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Superior Court of California,
County of San Diego

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By Marc David, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

JOYCE WYLIE, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

CLUB DEMONSTRATION SERVICES, INC.,
a Connecticut corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 37-2020-00005778-CU-OE-CTL

[Assigned to the Hon. Ronald F. Frazier,
Dept. C-65]

FIRST AMENDED COMPLAINT FOR:

**(1) VIOLATION OF LABOR CODE §
2698, *ET SEQ.***

DEMAND OVER \$25,000

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1 Plaintiff Joyce Wylie (“Plaintiff”), hereby submits this First Amended Complaint against
2 Defendants Club Demonstration Services, Inc. (“Defendant”), and Does 1-50 (hereinafter collectively
3 referred to as “Defendants”), on behalf of the State of California and all other similarly aggrieved
4 current and former employees of Defendants for penalties for failure to provide accurate, itemized wage
5 statements, failure to provide off-duty rest periods, and failure to provide suitable seating as follows:

6 **INTRODUCTION**

7 1. This representative action is within the Court’s jurisdiction under the Private Attorneys
8 General Act (the “PAGA”), California Labor Code § 2698, *et seq.* and the California Industrial Welfare
9 Commission’s (“IWC”) Wage Orders.

10 2. This Complaint challenges systemic illegal employment practices resulting in violations
11 of the California Labor Code and Business and Professions Code against employees of Defendants.

12 **JURISDICTION AND VENUE**

13 3. The Court has jurisdiction over the violations of the California Labor Code §§ 201-203,
14 226, and 226.7, and Wage Order No. 7-2001, by virtue of the PAGA, which expressly authorizes
15 Plaintiff to seek penalties on behalf of the State of California and all other similarly aggrieved
16 employees. As alleged herein, Plaintiff has exhausted her administrative remedies to proceed under the
17 PAGA.

18 4. Venue is proper in San Diego County because Plaintiff is informed and believes and
19 based thereon alleges that Defendant’s headquarters are based in this County and the time and payroll
20 records of Plaintiff and aggrieved employees are located in this County.

21 **PARTIES**

22 5. Plaintiff was hired by Defendant on or about August 8, 2019. On or about December 21,
23 2019, Plaintiff’s employment was terminated. Plaintiff worked as a non-exempt food demonstrator.
24 Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in
25 this action in ways that have deprived her of the rights guaranteed by California Labor Code §§ 201-203,
26 226, 226.7, and 2698, *et seq.* and the applicable IWC Wage Orders.

27 6. Plaintiff is informed and believes and based thereon alleges that Defendant was and is a
28 California corporation doing business in the State of California providing food and beverage
demonstration services at various retail stores, including Costco. Plaintiff is informed and believes and

1 based thereon alleges that Defendant maintains its headquarters at 9520 Towne Centre Drive, Suite 120,
2 San Diego, CA 92121.

3 7. Plaintiff is informed and believes and based thereon alleges that at all times herein
4 mentioned Defendant and DOES 1 through 50 are and were business entities, individuals, and
5 partnerships, licensed to do business and actually doing business in the State of California.

6 8. As such, and based upon all the facts and circumstances incident to Defendants' business
7 in California, Defendants are subject to California Labor Code §§ 201-203, 226, 226.7, and 2698, *et*
8 *seq.*, and the IWC Wage Orders.

9 9. Plaintiff does not know the true names or capacities, whether individual, partner or
10 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said
11 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint
12 when the true names and capacities are known. Plaintiff is informed and believes and based thereon
13 alleges that each of said fictitious Defendants were responsible in some way for the matters alleged
14 herein and proximately caused Plaintiff and aggrieved employees to be subject to the illegal employment
15 practices, wrongs and injuries complained of herein.

16 10. At all times herein mentioned, each of said Defendants participated in the doing of the
17 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
18 and each of them, were the agents, servants and employees of each of the other Defendants, as well as
19 the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope
20 of said agency and employment.

21 11. Plaintiff is informed and believes and based thereon alleges that at all times material
22 hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of,
23 or working in concert with each of the other co-defendants and was acting within the course and scope
24 of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and
25 omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and
26 ratified said acts, conduct, and omissions of the acting Defendants.

27 12. At all times herein mentioned, Defendants, and each of them, were members of, and
28 engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope
of, and in pursuance of, said joint venture, partnership and common enterprise.

1 13. At all times herein mentioned, the acts and omissions of various Defendants, and each of
2 them, concurred and contributed to the various acts and omissions of each and all of the other
3 Defendants in proximately causing the violations herein alleged. At all times herein mentioned,
4 Defendants, and each of them, ratified each and every act or omission complained of herein. At all
5 times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of
6 each and all of the other Defendants in proximately causing the violations as herein alleged.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

9 **(BY PLAINTIFF AS PROXY FOR STATE OF CALIFORNIA AND ALL SIMILARLY**
10 **AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**

11 14. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 13 as though fully
12 set for herein.

13 15. Plaintiff brings this cause of action on behalf as a proxy for the State of California and in
14 this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendant's violation of Labor
15 Code §§ 201-203, 226, and 226.7, and Wage Order No. 7-2001(14), from January 27, 2019, through the
16 present. Defendant violated Labor Code § 226.7 by not authorizing and permitting a duty-free 10-
17 minute rest period for every 4 hours worked, or major fraction thereof, to Plaintiff and other non-exempt
18 food demonstrator employees, nor paying the requisite rest period premium pay of an additional hour of
19 wages. Defendant violated these provisions by prohibiting Plaintiff and other non-exempt food
20 demonstrator employees from using their personal cell phones during their rest breaks and, thus,
21 exerting control. Defendant also violated Labor Code §§ 201-203 by failing to pay all wages upon the
22 separation of employment to Plaintiff and other non-exempt food demonstrator employees, including
23 without limitation, premium pay for missed rest periods. Defendant also violated Labor Code § 226(a)
24 by not providing accurate, itemized wage statements to Plaintiff and other non-exempt food
25 demonstrator employees, including by not accurately reflecting the premium pay for missed rest breaks
26 on the paystubs. Defendant also violated Wage Order No. 7-2001(14) for failing to provide suitable
27 seating to Plaintiff and other food demonstrator employees. Specifically, Wage Order No. 7-2001(14),
28 Cal. Code Regs. tit. 8, § 11070(14), which provides that "[a]ll working employees shall be provided
with suitable seats when the nature of the work reasonably permits the use of seats." Defendant failed to

1 provide suitable seats even though the nature of the work performed by Plaintiff and other food
2 demonstrator employees reasonably permitted the use of seats. Moreover, it was feasible for the
3 Company to provide seating, as the nature of the work as food and beverage demonstrators would have
4 allowed Plaintiff and other food demonstrators to perform their work while seated. Further, Wage Order
5 No. 7-2001(14)(B) states that “[w]hen employees are not engaged in the active duties of their
6 employment and the nature of the work requires standing, an adequate number of suitable seats shall be
7 placed in reasonable proximity to the work area and employees shall be permitted to use such seats
8 when it does not interfere with the performance of their duties.” Defendant failed to provide suitable
9 seats in reasonable proximity in the work area to Plaintiff and other food demonstrator employees when
10 they were not engaged in the active duties of our employment, nor were we permitted to use any such
11 seats.

12 16. On or about January 27, 2020, Plaintiff sent written notice to the California Labor &
13 Workforce Development Agency (“LWDA”) and to Defendants regarding Defendant’s violations of
14 Labor Code §§ 201-203, 226, and 226.7, and Wage Order No. 7-2001(14), pursuant to Labor Code §
15 2698, *et seq.*

16 17. As of the date of the filing of this Complaint, the LWDA has not provided written notice
17 as to whether it intends to investigate the Labor Code violations set forth in Plaintiff’s written notice
18 and, thus, allowing Plaintiff to proceed under PAGA against Defendants for said violations. Therefore,
19 Plaintiff may seek all applicable penalties under the PAGA.

20 18. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
21 applicable remedies under the PAGA for Defendant’s violation of Labor Code §§ 201-203, 226, and
22 226.7, and Wage Order No. 7-2001, for the time periods described above on behalf of all other
23 Aggrieved Employees, including without limitation, civil penalties under Labor Code § 2699, any
24 remedies under Labor Code § 226.3 and for costs and attorneys’ fees.

PRAYER FOR RELIEF

25 WHEREFORE, Plaintiff prays for judgment on behalf the State of California and on behalf of all
26 others that this suit is brought against Defendants, jointly and severally, as follows:

27 1. Upon the First Cause of Action, for penalties pursuant to statute as set forth in California
28 Labor Code §§ 226.3 and 2699, and for costs and attorneys’ fees;

1 2. On all causes of action, for attorneys' fees and costs as provided by California Labor
2 Code § 2699, and Code of Civil Procedure § 1021.5; and

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

4 DATED: March 19, 2020

DIVERSITY LAW GROUP, P.C.

5
6 By: 
7 Larry W. Lee
8 Attorneys for PLAINTIFF

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On March 19, 2020, I served the following document(s) described as: **FIRST**
11 **AMENDED COMPLAINT** on the interested parties in this action as follows:

12 Fermin H. Llaguno
13 Litler Mendelson, P.C.
14 2050 Main Street, Suite 900
15 Irvine, CA 92614
16 *Attorneys for Defendant*
17 *Club Demonstration Services, Inc.*

18 X BY MAIL: by placing _____ the original or X a true and correct
19 copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the
20 attached mailing list. I am readily familiar with the firm's practice for collection and processing
21 of correspondence and other materials for mailing with the United States Postal Service. On this
22 date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for
23 collection and mailing on this date at the address above following our office's ordinary business
24 practices. The envelope(s) will be deposited with the United States Postal Service on this date,
25 in the ordinary course of business.

26 I declare under penalty of perjury under the laws of the State of California that the
27 above is true and correct. Executed on March 19, 2020, at Los Angeles, California.

28


Erika Mejia