations, during the PAGA Period.

102. In addition, as set forth above, Defendant failed to provide Plaintiff and all Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code § 226(a). Labor Code section 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section

226."

103. Pursuant to Labor Code section 226.3, for PAGA penalties associated with the Section 226 claim, Plaintiff and the Aggrieved Employees for the Section 226 claim are entitled to $250 for each initial pay period with a violation and $1,000 for each subsequent pay period with a violation. *See Raines v. Coastal Pacific Food Distributors, Inc*. (2018) 23 Cal. App. 5th 667, 674-675 (finding that Labor Code section 226.3 applies to all violations of Labor Code § 226(a)); *see also Magadia v. Wal- Mart Assocs*., 384 F. Supp. 3d. 1058, 1109 (N.D. Cal. 2019) ("the Court finds that Cal. Lab. Code § 226.3 penalties are applicable as the appropriate measure of civil penalties under PAGA" for the violation of Labor Code § 226(a)).

104. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that Defendant's conduct in refusing to provide accurate and itemized wage statements was knowing, intentional, or willful. *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App.5th 773, 788; *see also Willner v. Manpower Inc*. 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (to obtain judgment on a PAGA claim, "all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above."); *McKenzie v. Fed. Exp. Corp*. 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that "for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) ("Plaintiff does not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.").

JURY DEMAND

105. Plaintiff hereby demands trial by jury of his claims against Defendant, except for his PAGA claim which is properly tried to the Court.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of himself, the Class, and the Aggrieved Employees, pray for judgment against Defendant as follows:

/ /

/ /

1. An Order than this action may proceed and be maintained as a class and representative PAGA action;
2. <u>On the First Cause of Action</u>:
   a. A declaratory judgment that Defendant violated Labor Code sections 226.7, 512 and Section 11 of IWC Wage Order 5-2001;
   b. Pursuant to Labor Code section 226.7, an award to Plaintiff, the Meal Break Subclass, and the Aggrieved Employees for premium compensation for each day that a timely, duty-free meal period was not provided during the relevant time period.
3. <u>On the Second Cause of Action</u>:
   a. A declaratory judgment that Defendant violated Labor Code section 226.7, and Section 12 of IWC Wage Order 5-2001;
   b. Pursuant to Labor Code section 226.7, an award to Plaintiff, the Rest Break Subclass for premium compensation for each day that a timely, duty-free rest period was not provided during the relevant time period.
4. <u>On the Third Cause of Action:</u>
   a. A declaratory judgment that Defendant has violated Labor Code section 1194;
   b. An award to Plaintiff, the Minimum Wage Subclass, and the Aggrieved Employes in the amount of their unpaid regular and minimum wages.
5. <u>On the Fourth Cause of Action</u>:
   a. A declaratory judgment that Defendant violated Labor Code section 204;
   b. Pursuant to Labor Code section 210, an award to Plaintiff, the Class, and the Aggrieved Employees for civil penalties.

/ /

6. On the Fifth Cause of Action:

a. A declaratory judgment that Defendant violated Labor Code section 226 by issuing inaccurate and/or incomplete, non-itemized wage statements, the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate to Plaintiff, the Wage Statement Subclass, and the Aggrieved Employees;

b. An award to Plaintiff, the Wage Statement Subclass, and the Aggrieved Employees for $50 for each initial pay period, one year prior to the filing of this Complaint through the date of trial, in which a violation of section 226 occurred; and $100 for each subsequent pay period in which a violation of section 226 occurred; for one year prior to the filing of Plaintiff's initial Complaint through the date of trial, not to exceed $4,000 for each Class Member and/or Aggrieved Employee, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code section 226(e).

7. On the Sixth Cause of Action:

a. A declaratory judgment that Defendant violated Labor Code sections 201 and 202;

b. Pursuant to Labor Code section 203, an award to Plaintiff, the Waiting Time Penalty Subclass, and the Aggrieved Employees for statutory "waiting time penalties" in the amount according to proof at trial

/ /

/ /

/ /

8. On the Seventh Cause of Action:

a. That the Court find and declare that Defendant has violated the UCL and committed unfair and unlawful business practices by failing to authorize and permit legally-compliant meal and rest breaks, failing to pay meal and rest break premiums, failing to pay minimum and regular wages, failing to pay all wages at the time they are due, failing to provide and maintain accurate, itemized wage statements, and failing to pay all wages owed at the time of separation;

9. Restitution of "unpaid wages" and prejudgment interest from the day such amounts were due and payable including, but not limited to, the relief permitted by section 226.7 of the Labor Code (i.e., pay as specified for meal and rest period premiums to Plaintiff, the Class, and the Aggrieved Employees during the relevant time period);

10. Disgorgement of any and all "unpaid wages" and incidental losses, according to proof;

11. General and special compensatory damages according to proof not mentioned above, including but not limited to damages for unpaid wages and unpaid meal and rest break premiums;

12. Statutory damages or penalties not mentioned above including liquidated damages, and/or civil penalties, as applicable and as provided under the Labor Code, including but not limited to sections 201, 202, 203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 512, 516, 1174, 1174.5, 1198, and 1199; and any other applicable statute;

13. PAGA penalties for each violation of the Labor Code, pursuant to Labor Code sections 2698-2699.5;

14. Reasonable attorney's fees and costs, pursuant to Labor Code sections 218.5, 226(e)(1), and 2699(g); CCP section 1021.5; and any other statutory basis or pursuant to the California Rules of Court;

15. Exemplary and punitive damages;

16. Interest as allowed by law;

17. An order directing Defendant to take such affirmative steps as may be necessary and appropriate to correct the effect of its past unlawful acts and practices; and

18. For all such other and further relief as the Court may deem just and proper.

Dated: May 23, 2025

Respectfully Submitted,

EMPLOYMENT RIGHTS LAWYERS, APC
LAW OFFICE OF TATIANA HERNANDEZ, P.C.

Amir Seyedfarshi

Amir Seyedfarshi, Esq.
Tatiana Hernandez, Esq.
Attorneys for Plaintiff, the Class, the Aggrieved Employees, and the LWDA

EXHIBIT 1

Employment Rights Lawyers, APC
Amir Seyedfarshi
6380 Wilshire Blvd., Suite 1602
Los Angeles, CA 90048
424-777-0964
amir@employmentrightslawyers.com

March 25, 2024

Via Online Filing with the LWDA & Certified Mail to Defendant

The California Club
C/O Jodi Horowitz
Agent for Service of Process
538 Flower Street
Los Angeles, CA 90071

The California Club
538 Flower Street
Los Angeles, CA 90071

Re: ***Lyudmila Zayka v. The California Club***
NOTICE OF INTENT TO FILE SUIT (Labor Code § 2699.3)

To Whom It May Concern:

This letter serves as the written notice ("Notice") required by the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698 *et seq.* This letter is being sent simultaneously via online filing with the California Labor and Workforce Development Agency ("LWDA"). This letter is an important formal legal notice which may lead to action against you and/or The California Club ("Defendant") in a court of law and/or in an administrative proceeding; and to the imposition of substantial penalties, damages, and/or other orders against Defendant.

My office, alongside with my co-counsel, Tatiana Hernández, Esq. of Law Offices of Tatiana Hernandez, P.C., represents Plaintiff Lyudmila Zayka ("Plaintiff") and a proposed group of current and former Aggrieved Employees of Defendant and/or any affiliated entities, including but not limited to any of its co-employers, successors in interest, and/or merged entities in connection with individual and/or PAGA representative action claims against Defendant for damages and civil penalties based on, without limitation, the following ("PAGA Claims"):

(1) Defendant's failure to provide compliant meal breaks and/or pay meal break premiums in violation of Labor Code sections 226.7 and 512 and Section 11 of the applicable Industrial Welfare Commission ("IWC") Wage Order;

(2) Defendant's failure to provide compliant rest breaks and/or pay rest break premiums in violation of Labor Code sections 226.7 and Section 12 of the

applicable IWC Wage Order;

(3) Defendant's unlawful rounding of actual hours worked;

(4) Defendant's failure to pay timely wages in violation of Labor Code section 204, and statutory penalties based upon the foregoing, pursuant to Labor Code section 210;

(5) Defendant's unlawful deductions from Aggrieved Employees' paychecks in violation of Labor Code section 221;

(6) Defendant's failure to provide and maintain accurate itemized wage statements in violation of Labor Code section 226 and 1174(d), and statutory penalties based upon the foregoing, pursuant to Labor Code section 226 *et seq*.;

(7) Defendant's failure to pay all wages upon termination in violation of Labor Code sections 201 and 202, and statutory penalties pursuant to Labor Code section 203 ("waiting time penalties") based upon the foregoing; and

(8) statutory penalties under PAGA based upon the foregoing, pursuant to Labor Code sections 2698 *et seq*.

In connection with these PAGA Claims, Plaintiffs and the Aggrieved Employees seek PAGA penalties from at least one year prior to the date of this Notice and ongoing (the "PAGA Period"). Also in connection with these PAGA claims, Plaintiff seeks to represent the LWDA and the following defined groups of Aggrieved Employees:

(1) "Aggrieved Employees": All current or former hourly, non-exempt employees who worked for Defendant in California during the PAGA period as a "Server"; and

(2) "Waiting Time Penalty Subclass Members" or "Waiting Time Penalty Subclass": All Aggrieved Employees whose employment with Defendant ended during the PAGA Period.

This notice is hereby given to and is made against Defendant, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the alleged violations as to the above-defined Aggrieved Employees who worked for Defendant at any time during the PAGA Period in the State of California.

I. <u>FACTUAL BACKGROUND</u>

Defendant operates a private, members-only social club which provides events, fine dining, social gatherings, accommodations, spa services, and fitness centers for its members and their guests.

Plaintiff was hired by Defendant to work as a Server sometime in 2005 until her separation from Defendant on or around August 18, 2023. At all relevant times during the PAGA Period, Plaintiff and the Aggrieved Employees worked for Defendant as a non-exempt, hourly-paid employees as those terms are defined within the Labor Code and the applicable wage order. At all relevant times during the PAGA Period, Defendant was and is an employer, as that term is defined within the Labor Code and the applicable Wage Order.

Due to understaffing and high customer demands, Plaintiff and the Aggrieved Employees were not permitted to take compliant rest breaks, as they are often forced to take late, short, or interrupted rest breaks, or else skip their rest breaks entirely. For example, Plaintiff and the Aggrieved Employees were never authorized to take a 10-minute rest break when working shifts of longer than 3.5 hours. Despite the foregoing, Defendant never paid any premium wages for shifts that Plaintiff and the Aggrieved Employees did not receive compliant rest breaks.

For the same reason, Plaintiff and the Aggrieved Employees were not permitted to take compliant meal breaks, and are often subjected to late, short, missed, and/or interrupted meal breaks due to understaffing and high customer demands. For example, Plaintiff and the Aggrieved Employees often worked shifts of five hours or more during which they were not able to clock out and take a meal break. Defendant required its employees to clock out for meal breaks, if and when they were able to take them. If and when employees were able to take a meal break, Defendant required Plaintiff and the Aggrieved Employees to remain on its premises to eat their meals. Despite the foregoing, Defendant never paid any premium wages for shifts that Plaintiff and the Aggrieved Employees did not receive compliant meal breaks.

Defendant also had a policy for advancing Plaintiff and the Aggrieved Employees the cost of a meal. However, if they did eat this meal, Defendant then deducted the cost from their paychecks.

Defendant was engaged in an unlawful practice of rounding Plaintiff and the Aggrieved Employees' actual hours worked in such a manner that was not fair and neutral. As a result, over a period of time, Defendant's rounding practices failed to properly compensate Plaintiff and the Aggrieved Employees for all time actually worked. For example, Defendant rounded employees' actual hours worked to the nearest increment of 15-minutes, or fourth (0.25) of an hour. Accordingly, Defendant's was engaged in a practice that systematically undercompensated Plaintiff and the Aggrieved Employees.

As discussed above, Plaintiff and the Aggrieved Employees were not paid timely wages for all hours worked. Specifically, they were not compensated for unpaid wages due to Defendant's unlawful rounding practices, as well as all meal and rest break premiums owed for days in which they was not permitted to take compliant meal and rest breaks.

Based on the foregoing, Defendant also failed to issue accurate, itemized wage statements to Plaintiff and the Aggrieved Employees, because the wage statements did not include all wages and premiums owed, as discussed above. The wage statements also included unlawful deductions for advancing costs of a meal. Accordingly, Defendant furnished Plaintiff and the Aggrieved Employees wage statements with an inaccurate number of hours worked, inaccurate gross and net wages, unlawful deductions, and inaccurate corresponding number of hours worked at each hourly rate.

II. PAGA Claims

A. Non-Compliant Meal Breaks

Pursuant to Labor Code section 512, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. *Id*. at subd. (a). However, if the total work period for that day is less than six hours, then the meal period may be waived by mutual consent. *Id*. The first meal period must start prior to the end of the employee's fifth hour of work if the employee is working less than ten (10) hours. *Brinker Restaurant Corp. v Superior Court* (2012) 53 Cal. 4th 1004,1041. During the meal period, the employee is to be completely free of the employer's control and must not be required to perform any work for the employer. *Id*. at 1040-1041. If an employer fails to provide a legally compliant, duty-free meal period, the employee is entitled to one hour of "premium pay," or an additional hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided. Lab. Code § 226.7(c); Section 11 of the applicable IWC Wage Order.

Here, Defendant did not authorize or permit Plaintiff and the Aggrieved Employees to take compliant meal periods on days when they worked for a period that lasted longer than five hours. Specifically, their meal periods were frequently late, short, missed, or interrupted because Defendant was often understaffed and/or because of high customer demands. Despite the foregoing, Defendant did not compensate Plaintiff and the Aggrieved Employees with one hour of premium pay for all shifts for which they did not receive a compliant meal break.

As a result of the Defendant's policies and practices, Plaintiff and the Aggrieved Employees are entitled to recover damages under Labor Code section 226.7 in an amount according to proof at trial for one additional hour of pay at their regular rate of compensation for each day in which Defendant failed to authorize and permit them to take meal breaks in compliance with the Labor Code and Section 11 of the applicable wage order. Plaintiff also seeks civil penalties, interest, and attorneys' fees and costs pursuant to Labor Code sections 203, 210, 218.5, 218.6, 558(a); section 20 of the applicable wage order; and CCP § 1021.5 for Defendant's unlawful conduct.

B. Non-Compliant Rest Breaks

California law requires an employer to provide its employees with an uninterrupted, duty-free rest period of not less than ten (10) minutes for each four hours worked or a "major fraction thereof." Lab. Code § 226.7; Section 12 of the applicable IWC Wage Order. The Division of Labor Standards Enforcement ("DLSE") has interpreted the phrase "major fraction thereof", as applied to a four-hour period, to mean any amount of time in excess of two hours—i.e., any fraction greater than half. *Brinker Rest. Corp., supra,* 53 Cal.4th at 1029, citing Dept. Industrial Relations, DLSE Opn. Letter No. 1999.02.16 (Feb. 16, 1999) p. 1. "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission . . ." Lab. Code § 226.7(b). If an employer fails to provide a legally compliant, duty-free rest period, the employee is entitled to one hour of "premium pay," or an additional hour of pay at the employee's regular rate of compensation for each workday that the rest period was not provided. Lab. Code § 226.7(c).

Here, Defendant did not authorize or permit Plaintiff and the Aggrieved Employees to take compliant rest breaks. Specifically, Plaintiff and the Aggrieved Employees' rest breaks were frequently late, short, missed, or interrupted because Defendant was often understaffed and/or because of high customer demands. Despite the foregoing, Defendant never paid any rest break premiums to Plaintiff and the Aggrieved Employees for every day in which they did not receive a rest break in compliance with the Labor Code and section 12 of the applicable wage order.

As a result of the Defendant's policies and practices, Plaintiff and the Aggrieved Employees are entitled to recover damages under Labor Code section 226.7 in an amount according to proof at trial for one additional hour of pay at their regular rate of compensation for each day in which Defendant failed to authorize and permit them to take rest breaks in compliance with the Labor Code and section 12 of the applicable wage order. Plaintiff also seeks civil penalties, interest, and attorneys' fees and costs pursuant to Labor Code sections 203, 210, 218.5, 218.6, 558(a); Wage Order No. 5-2001 § 20; and CCP § 1021.5 for Defendant's unlawful conduct.

C. Unlawful Rounding

Generally speaking, an employer which has a policy of rounding employees' time is not unlawful, as long as the rounding policy is "fair and neutral on its face" and is "used in such a manner that will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked." *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907. A rounding policy is "fair and neutral" if, "on average, [it] favors neither overpayment nor underpayment"; but such a policy or practice is unacceptable if it systematically undercompensates employees. *Id*. However, "if an employer . . . can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for 'all the time' worked." *Camp v. Home Depot U.S.A., Inc*. (2022) 84 Cal.App.5th 638, 660-661.

Here, Defendant had the ability to capture and record the exact number of minutes that Plaintiff and the Aggrieved Employees worked, and did indeed capture and record the exact number of minutes they worked, using its timekeeping system. Despite this, Defendant had a policy and practice of rounding Plaintiff and the Aggrieved Employees' hours worked to the nearest fourth (0.25) of an hour. This practice resulted in Defendant systematically underpaying Plaintiff and the Aggrieved Employees on a consistent basis.

As a result of the Defendant's policies and practices, Plaintiff and the Aggrieved Employees are entitled to recover damages in an amount according to proof at trial for unpaid wages due to Defendant's unlawful rounding practices. Plaintiff also seeks civil penalties, interest, and attorneys' fees and costs pursuant to Labor Code sections 210, 218.5, 218.6, 558(a); and CCP § 1021.5 for Defendant's unlawful conduct.

D. Section 210 Penalties for Failure to Pay Timely Wages

Pursuant to Labor Code section 200, "wages" include "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." The term "wages" includes meal and rest break premiums. *See Naranjo v. Spectrum Security Services, Inc*. (2022) 13 Cal. 5th 93, 110-118 (California Supreme Court held that unpaid meal and rest break are fairly understood as falling within the Labor Code's general definition of wages). Labor Code section 204 expressly requires that "[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." *Id*. at subd. (a). Additionally, Labor Code section 210(a), provides that, in addition to, and entirely independent and apart from, any other penalty provided under the Labor Code, every person who fails to pay wages pursuant to section 204 shall be subject to a civil penalty as follows:

> (1) For any initial 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% of the amount unlawfully withheld."

Here, due to Defendant's failure to pay Plaintiffs and the applicable Aggrieved Employees the meal period and rest period premiums that they were owed, as well as failing to pay them for all hours worked due to its unlawful rounding practices, it follows that Defendant also failed to pay them all applicable wages on a timely and bi-monthly basis, giving rise to a viable claim for unpaid wages and civil penalties pursuant to Labor Code section 210.

E. Unlawful Payroll Deductions

Pursuant to Labor Code section 221, it is unlawful for an employer to collect from an employee any part of wages theretofore paid to the employee. "[This] section is [] declaratory of strong public policy against fraud and deceit in the employment relationship. Even where fraud is not involved, the Legislature has recognized the employee's dependence on wages for the necessities of life and has, consequently, disapproved of unanticipated or unpredictable deductions because they impose a special hardship on employees." *Hudgins v. Neiman Marcus Group, Inc*. (1995) 34 Cal.App.4th 1109, 1118-1119.

Here, Defendant had a policy for advancing its employees the cost of a meal. However, if they did eat this meal, Defendant then deducted the cost from their paychecks. As a result of the unlawful acts of Defendant, Plaintiff and the Aggrieved Employees are entitled to recover civil penalties, interest, and attorneys' fees and costs, in an amount according to proof at trial, pursuant to Labor Code sections 204, 210, 218.5, and 218.6 for Defendant's unlawful conduct.

F. Failure to Provide and Maintain Accurate Itemized Wage Statements

An employer has an affirmative duty to track employee's hours worked and meal periods. *See* Section 7(A) of the applicable wage order ("Every employer shall keep accurate information with respect to each employee including . . . time records showing when the employee begins each work period[,] [m]eal periods[,] and total daily worked shall also be recorded.”).

Labor Code section 1174 requires employers to keep accurate payroll records. Labor Code section 1174.5 provides: “Any person employing labor who willfully fails to maintain . . . accurate and complete records required by subdivision (d) of Section 1174. . . shall be subject to a civil penalty of five hundred dollars ($500).”

Labor Code section 226, subdivision (a), requires that “at the time of each payment of wages,” employers must furnish employees with “an accurate itemized statement” that includes, *inter alia*, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Premium pay constitutes “wages”, as that term is used in the Labor Code. *Naranjo v. Spectrum Security Services, Inc.* (2022), 13 Cal. 5th 93, 118, 121 (premiums are wages that can be the basis of derivative claims for wage statement penalties).

Labor Code section 226(e) provides that an employee is entitled to recover $50 for initial pay period in which a violation of Section 226 occurs and $100 for each subsequent pay period, not to exceed $4,000, as well as an award of costs and reasonable attorney’s fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury. An employee is deemed to suffer injury if the employer fails to provide a wage statement containing all of the required information set forth in Labor Code section 226(a). See Lab. Code § 226 (e)(2).

Pursuant to Labor Code section 226.3, any employer who violates section 226(a) shall be subject to a civil penalty in the amount of two hundred and fifty dollars ($250.00) per employee per violation in an initial citation and one thousand dollars ($1,000.00) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

As set forth above, Defendant did not compensate Plaintiff and the Aggrieved Employees for all hours worked due to its unlawful rounding practices and all meal and rest break premiums they were entitled to. Accordingly, Defendant also failed to itemize the total number of all hours worked, the hours of compensable meal and rest breaks, the applicable rate(s) of compensation for such, all meal and rest break premiums owed, and the gross and net wages paid on the wage statements issued to Plaintiff and the Aggrieved Employees as required under Labor Code § 226(a). Defendant knowingly and intentionally failed to provide Plaintiff and the Aggrieved Employees wage statements in compliance with Labor Code section 226, because said statements contained inaccurate gross wages earned, an inaccurate total number of hours worked, inaccurate net wages earned, inaccurate applicable hourly rates in effect during the pay period, and an inaccurate number of hours worked at each hourly rate. Moreover, Defendant willfully failed to comply with section 7 of the applicable wage order and Labor

Code section 1174 by failing to maintain the above-mentioned records, including records of all wages and premium wages owed to Plaintiff and the Aggrieved Employees.

Because Defendant failed to include accurate and complete information required by Labor Code section 226(a) on the wage statements it issued to Plaintiff and the Aggrieved Employees, they is deemed to have suffered injury, per Labor Code section 226(e)(2)(B). As a result Defendant's policies and practices, Plaintiff and the Aggrieved Employees are entitled to recover damages and/or civil penalties, in an amount according to proof at trial, pursuant to Labor Code sections 226(e), 226.3, 1174.5, and section 20 of the applicable wage order for Defendant's unlawful conduct

G. Section 203 Waiting Time Penalties

Pursuant to Labor Code sections 201 and 202, an employer must provide employee wages at the time of discharge, or, if the employee resigns, the wages become due and payable not later than 72 hours thereafter. Labor Code section 203(a) provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced." These "waiting time" penalties are calculated by multiplying the daily wage rate by the number of days of nonpayment up to 30 days. *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 493. Meal and rest break premiums are wages that can be the basis of derivative claims for waiting time penalties. *Naranjo, supra,* 13 Cal. 5th at 110-111, 117-118.

Here, due to Defendant's faulty policies of failing to pay all wages due upon termination, including unpaid wages due to Defendant's unlawful rounding practice and all meal and rest break premiums owed, Plaintiff and the Waiting Time Penalty Subclass Members are entitled to waiting time penalties pursuant to Labor Code section 203.

III. CONCLUSION

Pursuant to Labor Code section 2699.3, the foregoing is to notify Defendant and the LWDA of Plaintiff's intent to pursue a PAGA representative action against Defendant regarding the PAGA Claims, as detailed above, to be brought by Plaintiff individually, and on behalf of the Aggrieved Employees.

Despite the foregoing, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to Plaintiff and the Aggrieved Employees. If Defendant is interested in attempting to resolve this matter, please have Defendant's counsel contact us by **April 12, 2024**, so that we may discuss an informal discovery plan and the possibility of early resolution through mediation. You may contact either myself or my co-counsel, Ms. Hernández. We look forward to your response.

Regards,

____
Amir Seyedfarshi, Esq
Tatiana Hernández, Esq.
Attorneys for Plaintiffs, the Aggrieved Employees, and the LWDA

cc: Tatiana Hernández, Esq.

EXHIBIT 2

Employment Rights Law Group, APC
Amir Seyedfarshi
6380 Wilshire blvd., Suite 1602
Los Angeles, CA 90048
424-777-0964
amir@employmentrightslawyers.com

February 28, 2025

<u>Via Online Filing with the LWDA & Email to Defendant's Counsel of record</u>

The California Club
C/O
Drew Davis
FOLGER LEVIN LLP
33 New Montgomery Street, 19th Floor
San Francisco, CA 94105
ddavis@folgerlevin.com

Re: ***Lyudmila Zayka v. The California Club***
SUPPLEMENTAL NOTICE OF INTENT TO FILE SUIT (Labor Code § 2699.3)

To Whom It May Concern:

This letter ("Supplemental Notice") supplements Plaintiff Lyudmila Zayka ("Plaintiff Zayka")'s previously submitted notice letter dated March 25, 2024, ("Notice") required by the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698 *et seq*., which initiated the Labor and Workforce Development Agency ("LWDA") Case No. 1018523-24.

As you are aware, my office, alongside with my co-counsel, Tatiana Hernández, Esq. of Law Offices of Tatiana Hernandez, P.C., represented Plaintiff Zayka and a proposed group of current and former Aggrieved Employees of Defendant in connection with individual, class, and/or PAGA representative action claims against Defendant for damages and civil penalties ("PAGA Claims"), as described in further detail below. The purpose of this Supplemental Notice is to add Plaintiff Rafael Blanco ("Plaintiff Blanco"). Accordingly, with this Supplemental Notice, Plaintiff Blanco hereby supplements the previously submitted Notice, wherein the same allegations contained herein are as previously alleged.

/ / /

The alleged PAGA Claims include:

(1) Defendant's failure to provide compliant meal breaks and/or pay meal break premiums in violation of Labor Code sections 226.7 and 512 and Section 11 of the applicable Industrial Welfare Commission ("IWC") Wage Order;

(2) Defendant's failure to provide compliant rest breaks and/or pay rest break premiums in violation of Labor Code sections 226.7 and Section 12 of the applicable IWC Wage Order;

(3) Defendant's unlawful rounding of actual hours worked;

(4) Defendant's failure to pay timely wages in violation of Labor Code section 204, and statutory penalties based upon the foregoing, pursuant to Labor Code section 210;

(5) Defendant's unlawful deductions from Aggrieved Employees' paychecks in violation of Labor Code section 221;

(6) Defendant's failure to provide and maintain accurate itemized wage statements in violation of Labor Code section 226 and 1174(d), and statutory penalties based upon the foregoing, pursuant to Labor Code section 226 *et seq*.;

(7) Defendant's failure to pay all wages upon termination in violation of Labor Code sections 201 and 202, and statutory penalties pursuant to Labor Code section 203 ("waiting time penalties") based upon the foregoing; and

(8) statutory penalties under PAGA based upon the foregoing, pursuant to Labor Code sections 2698 *et seq*.

In connection with these PAGA Claims, Plaintiff Blanco and the Aggrieved Employees seek PAGA penalties from at least one year prior to the date of the originally submitted Notice, submitted by Plaintiff Zayka, and ongoing (the "PAGA Period"). Also in connection with these PAGA claims, Plaintiff Blanco seeks to represent the LWDA and the following defined groups of Aggrieved Employees:

(1) "Aggrieved Employees": All current or former hourly, non-exempt employees who worked for Defendant in California during the PAGA period as a "Server"; and

(2) "Waiting Time Penalty Subclass Members" or "Waiting Time Penalty Subclass": All Aggrieved Employees whose employment with Defendant ended during the PAGA Period.

This Supplemental Notice is hereby given to and is made against Defendant, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the alleged violations as to the above-defined Aggrieved Employees who worked for Defendant at any time during the PAGA Period in the State of California.

I. FACTUAL BACKGROUND

Defendant operates a private, members-only social club which provides events, fine dining, social gatherings, accommodations, spa services, and fitness centers for its members and their guests.

Due to understaffing and high customer demands, Plaintiff Blanco and the Aggrieved Employees were not permitted to take compliant rest breaks, as they are often forced to take late, short, or interrupted rest breaks, or else skip their rest breaks entirely. For example, Plaintiff Blanco and the Aggrieved Employees were never authorized to take a 10-minute rest break when working shifts of longer than 3.5 hours. Despite the foregoing, Defendant never paid any premium wages for shifts that Plaintiff Blanco and the Aggrieved Employees did not receive compliant rest breaks.

For the same reason, Plaintiff Blanco and the Aggrieved Employees were not permitted to take compliant meal breaks, and are often subjected to late, short, missed, and/or interrupted meal breaks due to understaffing and high customer demands. For example, Plaintiff Blanco and the Aggrieved Employees often worked shifts of five hours or more during which they were not able to clock out and take a meal break. Defendant required its employees to clock out for meal breaks, if and when they were able to take them. If and when employees were able to take a meal break, Defendant required Plaintiff Blanco and the Aggrieved Employees to remain on its premises to eat their meals. Despite the foregoing, Defendant never paid any premium wages for shifts that Plaintiff Blanco and the Aggrieved Employees did not receive compliant meal breaks.

Defendant also had a policy for advancing Plaintiff Blanco and the Aggrieved Employees the cost of a meal. However, if they did eat this meal, Defendant then deducted the cost from their paychecks.

Defendant was engaged in an unlawful practice of rounding Plaintiff Blanco and the Aggrieved Employees' actual hours worked in such a manner that was not fair and neutral. As a result, over a period of time, Defendant's rounding practices failed to properly compensate Plaintiff Blanco and the Aggrieved Employees for all time actually worked. For example, Defendant rounded employees' actual hours worked to the nearest increment of 15-minutes, or fourth (0.25) of an hour. Accordingly, Defendant's was engaged in a practice that systematically undercompensated Plaintiff Blanco and the Aggrieved Employees.

As discussed above, Plaintiff Blanco and the Aggrieved Employees were not paid timely wages for all hours worked. Specifically, they were not compensated for unpaid wages due to Defendant's unlawful rounding practices, as well as all meal and rest break premiums owed for days in which they was not permitted to take compliant meal and rest breaks.

Based on the foregoing, Defendant also failed to issue accurate, itemized wage statements to Plaintiff Blanco and the Aggrieved Employees, because the wage statements did not include all wages and premiums owed, as discussed above. The wage statements also included unlawful deductions for advancing costs of a meal. Accordingly, Defendant furnished Plaintiff Blanco and the Aggrieved Employees wage statements with an inaccurate number of hours worked, inaccurate gross and net wages, unlawful deductions, and inaccurate corresponding number of hours worked at each hourly rate.

II. <u>PAGA Claims</u>

A. Non-Compliant Meal Breaks

Pursuant to Labor Code section 512, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. *Id*. at subd. (a). However, if the total work period for that day is less than six hours, then the meal period may be waived by mutual consent. *Id*. The first meal period must start prior to the end of the employee's fifth hour of work if the employee is working less than ten (10) hours. *Brinker Restaurant Corp. v Superior Court* (2012) 53 Cal. 4th 1004,1041. During the meal period, the employee is to be completely free of the employer's control and must not be required to perform any work for the employer. *Id*. at 1040-1041. If an employer fails to provide a legally compliant, duty-free meal period, the employee is entitled to one hour of "premium pay," or an additional hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided. Lab. Code § 226.7(c); Section 11 of the applicable IWC Wage Order.

Here, Defendant did not authorize or permit Plaintiff Blanco and the Aggrieved Employees to take compliant meal periods on days when they worked for a period that lasted longer than five hours. Specifically, their meal periods were frequently late, short, missed, or interrupted because Defendant was often understaffed and/or because of high customer demands. Despite the foregoing, Defendant did not compensate Plaintiff Blanco and the Aggrieved Employees with one hour of premium pay for all shifts for which they did not receive a compliant meal break.

As a result of the Defendant's policies and practices, Plaintiff Blanco and the Aggrieved Employees are entitled to recover damages under Labor Code section 226.7 in an amount according to proof at trial for one additional hour of pay at their regular rate of compensation for each day in which Defendant failed to authorize and permit them to take meal breaks in compliance with the Labor Code and Section 11 of the applicable wage order. Plaintiff Blanco also seeks civil penalties, interest, and attorneys' fees and costs pursuant to Labor Code sections 203, 210, 218.5, 218.6, 558(a); section 20 of the applicable wage order; and CCP § 1021.5 for Defendant's unlawful conduct.

B. Non-Compliant Rest Breaks

California law requires an employer to provide its employees with an uninterrupted, duty-free rest period of not less than ten (10) minutes for each four hours worked or a "major fraction thereof." Lab. Code § 226.7; Section 12 of the applicable IWC Wage Order. The Division of Labor Standards Enforcement ("DLSE") has interpreted the phrase "major fraction thereof", as applied to a four-hour period, to mean any amount of time in excess of two hours—i.e., any fraction greater than half. *Brinker Rest. Corp., supra,* 53 Cal.4th at 1029, citing Dept. Industrial Relations, DLSE Opn. Letter No. 1999.02.16 (Feb. 16, 1999) p. 1. "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission . . ." Lab. Code § 226.7(b). If an employer fails to provide a legally compliant, duty-free rest period, the employee is entitled to one hour of "premium pay," or an additional hour of pay at the employee's regular rate of compensation for each workday that the rest period was not provided. Lab. Code § 226.7(c).

Here, Defendant did not authorize or permit Plaintiff Blanco and the Aggrieved Employees to take compliant rest breaks. Specifically, Plaintiff and the Aggrieved Employees' rest breaks were frequently late, short, missed, or interrupted because Defendant was often understaffed and/or because of high customer demands. Despite the foregoing, Defendant never paid any rest break premiums to Plaintiff Blanco and the Aggrieved Employees for every day in which they did not receive a rest break in compliance with the Labor Code and section 12 of the applicable wage order.

As a result of the Defendant's policies and practices, Plaintiff Blanco and the Aggrieved Employees are entitled to recover damages under Labor Code section 226.7 in an amount according to proof at trial for one additional hour of pay at their regular rate of compensation for each day in which Defendant failed to authorize and permit them to take rest breaks in compliance with the Labor Code and section 12 of the applicable wage order. Plaintiff Blanco also seeks civil penalties, interest, and attorneys' fees and costs pursuant to Labor Code sections 203, 210, 218.5, 218.6, 558(a); Wage Order No. 5-2001 § 20; and CCP § 1021.5 for Defendant's unlawful conduct.

C. Unlawful Rounding

Generally speaking, an employer which has a policy of rounding employees' time is not unlawful, as long as the rounding policy is "fair and neutral on its face" and is "used in such a manner that will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked." *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907. A rounding policy is "fair and neutral" if, "on average, [it] favors neither overpayment nor underpayment"; but such a policy or practice is unacceptable if it systematically undercompensates employees. *Id.* However, "if an employer . . . can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for 'all the time' worked." *Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, 660-661.

Here, Defendant had the ability to capture and record the exact number of minutes that Plaintiff Blanco and the Aggrieved Employees worked, and did indeed capture and record the exact number of minutes they worked, using its timekeeping system. Despite this, Defendant had a policy and practice of rounding Plaintiff Blanco and the Aggrieved Employees' hours worked to the nearest fourth (0.25) of an hour. This practice resulted in Defendant systematically underpaying Plaintiff Blanco and the Aggrieved Employees on a consistent basis.

As a result of the Defendant's policies and practices, Plaintiff Blanco and the Aggrieved Employees are entitled to recover damages in an amount according to proof at trial for unpaid wages due to Defendant's unlawful rounding practices. Plaintiff Blanco also seeks civil penalties, interest, and attorneys' fees and costs pursuant to Labor Code sections 210, 218.5, 218.6, 558(a); and CCP § 1021.5 for Defendant's unlawful conduct.

D. Section 210 Penalties for Failure to Pay Timely Wages

Pursuant to Labor Code section 200, "wages" include "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." The term "wages" includes meal and rest break premiums. *See Naranjo v. Spectrum Security Services, Inc*. (2022) 13 Cal. 5th 93, 110-118 (California Supreme Court held that unpaid meal and rest break are fairly understood as falling within the Labor Code's general definition of wages). Labor Code section 204 expressly requires that "[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." *Id*. at subd. (a). Additionally, Labor Code section 210(a), provides that, in addition to, and entirely independent and apart from, any other penalty provided under the Labor Code, every person who fails to pay wages pursuant to section 204 shall be subject to a civil penalty as follows:

> (1) For any initial 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% of the amount unlawfully withheld."

Here, due to Defendant's failure to pay Plaintiff Blanco and the applicable Aggrieved Employees the meal period and rest period premiums that they were owed, as well as failing to pay them for all hours worked due to its unlawful rounding practices, it follows that Defendant also failed to pay them all applicable wages on a timely and bi-monthly basis, giving rise to a viable claim for unpaid wages and civil penalties pursuant to Labor Code section 210.

E. Unlawful Payroll Deductions

Pursuant to Labor Code section 221, it is unlawful for an employer to collect from an employee any part of wages theretofore paid to the employee. "[This] section is [] declaratory of strong public policy against fraud and deceit in the employment relationship. Even where fraud is not involved, the Legislature has recognized the employee's dependence on wages for the necessities of life and has, consequently, disapproved of unanticipated or unpredictable deductions because they impose a special hardship on employees." *Hudgins v. Neiman Marcus Group, Inc*. (1995) 34 Cal.App.4th 1109, 1118-1119.

Here, Defendant had a policy for advancing its employees the cost of a meal. However, if they did eat this meal, Defendant then deducted the cost from their paychecks. As a result of the unlawful acts of Defendant, Plaintiff Blanco and the Aggrieved Employees are entitled to recover civil penalties, interest, and attorneys' fees and costs, in an amount according to proof at trial, pursuant to Labor Code sections 204, 210, 218.5, and 218.6 for Defendant's unlawful conduct.

F. Failure to Provide and Maintain Accurate Itemized Wage Statements

An employer has an affirmative duty to track employee's hours worked and meal periods. *See* Section 7(A) of the applicable wage order ("Every employer shall keep accurate information with respect to each employee including . . . time records showing when the employee begins each work period[,] [m]eal periods[,] and total daily worked shall also be recorded.").

Labor Code section 1174 requires employers to keep accurate payroll records. Labor Code section 1174.5 provides: "Any person employing labor who willfully fails to maintain . . . accurate and complete records required by subdivision (d) of Section 1174. . . shall be subject to a civil penalty of five hundred dollars ($500)."

Labor Code section 226, subdivision (a), requires that "at the time of each payment of wages," employers must furnish employees with "an accurate itemized statement" that includes, *inter alia*, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Premium pay constitutes "wages", as that term is used in the Labor Code. *Naranjo v. Spectrum Security Services, Inc.* (2022), 13 Cal. 5th 93, 118, 121 (premiums are wages that can be the basis of derivative claims for wage statement penalties).

Labor Code section 226(e) provides that an employee is entitled to recover $50 for initial pay period in which a violation of Section 226 occurs and $100 for each subsequent pay period, not to exceed $4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury. An employee is deemed to suffer injury if the employer fails to provide a wage statement containing all of the required information set forth in Labor Code section 226(a). See Lab. Code § 226 (e)(2).

Pursuant to Labor Code section 226.3, any employer who violates section 226(a) shall be subject to a civil penalty in the amount of two hundred and fifty dollars ($250.00) per employee per violation in an initial citation and one thousand dollars ($1,000.00) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

As set forth above, Defendant did not compensate Plaintiff Blanco and the Aggrieved Employees for all hours worked due to its unlawful rounding practices and all meal and rest break premiums they were entitled to. Accordingly, Defendant also failed to itemize the total number of all hours worked, the hours of compensable meal and rest breaks, the applicable rate(s) of compensation for such, all meal and rest break premiums owed, and the gross and net wages paid on the wage statements issued to Plaintiff and the Aggrieved Employees as required under Labor Code § 226(a). Defendant knowingly and intentionally failed to provide Plaintiff Blanco and the Aggrieved Employees wage statements in compliance with Labor Code section 226, because said statements contained inaccurate gross wages earned, an inaccurate total number of hours worked, inaccurate net wages earned, inaccurate applicable hourly rates in effect during the pay period, and an inaccurate number of hours worked at each hourly rate. Moreover, Defendant willfully failed to comply with section 7 of the applicable wage order and Labor Code section 1174 by failing to maintain the above-mentioned records, including records of all wages and premium wages owed to Plaintiff Blanco and the Aggrieved Employees.

Because Defendant failed to include accurate and complete information required by Labor Code section 226(a) on the wage statements it issued to Plaintiff Blanco and the Aggrieved Employees, they is deemed to have suffered injury, per Labor Code section 226(e)(2)(B). As a result Defendant's policies and practices, Plaintiff Blanco and the Aggrieved Employees are entitled to recover damages and/or civil penalties, in an amount according to proof at trial, pursuant to Labor Code sections 226(e), 226.3, 1174.5, and section 20 of the applicable wage order for Defendant's unlawful conduct

G. Section 203 Waiting Time Penalties

Pursuant to Labor Code sections 201 and 202, an employer must provide employee wages at the time of discharge, or, if the employee resigns, the wages become due and payable not later than 72 hours thereafter. Labor Code section 203(a) provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced." These "waiting time" penalties are calculated by multiplying the daily wage rate by the number of days of nonpayment up to 30 days. *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 493. Meal and rest break premiums are wages that can be the basis of derivative claims for waiting time penalties. *Naranjo, supra,* 13 Cal. 5th at 110-111, 117-118.

Here, due to Defendant's faulty policies of failing to pay all wages due upon termination, including unpaid wages due to Defendant's unlawful rounding practice and all meal and rest break premiums owed, Plaintiff Blanco and the Waiting Time Penalty Subclass Members are entitled to waiting time penalties pursuant to Labor Code section 203.

III. <u>CONCLUSION</u>

Pursuant to Labor Code section 2699.3, the foregoing is to notify Defendant and the LWDA of Plaintiff's intent to pursue a PAGA representative action against Defendant regarding the PAGA Claims, as detailed above, to be brought by Plaintiff Blanco individually, and on behalf of the Aggrieved Employees.

Regards,

Amir Seyedfarshi, Esq
Tatiana Hernández, Esq.
Attorneys for Plaintiff, the
Aggrieved Employees, and the LWDA