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behalf of themselves and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANTHONY IMPERATO, an individual;	) Case No. 20STCV25314
CALVIN PENG aka TZU-I PENG, an	)
individual, on behalf of themselves and other	) BC644587 - Lead Case
aggrieved employees,	) [Related to 20STCV01232, 20STCV16584,
	) 20STCV25314, and 19STCV41482]
Plaintiffs,	)
	) Assigned for All Purposes to:
v.	) Hon. Carolyn B. Kuhl
	) Dept. SSC-12
CALIFORNIA COMMERCE CLUB, INC. a	)
California corporation; and DOES 1 through	) DECLARATION OF AARON A. BARTZ
100, inclusive,	) IN SUPPORT OF MOTION TO
	) APPROVE PAGA SETTLEMENT
Defendants.	)
	) Date: August 21, 2023
	) Time: 1:45 p.m.
	) Dept.: SSC-12

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- c. Attorneys' Fees: \$800,000;
- d. Attorneys' Costs: \$13,705.78;
- e. Administration Expenses: \$14,950.

7. Based on Defendant's employment records, there are 4,538 aggrieved employees. PAGA Members covered by the Settlement Agreement consist of the following two groups of employees:

a. The "Dealer/Floorperson Group" includes all current and former non-exempt dealers and floorpersons of Defendant during the PAGA Period. Based on Defendant's records, there are 2,098 dealers and floorpersons who worked a total of 83,276 pay periods during the PAGA Period.

b. The "Non-Exempt Employee Group" includes all current and former non-exempt employees of Defendant excluding the "Dealer/Floorperson Group" during the PAGA Period. According to Defendant's records, there are 2,440 non-exempt employees other than dealers and floorpersons who collectively worked 65,126 pay periods during the PAGA Period.

c. The aggrieved employee settlement allocation is 70% to the Dealer/Floorperson Group, and 30% to the Non-Exempt Employee Group, and the aggrieved employees are paid pro-rata based on the number of pay periods worked during the PAGA Period.

d. The PAGA Period is between April 6, 2019 and June 15, 2023.

8. As part of the settlement, the aggrieved employees release only penalties recoverable under PAGA, and do not release any of their underlying wage claims.

Background of Case

9. This case arises out of alleged wage and hour violations committed by Defendant against their non-exempt employees in California. Plaintiffs served their initial PAGA letter on the Labor and Workforce Development Agency (LWDA) on April 29, 2020, and filed and served their amended PAGA letter on May 8, 2023. Attached as **Exhibit 2** are true and correct copies of Plaintiffs' PAGA letters. On July 6, 2020, Plaintiffs filed a Complaint, on behalf of

1 themselves and other aggrieved employees for Civil Penalties under PAGA based on
2 Defendants' wage and hour violations, including failure to pay all wages, meal period and rest
3 break violations, and other wage violations. Thereafter, on July 21, 2023, Plaintiffs filed their
4 operative First Amended Complaint. Attached as **Exhibit 3** is a true and correct copy of
5 Plaintiffs' operative First Amended PAGA Complaint filed in this action.

6 10. Since filing this action, Plaintiffs have been very aggressive in pursuing this case
7 on behalf of themselves and other aggrieved employees and the State of California. Shortly after
8 filing this action, Plaintiffs propounded formal representative discovery, and thereafter agreed to
9 an informal exchange of discovery with Defendant, including engaging in the *Belaire-West*
10 notice process for a subset of all of the aggrieved employees.

11 11. As a result of the exchange of discovery, Plaintiffs learned that Defendant
12 adopted separate agreements for its casino dealers and floorpersons. For instance, Defendant
13 provided dealers and floorpersons with a document entitled Casino Dealer Break Procedures
14 ("Dealer Break Agreement") providing that unless aggrieved employees agree to waive their rest
15 periods, they may lose their spot in the dealer rotation, and they must take significant steps just
16 to be entitled to take their statutorily required rest periods. Attached as **Exhibit 4** is a true and
17 correct copy of the Dealer Break Agreement.

18 12. In analyzing the voluminous pay records, moreover, Plaintiffs' counsel
19 discovered substantial discrepancies between the rotation schedules that casino dealers and
20 floorpersons were supposed to work, and their "actual" punch in and punch out time records.
21 After further investigation, Plaintiffs' counsel learned that these time records were manipulated,
22 and that pre-Covid, the time records were not reflective of their hours or mandatory meal
23 periods.

24 13. Additionally, through extensive witness outreach, including calling many
25 aggrieved employees disclosed through the *Belaire-West* notice process, Plaintiffs' counsel
26 found that Defendant automatically deducted 45 minutes from dealers and floorpersons' time
27 records pre-Covid, even if there was no actual time record of them taking a meal period.

1 14. With respect to the post-Covid time period, Defendant apparently corrected its
2 policies and procedures with respect to requiring aggrieved employees, particularly dealers and
3 floorpersons, to clock in and clock out for their meal periods. Even so, Plaintiffs' counsel's
4 analysis showed missed, late, and short meal periods for aggrieved employees. The policies and
5 procedures affecting dealers and floorpersons, however, were not applied to other non-exempt
6 employees. For instance, other non-exempt employees were not subject to the Dealer Break
7 Agreement, and did not have automatic 45 minute deductions from their time for their meal
8 periods. As such, proving violations as to non-dealers and floorpersons would have been
9 exceedingly difficult if this case was not settled. Because of the substantially greater violations
10 affecting dealers and floorpersons and the differences in proving their respective claims, as well
11 as the fact that dealers and floorpersons' pay periods represent more than 56% of the total pay
12 periods worked, Plaintiffs' counsel believes that the settlement allocation is more than justified
13 and appropriate here.

14 15. After performing substantial due diligence, discovery and analysis for more than
15 1.5 years, the parties agreed to go to Mediation. In the interim, however, the Supreme Court
16 decided to hear *Viking River Cruises, Inc. v. Moriana*, 596 U.S. ___, 142 S.Ct. 1906 (2022)
17 ("*Viking River*"), thus putting a stop to any possible Mediation in early 2022. Instead, after the
18 decision in *Viking River* was published, Defendant filed a motion to compel arbitration of
19 Plaintiffs' individual wage claims, and to dismiss Plaintiffs' PAGA claims, pursuant to an
20 arbitration agreement entered into as a condition of Plaintiffs' employment.

21 16. Plaintiffs vigorously opposed the motion to compel arbitration, and this Court
22 accepted supplemental briefing for certain issues raised by *Viking River* and another California
23 case, *Adolph v. Uber Technologies, Inc.*, Case No. S274671 ("*Adolph*"). Ultimately, on
24 November 4, 2022, this Court compelled Plaintiffs' individual claims to arbitration, and stayed
25 the PAGA claims pending a resolution in *Adolph*.

26 17. Next, Plaintiffs filed their individual arbitration claims with JAMS, and were
27 ready to proceed with those claims despite the uncertainty of whether the PAGA claims would
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1 survive under *Viking River* and *Adolph*. Because of the uncertainty to both Plaintiffs and
2 Defendant, the parties agreed to mediate the PAGA and individual claims.

3 18. In preparation for Mediation, Plaintiffs obtained additional pay and timekeeping
4 data, and updated policies and procedures from Defendant's earlier document production.
5 Plaintiffs also hired statistical expert James Toney to analyze the data on the aggrieved
6 employees to create models reflecting the total exposure to PAGA penalties in this case.
7 Attached as **Exhibit 5** is a true and correct copy of the PAGA exposure model developed by Mr.
8 Toney in advance of the mediation.

9 19. On May 3, 2023, the parties attended mediation before Michael Loeb. The parties
10 engaged in vigorous debate and hard fought negotiations, and after a full day of mediation, were
11 able to reach a settlement in principle, and after more than a month of negotiations, entered into
12 the Exhibit 1 Settlement Agreement attached hereto.

13 20. Plaintiffs did not settle this case until they had conducted sufficient investigation into
14 the claims, interviewed numerous aggrieved employees working for Defendant, and thoroughly
15 reviewed Defendant's employment policies and pay records. I believe that this is an excellent
16 settlement of the PAGA claims, which will not affect any aggrieved employee's right to pursue
17 underlying Labor Code violations against Defendant if he or she chooses to do so.

18 **Plaintiffs' Counsel Is Very Experienced In Representative And Class Actions**

19 21. I am experienced class action counsel, including specializing in wage and hour
20 and employment claims. Some of the class action and representative litigation on which I have
21 served as Class or Representative Counsel include:

- 22 a. *Wilkins, et al. v. Equinox Holdings, Inc.*
23 Los Angeles Superior Court, No.: BC440058
- 24 b. *TBC Retail Group Wage and Hour Cases*
25 Los Angeles Superior Court, No.: JCCP No. 4701
- 26 c. *Cassery v. Randstad US, L.P., et al.*
27 U.S.D.C., Central District of California, No. SACV 12-1023-DOC(ANx)
- 28 d. *Crilly v. Micro Electronics, Inc.*

- 1 Orange County Superior Court, No.: 30-2013-00662586-CU-OE-CXC
- 2 e. *Concho, et al. v. Pipeline Carriers, Inc. et al.*
- 3 Orange County Superior Court, No.:30:2013-00649600-DU-OE-CXC
- 4 f. *Holsted et al. v. R.J. Noble Company et. al.*
- 5 Orange County Superior Court, No.:30:2010-00379770-CU-OE-CXC
- 6 g. *Piggue v. Chief Protective Services, Inc.*
- 7 Orange County Superior Court, No.:30-2013-00688107-CU-OE-CXC
- 8 h. *Walsh v. Pacific Bell Telephone Company*
- 9 Orange County Superior Court, No.:30-2011-00498062-CU-OE-CXC
- 10 i. *Woods v. JFK Memorial Hospital*
- 11 Riverside County Superior Court, No.: INC 1205209
- 12 j. *Ramirez et. al v. Titan Insurance of New Mexico*
- 13 Riverside County Superior Court, No.: RIC1211890
- 14 k. *DeSantos v. Jaco Oil Company, et al.*
- 15 U.S.D.C. Eastern District of California, No. 1:14-CV-00738-JLT
- 16 l. *Duran v. Big 5 Corp.*
- 17 Los Angeles Superior Court, Case No. BC557154
- 18 m. *Sheahan v. Celtic Leasing Corporation, Inc.*
- 19 Orange County Superior Court No.: 30-2016-00852151-CU-OE-CXC
- 20 n. *Panusis v. Control4 Corporation*
- 21 United States District Court, Central District of California
- 22 Case No. SACV-16-1179-DOC
- 23 o. *O&R Construction, LLC v. Dun & Bradstreet, et al.*
- 24 United States District Court, Western District of Washington
- 25 Case No. C12-2184 TSZ
- 26 p. *Matthews v. Whelan Security of California, Inc.*
- 27 Orange County Superior Court, No.: 30-2016-00833250-CU-OE-CXC
- 28 q. *Rodriguez v. R.J. Noble Company (Navarro/Kles),*
- Orange County Superior Court, No.: 30-2017-00916018-CU-OE-CXC
- r. *Wang v. Fountain Valley Regional Hospital and Medical Center*
- Orange County Superior Court, No. 30-2015-00821329-CU-OE-CXC
- s. *Skerl v. Sutter Bay Hospitals*

22. I graduated from Vanderbilt University in 1992 with a Bachelor of Arts in Economics and English, and graduated from Southwestern Law School in 1998. Since becoming a lawyer in 1998, my practice has focused on complex litigation matters, and for more than a decade, complex employment law and wage and hour matters.

23. I am a member of the California State Bar, the Orange County Bar Association, Los Angeles County Bar Association, and the California Employment Lawyers Association. I have an AV rating from Martindale-Hubbell, the highest possible rating for a lawyer. During my 25 year career, I have handled many successful employment law matters both at the trial and appellate levels. I estimate that I have represented plaintiffs in over 80 different employment cases, the vast majority of which have resulted in favorable settlements, awards and/or verdicts for my clients. I have successfully prosecuted and obtained significant recoveries in several class action lawsuits and other lawsuits involving complex legal and factual issues. In 2015, I was co-lead counsel in *Walsh v. Pacific Bell*, which settled for \$16,800,000. I also served as co-class counsel in the above-referenced *Wilkins* case which settled for \$5,500,000 and the above-referenced *Cassery* case which settled for \$4,900,000. I also was co-class counsel in the above-described *Holsted v. RJ Noble*, which was settled on behalf of 66 class members for \$1,900,000. I have also been involved in many other million and multi-million dollar verdicts and settlements over the years.

Evaluation of the PAGA Claims

24. In this case, Plaintiffs seek PAGA penalties only. The sole PAGA claim that is at issue in this settlement concerns Defendant's: (1) failure to pay all wages owed and make unlawful deductions from Plaintiffs' pay; (2) failure to provide duty-free meal periods; (3) failure to authorize and permit duty-free rest periods; (4) failure to pay all wages due upon termination; (5) failure to properly maintain and submit accurate itemized wage statements; (6) failure to reimburse expenses. Plaintiff's penalties exposure analysis for the PAGA claims is set forth below.

1 a. Unpaid wages

2 Labor Code §221 provides: “It shall be unlawful for any employer to collect or receive
3 from any employee any part of wages theretofore paid by said employer to said employee.”
4 Labor Code §223 provides: “Where any statute or contract requires an employer to maintain the
5 designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay
6 the wage designated by statute or by contract.” Labor Code § 1194 states any employee
7 receiving less than the legal minimum wage is entitled to recover the unpaid balance of the full
8 amount of this minimum wage, including interest thereon, reasonable attorney’s fees, and costs
9 of suit.

10 ***First***, Plaintiffs allege that Defendant unlawfully collected, received and/or paid
11 aggrieved employees less than the required minimum wage due based on Defendant’s practice of
12 automatically deducting 45 minutes from the dealers and floorpersons time, even though
13 frequently, they did not receive meal periods that were 45 minutes in length. This resulted in
14 substantially undercompensating dealers and floorpersons.¹

15 ***Second***, Plaintiffs alleged that Defendant unlawfully deducted tips from aggrieved
16 employees’ wages by violating Defendant’s own tip pooling policies. Defendant’s tip pooling
17 policy provides that no more than \$15 per day should be pooled as tips, but Defendant regularly
18 collected in excess of \$15 from aggrieved employees, particularly dealers and floorpersons,
19 during their shifts.

20 Defendant contends that they have numerous defenses to Plaintiffs’ unpaid wage claims,
21 including that dealers and floorpersons received well in excess of 45 minutes per day in meal
22 periods, because they received two 40 minute meal periods in lieu of their rest periods.

23 Defendant further contends that the tip pooling policy that Plaintiffs refer to is outdated, and that
24 during the PAGA period covered by this case, Defendant fully complied with California’s tip
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26 _____
27 ¹ Based on counsel’s research and investigation, the same was not true for other aggrieved
28 employees, who clocked in and out for meal periods, and were not subject to automatic
deductions from their pay.

1 pooling laws, and aggrieved employees were only required to contribute up to 15% of their tip
2 earnings, which is fully compliant with California law.

3 The maximum potential PAGA penalties for the unpaid wage claim is approximately
4 \$4.66 million, as calculated by Plaintiffs' expert. Based on the various issues raised above,
5 including the fact that Plaintiffs verified that the tip pooling policy capping tips at \$15 was
6 discontinued in 2017, and the fact that the automatic deductions were discontinued in March
7 2020, Plaintiffs believe they had a 20% chance of success on the various unpaid
8 wage/deduction/tip pooling theories. Nevertheless, Labor Code section 2699(e)(2) also gives a
9 trial court broad discretion to reduce PAGA penalties: "[A] court may award a lesser amount
10 than the maximum civil penalty amount specified by this part if, based on the facts and
11 circumstances of the particular case, to do otherwise would result in an award that is unjust,
12 arbitrary and oppressive, or confiscatory." Case law supports a trial court's discretion in
13 downgrading penalties based on these factors. *See Thurman v. Bayshore Transit Management,*
14 *Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012) (no abuse of discretion by reducing penalty by 30
15 percent). Thus, Plaintiffs believe that the real value of the unpaid wage penalties are \$652,400
16 (\$4,660,000 x .2 [chances of success] x .7 [court discretion] = \$652,400).

17 b. Meal period violations

18 Plaintiffs further allege that Defendant failed to provide Plaintiffs and the other aggrieved
19 employees with a duty-free 30-minute meal period for every five hours of work as is required by
20 Labor Code § 512 and the applicable IWC Wage Order(s) and in violation of *Brinker Restaurant*
21 *Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). Failure to provide a meal in accordance with
22 the applicable Wage Order(s) results in payment by the employer of one additional hour of pay at
23 the employee's regular rate of pay for each workday that the rest or meal period is not provided.
24 (Labor Code § 226.7.)

25 In *Brinker, supra*, the California Supreme Court held that "under ... Labor Code § 512,
26 subdivision (a), an employer must relieve the employee of all duty for the designated period, but
27 need not ensure that the employee does no work" during the meal period. *Id.* at 1034. However,
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1 “...an employer may not undermine a formal policy of providing meal breaks by pressuring
2 employees to perform their duties in ways that omit breaks. *Cicairos v. Summit Logistics, Inc.*,
3 133 Cal.App.4th 949, 962–63 (2005); *see also Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th
4 1286, 1304–05 (2010) [proof of common scheduling policy that made taking breaks extremely
5 difficult would show violation]; *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625, 638
6 (S.D.Cal.2010) [indicating informal anti-meal-break policy "enforced through ‘ridicule’ or
7 ‘reprimand’" would be illegal].) Defendant also cannot create “incentives to forego, or otherwise
8 encourage[] the skipping of legally protected breaks.” *Brinker, supra*, 53 Cal.4th at 1040.

9 Moreover, in *Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 78 (2021), the Court held
10 that at both the class certification and summary judgment stage, when time records show short,
11 missed, and late meal periods, as they do here, there is a presumption that an employer violated
12 California’s meal period requirements. *See Donohue, supra*, 11 Cal.5th at 78 (“If time records
13 show noncompliant meal periods, then a rebuttable presumption of liability arises.”)

14 **First**, Plaintiffs contend that the dealer rotation schedules prevented Plaintiffs and other
15 dealers and floorpersons full duty-free meal periods, because a dealer could not leave his or her
16 table until a new dealer came to the table, and closed out his or her last table. Thus, the process
17 of closing down the prior table and moving to a new table took about 15-20 minutes, leaving the
18 last dealer, who was to go on break with far less than a full 30-minute duty-free meal period.

19 **Second**, even for those aggrieved employees who may have clocked out during their meal
20 periods, Plaintiffs uncovered evidence showing late and missed meal breaks, therefore creating a
21 presumption of Labor Code violations. *See Donohue, supra*, 11 Cal.5th at 78.

22 **Third**, Plaintiffs contend that Defendant fails to maintain accurate and complete
23 documentation regarding Plaintiffs’ and dealers and floorpersons’ meal periods, a prima facie
24 violation of the Wage Orders. During extensive investigation and discovery, Plaintiffs
25 discovered that Defendant’s own time records and rotation schedules are entirely inconsistent
26 and contradictory. As such, Plaintiffs rely upon the presumption that aggrieved employees were
27 not relieved of duty and no meal periods were provided. *See Brinker, supra*, 53 Cal.4th at 1053

1 (conc. opn. of Werdegarr, J.)

2 In response to such arguments, Defendant contends that it permits all aggrieved
3 employees more than 30-minute meal periods, and the aggrieved employees will be unable to
4 establish why certain aggrieved employees did not take their meal periods, and that in any event,
5 Defendant had no duty to ensure that meal periods were taken, pursuant to *Brinker, supra*.
6 Defendant further argues that individual issues will predominate because of the various scenarios
7 affecting different classes of employees working for Defendant, and Defendant's meal period
8 policy is compliant under California law. As such, Defendant claims that PAGA claims must
9 meet a manageability requirement. *See Wesson v. Staples The Office Superstore, LLC*, 68
10 Cal.App.5th 746 (2021) (holding that courts have inherent authority to ensure the manageability
11 of PAGA claims).

12 The maximum potential PAGA penalties recoverable for meal period violations, as
13 calculated by Plaintiffs' expert, is \$13,827,300. Based on the various issues raised above
14 regarding proving meal period violations, Plaintiffs believe that they have a 10% chance of
15 proving all of those penalties. Thus, Plaintiffs believe that the real value of the meal period
16 penalties are \$967,911. ($\$13,827,300 \times .1$ [chances of success] $\times .7$ [court discretion] =
17 \$967,911).

18 c. Rest period claims

19 Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and
20 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
21 each work period. The authorized rest period time shall be based on the total hours worked daily
22 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
23 a rest period need not be authorized for employees whose total daily work time is less than three
24 and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
25 there shall be no deduction from wages."

26 Section 12(B) of the IWC Wage Order(s) states: "If an employer fails to provide an
27 employee a rest period in accordance with the applicable provisions of this order, the employer
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1 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for
2 each workday that the rest period is not provided." Moreover, during rest periods, "employees
3 must not only be relieved of work duties, but also be freed from employer control over how they
4 spend their time." *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 270 (2016). Further, when
5 an employer adopts common policies that prevent employees from taking their rest breaks, it
6 presents a common factual issue by which liability may follow. *See Jaimez v. Daiohs USA, Inc.*,
7 181 Cal.App.4th 1286, 1304 (2010). Indeed, "[t]he wage orders and governing statute do not
8 countenance an employer's exerting coercion against the taking of, creating incentives to forego,
9 or otherwise encouraging the skipping of legally protected breaks." *Brinker, supra*, 53 Cal.4th at
10 1040.

11 Here, Defendant adopted an agreement which purports to provide casino dealers two 40-
12 minute meal periods if they agree to waive any and all rest periods, effectively resulting in the
13 waiver of their statutory right to take rest periods during their workday. (*See* Exhibit 4 attached
14 hereto, Casino Dealer Break Procedures ["Dealer Break Agreement"].) The plain language of
15 the Dealer Break Agreement provides that unless aggrieved employees agree to waive their rest
16 periods, they may lose their spot in the dealer rotation, and they must take substantial steps just
17 to be entitled to take their statutorily required rest periods. Plaintiffs contend that the Dealer
18 Break Agreement is coercive, especially because 99% of aggrieved employees presented with
19 the Dealer Break Agreement have waived their right to receive rest periods, and those employees
20 will testify that they believed that they had no choice but to agree to such a waiver.

21 For other aggrieved employees, Plaintiffs contend that because of the fast paced work
22 environment, that they were not authorized or permitted to take their 10 minute duty-free rest
23 periods.

24 Defendant contends that it complied with California's rest period requirements, and
25 implemented rest period policies throughout the PAGA period that comply with California law,
26 and that the Dealer Break Agreement was voluntarily entered into and dealers agreed to waive
27 their rest periods in exchange for substantially longer meal periods. For other aggrieved
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1 employees, Defendant argues that there is no way to prove, on a representative basis, that they
2 did not receive their duty-free rest periods, except on an individual basis, which would be
3 completely unmanageable.

4 Plaintiffs' damages expert calculates total penalties on the rest period claim of
5 \$13,827,300. Plaintiffs believe the dealers and floorpersons have a strong rest period claim in
6 light of the Agreement that in effect coerces them to waive their rest periods. On the other hand,
7 there is no evidence that other aggrieved employees entered into a similar agreement, and
8 Defendant has a facially valid rest period policy, and for them, there are substantial individual
9 issues relating to proving rest break violations. As such, and because of Plaintiffs' and dealers
10 and floorpersons strong rest period claims, overall Plaintiffs believe they had a 50% chance of
11 recovering all of the above penalties on the rest period claim, in the absence of other mitigating
12 factors. Given that a court has discretion regarding the amount of penalties to be assessed,
13 Plaintiffs therefore believe the real exposure of PAGA penalties on the rest period claim is
14 approximately \$4,839,555. ($\$13,827,300 \times .5$ [chances of success] $\times .7$ [court discretion] =
15 \$4,839,555.)

16 d. Failure to pay all wages on termination

17 Plaintiffs further allege that pursuant to Labor Code §203, aggrieved employees terminated
18 from Defendants' employment are entitled to a penalty pursuant to Labor Code §256, because
19 Defendant did not pay them all wages due upon separation. Such a claim is derivative, and for the
20 same reasons as stated above, Defendant contends no wages are due, and thus no penalties owed
21 under PAGA. Defendant further argues that its failure to pay wages upon separation was not
22 "willful," in that the law is uncertain as to claims asserted in this case or whether the failure to pay is
23 due to a good faith dispute. *See Barnhill v. Robert Saunders & Co.*, 125 Cal.App.3d 1, 8 (1981)
24 (employer's failure to pay is not willful if its failure is due to uncertainty in the law); *Road Sprinkler*
25 *Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.*, 102 Cal.App.4th 765, 782 (2002)
26 (willfulness not met if defendant's failure to pay a result of a "good faith mistaken belief that wages
27 are not owed"). Defendant further argues that Labor Code § 256 only applies to seasonal laborers
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1 and therefore is inapposite to the aggrieved employees in this case. *See Culley v. Lincare, Inc.*, 236
2 F.Supp.3d 1184 (E.D. Cal. 2017).

3 Plaintiffs' expert calculates PAGA penalties on this claim of \$7,032,027. Based on the
4 heightened willfulness standard, as well as the case law undermining Plaintiffs' ability to recover
5 waiting time penalties under Labor Code § 256, Plaintiffs estimate that the real exposure of this
6 claim is 5% of those total penalties. Moreover, Plaintiffs apply the same discounts as set forth
7 above in the above analysis as to the court's discretion to reduce penalties. As such, Plaintiffs
8 believe the real exposure on this claim to be \$246,121 ($\$7,032,027 \times .05$ [chances of success] $\times .7$
9 [court discretion] = \$246,121).

10 e. Improper pay stubs

11 Plaintiffs further allege that Defendants failed to provide proper pay statements that
12 complied with Labor Code § 226.

13 Plaintiffs allege similar theories of liability as above with respect to the paystub claim,
14 i.e. that the wage statements are defective because they do not reflect all wages owed, and fail to
15 show premium payments for missed meal and rest periods. *See Naranjo v. Spectrum Security*
16 *Servs., Inc.*, 13 Cal.5th 93 (2022). Plaintiffs further allege that to obtain PAGA penalties for pay
17 stub violations, a plaintiff need not satisfy the "injury" or "knowing and intentional"
18 requirements of Labor Code section 226(e)(1). *See Raines v. Coastal Pacific Food Distributors,*
19 *Inc.*, 23 Cal.App.5th 667 (2018).

20 On the other hand, Defendants argue derivative violations of Labor Code § 226 do not
21 give rise to pay stub violations upon which PAGA penalties arise. *See Maldonado v. Epsilon*
22 *Plastics, Inc.*, 22 Cal.App.5th 1308 (2018); *see also Culley v. Lincare Inc.*, 236 F.Supp.3d 1184,
23 1195-1196 (E.D. Cal. 2017). Defendants further argue that any such violations were inadvertent,
24 and therefore not actionable. *See Heritage Residential Care, Inc. v. Division of Labor Standards*
25 *Enforcement*, 192 Cal.App.4th 75 (2011).

26 Plaintiffs' expert calculates pay stub penalties to be approximately \$8,334,000. Plaintiffs
27 believe they had a 10% chance of recovering all of the potentially recoverable civil penalties.

Moreover, Plaintiffs apply the same discounts as set forth above in the analysis as to the court's discretion to reduce penalties. As such, Plaintiffs believe the real exposure on this claim to be \$583,380. ($\$8,334,000 \times .1$ [chances of success] $\times .7$ [court discretion] = \$583,380).

f. Reimbursement

Labor Code section 2802 provides, in pertinent part: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. . ."

Plaintiffs contend that Defendant required Plaintiffs to use their personal cell phones to respond to work calls and respond to text messages, and to purchase certain clothing and footwear for the purpose of performing their work duties. Defendant contends that it had a compliant reimbursement policy, and that Plaintiffs and other aggrieved employees did not have to use their phones for work purposes, and that any required clothing was usable outside of work and therefore not compensable. *See, e.g., Townley v. BJ's Restaurants, Inc.*, 37 Cal.App.5th 179 (2019).

Upon further investigation and discussions with witnesses, Plaintiffs value the reimbursement claim very low, because Plaintiffs' counsel was unable to substantiate through their investigation the cell phone reimbursement claim, and the clothing reimbursement claim is at most a one-time violation per aggrieved employee. Because there are 4,538 aggrieved employees, Plaintiffs value the reimbursement claim at no more than \$100 per aggrieved employee, or \$453,800. Because of the tenuous nature of the claim, Plaintiffs believe their likelihood of success on the claim is 10%, or at most, \$45,380.

g. Total exposure to PAGA penalties

Based upon the alleged Labor Code violations, Plaintiffs' believe the total actual PAGA exposure is approximately \$7,334,747. Based on a settlement value of \$2,400,000, this amounts to approximately 33% of the total exposure to PAGA penalties. Plaintiffs believe this to be an excellent result, given that Defendants have valid defenses to Plaintiffs' claims, and that there is

1 a substantial question as to whether a trial court will even award cumulative penalties sought by
2 Plaintiffs for alleged multiple Labor Code violations because there is no precedent for such an
3 award.² Moreover, even to the extent any violations are proven, Defendants argue that any
4 heightened penalties from subsequent violations are not warranted. *See Amaral v. Cintas Corp.*
5 *No. 2*, 163 Cal.App.4th 1157, 1208-1209 (2008) (“Until the employer has been notified that it is
6 violating a Labor Code provision. . . , the employer cannot be presumed to be aware that its
7 continuing underpayment of employees is a ‘violation’ subject to penalties”).

8 **Attorneys’ Fees and Costs**

9 25. As of the date of filing this Motion, my firm Bartz Law Group, APC has spent
10 approximately 224 hours on this action and has incurred approximately \$189,290 in fees. The
11 fees incurred were reasonable and necessary in order to prosecute this case. Plaintiffs’ counsel’s
12 billing rates of \$850 per hour are in line with other firms billing rates for similar work, and
13 generally, lower based on my collective experience and results achieved in other cases. I have
14 also exercised billing discretion throughout the prosecution of this case, by not billing for every
15 minute spent on this case, and I have carefully reviewed the bills to ensure that the fees reflect
16 only time reasonably spent. Moreover, based on my experience and understanding of defense
17 counsel’s rates in similar complex wage and hour matters, my hourly rate is commensurate with
18 them, and does not reflect the risk with this being a contingency case.

19 26. In connection with this PAGA settlement, Plaintiffs’ counsel requests attorneys’
20 fees of \$800,000, or one-third of the gross settlement amount. This amount equates to an
21 approximate 1.6 multiplier for all of Plaintiffs’ counsel’s fees, which are approximately
22 \$502,662 to date, which are inclusive of my co-counsel Shanberg Stafford LLP’s fees of over
23 \$313,000 to date (see Declaration of Ross E. Shanberg submitted concurrently herewith). The
24 multiplier requested is consistent with other multipliers given in similar wage and hour and other
25 complex litigation taken on contingency. I believe that pursuant to *Laffitte v. Robert Half Int’l,*
26 *Inc.*, 1 Cal.5th 480 (2016), the attorneys’ fees requested here are fair and reasonable in this case,
27 given the work expended and the results achieved in this case. Bartz Law Group APC has also

28 ² While there are cases allowing for the “stacking” of penalties when it comes to evaluating the
“amount in controversy” where a case has been removed to federal court (*see Schiller v. David’s*
Bridal, Inc., 2010 WL 2793650 (E.D. Cal. July 14, 2010)), it appears to be an open question
whether such “stacked” penalties may be awarded when they potentially overlap and “double
count” remedies for similar violations.

1 incurred \$5,111.36 in out of pocket costs, all of which were reasonable and necessary in
2 prosecuting this action. Attached as **Exhibit 6** is a true and correct copy of the Bartz Law
3 Group, APC's attorneys' fees to date incurred to prosecute this action. Attached as **Exhibit 7** is
4 a true and correct copy of the Bartz Law Group, APC's litigation expenses incurred in this
5 action.

6 27. Plaintiffs' counsel has also retained Rust Consulting, Inc. to administer the
7 settlement in this case. The Settlement Administrator provided a project bid of \$14,950 to
8 administer the settlement. The Settlement Administrator's bid is attached hereto as **Exhibit 8**.

9 28. My office provided notice of the proposed settlement and all documents filed in
10 support of this motion for PAGA settlement approval to the LWDA by uploading the documents
11 the California DIR/LWDA's website on the same date as the filing of the instant motion.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct. Executed on July 25, 2023, at Irvine, California.

14 //Aaron A. Bartz//
15 Aaron A. Bartz
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EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY LOS ANGELES

ANTHONY IMPERATO, an individual;
CALVIN PENG aka TZU-I PENG, an
individual, on behalf of themselves and other
aggrieved employees,

Plaintiffs,

vs.

CALIFORNIA COMMERCE CLUB, INC.,
a California corporation; and DOES 1
through 100, inclusive,

Defendants.

CASE NO. 20STCV25314
Lead Case-BC644587 [Related to
20STCV01232, 20STCV16584, 20STCV24987,
19STCV41482]

**JOINT STIPULATION OF PAGA
SETTLEMENT AND RELEASE**

JOINT STIPULATION OF SETTLEMENT AND RELEASE

This Joint Stipulation of Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiffs Anthony Imperato and Calvin (aka Tzu-I) Peng (“Plaintiffs”), and Defendant California Commerce Club, Inc. (“Defendant”) (collectively with Plaintiffs, the “Parties”).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means *Anthony Imperato et al. v. California Commerce Club, Inc.*, Los Angeles County Superior Court Case Number 20STCV25314.

2. “Attorneys’ Fees and Costs” means attorneys’ fees for Plaintiffs’ Counsel’s litigation and resolution of the Action, and their expenses and costs incurred in connection with the Action, which shall be paid from the Gross Settlement Amount. Plaintiffs’ Counsel will request attorneys’ fees not in excess of Thirty-Three and One-Third Percent (33.33%) of the Gross Settlement Amount, i.e., Eight Hundred Thousand Dollars (\$800,000.00) and the reimbursement of costs and expenses associated with Plaintiffs’ Counsel’s litigation and settlement of the Action, up to Twenty-Five Thousand Dollars (\$25,000.00), subject to the Court’s approval. Defendant has agreed not to oppose Plaintiffs’ Counsel’s request for fees and reimbursement of costs as set forth above.

3. “Plaintiffs’ Counsel” means Shanberg Stafford LLP and Bartz Law Group, APC.

4. “PAGA Member List” means a complete list of all PAGA Members that Defendant will diligently and in good faith compile from its records and provide only to the Settlement Administrator within twenty (20) calendar days after Approval of this Settlement. The PAGA Member List will be formatted in Microsoft Office Excel and will include each PAGA Member’s full name; most recent mailing address and telephone number; Social Security number; dates of employment; the number of pay periods that each PAGA Member worked during the PAGA Period.

5. “Court” means the Los Angeles Superior Court.

6. “Defendant” means Defendant California Commerce Club, Inc.

7. “Effective Date” means the date of Settlement Approval.

1 8. “Gross Settlement Amount” means the Gross Settlement Amount of Two Million Four
2 Hundred Thousand Dollars and Zero Cents (\$2,400,000.00), to be paid by Defendant in full satisfaction
3 of all Released Claims, which includes Attorneys’ Fees and Costs, the PAGA Settlement Amount, and
4 Settlement Administration Costs. In no event will Defendant be liable for more than the Gross
5 Settlement Amount except as otherwise explicitly set forth herein. There will be no reversion of the
6 Gross Settlement Amount to Defendant.

7 9. “Individual Settlement Payment” means each PAGA Member’s respective share of the
8 Net Settlement Fund, after payment to the Labor and Workforce Development Agency (“LWDA”) of
9 75% of the Net Settlement Fund.

10 10. “Net Settlement Fund” means the portion of the Gross Settlement Amount remaining
11 after deducting the Attorneys’ Fees and Costs and Settlement Administration Costs. The Net Settlement
12 Fund will be distributed to the LWDA and PAGA Members. There will be no reversion of the Net
13 Settlement Fund to Defendant.

14 11. “Settlement Cover Letter” means a letter, substantially in the form attached as Exhibit A,
15 and each PAGA Member’s Individual Settlement Payment.

16 12. “PAGA Members” consist of the following two groups of employees:

17 a. The “Dealer/Floorperson Group” includes all current and former non-exempt
18 dealers and floorpersons of Defendant during the PAGA Period. Defendant represents that there
19 are approximately 2,016 individuals in the Dealer/Floorperson Group.

20 b. The “Non-Exempt Employee Group” includes all current and former non-
21 exempt employees of Defendant excluding the “Dealer/Floorperson Group” during the PAGA
22 Period. Defendant represents that there are approximately 2,249 individuals in the Non-Exempt
23 Employee Group.

24 13. “PAGA Period” means the period from April 6, 2019 to the date of full execution of this
25 Agreement.

26 14. “Parties” means Plaintiffs and Defendant collectively.

27 15. “Plaintiffs” means Plaintiffs Anthony Imperato and Calvin (aka Tzu-I) Peng.

28 16. “Approval” means the date on which the Court enters an order granting approval of the

1 Settlement Agreement.

2 17. “Released Claims” means all claims, rights, demands, and liabilities for civil penalties
3 pursuant to the Private Attorneys General Act (Labor Code section 2699, *et seq.*) for alleged violations of
4 the California Labor Code, arising at any time during the PAGA Period for the claims brought by
5 Plaintiffs in the Action or that could have been brought against Released Parties in the Action based on
6 the facts or theories alleged in Plaintiffs’ PAGA letters (including their letters dated April 29, 2020 and
7 May 8, 2023) or the Action. This includes any claims for civil penalties under Labor Code section 2699.

8 18. “Released Parties” means Defendant California Commerce Club, Inc., its current and
9 former parent, subsidiaries and/or related companies, affiliated and related corporations and other
10 entities, their successors and assigns, and all of its current and former owners, shareholders, directors,
11 officers, partners, principals, managers, members, employees, agents, attorneys, representatives, firms,
12 associations, partnerships, joint ventures, and entities, and their agents, guardians, successors, assigns,
13 heirs, executors, and administrators.

14 19. “Settlement Administration Costs” means the costs payable from the Gross Settlement
15 Amount to the Settlement Administrator for administering this Settlement, including, but not limited to,
16 printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross
17 Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The
18 Settlement Administration Costs will be paid from the Gross Settlement Amount, including, if necessary,
19 any such costs in excess of the amount represented by the Settlement Administrator as being the
20 maximum costs necessary to administer the Settlement. The Settlement Administration Costs shall not
21 exceed Fifteen Thousand Dollars (\$15,000.00).

22 20. “Settlement Administrator” means Rust Consulting, Inc., or any other third-party
23 settlement administrator agreed to by the Parties and approved by the Court for the purposes of
24 administering this Settlement. The Parties each represent that they do not have any financial interest in
25 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that
26 could create a conflict of interest.

27 21. “Settlement Check” means the checks that will be issued to each PAGA Member
28 pursuant to this Agreement.

TERMS OF AGREEMENT

The Plaintiffs and Defendants agree as follows:

22. Amended PAGA Notice and Pleading. For settlement purposes, Plaintiffs will seek leave to amend the complaint in the Action in the form attached hereto as Exhibit B, to add PAGA theories related to reimbursement and timely payment of wages (pursuant to Labor Code section 204) as set forth in their May 8, 2023 PAGA letter. Plaintiffs will seek leave to amend their pleadings within seventy-five (75) calendar days of the full execution of this Agreement. The granting of leave to file the amended complaint in the form attached hereto as Exhibit B and the actual filing of the amended complaint in that form are a condition precedent to seeking Court approval of this Agreement and a condition precedent to any payment obligations by Defendant under this Agreement. Should the Court deny the amended pleading, or should Plaintiffs fail to amend the complaint, the Parties will meet and confer in good faith as to possible next steps, but Defendant will not be required to abide by the terms of the Agreement.

23. Funding of the Gross Settlement Amount. Defendant will make a one-time deposit of the Gross Settlement Amount of Two Million Four Hundred Thousand Dollars and Zero Cents (\$2,400,000.00) into a Qualified Settlement Account to be established by the Settlement Administrator. After the Effective Date, the Gross Settlement Amount will be used for: (i) Individual Settlement Payments; (ii) the Labor and Workforce Development Agency Payment; (iii) Attorneys' Fees and Costs; and (iv) Settlement Administration Costs. Defendants will deposit the Gross Settlement Amount within fifteen (15) calendar days of the Effective Date ("Funding Date").

24. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments from the Gross Settlement Amount, which shall not exceed Fifteen Thousand Dollars (\$15,000.00). These costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of IRS Form 1099s, distributing Settlement Cover Letter, calculating and distributing the Gross Settlement Amount, and providing necessary reports and declarations.

25. PAGA Settlement Amount. Pursuant to PAGA, Seventy-Five Percent (75%) of the Net

Settlement Amount will be paid to the LWDA and Twenty-Five Percent (25%) will be paid to PAGA Members in proportion to the number of pay periods worked during the PAGA Period.

26. Notice to the LWDA. The Parties' settlement is expressly conditioned upon the Court's approval of the Settlement. Plaintiffs shall be responsible for timely providing notice to the LWDA and providing Defendant's counsel confirmation of same, under California Labor Code § 2699(l)(2), and submission of any judgment within 10 days after entry of same, under California Labor Code § 2699(l)(3).

27. No Right to Exclusion or Objections by Representative Action Members. Because this settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as proxies and as a Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no PAGA Member has the right to exclude himself or herself from the Settlement. PAGA Members will be bound by the terms of the Settlement Agreement, upon its approval by the Court, regardless of whether he or she cashes any payment received as a result of this Settlement.

28. Net Settlement Fund. The entire Net Settlement Fund will be distributed to the LWDA and PAGA Members. No portion of the Net Settlement Fund will revert to or be retained by Defendant.

29. Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned as follows:

a. Seventy percent (70%) of the Individual Settlement Payments from the Net Settlement Fund shall be designated the "Dealer/Floorperson Amount" and shall be distributed pro rata among members of the Dealer/Floorperson Group, based on the number of pay periods worked by each Dealer/Floorperson Group member during the PAGA Period.

b. Thirty percent (30%) of the Individual Settlement Payments from the Net Settlement Fund shall be designated the "Non-Exempt Employee Amount" and shall be distributed pro rata among members of the Non-Exempt Employee Group, based on the number of pay periods worked by each Non-Exempt Employee Group member during the PAGA Period.

c. The entire PAGA Fund will be disbursed to all PAGA Members.

30. Administration Process. The Parties agree to cooperate in the administration of the

1 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in
2 administration of the Settlement.

3 31. Delivery of the PAGA Member List. Within twenty (20) calendar days of Approval,
4 Defendant will provide the PAGA Member List to the Settlement Administrator.

5 32. Confirmation of Contact Information in the PAGA Member List. Prior to mailing, the
6 Settlement Administrator will perform a search based on the National Change of Address Database for
7 information to update and correct for any known or identifiable address changes. Any Settlement Cover
8 Letter returned to the Settlement Administrator as non-deliverable will be sent promptly via regular First-
9 Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate
10 the date of such re-mailing on the Settlement Cover Letter. If no forwarding address is provided, the
11 Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or
12 other search using the name, address and/or Social Security number of the PAGA Member involved, and
13 will then perform a single re-mailing.

14 33. Settlement Cover Letter. All PAGA Members will be mailed, at their last known
15 mailing address identified in the PAGA Member List, a Settlement Each PAGA Member's Individual
16 Settlement Payment will be enclosed with each PAGA Member's respective Settlement Cover Letter.

17 34. Releases by PAGA Members. Upon the Funding Date, and except as to such rights or
18 claims as may be created by this Settlement Agreement, each PAGA Member, together and individually,
19 on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys,
20 shall, by operation of the Court's Order approving this settlement, fully and forever release and discharge
21 all of the Released Parties, or any of them, from each of the Released Claims during the PAGA Period.

22 35. Distribution Timing of Individual Settlement Payments. Within twenty (20) calendar
23 days of the Funding Date, the Settlement Administrator will issue payments, enclosed with the
24 Settlement Cover Letter, to: (i) PAGA Members; (ii) the Labor and Workforce Development Agency;
25 and (iii) Plaintiffs' Counsel. The Settlement Administrator will also issue a payment to itself for Court-
26 approved services performed in connection with the Settlement.

27 36. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment
28 checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for

1 more than one hundred and eighty (180) calendar days after issuance will be tendered to Bet Tzedek
2 Legal Services. The Parties do not have any interest or involvement in the governance or administration
3 of Bet Tzedek Legal Services that would in any way create a conflict of interest.

4 37. Certification of Completion. Upon completion of administration of the Settlement, the
5 Settlement Administrator will provide a written declaration under oath to certify such completion to
6 counsel for all Parties, and the Court, if necessary.

7 38. Treatment of Individual Settlement Payments. All Individual Settlement Payments will
8 be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

9 39. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
10 will be responsible for issuing to PAGA Members and Plaintiffs' Counsel any 1099, or other tax forms
11 as may be required by law for all amounts paid pursuant to this Settlement.

12 40. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect
13 of the payments called for hereunder, and PAGA Members are not relying on any statement,
14 representation, or calculation by Defendant or by the Settlement Administrator in this regard.

15 41. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
16 OF THIS SECTION, (THE "ACKNOWLEDGING PARTY") AND EACH PARTY TO THIS
17 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, (AN "OTHER PARTY")
18 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
19 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
20 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
21 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED
22 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
23 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
24 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
25 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
26 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
27 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
28 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY

1 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
2 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
3 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
4 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
5 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
6 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
7 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
8 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
9 AGREEMENT.

10 42. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
11 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
12 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
13 action or right herein released and discharged.

14 43. Nullification of Settlement Agreement. In the event that the Court does not finally
15 approve the Settlement as provided herein, then this Settlement Agreement, and any documents
16 generated to bring it into effect, will be null and void. Any order or judgment entered by the Court in
17 furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

18 44. Approval Hearing. The Parties recognize in accordance with Labor Code §2699(1)(2)
19 that Court approval is required in the event of any settlement of a PAGA action. Within fifteen (15)
20 calendar days of Plaintiffs' filing an amended Complaint, Plaintiffs shall file a motion to the Settlement
21 Court identifying the key terms of the Settlement and requesting that the Court approve the PAGA
22 Penalties provided for in this Settlement Agreement ("Approval Motion"). The Parties agree to work
23 diligently and cooperatively to have this Settlement presented to the Court for approval, and Plaintiffs
24 shall provide for review and input the Approval Motion to Defendant at least seven (7) calendar days
25 prior to filing the Approval Motion. The Approval Motion submitted to the Settlement Court shall
26 request the entry of an order approving the Settlement Amount provided for in this Settlement.

27 45. Judgment and Continued Jurisdiction. Upon approval of the Settlement by the Court,
28 the Parties will present the Judgment to the Court for its approval. After entry of the Judgment, the Court

1 will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
2 of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment
3 matters as may be appropriate under court rules or as set forth in this Settlement Agreement. A copy of
4 the Judgment will be posted to the Settlement Administrator's website.

5 46. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the
6 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
7 herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

8 47. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
9 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
10 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section
11 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is
12 to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and
13 the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or
14 contradict the terms of this Settlement Agreement.

15 48. Amendment or Modification. No amendment, change, or modification to this Settlement
16 Agreement will be valid unless in writing and signed, either by all the Parties or all their counsel in this
17 Action.

18 49. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
19 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
20 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
21 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
22 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
23 other and use their best efforts to affect the implementation of the Settlement. If the Parties are unable to
24 reach agreement on the form or content of any document needed to implement the Settlement, or on any
25 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
26 may seek the assistance of the Court to resolve such disagreement.

27 50. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
28 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

1 51. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
2 will be governed by and interpreted according to the laws of the State of California.

3 52. Execution and Counterparts. This Settlement Agreement is subject only to the execution
4 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
5 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned
6 copies of the signature page, will be deemed to be one and the same instrument.

7 53. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
8 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this
9 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account
10 all relevant factors, present and potential. The Parties further acknowledge that they are each represented
11 by competent counsel and that they have had an opportunity to consult with their counsel regarding the
12 fairness and reasonableness of this Settlement.

13 54. Invalidity of Any Provision. Before declaring any provision of this Settlement
14 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
15 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
16 valid and enforceable.

17 55. Waiver of Certain Appeals. The Parties agree to waive appeals in the event that this
18 Settlement is approved.

19 56. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute
20 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In
21 entering into this Settlement, Defendant does not admit, and specifically deny, that it violated any
22 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or
23 any other applicable laws, regulations or legal requirements; breached any contract; violated or breached
24 any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
25 respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any
26 of the negotiations connected with it, will be construed as an admission or concession by Defendant of
27 any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to
28 enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be

1 offered or received as evidence in any action or proceeding to establish any liability or admission on the
2 part of Defendant or to establish the existence of any condition constituting a violation of, or a non-
3 compliance with, federal, state, local or other applicable law.

4 57. No Public Comment: The Parties and their counsel agree that they will not issue any
5 press releases, initiate any contact with the press, respond to any press inquiry, or have any
6 communication with the press about the fact, amount or terms of the Settlement.

7 58. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
8 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
9 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

10 59. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
11 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
12 more strictly against one party than another merely by virtue of the fact that it may have been prepared
13 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
14 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

15 60. Representation By Counsel. The Parties acknowledge that they have been represented
16 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
17 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,
18 Plaintiff and Plaintiffs' Counsel warrant and represent that there are no liens on the Settlement
19 Agreement.

20 61. All Terms Subject to Final Court Approval. All amounts and procedures described in
21 this Settlement Agreement herein will be subject to Court approval.

22 62. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
23 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
24 Settlement Agreement.

25 63. Binding Agreement. The Parties warrant that they understand and have full authority to
26 enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully
27 enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in
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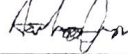
any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 6/5/2023

DocuSigned by:



B5D36EE8FDD014A5

Anthony Imperato

PLAINTIFF

Dated: 6/5/2023

DocuSigned by:



C5FD60184FF5485

Calvin Peng aka Tzu-I Peng

DEFENDANT

Dated: June 15, 2023



California Commerce Club, Inc.

By its: General Counsel

APPROVED AS TO FORM

SHANBERG STAFFORD LLP
BARTZ LAW GROUP, APC

Dated: 6/5/2023

DocuSigned by:



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By: Ross E. Shanberg
Aaron A. Bartz

Attorneys for Plaintiffs

GREENBERG TRAURIG, LLP

Dated: JUNE 15, 2023

By: 

Mark D. Kemple

Ashley Farrell Pickett

Matthew J. Weber

Attorneys for Defendant

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EXHIBIT A
(Notice of PAGA Settlement)

1 [Mailing Date]

2 **NOTICE OF SETTLEMENT**

3 *Re: Anthony Imperato et al. v. California Commerce Club, Inc.*, Los Angeles County
4 Superior Court Case Number 20STCV25314

5 [Claims Admin Info]

6 Dear Sir or Madam:

7 The enclosed payment is made to you pursuant to a court-approved settlement between Plaintiffs
8 Anthony Imperato and Calvin (aka Tzu-I) Peng (“Plaintiffs”), on behalf of themselves and the
9 people of the State of California and as “aggrieved employees” under the Labor Code Private
10 Attorneys General Act of 2004, section 2698, et seq. (“PAGA”), and Defendant California
Commerce Club, Inc. (“Defendant”), in the above-referenced matters (the “Actions”) in which
Plaintiffs made claims against Defendant.

11 Defendant denies any liability or wrongdoing of any kind and no finding of liability has been
12 made by the court. However, the Parties have reached a settlement, which has been approved by
13 the Court, and whereby all current and former non-exempt California employees employed by
14 Defendant at any time during the PAGA Period (“PAGA Members”) will receive a portion of the
15 settlement in exchange for a release of all claims that could be made pursuant to the Private
16 Attorneys General Act (Labor Code section 2699, *et seq.*) for alleged violations of the California
17 Labor Code, arising at any time during the PAGA Period for the claims brought by Plaintiffs in
18 the Action or that could have been brought against Released Parties in the Action based on the
19 facts or theories alleged in Plaintiffs’ PAGA letters (including their letters dated April 29, 2020
20 and May 8, 2023) or the Action, between April 6, 2019 and [settlement execution date]. **No wage
21 claims are released by this settlement.** There is no opportunity to opt-out of this PAGA
22 settlement. The enclosed check represents your portion of the settlement recovery. Your enclosed
23 check is valid for 180 days from the date of issuance. We suggest you cash it promptly. For tax
24 purposes, an IRS Form 1099 will be issued to you for this payment.
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EXHIBIT B
(Plaintiffs’ Proposed First Amended Complaint)

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Attorneys for Plaintiffs ANTHONY IMPERATO and CALVIN PENG aka TZU-I PENG, on behalf of themselves and all other aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ANTHONY IMPERATO, an
individual; CALVIN PENG aka TZU-I
PENG, an individual, on behalf of
themselves and other aggrieved
employees,

Plaintiffs,

vs.

CALIFORNIA COMMERCE CLUB,
INC. a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO. 20STCV25314

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL ACT
("PAGA") [California
Labor Code §§2698, et seq.]**

DEMAND FOR JURY TRIAL

Plaintiffs ANTHONY IMPERATO ("Imperato") and CALVIN PENG aka TZU-I PENG ("Peng"), on behalf of themselves and all other aggrieved employees (hereinafter collectively "Plaintiffs"), and as private attorneys general, hereby assert representative claims against Defendant CALIFORNIA COMMERCE CLUB, INC. ("Commerce Casino"), and DOES 1 through 100 (hereinafter collectively "Defendants"), and hereby complain and allege as follows:

I. INTRODUCTION

1. This lawsuit is directed at Defendants' California state law violations of wage and hour laws -- it is a representative action seeking recovery of civil penalties under the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code ("Labor Code") §§2698, et seq. PAGA permits "aggrieved employees" to bring a lawsuit as a representative action on behalf of themselves and other aggrieved current and former employees to recover civil penalties for Defendant's violations of the Labor Code, including, but not limited to Labor Code §§200, et seq., 500, et seq., 1174, 1194, 1198, 2699, and all applicable Industrial Welfare Commission ("IWC") Orders, including IWC Wage Order 10-2001.

2. This action is brought as a representative action on behalf of all current and former aggrieved employees who were employed by Defendants in California and who work or worked as non-exempt hourly employees during the applicable time period and who were subject to Defendants' meal period policy, rest period policy, tip pooling policy, compensation policy, overtime policy, final payment of wages policy, and related wage and hour policies and/or practices.

3. As set forth in detail below, Defendants consistently implemented, maintained and enforced unlawful policies and practices regarding Plaintiffs in violation of California's wage and hour laws, which led to Defendants' violations of Labor Code §§ 201-203, 226.7, 351, 510, 512, 1174, 1194, 1198, 2698, et seq. and IWC Wage Order 10-2001 due to Defendants': (1) failure to pay all wages, including minimum wages, straight time wages, and overtime compensation; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods or provide compensation in lieu thereof; (4) failure to timely pay all wages owed; and (5) failure to properly maintain and submit accurate itemized wage statements; and (6) illegal tip pooling scheme. Such policies and practices, as described herein, violate the Labor Code, and therefore trigger civil penalties under Labor Code §2699. Therefore, Plaintiffs, on behalf of themselves and all aggrieved employees, bring this representative PAGA action pursuant to the provisions of the Labor Code as referenced herein. Plaintiffs seek recovery of civil penalties, reasonable attorney's fees and costs, and other relief as deemed proper.

4. The acts complained of herein occurred, occur and will occur, at least in part, within the statute of limitations under the PAGA statute, or within the statute of limitations of any other Complaint or other filing which has tolled the claims asserted herein, up to and through the time of trial for this matter.

II. THE PARTIES

5. Plaintiff Imperato is, and was at all relevant times mentioned herein, an individual residing within the State of California. Plaintiff Imperato worked for Defendants as a poker dealer between April 2017 and January 2020.

6. Plaintiff Peng is, and was at all relevant times mentioned herein, an individual residing within the State of California. Plaintiff Peng worked for Defendants as a floorman between approximately 1991 and May 2019.

7. Defendant Commerce Casino is and has been, at all relevant times herein, a corporation organized and existing under the laws of the State of California, with its principal place of business in the State of California, and doing business within the County of Los Angeles, in the State of California.

8. Defendants DOES 1 through 100, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiffs. When their true names and capacities are ascertained, Plaintiffs will amend their complaint by inserting their true names and capacities herein. Plaintiffs are informed and believe, and based thereon allege that each of the fictitiously named Defendants are responsible in some manner for the occurrences herein alleged and that Plaintiffs' damages as herein alleged were proximately caused by those Defendants.

9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude and/or employment.

10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common

enterprise, and were acting within the course and scope of, and in pursuit of a joint venture, partnership and common enterprise.

11. Each reference in this complaint to “Defendant,” “Defendants,” or a specifically named Defendant refers also to all Defendants sued under fictitious names.

12. Plaintiffs are informed and believe, and thereon allege that at all relevant times herein, Defendants maintained offices, employed persons, conducted business in, and/or engaged in illegal employment practices and policies in the State of California, County of Los Angeles.

III. JURISDICTION

13. The California Superior Court has jurisdiction in this matter due to Defendants’ aforementioned violations of California statutory law and/or related common law principles.

14. The California Superior Court also has jurisdiction in this matter because both the relief sought herein exceeds the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

15. The California Superior Court also has jurisdiction in this matter because Defendants’ corporate officers direct, control, and coordinate Defendants’ activities from Defendants’ offices located in the State of California.

16. The California Superior Court also has jurisdiction in this matter because during their employment with Defendants, Plaintiffs herein were all California citizens and Defendants have owned and operated a casino and hotel within California. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law.

IV. VENUE

17. Venue in Los Angeles County is proper in this matter as Defendants’ liabilities and obligations arose in Los Angeles County, including Defendants’ statutory obligations to pay Plaintiffs wages for all hours worked, overtime wages, straight time wages, minimum wages, timely wages upon termination and/or resignation, provide legally compliant meal and rest periods, maintain and submit accurate wage statements, and other obligations as described herein.

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19. Plaintiffs and the aggrieved employees who Plaintiffs seek to represent worked for Defendants as non-exempt employees in California, during the applicable time period.

21. Defendants also failed to provide Plaintiffs with meal and rest periods under California law. Defendants failed to adopt, implement, and enforce a uniform meal period policy that complied with California law. For example, Defendants required Plaintiffs to take meal periods after they worked for more than five hours, and Defendants failed to provide Plaintiffs with their full 30 minute duty-free meal period based on numerous factors, including but not limited to the fact that the amount of work required of Plaintiffs by Defendants necessitated that Plaintiffs take their meal periods late, return early from their meal periods, and/or interrupt their meal periods. Moreover, as a matter of policy and/or practice, Defendants failed to pay Plaintiffs one hour of pay at their regular rate of pay for each workday that a 30 minute duty-free meal period was not provided. Defendants also failed to keep accurate records of meal breaks taken by Plaintiffs in violation of Labor Code §1174 and IWC Wage Order 10-2001.

- 5 -

1 failing and refusing to provide a rest period for any hours in excess of 10 per day. As a result of
2 Defendants' lack of any meal or rest break policy that complies with California law, Defendants
3 have violated Labor Code §§512 and 226.7 and the IWC Wage Order 10-2001, among other
4 things.

5 23. Defendants further engaged in an illegal tip pooling scheme that violates Labor
6 Code § 351, by disgorging tips from Plaintiffs and other aggrieved employees every hour of
7 work, regardless of whether Plaintiffs ever receive tips. Defendants further unlawfully includes
8 non-service workers within the tip pooling scheme, thus depriving Plaintiffs and other aggrieved
9 employees of all tips owed to them. Defendants also adopted and implemented a policy whereby
10 Defendants agree that Plaintiffs and other aggrieved employees will not have to share tips over
11 \$15 per day, then violates the documented policy by requiring Plaintiffs and other aggrieved
12 employees to remit additional tips over and above the stated policy, in violation of Labor Code
13 §§206 and 223, among others. Defendants further fail to keep accurate records of all gratuities,
14 as required by Labor Code §353.

15 24. Defendants also deduct earned wages from Plaintiffs' and other aggrieved
16 employees' itemized wage statements in violation of Labor Code §§221 and 223. Defendants do
17 this by deducting "phantom" tips from wages that were never received by Plaintiffs and other
18 aggrieved employees, and by deducting other amounts that Plaintiffs never consented to or
19 agreed could be deducted from their wages.

20 25. Defendants also willfully failed to provide properly itemized wage statements to
21 Plaintiffs pursuant to Labor Code §226. Those violations include, but are not limited to: an
22 inaccurate showing of wages due and owing, failing to include gross wages earned as a result of
23 not showing tipped and other wages owed, failing to show all hourly rates in effect and the
24 corresponding number of hours at each hourly rate, failing to identify the name of the legal entity
25 that is the employer, and failing to maintain accurate and complete payroll and itemized wage
26 statements. The failure to provide accurate itemized wage statements violates Labor Code
27 §§226, 2699, et seq., and IWC Wage Order 10-2001.

28 26. Defendants willfully failed and refused to timely pay all compensation due and

owing to Plaintiffs whose employment was terminated during the relevant time period, by failing to pay all of Plaintiff's compensation due upon termination by failing and refusing to pay overtime and straight time wages, failing to pay Plaintiffs for time worked during meal and rest periods, failing to pay Plaintiffs for an extra hour because Defendants failed to provide compliant meal and rest periods, and by Defendants' other unlawful actions as described herein. As such, Defendants are liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code §§201, 202, and 203.

27. Labor Code § 204 requires that an employer pay employees all wages earned between certain time periods. Here, Defendants did not pay Plaintiffs all wages owed in a timely manner, thereby violating Labor Code § 204.

28. Defendants also failed to reimburse Plaintiffs for all of their necessary and reasonable expenses incurred on behalf of the Defendants. For example and without limitation, Plaintiffs were required to use their personal cell phones for business purposes, and purchase certain clothing and footwear for the purpose of performing their work duties for Defendants, but Defendants failed and refused to reimburse Plaintiffs for such expenses.

VI. PRIVATE ATTORNEYS GENERAL ACT CLAIM

29. On or about April 29, 2020, and by amendment thereafter on May 8, 2023, Plaintiffs provided written notice to the Labor and Workforce Development Agency ("LWDA") and Defendants in compliance with Labor Code §§ 2699 et seq. of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

30. The LWDA failed to respond to Plaintiff counsel's correspondence dated April 29, 2020 and May 8, 2023, and failed to notify Plaintiffs' counsel as to whether it would investigate the allegations contained therein, within 65 calendar days of the postmark date of Plaintiff' correspondence as required under Labor Code §2699.3. Plaintiffs have fully complied with the notice requirements set forth in Labor Code §2699.3 in order to commence a civil action against an employer pursuant to Labor Code §2699.

31. Defendants' failure to pay Plaintiffs for all hours worked, minimum wages,

overtime compensation, failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all wages upon termination or resignation, failure to remit all tips and/or illegal deductions of tips, and failure to provide accurate itemized wage statements, will subject Defendants to civil penalties pursuant to, without limitation, Labor Code §§ 210, 226.3, 256, 558, 1174.5, 1197.1, 1198, 2699 and IWC Wage Order 10-2001.

32. Plaintiffs are aggrieved employees as defined in Labor Code §§2699(a) and (c), and related Labor Code provisions. Plaintiffs bring the causes of action below on behalf of themselves, as private attorneys general, and in a representative capacity on behalf of other aggrieved employees, affected by the labor law violations alleged herein.

A. FAILURE TO PAY ALL WAGES AND OVERTIME COMPENSATION

33. Labor Code §1194 states that any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

34. Labor Code §1197 states that the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

35. Labor Code §510(a) and IWC Wage Order 10-2001 regulating payment of wages in the state of California, provide that eight (8) hours of labor constitutes a day's work and any work in excess of eight (8) hours in one (1) workday and any work in excess of forty (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for each employee and any work in excess of twelve (12) hours in any one workday shall be compensated at the rate of no less than twice the regular rate of pay for each employee.

36. At all relevant times, Defendants required Plaintiffs to perform work without compensation in violation of the IWC Wage Order 10-2001 and the Labor Code. Specifically, Plaintiffs were not paid for all of their hours worked, because among other things, Defendants required Plaintiffs to: (1) go through security lines after they have clocked out, (2) attend

1 mandatory meetings off the clock, and (3) park offsite and take mandatory employer shuttles to
2 work. Defendants also deducted time for meal periods that either were not provided or were
3 interrupted and therefore not duty-free, and required employees to deduct at least 30 minutes of
4 time from Plaintiffs' hours worked for each workday, despite the fact that Plaintiffs were not
5 entitled to take full and uninterrupted 30 minute meal periods. Defendants are therefore in
6 violation of Labor Code §§510 and 1194, and IWC Wage Order 10-2001.

7 37. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiffs seek recovery of
8 pre-judgment interest on all amounts recovered herein. Plaintiffs further request that this Court
9 award reasonable attorneys' fees and costs incurred in this action pursuant to Labor Code
10 §§1194(a) and/or 2699.

11 38. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
12 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
13 limited to Labor Code §§558, 1197.1, and 2699(f). Plaintiffs seek only to recover the civil
14 penalties provided for in §§558(a) and 1197.1 for the violations alleged herein, and does not seek
15 to recover underpaid wages.

16 **B. MEAL PERIODS (Labor Code §§226.7 and 512)**

17 39. Labor Code §512 and IWC Wage Order 10-2001 state that an employer may not
18 employ an employee for a work period of more than five (5) hours per day without providing the
19 employee a meal period of not less than 30 minutes, and an employer may not employ an
20 employee for a work period of more than 10 hours per day without providing the employee with
21 a second meal period of not less than 30 minutes. Wage Order 10-2001 states that unless the
22 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
23 considered an "on duty" meal period and counted as time worked. Labor Code §226.7(a) further
24 states that no employer shall require any employee to work during any meal or rest period
25 mandated by an applicable order of the IWC. Moreover, an employer is prohibited from exerting
26 coercion against the taking of, creating incentives to forego, or otherwise encouraging the
27 skipping of legally protected breaks.

28 40. Plaintiffs were not provided with nor given the opportunity to take the requisite

1 meal periods before the end of the first 5 hours of work, nor were they provided with or given the
2 opportunity to take a proper second meal period during the days when they worked more than 10
3 hours in a day.

4 41. Pursuant to Labor Code §226.7(b) and IWC Wage Order 10-2001, if an employer
5 fails to provide an employee a meal period in accordance with the applicable provisions of IWC
6 Wage Order 10-2001, the employer shall pay the employee one (1) hour of pay at the employee's
7 regular rate of compensation for each workday that the meal period is not provided. As such,
8 Plaintiffs are entitled to an additional one hour's pay for each day in which Plaintiffs were not
9 provided a proper meal break under the above-described authorities.

10 42. Labor Code §558 and IWC Wage Order 10-2001 state, in pertinent part, that any
11 employer or other person acting on behalf of an employer who violates, or causes to be violated,
12 a section of any provision regulating hours and days of work in any order of the IWC shall be
13 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
14 underpaid employee for each pay period for which the employee was underpaid in addition to an
15 amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred
16 dollars (\$100) for each underpaid employee for each pay period for which the employee was
17 underpaid in addition to an amount sufficient to recover underpaid wages. Plaintiffs seek only to
18 recover the civil penalty provided for in §558(a) for the violations alleged herein, and do not
19 seek to recover underpaid wages.

20 43. Plaintiffs request that the Court award interest on all unpaid wages at the legal
21 rate specified by Civil Code §3289(b), accruing from the date the wages were due and payable
22 pursuant to Labor Code §218.6.

23 44. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
24 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
25 limited to Labor Code §§558 and 2699(f).

26 **C. REST PERIODS (Labor Code §226.7)**

27 45. IWC Wage Order 10-2001 states that every employer shall authorize and permit
28 all employees to take rest periods. The authorized rest period time shall be based on the total

1 hours worked daily at the rate of ten (10) minutes net rest time per four hours of work, or major
2 fraction thereof. An employer must provide employees with 10 minutes rest for shifts from three
3 and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours,
4 30 minutes for shifts of more than 10 hours up to 14 hours, and so on. Furthermore, Labor Code
5 §1198 provides, in pertinent part: . . . The employment of any employee for longer hours than
6 those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

7 46. Plaintiffs were not permitted to take proper rest periods and/or were required to
8 work during any “rest periods” in contravention of California law. Further, Plaintiffs and other
9 aggrieved employees were required to waive the taking of their rest breaks because of the
10 business of Defendants’ operations, and/or in the event that any rest breaks were authorized and
11 permitted, such rest breaks would be tacked onto other breaks in violation of California law.
12 Moreover, Defendants coerced Plaintiffs and other aggrieved employees not to take legally
13 mandated rest periods by criticizing, disciplining and/or reprimanding Plaintiffs and other
14 aggrieved employees who attempted to take legally required rest periods; failed to schedule rest
15 periods; and pressured Plaintiffs to remain available at their stations.

16 47. Pursuant to Labor Code §226.7(b) and IWC Wage Order 10-2001, if an employer
17 fails to provide an employee a rest period in accordance with the applicable provisions of IWC
18 Wage Order 10-2001, the employer shall pay the employee one (1) hour of pay at the employee’s
19 regular rate of compensation for each workday that the rest period is not provided.

20 48. As such, Plaintiffs are entitled to an additional one hour of pay for each day in
21 which they were not provided a proper rest period under the above-described authorities.

22 49. Plaintiffs request that the Court award interest on all unpaid wages at the legal
23 rate specified by Civil Code §3289(b), accruing from the date the wages were due and payable
24 pursuant to Labor Code §218.6.

25 50. Labor Code §558 and IWC Wage Order 10-2001 state, in pertinent part, that any
26 employer or other person acting on behalf of an employer who violates, or causes to be violated,
27 a section of any provision regulating hours and days of work in any order of the IWC shall be
28 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each

1 underpaid employee for each pay period for which the employee was underpaid in addition to an
2 amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred
3 dollars (\$100) for each underpaid employee for each pay period for which the employee was
4 underpaid in addition to an amount sufficient to recover underpaid wages. Pursuant to Labor
5 Code §§558, 1198 and 2699, and/or IWC Wage Order 10-2001, Plaintiffs are entitled to civil
6 penalties for each pay period in which Defendants underpaid their wages as set forth herein.
7 Plaintiffs seek only to recover the civil penalty provided for in §558(a) for the violations alleged
8 herein, and do not seek to recover underpaid wages.

9 51. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
10 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
11 limited to Labor Code §§558, 2699(f), and IWC Wage Order 10-2001.

12 **D. ILLEGAL TIP POOLING**

13 52. Labor Code §351 states, in relevant part: “No employer or agent shall collect,
14 take, or receive any gratuity or a part thereof that is paid, given to or left by a patron, or deduct
15 any amount from wages due an employee on account of a gratuity, or require an employee to
16 credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the
17 employee from the employer.”

18 53. Labor Code §353 provides: “Every employer shall keep accurate records of all
19 gratuities received by him, whether received directly from the employee or indirectly. . . .”

20 54. Defendants had a policy and practice of unlawfully taking tips from Plaintiffs and
21 the aggrieved employees, requiring Plaintiffs and others to remit amounts to Defendants in
22 amounts above and beyond those provided for in written employer documents, and refusing to
23 keep accurate records of gratuities, among other things.

24 55. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
25 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
26 limited to Labor Code § 2699(f).

27 **E. UNLAWFUL DEDUCTIONS**

28 56. Labor Code §221 provides: “It shall be unlawful for any employer to collect or

1 receive from any employee any part of wages theretofore paid by said employer to said
2 employee.”

3 57. Labor Code §223 provides: “Where any statute or contract requires an employer
4 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
5 purporting to pay the wage designated by statute or by contract.”

6 58. Defendants unlawfully collected, received and/or paid Plaintiffs lower wages than
7 permitted by statute and/or contract, by deducting “phantom” tips from wages that were never
8 received, deducting amounts in “arrear” that were never received, and requiring Plaintiffs and
9 other aggrieved employees to account for higher tip earnings than allowed by Defendants’
10 written policies and contracts, among other things.

11 59. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
12 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
13 limited to Labor Code §§225.5 and 2699(f).

14 **F. FAILURE TO PROPERLY MAINTAIN AND SUBMIT ACCURATE**
15 **ITEMIZED WAGE STATEMENTS (Labor Code §226)**

16 60. Labor Code §§226, 1174, and/or IWC Wage Order 10-2001 require employers to
17 maintain and provide its employees accurate time and employment records, as well as itemized
18 wage statements showing, among other things, gross wages earned, the total hours worked by the
19 employee, all deductions, net wages earned, all applicable hourly rates in effect during the pay
20 period and the corresponding number of hours worked at each hourly rate by the employee.
21 Furthermore, Wage Order 10-2001 and Labor Code §226 requires every employer to keep
22 accurate information with respect to each employee, including: (1) the employee’s full name,
23 home address, occupation, social security number, employee’s date of birth, and time records
24 showing when the employee begins and ends each work period; (2) an employee’s meal periods;
25 (3) total wages paid each payroll period; and (4) total hours worked during the payroll period and
26 applicable rates of pay.

27 61. Defendants failed to properly maintain itemized wage statements in that, among
28 other things, the wage statements provided do not set forth the accurate number of hours worked,

1 correct rates of pay, all overtime compensation, meal periods, premium pay, proper deductions,
2 and other related information required by California law. In addition, in implementing their
3 illegal rest period and illegal tip pooling policies and practices regarding Plaintiffs, Defendants
4 failed to record wages for rest period premiums and other wages that should have been paid to
5 Plaintiffs as required by California law. Defendants have failed to record all items delineated in
6 Labor Code §226 and the applicable IWC Wage Order, and required under Labor Code §1174.
7 Plaintiffs are informed and believe that these failures were knowing and intentional by
8 Defendants as Defendants sought to deprive Plaintiffs of their legitimate right to unpaid wages,
9 and otherwise deprive them of their proper compensation. As a result of Defendants' intentional
10 and knowing failure to maintain adequate itemized statements, Plaintiffs could not ascertain the
11 actual amount of compensation they earned and/or were entitled to, and thereby are presumed to
12 have suffered cognizable injury in the form of the accrual of unpaid wages, overtime, and
13 interest pursuant to Labor Code §226(e)(2).

14 62. Pursuant to Labor Code §226(e), an employee who suffers injury as a
15 result of an employer's knowing and intentional failure to comply with subdivision (a), is
16 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
17 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
18 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
19 is entitled to an award of costs and reasonable attorney's fees.

20 63. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
21 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
22 limited to Labor Code §§226.3, 1174.5 and 2699(f), as well as reasonable attorneys' fees and
23 costs.

24 **G. WAITING TIME PENALTIES (Labor Code §§201-203)**

25 64. Labor Code §201 states that an employer is required to provide an employee who
26 is terminated all unpaid wages immediately upon termination.

27 65. Plaintiffs are informed and believe and thereon allege that Defendants failed to
28 pay Plaintiffs all wages due and owing immediately upon termination, thereby violating Labor

1 Code §201.

2 66. Labor Code §202 states, in pertinent part, that an employer is required to provide
3 an employee who quits his or her employment all wages due and owing not later than 72 hours
4 thereafter.

5 67. Plaintiffs are informed and believe and thereon allege that Defendants failed to
6 pay Plaintiffs all wages due and owing upon voluntary resignation, thereby violating Labor Code
7 §202.

8 68. Labor Code §203 states that if an employer willfully fails to pay an employee
9 wages according to Labor Code §§201 and 202, these wages shall continue as a penalty for up to
10 a maximum of 30 days.

11 69. Defendants willfully withheld paying Plaintiffs wages thereby violating Labor
12 Code §203. As such, Defendants are required to pay Plaintiffs a 30 day wage penalty in addition
13 to all unpaid wages as described herein.

14 70. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
15 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
16 limited to Labor Code §§256 and 2699(f).

17 **H. VIOLATION OF LABOR CODE § 204**

18 71. Labor Code § 204(a) provides in pertinent part that “[a]ll wages, other than those
19 mentioned in [Labor Code] Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any
20 employment are due and payable twice during each calendar month, on days designated in
21 advance by the employer as the regular paydays. Labor performed between the 1st and 15th
22 days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the
23 month during which the labor was performed, and labor performed between the 16th and the last
24 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the
25 following month.”

26 72. Pursuant to Labor Code § 204(b)(1), moreover, “all wages earned for labor in
27 excess of the normal work period shall be paid no later than the payday for the next regular
28 payroll period.”

73. Because Defendants did not pay Plaintiffs all wages owed in a timely manner, as further described herein, Defendants have violated Labor Code § 204.

I. FAILURE TO REIMBURSE EXPENSES

74. Labor Code § 2802(a) states, in pertinent part: “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. . . .”

75. Defendants required Plaintiffs to use their personal cell phones to respond to work calls and respond to text messages, and to purchase certain clothing and footwear for the purpose of performing their work duties, but Defendants failed and refused to reimburse Plaintiffs for their reasonable and necessary business expenses.

76. Defendants’ failure to reimburse and/or indemnify Plaintiffs for these necessary expenditures constitutes a violation of California law.

77. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved employees, entitled to recover civil penalties pursuant to the Labor Code, including but not limited to Labor Code § 2699(f).

J. ALL CLAIMS

78. Pursuant to Labor Code §2699, Plaintiffs seek to recover civil penalties, as otherwise provided by statute and wage order, for which Defendants are liable as a result of their violations of the Labor Code and applicable wage order(s) in an amount to be proven at trial. These penalties include, but are not limited to, those provided by Labor Code §§210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, and 2699. Plaintiffs further seek an award of reasonable attorneys’ fees and costs pursuant to the Labor Code §2699(g)(1) and any other applicable statute.

WHEREFORE, Plaintiffs pray:

a. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely independent and apart from other penalties in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay

1 period for each violation, and \$200 for each aggrieved employee per pay period for each
2 subsequent violation;

3 b. For civil penalties pursuant to Labor Code §558, as follows:

4 i. For any initial violation, fifty dollars (\$50) for each aggrieved underpaid
5 employee for each pay period for which the employee was underpaid;

6 ii. For each subsequent violation, one hundred dollars (\$100) for each
7 aggrieved underpaid employee for each pay period for which the
8 employee was underpaid;

9 c. For civil penalties pursuant to Labor Code §1197.1, as follows:

10 i. For any initial violation that is intentionally committed, one hundred
11 dollars (\$100) for each underpaid employee for each pay period for which
12 the employee is underpaid;

13 ii. For each subsequent violation for the same offense, two hundred fifty
14 dollars (\$250) for each aggrieved underpaid employee for each pay period
15 for which the employee was underpaid regardless of whether the initial
16 violation is intentionally committed;

17 d. For civil penalties per Labor Code §225.5 in the amount of \$100 for each failure
18 to pay each employee, and \$200 for each subsequent failure to pay each
19 employee, plus 25 percent of the amount unlawfully withheld.

20 e. For civil penalties per Labor Code §226.3 in the amount of \$250 for each
21 aggrieved employee per pay period for each violation, and \$1,000 for each
22 aggrieved employee per pay period for each subsequent violation;

23 f. For civil penalties per Labor Code §1174.5 in the amount of \$500 for each willful
24 failure to maintain records as required by Labor Code §1174(c).

25 g. For civil penalties per Labor Code §256 in the amount of one day of pay, at the
26 same rate, for each day that an aggrieved employee was paid late, at the time of
27 termination, until payment was/is made, up to a maximum of thirty (30) days;

28 h. For civil penalties per Labor Code §210 in the amount of \$100 for each failure to

1 pay each employee, and for each subsequent violation, or any willful or
2 intentional violation, \$200 for each failure to pay each employee, plus 25 percent
3 of the amount unlawfully withheld.

4 i. For reasonable attorneys' fees and costs incurred; and

5 j. For such relief as this Court may deem just and proper.

6
7 Dated: June 1, 2023

SHANBERG STAFFORD LLP
BARTZ LAW GROUP APC

8
9 By: /s/ Ross E. Shanberg

ROSS E. SHANBERG

10 AARON A. BARTZ

11 Attorneys for Plaintiffs ANTHONY IMPERATO
12 and CALVIN PENG aka TZU-I PENG, on behalf
13 of themselves and all other aggrieved employees
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DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all issues triable to a jury.

Dated: June 1, 2023

SHANBERG STAFFORD LLP
BARTZ LAW GROUP APC

By: /s/ Ross E. Shanberg

ROSS E. SHANBERG

AARON A. BARTZ

Attorneys for Plaintiffs ANTHONY IMPERATO
and CALVIN PENG aka TZU-I PENG, on behalf
of themselves and all other aggrieved employees

EXHIBIT 2

SHANBERG, STAFFORD & BARTZ LLP

5031 BIRCH STREET
NEWPORT BEACH, CALIFORNIA 92660

TELEPHONE (949) 205-7515
FACSIMILE (949) 205-7144
www.ssbfirm.com

April 29, 2020

Notice Via Online Submission

PAGA Administrator
California Labor and Workforce Development Agency

Via Certified Mail (Return Receipt Requested)

California Commerce Club, Inc.
Attn: Nedy Warren, Esq. – Agent for Service of Process
6131 East Telegraph Road
Commerce, California 90040

Re: *Anthony Imperato et al. v. California Commerce Club, Inc.*

Dear PAGA Administrator:

Please be advised that the law firm of Shanberg, Stafford & Bartz LLP represents Anthony Imperato (“Imperato”) and Calvin Peng aka Tzu-i Peng (“Peng”) and all other similarly situated aggrieved employees (“Claimants”) with respect to their employment with California Commerce Club, Inc. (“Employer” or “Commerce”).

Employer has committed numerous violations of the California Labor Code, including, but not limited to, sections 201, 202, 203, 204, 206, 223, 226, 226.7, 510, 512, 1174, 1194, and 1198. The facts and theories to support the alleged violations are set forth herein.

Employer owns and operates a casino, card room restaurant and hotel in Commerce, California. Claimant Imperato was employed as a poker dealer by Commerce between April 2017 and January 2020. Peng worked as a floorman for Commerce between 1991 and May 15, 2019. Claimants worked for Commerce within California and within the last year. Claimants were paid on an hourly basis and are non-exempt employees.

A. Failure to Pay All Wages

Employer regularly failed to pay Claimants all wages that they were owed, including minimum wages and overtime compensation, based upon automatic deductions of time for meal periods that Claimants were not provided, and/or meal periods were interrupted because of the demands on Claimant’s time while working for Employer. Moreover, Employer regularly required Claimants to attend meetings and work before and after clocking out, including but not limited to requiring Claimants to park offsite and take employer-mandated shuttles to work. Additionally, Employer required security checks after Claimants and others clocked out for the day, thus depriving Claimants of all pay to which they were due. As such, Employer failed to pay Claimants all wages to which they are due, including minimum wages and premium wages for all overtime hours worked, both at one and one-half times the regular rate of pay for hours in excess of 8 per day or 40 per week, and twice the amount of the regular rate of pay for hours in excess of 12 per day.

Employer's failure to pay all minimum and overtime compensation violates Labor Code §§ 510 and 1194.

Labor Code § 204(a) provides in pertinent part that "[a]ll wages, other than those mentioned in [Labor Code] Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month."

Pursuant to Labor Code § 204(b)(1), moreover, "all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period." Here, Employer did not pay Claimants all wages owed in a timely manner, thereby violating Labor Code § 204.

B. Meal Breaks

Employer adopted, implemented and enforced uniform meal period policies that are not lawful under California law. Employer is required to provide a first meal period no later than the end of the 5th hour of work, and a second meal period no later than the end of the 10th hour of work. However, Employer failed to provide proper, timely meal periods during Claimant's shifts.

Moreover, Employer required Claimants to sign meal period waivers for hours worked in excess of 10. Such waivers are given as a condition of employment, and are forced upon Claimants without their consent. As such, any such meal period waiver is invalid.

Employer failed to permit and provide Claimants: (a) a first duty-free meal period of not less than thirty minutes before working more than five hours; or (b) a second duty-free meal period of not less than thirty minutes before working more than ten hours. Employer also failed to pay Claimants one hour of pay at their regular rate of pay for each workday that a compliant meal period was not provided. As such, Employer has violated Labor Code §§ 226.7 and 512.

C. Rest Breaks

Employer failed to adopt, implement, or enforce a rest break policy that complied with California law. Claimants were either not authorized or permitted to take their rest breaks, or Employer required Claimants to waive in writing their rest breaks, or require that any rest breaks be tacked onto other breaks, in the event they were authorized. Claimants also worked in a fast-paced environment in the casino that prevented them from having the opportunity to take regular rest breaks. Employer also coerced Claimants not to take legally mandated rest periods by criticizing, disciplining and/or reprimanding employees who attempted to take legally mandated rest periods; failing to schedule rest periods; and constantly pressuring Claimants to remain available at their stations. As such, Employer failed to authorize and permit Claimants to take duty-free rest periods of 10 minutes for every four hours worked or major fraction thereof, failed to provide a second duty-free rest period of 10 minutes for shifts between 6-10 hours and failed to provide a third duty-free rest period of 10 minutes for shifts in excess of 10 hours. As a result of Employer's lack of a rest break policy that complies with California law, Employer has violated Labor Code section 226.7.

D. Illegal Tip Pooling

Employer also engages in an illegal tip pooling scheme that is violative of Labor Code section 351, whereby Employer requires Claimants to disgorge monies every hour of work towards a tip pool, regardless of whether Claimants ever receive tips at all. Employer also unlawfully includes

non-service workers within the tip pooling scheme, thereby depriving Claimants of all rightful tips owed to them. Employer further documents in writing that Claimants shall not have to share more than \$15 per day in tips, then violates its documented policies and practices by not paying the designated wage scale and taking more than permitted, in violation of Labor Code sections 206 and 223.

E. Unlawful Deductions

Employer unlawfully deducts earned wages from Claimants' pay pursuant to Labor Code sections 221, 222, and 223. Employer does this by surreptitiously deducting "phantom" tips from wages that were never received, and deducting other amounts identified as "arrearages" or related terms for which the Claimants never agreed or consented to have deducted from their wages, and for which Employer has no legal basis to make such deductions.

F. Wage Statement Violations

In conjunction with the above-referenced violations, Employer willfully failed to provide properly itemized wage statements to Claimants pursuant to Labor Code section 226. Violations include, but are not limited to: an inaccurate showing of wages due and owing, failing to include gross wages earned as a result of not showing tipped and other wages owed, failing to show all hourly rates in effect and the corresponding number of hours at each hourly rate, failing to identify the name of the legal entity that is the employer, and failing to maintain accurate payroll and itemized wage statements. The failure to provide accurate itemized wage statements violates Labor Code § 226 and 1174.

G. Waiting Time Penalties

In addition, Employer willfully failed and refused to timely pay all compensation due and owing to Claimants whose employment was terminated during the relevant time period, as required by Labor Code sections 201 and 202. Employer failed to pay all such wages due by failing to pay Claimants all such wages due and owing during and upon termination of their employment, as detailed above. As such, Employer is liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code section 203.

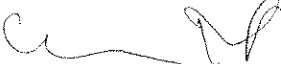
CONCLUSION

Pursuant to Labor Code Section 2699.3, the undersigned, on behalf of Claimants and other similarly situated employees, is providing written notice of the alleged Labor Code violations. Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Claimants intend to pursue their claims under PAGA in a representative action lawsuit. Please also consider this letter as providing notice on behalf of other similarly aggrieved employees working for Employer, that were subject to the same Labor Code violations described above.

Should you have any questions with respect to the above, please do not hesitate to contact the undersigned.

Very truly yours,

SHANBERG STAFFORD & BARTZ LLP



Ross E. Shanberg
Shane C. Stafford
Aaron A. Bartz

SHANBERG STAFFORD LLP

4100 NEWPORT PLACE, SUITE 820
NEWPORT BEACH, CALIFORNIA 92660

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May 8, 2023

Notice Via Online Submission

PAGA Administrator
California Labor and Workforce Development Agency

Via Certified Mail (Return Receipt Requested)

Joy Harn, Esq.
General Counsel
California Commerce Club, Inc.
6131 East Telegraph Road
Los Angeles, California 90040

Re: *Amended PAGA Letter*
 Anthony Imperato et al. v. California Commerce Club, Inc.

Dear PAGA Administrator:

Please be advised that the law firm of Shanberg Stafford LLP represents Anthony Imperato ("Imperato") and Calvin Peng aka Tzu-i Peng ("Peng") and all other similarly situated aggrieved employees ("Claimants") with respect to their employment with California Commerce Club, Inc. ("Employer" or "Commerce"). Claimants hereby amend their PAGA letter dated April 29, 2020 to include additional allegations and California Labor Code violations as detailed below.

Employer has committed numerous violations of the California Labor Code, including, but not limited to, sections 201, 202, 203, 204, 206, 221, 222, 223, 226, 226.7, 510, 512, 1174, 1194, 1198, and 2802. The facts and theories to support the alleged violations are set forth herein.

Employer owns and operates a casino, cardroom, restaurant and hotel in Commerce, California. Claimant Imperato was employed as a poker dealer by Commerce between April 2017 and January 2020. Claimant Peng worked as a floorman for Commerce between 1991 and May 15, 2019. Claimants were paid on an hourly basis and are non-exempt employees.

A. Failure to Pay All Wages

Employer regularly failed to pay Claimants all wages that they were owed, including minimum wages and overtime compensation, based upon automatic deductions of time for meal periods that Claimants were not provided, and/or meal periods were interrupted because of the demands on Claimant's time while working for Employer. Moreover, Employer regularly required Claimants to attend meetings and work before and after clocking out, including but not limited to requiring Claimants to park offsite and take employer-mandated shuttles to work. Additionally, Employer required security checks after Claimants and others clocked out for the day, thus depriving Claimants of all pay to which they were due. As such, Employer failed to pay Claimants all wages to which they are due, including minimum wages and premium wages for all overtime hours worked, both at one and one-half times the regular rate of pay for hours in excess of 8 per day or 40

per week, and twice the amount of the regular rate of pay for hours in excess of 12 per day. Employer's failure to pay all minimum and overtime compensation violates Labor Code §§ 510 and 1194.

Labor Code § 204(a) provides in pertinent part that "[a]ll wages, other than those mentioned in [Labor Code] Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month."

Pursuant to Labor Code § 204(b)(1), moreover, "all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period." Here, Employer did not pay Claimants all wages owed in a timely manner, thereby violating Labor Code § 204.

B. Meal Breaks

Employer adopted, implemented and enforced uniform meal period policies that are not lawful under California law. Employer is required to provide a first meal period no later than the end of the 5th hour of work, and a second meal period no later than the end of the 10th hour of work. However, Employer failed to provide proper, timely meal periods during Claimant's shifts.

Moreover, Employer required Claimants to sign meal period waivers for hours worked in excess of 10. Such waivers are given as a condition of employment, and are forced upon Claimants without their consent. As such, any such meal period waiver is invalid.

Employer failed to permit and provide Claimants: (a) a first duty-free meal period of not less than thirty minutes before working more than five hours; or (b) a second duty-free meal period of not less than thirty minutes before working more than ten hours. Employer also failed to pay Claimants one hour of pay at their regular rate of pay for each workday that a compliant meal period was not provided. As such, Employer has violated Labor Code §§ 226.7 and 512.

C. Rest Breaks

Employer failed to adopt, implement, or enforce a rest break policy that complied with California law. Claimants were either not authorized or permitted to take their rest breaks, or Employer required Claimants to waive in writing their rest breaks, or require that any rest breaks be tacked onto other breaks, in the event they were authorized. Claimants also worked in a fast-paced environment in the casino that prevented them from having the opportunity to take regular rest breaks. Employer also coerced Claimants not to take legally mandated rest periods by criticizing, disciplining and/or reprimanding employees who attempted to take legally mandated rest periods; failing to schedule rest periods; and constantly pressuring Claimants to remain available at their stations. As such, Employer failed to authorize and permit Claimants to take duty-free rest periods of 10 minutes for every four hours worked or major fraction thereof, failed to provide a second duty-free rest period of 10 minutes for shifts between 6-10 hours and failed to provide a third duty-free rest period of 10 minutes for shifts in excess of 10 hours. As a result of Employer's lack of a rest break policy that complies with California law, Employer has violated Labor Code section 226.7. Employer also failed to pay Claimants one hour of pay at their regular rate of pay for each workday that a rest period was not authorized or permitted. As such, Employer has violated Labor Code §§ 226.7 and 512.

D. Illegal Tip Pooling

Employer also engages in an illegal tip pooling scheme that is violative of Labor Code section 351, whereby Employer requires Claimants to disgorge monies every hour of work towards a tip pool, regardless of whether Claimants ever receive tips at all. Employer also unlawfully includes non-service workers within the tip pooling scheme, thereby depriving Claimants of all rightful tips owed to them. Employer further documents in writing that Claimants shall not have to share more than \$15 per day in tips, then violates its documented policies and practices by not paying the designated wage scale and taking more than permitted, in violation of Labor Code sections 206 and 223.

E. Unlawful Deductions

Employer unlawfully deducts earned wages from Claimants' pay pursuant to Labor Code sections 221, 222, and 223. Employer does this by surreptitiously deducting "phantom" tips from wages that were never received, and deducting other amounts identified as "arrearages" or related terms for which the Claimants never agreed or consented to have deducted from their wages, and for which Employer has no legal basis to make such deductions.

F. Wage Statement Violations

In conjunction with the above-referenced violations, Employer willfully failed to provide properly itemized wage statements to Claimants pursuant to Labor Code section 226. Violations include, but are not limited to: an inaccurate showing of wages due and owing, failing to include gross wages earned as a result of not showing tipped and other wages owed, failing to include gross wages earned as a result of not showing meal and rest period premium payments on Plaintiffs' paystubs, failing to show all hourly rates in effect and the corresponding number of hours at each hourly rate, failing to identify the name of the legal entity that is the employer, and failing to maintain accurate payroll and itemized wage statements. The failure to provide accurate itemized wage statements violates Labor Code § 226 and 1174.

G. Waiting Time Penalties

In addition, Employer willfully failed and refused to timely pay all compensation due and owing to Claimants whose employment was terminated during the relevant time period, as required by Labor Code sections 201 and 202. Employer failed to pay all such wages due by failing to pay Claimants all such wages due and owing during and upon termination of their employment, including but not limited to failing to pay overtime, straight time and minimum wages for all hours worked, failing to pay Plaintiffs for an extra hour at the regular rate of pay because Employer failed to provide compliant meal and rest periods, and as otherwise detailed above. As such, Employer is liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code section 203.

H. Failure to Reimburse Expenses

Employer also failed to reimburse Claimants for all of their necessary and reasonable expenses incurred on behalf of the Employer. For example and without limitation, Claimants were required to use their personal cell phones for business purposes, and purchase certain clothing and footwear for the purpose of performing their work duties for Employer, but Employer failed and refused to reimburse Claimants for such expenses.

CONCLUSION

Pursuant to Labor Code Section 2699.3, the undersigned, on behalf of Claimants and other similarly situated employees, is providing written notice of the alleged Labor Code violations. Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Claimants intend to pursue their claims under PAGA in a representative action lawsuit. Please also consider this letter as providing notice on behalf of other similarly aggrieved employees working for Employer, that were subject to the same Labor Code violations described above.

Should you have any questions with respect to the above, please do not hesitate to contact the undersigned.

Very truly yours,

SHANBERG STAFFORD LLP

A handwritten signature in black ink, appearing to be 'Ross E. Shanberg', written in a cursive style.

Ross E. Shanberg

EXHIBIT 3

Ross E. Shanberg, Esq. (SBN 179842)
 rshanberg@ssbfirm.com
 Shane C. Stafford, Esq. (SBN 216151)
 sstafford@ssbfirm.com
 SHANBERG STAFFORD LLP
 4100 Newport Place, Suite 820
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Aaron A. Bartz, Esq. (SBN 198722)
 aaron@bartzlawgroup.com
 BARTZ LAW GROUP, APC
 5151 California Ave., Suite 100
 Irvine, CA 92617
 Tel.: (949) 504-4413 / Fax: (949) 656-7760

Attorneys for Plaintiffs ANTHONY IMPERATO and CALVIN PENG aka TZU-I PENG, on behalf of themselves and all other aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

ANTHONY IMPERATO, an
 individual; CALVIN PENG aka TZU-I
 PENG, an individual, on behalf of
 themselves and other aggrieved
 employees,

Plaintiffs,

vs.

CALIFORNIA COMMERCE CLUB,
 INC. a California corporation; and
 DOES 1 through 100, inclusive,

Defendants.

CASE NO. 20STCV25314

**FIRST AMENDED COMPLAINT FOR
 CIVIL PENALTIES UNDER THE
 PRIVATE ATTORNEYS GENERAL ACT
 ("PAGA") [California
 Labor Code §§2698, et seq.]**

DEMAND FOR JURY TRIAL

Plaintiffs ANTHONY IMPERATO ("Imperato") and CALVIN PENG aka TZU-I PENG ("Peng"), on behalf of themselves and all other aggrieved employees (hereinafter collectively "Plaintiffs"), and as private attorneys general, hereby assert representative claims against Defendant CALIFORNIA COMMERCE CLUB, INC. ("Commerce Casino"), and DOES 1 through 100 (hereinafter collectively "Defendants"), and hereby complain and allege as follows:

I. INTRODUCTION

1. This lawsuit is directed at Defendants' California state law violations of wage and hour laws -- it is a representative action seeking recovery of civil penalties under the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code ("Labor Code") §§2698, et seq. PAGA permits "aggrieved employees" to bring a lawsuit as a representative action on behalf of themselves and other aggrieved current and former employees to recover civil penalties for Defendant's violations of the Labor Code, including, but not limited to Labor Code §§200, et seq., 500, et seq., 1174, 1194, 1198, 2699, and all applicable Industrial Welfare Commission ("IWC") Orders, including IWC Wage Order 10-2001.

2. This action is brought as a representative action on behalf of all current and former aggrieved employees who were employed by Defendants in California and who work or worked as non-exempt hourly employees during the applicable time period and who were subject to Defendants' meal period policy, rest period policy, tip pooling policy, compensation policy, overtime policy, final payment of wages policy, and related wage and hour policies and/or practices.

3. As set forth in detail below, Defendants consistently implemented, maintained and enforced unlawful policies and practices regarding Plaintiffs in violation of California's wage and hour laws, which led to Defendants' violations of Labor Code §§ 201-203, 226.7, 351, 510, 512, 1174, 1194, 1198, 2698, et seq. and IWC Wage Order 10-2001 due to Defendants': (1) failure to pay all wages, including minimum wages, straight time wages, and overtime compensation; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods or provide compensation in lieu thereof; (4) failure to timely pay all wages owed; and (5) failure to properly maintain and submit accurate itemized wage statements; and (6) illegal tip pooling scheme. Such policies and practices, as described herein, violate the Labor Code, and therefore trigger civil penalties under Labor Code §2699. Therefore, Plaintiffs, on behalf of themselves and all aggrieved employees, bring this representative PAGA action pursuant to the provisions of the Labor Code as referenced herein. Plaintiffs seek recovery of civil penalties, reasonable attorney's fees and costs, and other relief as deemed proper.

4. The acts complained of herein occurred, occur and will occur, at least in part, within the statute of limitations under the PAGA statute, or within the statute of limitations of any other Complaint or other filing which has tolled the claims asserted herein, up to and through the time of trial for this matter.

II. THE PARTIES

5. Plaintiff Imperato is, and was at all relevant times mentioned herein, an individual residing within the State of California. Plaintiff Imperato worked for Defendants as a poker dealer between April 2017 and January 2020.

6. Plaintiff Peng is, and was at all relevant times mentioned herein, an individual residing within the State of California. Plaintiff Peng worked for Defendants as a floorman between approximately 1991 and May 2019.

7. Defendant Commerce Casino is and has been, at all relevant times herein, a corporation organized and existing under the laws of the State of California, with its principal place of business in the State of California, and doing business within the County of Los Angeles, in the State of California.

8. Defendants DOES 1 through 100, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiffs. When their true names and capacities are ascertained, Plaintiffs will amend their complaint by inserting their true names and capacities herein. Plaintiffs are informed and believe, and based thereon allege that each of the fictitiously named Defendants are responsible in some manner for the occurrences herein alleged and that Plaintiffs' damages as herein alleged were proximately caused by those Defendants.

9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude and/or employment.

10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common

enterprise, and were acting within the course and scope of, and in pursuit of a joint venture, partnership and common enterprise.

11. Each reference in this complaint to “Defendant,” “Defendants,” or a specifically named Defendant refers also to all Defendants sued under fictitious names.

12. Plaintiffs are informed and believe, and thereon allege that at all relevant times herein, Defendants maintained offices, employed persons, conducted business in, and/or engaged in illegal employment practices and policies in the State of California, County of Los Angeles.

III. JURISDICTION

13. The California Superior Court has jurisdiction in this matter due to Defendants’ aforementioned violations of California statutory law and/or related common law principles.

14. The California Superior Court also has jurisdiction in this matter because both the relief sought herein exceeds the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

15. The California Superior Court also has jurisdiction in this matter because Defendants’ corporate officers direct, control, and coordinate Defendants’ activities from Defendants’ offices located in the State of California.

16. The California Superior Court also has jurisdiction in this matter because during their employment with Defendants, Plaintiffs herein were all California citizens and Defendants have owned and operated a casino and hotel within California. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law.

IV. VENUE

17. Venue in Los Angeles County is proper in this matter as Defendants’ liabilities and obligations arose in Los Angeles County, including Defendants’ statutory obligations to pay Plaintiffs wages for all hours worked, overtime wages, straight time wages, minimum wages, timely wages upon termination and/or resignation, provide legally compliant meal and rest periods, maintain and submit accurate wage statements, and other obligations as described herein.

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19. Plaintiffs and the aggrieved employees who Plaintiffs seek to represent worked for Defendants as non-exempt employees in California, during the applicable time period.

21. Defendants also failed to provide Plaintiffs with meal and rest periods under California law. Defendants failed to adopt, implement, and enforce a uniform meal period policy that complied with California law. For example, Defendants required Plaintiffs to take meal periods after they worked for more than five hours, and Defendants failed to provide Plaintiffs with their full 30 minute duty-free meal period based on numerous factors, including but not limited to the fact that the amount of work required of Plaintiffs by Defendants necessitated that Plaintiffs take their meal periods late, return early from their meal periods, and/or interrupt their meal periods. Moreover, as a matter of policy and/or practice, Defendants failed to pay Plaintiffs one hour of pay at their regular rate of pay for each workday that a 30 minute duty-free meal period was not provided. Defendants also failed to keep accurate records of meal breaks taken by Plaintiffs in violation of Labor Code §1174 and IWC Wage Order 10-2001.

- 5 -

1 failing and refusing to provide a rest period for any hours in excess of 10 per day. As a result of
2 Defendants' lack of any meal or rest break policy that complies with California law, Defendants
3 have violated Labor Code §§512 and 226.7 and the IWC Wage Order 10-2001, among other
4 things.

5 23. Defendants further engaged in an illegal tip pooling scheme that violates Labor
6 Code § 351, by disgorging tips from Plaintiffs and other aggrieved employees every hour of
7 work, regardless of whether Plaintiffs ever receive tips. Defendants further unlawfully includes
8 non-service workers within the tip pooling scheme, thus depriving Plaintiffs and other aggrieved
9 employees of all tips owed to them. Defendants also adopted and implemented a policy whereby
10 Defendants agree that Plaintiffs and other aggrieved employees will not have to share tips over
11 \$15 per day, then violates the documented policy by requiring Plaintiffs and other aggrieved
12 employees to remit additional tips over and above the stated policy, in violation of Labor Code
13 §§206 and 223, among others. Defendants further fail to keep accurate records of all gratuities,
14 as required by Labor Code §353.

15 24. Defendants also deduct earned wages from Plaintiffs' and other aggrieved
16 employees' itemized wage statements in violation of Labor Code §§221 and 223. Defendants do
17 this by deducting "phantom" tips from wages that were never received by Plaintiffs and other
18 aggrieved employees, and by deducting other amounts that Plaintiffs never consented to or
19 agreed could be deducted from their wages.

20 25. Defendants also willfully failed to provide properly itemized wage statements to
21 Plaintiffs pursuant to Labor Code §226. Those violations include, but are not limited to: an
22 inaccurate showing of wages due and owing, failing to include gross wages earned as a result of
23 not showing tipped and other wages owed, failing to show all hourly rates in effect and the
24 corresponding number of hours at each hourly rate, failing to identify the name of the legal entity
25 that is the employer, and failing to maintain accurate and complete payroll and itemized wage
26 statements. The failure to provide accurate itemized wage statements violates Labor Code
27 §§226, 2699, et seq., and IWC Wage Order 10-2001.

28 26. Defendants willfully failed and refused to timely pay all compensation due and

owing to Plaintiffs whose employment was terminated during the relevant time period, by failing to pay all of Plaintiff's compensation due upon termination by failing and refusing to pay overtime and straight time wages, failing to pay Plaintiffs for time worked during meal and rest periods, failing to pay Plaintiffs for an extra hour because Defendants failed to provide compliant meal and rest periods, and by Defendants' other unlawful actions as described herein. As such, Defendants are liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code §§201, 202, and 203.

27. Labor Code § 204 requires that an employer pay employees all wages earned between certain time periods. Here, Defendants did not pay Plaintiffs all wages owed in a timely manner, thereby violating Labor Code § 204.

28. Defendants also failed to reimburse Plaintiffs for all of their necessary and reasonable expenses incurred on behalf of the Defendants. For example and without limitation, Plaintiffs were required to use their personal cell phones for business purposes, and purchase certain clothing and footwear for the purpose of performing their work duties for Defendants, but Defendants failed and refused to reimburse Plaintiffs for such expenses.

VI. PRIVATE ATTORNEYS GENERAL ACT CLAIM

29. On or about April 29, 2020, and by amendment thereafter on May 8, 2023, Plaintiffs provided written notice to the Labor and Workforce Development Agency ("LWDA") and Defendants in compliance with Labor Code §§ 2699 et seq. of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

30. The LWDA failed to respond to Plaintiff counsel's correspondence dated April 29, 2020 and May 8, 2023, and failed to notify Plaintiffs' counsel as to whether it would investigate the allegations contained therein, within 65 calendar days of the postmark date of Plaintiff' correspondence as required under Labor Code §2699.3. Plaintiffs have fully complied with the notice requirements set forth in Labor Code §2699.3 in order to commence a civil action against an employer pursuant to Labor Code §2699.

31. Defendants' failure to pay Plaintiffs for all hours worked, minimum wages,

overtime compensation, failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all wages upon termination or resignation, failure to remit all tips and/or illegal deductions of tips, and failure to provide accurate itemized wage statements, will subject Defendants to civil penalties pursuant to, without limitation, Labor Code §§ 210, 226.3, 256, 558, 1174.5, 1197.1, 1198, 2699 and IWC Wage Order 10-2001.

32. Plaintiffs are aggrieved employees as defined in Labor Code §§2699(a) and (c), and related Labor Code provisions. Plaintiffs bring the causes of action below on behalf of themselves, as private attorneys general, and in a representative capacity on behalf of other aggrieved employees, affected by the labor law violations alleged herein.

A. FAILURE TO PAY ALL WAGES AND OVERTIME COMPENSATION

33. Labor Code §1194 states that any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

34. Labor Code §1197 states that the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

35. Labor Code §510(a) and IWC Wage Order 10-2001 regulating payment of wages in the state of California, provide that eight (8) hours of labor constitutes a day's work and any work in excess of eight (8) hours in one (1) workday and any work in excess of forty (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for each employee and any work in excess of twelve (12) hours in any one workday shall be compensated at the rate of no less than twice the regular rate of pay for each employee.

36. At all relevant times, Defendants required Plaintiffs to perform work without compensation in violation of the IWC Wage Order 10-2001 and the Labor Code. Specifically, Plaintiffs were not paid for all of their hours worked, because among other things, Defendants required Plaintiffs to: (1) go through security lines after they have clocked out, (2) attend

1 mandatory meetings off the clock, and (3) park offsite and take mandatory employer shuttles to
2 work. Defendants also deducted time for meal periods that either were not provided or were
3 interrupted and therefore not duty-free, and required employees to deduct at least 30 minutes of
4 time from Plaintiffs' hours worked for each workday, despite the fact that Plaintiffs were not
5 entitled to take full and uninterrupted 30 minute meal periods. Defendants are therefore in
6 violation of Labor Code §§510 and 1194, and IWC Wage Order 10-2001.

7 37. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiffs seek recovery of
8 pre-judgment interest on all amounts recovered herein. Plaintiffs further request that this Court
9 award reasonable attorneys' fees and costs incurred in this action pursuant to Labor Code
10 §§1194(a) and/or 2699.

11 38. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
12 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
13 limited to Labor Code §§558, 1197.1, and 2699(f). Plaintiffs seek only to recover the civil
14 penalties provided for in §§558(a) and 1197.1 for the violations alleged herein, and does not seek
15 to recover underpaid wages.

16 **B. MEAL PERIODS (Labor Code §§226.7 and 512)**

17 39. Labor Code §512 and IWC Wage Order 10-2001 state that an employer may not
18 employ an employee for a work period of more than five (5) hours per day without providing the
19 employee a meal period of not less than 30 minutes, and an employer may not employ an
20 employee for a work period of more than 10 hours per day without providing the employee with
21 a second meal period of not less than 30 minutes. Wage Order 10-2001 states that unless the
22 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
23 considered an "on duty" meal period and counted as time worked. Labor Code §226.7(a) further
24 states that no employer shall require any employee to work during any meal or rest period
25 mandated by an applicable order of the IWC. Moreover, an employer is prohibited from exerting
26 coercion against the taking of, creating incentives to forego, or otherwise encouraging the
27 skipping of legally protected breaks.

28 40. Plaintiffs were not provided with nor given the opportunity to take the requisite

1 meal periods before the end of the first 5 hours of work, nor were they provided with or given the
2 opportunity to take a proper second meal period during the days when they worked more than 10
3 hours in a day.

4 41. Pursuant to Labor Code §226.7(b) and IWC Wage Order 10-2001, if an employer
5 fails to provide an employee a meal period in accordance with the applicable provisions of IWC
6 Wage Order 10-2001, the employer shall pay the employee one (1) hour of pay at the employee's
7 regular rate of compensation for each workday that the meal period is not provided. As such,
8 Plaintiffs are entitled to an additional one hour's pay for each day in which Plaintiffs were not
9 provided a proper meal break under the above-described authorities.

10 42. Labor Code §558 and IWC Wage Order 10-2001 state, in pertinent part, that any
11 employer or other person acting on behalf of an employer who violates, or causes to be violated,
12 a section of any provision regulating hours and days of work in any order of the IWC shall be
13 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
14 underpaid employee for each pay period for which the employee was underpaid in addition to an
15 amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred
16 dollars (\$100) for each underpaid employee for each pay period for which the employee was
17 underpaid in addition to an amount sufficient to recover underpaid wages. Plaintiffs seek only to
18 recover the civil penalty provided for in §558(a) for the violations alleged herein, and do not
19 seek to recover underpaid wages.

20 43. Plaintiffs request that the Court award interest on all unpaid wages at the legal
21 rate specified by Civil Code §3289(b), accruing from the date the wages were due and payable
22 pursuant to Labor Code §218.6.

23 44. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
24 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
25 limited to Labor Code §§558 and 2699(f).

26 **C. REST PERIODS (Labor Code §226.7)**

27 45. IWC Wage Order 10-2001 states that every employer shall authorize and permit
28 all employees to take rest periods. The authorized rest period time shall be based on the total

1 hours worked daily at the rate of ten (10) minutes net rest time per four hours of work, or major
2 fraction thereof. An employer must provide employees with 10 minutes rest for shifts from three
3 and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours,
4 30 minutes for shifts of more than 10 hours up to 14 hours, and so on. Furthermore, Labor Code
5 §1198 provides, in pertinent part: . . . The employment of any employee for longer hours than
6 those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

7 46. Plaintiffs were not permitted to take proper rest periods and/or were required to
8 work during any “rest periods” in contravention of California law. Further, Plaintiffs and other
9 aggrieved employees were required to waive the taking of their rest breaks because of the
10 business of Defendants’ operations, and/or in the event that any rest breaks were authorized and
11 permitted, such rest breaks would be tacked onto other breaks in violation of California law.
12 Moreover, Defendants coerced Plaintiffs and other aggrieved employees not to take legally
13 mandated rest periods by criticizing, disciplining and/or reprimanding Plaintiffs and other
14 aggrieved employees who attempted to take legally required rest periods; failed to schedule rest
15 periods; and pressured Plaintiffs to remain available at their stations.

16 47. Pursuant to Labor Code §226.7(b) and IWC Wage Order 10-2001, if an employer
17 fails to provide an employee a rest period in accordance with the applicable provisions of IWC
18 Wage Order 10-2001, the employer shall pay the employee one (1) hour of pay at the employee’s
19 regular rate of compensation for each workday that the rest period is not provided.

20 48. As such, Plaintiffs are entitled to an additional one hour of pay for each day in
21 which they were not provided a proper rest period under the above-described authorities.

22 49. Plaintiffs request that the Court award interest on all unpaid wages at the legal
23 rate specified by Civil Code §3289(b), accruing from the date the wages were due and payable
24 pursuant to Labor Code §218.6.

25 50. Labor Code §558 and IWC Wage Order 10-2001 state, in pertinent part, that any
26 employer or other person acting on behalf of an employer who violates, or causes to be violated,
27 a section of any provision regulating hours and days of work in any order of the IWC shall be
28 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each

1 underpaid employee for each pay period for which the employee was underpaid in addition to an
2 amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred
3 dollars (\$100) for each underpaid employee for each pay period for which the employee was
4 underpaid in addition to an amount sufficient to recover underpaid wages. Pursuant to Labor
5 Code §§558, 1198 and 2699, and/or IWC Wage Order 10-2001, Plaintiffs are entitled to civil
6 penalties for each pay period in which Defendants underpaid their wages as set forth herein.
7 Plaintiffs seek only to recover the civil penalty provided for in §558(a) for the violations alleged
8 herein, and do not seek to recover underpaid wages.

9 51. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
10 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
11 limited to Labor Code §§558, 2699(f), and IWC Wage Order 10-2001.

12 **D. ILLEGAL TIP POOLING**

13 52. Labor Code §351 states, in relevant part: “No employer or agent shall collect,
14 take, or receive any gratuity or a part thereof that is paid, given to or left by a patron, or deduct
15 any amount from wages due an employee on account of a gratuity, or require an employee to
16 credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the
17 employee from the employer.”

18 53. Labor Code §353 provides: “Every employer shall keep accurate records of all
19 gratuities received by him, whether received directly from the employee or indirectly. . . .”

20 54. Defendants had a policy and practice of unlawfully taking tips from Plaintiffs and
21 the aggrieved employees, requiring Plaintiffs and others to remit amounts to Defendants in
22 amounts above and beyond those provided for in written employer documents, and refusing to
23 keep accurate records of gratuities, among other things.

24 55. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
25 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
26 limited to Labor Code § 2699(f).

27 **E. UNLAWFUL DEDUCTIONS**

28 56. Labor Code §221 provides: “It shall be unlawful for any employer to collect or

1 receive from any employee any part of wages theretofore paid by said employer to said
2 employee.”

3 57. Labor Code §223 provides: “Where any statute or contract requires an employer
4 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
5 purporting to pay the wage designated by statute or by contract.”

6 58. Defendants unlawfully collected, received and/or paid Plaintiffs lower wages than
7 permitted by statute and/or contract, by deducting “phantom” tips from wages that were never
8 received, deducting amounts in “arrears” that were never received, and requiring Plaintiffs and
9 other aggrieved employees to account for higher tip earnings than allowed by Defendants’
10 written policies and contracts, among other things.

11 59. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
12 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
13 limited to Labor Code §§225.5 and 2699(f).

14 **F. FAILURE TO PROPERLY MAINTAIN AND SUBMIT ACCURATE**
15 **ITEMIZED WAGE STATEMENTS (Labor Code §226)**

16 60. Labor Code §§226, 1174, and/or IWC Wage Order 10-2001 require employers to
17 maintain and provide its employees accurate time and employment records, as well as itemized
18 wage statements showing, among other things, gross wages earned, the total hours worked by the
19 employee, all deductions, net wages earned, all applicable hourly rates in effect during the pay
20 period and the corresponding number of hours worked at each hourly rate by the employee.
21 Furthermore, Wage Order 10-2001 and Labor Code §226 requires every employer to keep
22 accurate information with respect to each employee, including: (1) the employee’s full name,
23 home address, occupation, social security number, employee’s date of birth, and time records
24 showing when the employee begins and ends each work period; (2) an employee’s meal periods;
25 (3) total wages paid each payroll period; and (4) total hours worked during the payroll period and
26 applicable rates of pay.

27 61. Defendants failed to properly maintain itemized wage statements in that, among
28 other things, the wage statements provided do not set forth the accurate number of hours worked,

1 correct rates of pay, all overtime compensation, meal periods, premium pay, proper deductions,
2 and other related information required by California law. In addition, in implementing their
3 illegal rest period and illegal tip pooling policies and practices regarding Plaintiffs, Defendants
4 failed to record wages for rest period premiums and other wages that should have been paid to
5 Plaintiffs as required by California law. Defendants have failed to record all items delineated in
6 Labor Code §226 and the applicable IWC Wage Order, and required under Labor Code §1174.
7 Plaintiffs are informed and believe that these failures were knowing and intentional by
8 Defendants as Defendants sought to deprive Plaintiffs of their legitimate right to unpaid wages,
9 and otherwise deprive them of their proper compensation. As a result of Defendants' intentional
10 and knowing failure to maintain adequate itemized statements, Plaintiffs could not ascertain the
11 actual amount of compensation they earned and/or were entitled to, and thereby are presumed to
12 have suffered cognizable injury in the form of the accrual of unpaid wages, overtime, and
13 interest pursuant to Labor Code §226(e)(2).

14 62. Pursuant to Labor Code §226(e), an employee who suffers injury as a
15 result of an employer's knowing and intentional failure to comply with subdivision (a), is
16 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
17 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
18 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
19 is entitled to an award of costs and reasonable attorney's fees.

20 63. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
21 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
22 limited to Labor Code §§226.3, 1174.5 and 2699(f), as well as reasonable attorneys' fees and
23 costs.

24 **G. WAITING TIME PENALTIES (Labor Code §§201-203)**

25 64. Labor Code §201 states that an employer is required to provide an employee who
26 is terminated all unpaid wages immediately upon termination.

27 65. Plaintiffs are informed and believe and thereon allege that Defendants failed to
28 pay Plaintiffs all wages due and owing immediately upon termination, thereby violating Labor

1 Code §201.

2 66. Labor Code §202 states, in pertinent part, that an employer is required to provide
3 an employee who quits his or her employment all wages due and owing not later than 72 hours
4 thereafter.

5 67. Plaintiffs are informed and believe and thereon allege that Defendants failed to
6 pay Plaintiffs all wages due and owing upon voluntary resignation, thereby violating Labor Code
7 §202.

8 68. Labor Code §203 states that if an employer willfully fails to pay an employee
9 wages according to Labor Code §§201 and 202, these wages shall continue as a penalty for up to
10 a maximum of 30 days.

11 69. Defendants willfully withheld paying Plaintiffs wages thereby violating Labor
12 Code §203. As such, Defendants are required to pay Plaintiffs a 30 day wage penalty in addition
13 to all unpaid wages as described herein.

14 70. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
15 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
16 limited to Labor Code §§256 and 2699(f).

17 **H. VIOLATION OF LABOR CODE § 204**

18 71. Labor Code § 204(a) provides in pertinent part that “[a]ll wages, other than those
19 mentioned in [Labor Code] Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any
20 employment are due and payable twice during each calendar month, on days designated in
21 advance by the employer as the regular paydays. Labor performed between the 1st and 15th
22 days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the
23 month during which the labor was performed, and labor performed between the 16th and the last
24 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the
25 following month.”

26 72. Pursuant to Labor Code § 204(b)(1), moreover, “all wages earned for labor in
27 excess of the normal work period shall be paid no later than the payday for the next regular
28 payroll period.”

1 73. Because Defendants did not pay Plaintiffs all wages owed in a timely manner, as
2 further described herein, Defendants have violated Labor Code § 204.

3 **I. FAILURE TO REIMBURSE EXPENSES**

4 74. Labor Code § 2802(a) states, in pertinent part: “An employer shall indemnify his
5 or her employee for all necessary expenditures or losses incurred by the employee in direct
6 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
7 the employer. . . .”

8 75. Defendants required Plaintiffs to use their personal cell phones to respond to work
9 calls and respond to text messages, and to purchase certain clothing and footwear for the purpose
10 of performing their work duties, but Defendants failed and refused to reimburse Plaintiffs for
11 their reasonable and necessary business expenses.

12 76. Defendants’ failure to reimburse and/or indemnify Plaintiffs for these necessary
13 expenditures constitutes a violation of California law.

14 77. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
15 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
16 limited to Labor Code § 2699(f).

17 **J. ALL CLAIMS**

18 78. Pursuant to Labor Code §2699, Plaintiffs seek to recover civil penalties, as
19 otherwise provided by statute and wage order, for which Defendants are liable as a result of their
20 violations of the Labor Code and applicable wage order(s) in an amount to be proven at trial.
21 These penalties include, but are not limited to, those provided by Labor Code §§210, 225.5,
22 226.3, 256, 558, 1174.5, 1197.1, and 2699. Plaintiffs further seek an award of reasonable
23 attorneys’ fees and costs pursuant to the Labor Code §2699(g)(1) and any other applicable
24 statute.

25 **WHEREFORE**, Plaintiffs pray:

26 a. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely
27 independent and apart from other penalties in the Labor Code and for Labor Code violations
28 without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay

1 period for each violation, and \$200 for each aggrieved employee per pay period for each
2 subsequent violation;

3 b. For civil penalties pursuant to Labor Code §558, as follows:

4 i. For any initial violation, fifty dollars (\$50) for each aggrieved underpaid
5 employee for each pay period for which the employee was underpaid;

6 ii. For each subsequent violation, one hundred dollars (\$100) for each
7 aggrieved underpaid employee for each pay period for which the
8 employee was underpaid;

9 c. For civil penalties pursuant to Labor Code §1197.1, as follows:

10 i. For any initial violation that is intentionally committed, one hundred
11 dollars (\$100) for each underpaid employee for each pay period for which
12 the employee is underpaid;

13 ii. For each subsequent violation for the same offense, two hundred fifty
14 dollars (\$250) for each aggrieved underpaid employee for each pay period
15 for which the employee was underpaid regardless of whether the initial
16 violation is intentionally committed;

17 d. For civil penalties per Labor Code §225.5 in the amount of \$100 for each failure
18 to pay each employee, and \$200 for each subsequent failure to pay each
19 employee, plus 25 percent of the amount unlawfully withheld.

20 e. For civil penalties per Labor Code §226.3 in the amount of \$250 for each
21 aggrieved employee per pay period for each violation, and \$1,000 for each
22 aggrieved employee per pay period for each subsequent violation;

23 f. For civil penalties per Labor Code §1174.5 in the amount of \$500 for each willful
24 failure to maintain records as required by Labor Code §1174(c).

25 g. For civil penalties per Labor Code §256 in the amount of one day of pay, at the
26 same rate, for each day that an aggrieved employee was paid late, at the time of
27 termination, until payment was/is made, up to a maximum of thirty (30) days;

28 h. For civil penalties per Labor Code §210 in the amount of \$100 for each failure to

1 pay each employee, and for each subsequent violation, or any willful or
2 intentional violation, \$200 for each failure to pay each employee, plus 25 percent
3 of the amount unlawfully withheld.

4 i. For reasonable attorneys' fees and costs incurred; and

5 j. For such relief as this Court may deem just and proper.

6
7 Dated: July 20, 2023

SHANBERG STAFFORD LLP
BARTZ LAW GROUP APC

8
9 By: /s/ Ross E. Shanberg

ROSS E. SHANBERG

10 AARON A. BARTZ

11 Attorneys for Plaintiffs ANTHONY IMPERATO
12 and CALVIN PENG aka TZU-I PENG, on behalf
13 of themselves and all other aggrieved employees
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DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all issues triable to a jury.

Dated: July 20, 2023

SHANBERG STAFFORD LLP
BARTZ LAW GROUP APC

By: /s/ Ross E. Shanberg

ROSS E. SHANBERG

AARON A. BARTZ

Attorneys for Plaintiffs ANTHONY IMPERATO
and CALVIN PENG aka TZU-I PENG, on behalf
of themselves and all other aggrieved employees

PROOF OF SERVICE - C.C.P. §§ 1013A, 2015.5
STATE OF CALIFORNIA, COUNTY OF ORANGE

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 5151 California Ave., Suite 100, Irvine, California 92617.

On July 21, 2023, I served true copies of the foregoing documents described as: on the interested parties in this action, addressed as follows: **FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

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1 (X) BY ELECTRONIC TRANSMISSION: I caused the above document(s) to be
2 electronically served on the interested parties identified above by using www.caseanywhere.com
and the e-mail addresses maintained by www.caseanywhere.com for this case.

3 (X) (State) I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct, and that this declaration was executed on July 21, 2023, at Irvine,
5 California.

6 /s/ Aaron Bartz /s/
7 Aaron Bartz
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EXHIBIT 4

Casino Dealer Break Procedures

The State of California has issued regulations governing employee rest breaks and meal periods. Consistent with Commerce Casino's policy of complying with such regulations, all dealers may choose to take, in addition to a meal period, two separate rest breaks of 20-minutes for each 8-hour shift worked.

Commerce Casino strongly encourages all dealers to take their designated rest break to maintain optimum performance. However, acceptance of the rest breaks is not mandatory and the Casino Department will accommodate those employees who voluntarily choose not to take rest breaks during his or her shift. In order to maintain proper staffing and equitable dealer rotations, the following revised procedures will be implemented:

Dealers will be given an option at the commencement of the shift to determine whether they intend to take two 20-minute rest breaks and one meal period during the shift (Option #1), or if they want to waive the rest breaks (Option #2).

OPTION #1 – Two 20-Minute Rest Breaks and One Meal Period

Any dealer intending to take two 20-minute rest breaks will be subject to the following:

- The first 20-minute rest break will be scheduled within the 2nd and 3rd hours worked; a 40-minute meal period will be scheduled between the 4th and 5th hours worked, and the second 20-minute rest break will be scheduled between the 6th and 7th hour worked.
- Dealers may not be entitled to any other break rotation.
- When the dealer comes to a break table, that dealer will need to see the RA in order to be rerouted to the next available table.
- When pushed for either his or her rest break or meal period, the dealer may lose his or her rotation.
- The dealer will be put back in the rotation after either the rest break or meal period, as rotation positions become available.

OPTION #2 – Two 40-Minute Meal Periods

The dealer will receive a minimum of two 40-minute meal periods for each 8-hour shift as they fall within the regular rotation, consistent with our current procedure.

I understand that I can change my selection at anytime but that my selection will remain in effect unless I modify my decision, in writing, prior to the commencement of my shift.

I choose Option #1 _____; I choose Option #2 ✓

Anthony Imperato / 17523
Employee Name EE No.

[Signature] / 9/11/17
Signature Date

EXHIBIT 5

Privileged and Confidential - For Mediation Purposes Only

Commerce Casino

PAGA Full Period Claims - April 6, 2019 through March 27, 2020 and June 19, 2020 to March 31, 2023

All Non-Exempt Employees

	Unpaid Minimum Wages Labor Code §1197.1 April 6, 2019 - March 27, 2020	Unlawful Deductions Labor Code §225.5 April 6, 2019 - March 27, 2020	Meal Breaks April 6, 2019 - March 27, 2020 & June 20, 2020 - March 31, 2023	Rest Breaks April 6, 2019 - March 27, 2020 & June 20, 2020 - March 31, 2023
Employee Count	2,498	2,498	4,265	4,265
Penalty Amount	\$100.00	\$100.00	\$100.00	\$100.00
Pay Period Count	46,620	46,620	138,273	138,273
Total Penalty	\$4,662,000.00	\$4,662,000.00	\$13,827,300.00	\$13,827,300.00

	Paystub Labor Code §2699 June 3, 2020 - March 31, 2023	Sub-Total	Labor Code §203/256	Grand Total
Employee Count	3,620			
Penalty Amount	\$100.00			
Pay Period Count	83,340			
Total Pay Period Count	\$8,334,000.00	\$45,312,600.00		

Penalty Hours - Per Employee	222.0
Weighted Avg Rate	\$13.10
Penalty Per Employee	\$2,908.20
Termination Count	2,418
Total Penalty	\$7,032,027.60

	\$52,344,627.60
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Notes:

- Pay period count is based information from opposing counsel.

EXHIBIT 6

Activities Export

07/24/2023

12:20 PM

Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
07/24/2023	 Unbilled	Review, revise and final motion for PAGA approval, and coordinate filing and service of same.	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	4.00h	\$850.00	-	\$3,400.00
07/24/2023	 Unbilled	Prepare exhibits for PAGA motion, and prepare cost spreadsheet.	00003-Imperato Imperato v. Commerce Casino	Nestor Mejia	2.00h	\$295.00	-	\$590.00
07/21/2023	 Unbilled	Revise and final FAC, and coordinate filing with Court; Continued research in support of PAGA approval, and review and revise documents in support of Motion; Confer with co-counsel regarding same.	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	4.50h	\$850.00	-	\$3,825.00
07/20/2023	 Unbilled	Review and consider data from Defendant, and confer with RES regarding same; Continue preparing Motion to Approve PAGA Settlement, and review and consider exhibits in support thereof; Prepare supporting declarations.	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	6.00h	\$850.00	-	\$5,100.00
07/13/2023	 Unbilled	Review and consider supporting declarations to approval motion, and review and respond to emails regarding same.	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.50h	\$850.00	-	\$1,275.00
07/11/2023	 Unbilled	Review supporting declarations, and revise motion papers.	00003-Imperato Imperato v. Commerce	Aaron Bartz	1.50h	\$850.00	-	\$1,275.00
					224.00h		\$0.00 0.00h	\$189,290.00 224.00h

Activities Export

07/24/2023

12:20 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Unbilled	Casino					
07/07/2023	🕒	Review and consider settlement issues, and call to OPC regarding same; Review and revise Stipulation, and coordinate filing with Court; Prepare posting on CaseAnywhere, and call with court clerk regarding hearing date; Review and revise motion papers. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	2.00h	\$850.00	-	\$1,700.00
07/06/2023	🕒	Review and revise Motion for approval papers, and prepare email to OPC regarding same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00h	\$850.00	-	\$850.00
07/03/2023	🕒	Review and revise Stipulation to file First Amended Complaint, and prepare email regarding same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	0.50h	\$850.00	-	\$425.00
06/30/2023	🕒	Review and consider emails from RES regarding settlement, and respond to same; Review settlement strategies. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00h	\$850.00	-	\$850.00
06/29/2023	🕒	Continue preparing motion for approval of PAGA papers, and review and respond to emails with co-counsel. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	3.00h	\$850.00	-	\$2,550.00
06/28/2023	🕒	Continue preparing Motion for	00003-Imperato	Aaron Bartz	6.50h	\$850.00	-	\$5,525.00
					224.00h		\$0.00 0.00h	\$189,290.00 224.00h

Activities Export

07/24/2023

12:20 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		Approval of PAGA Motion; Prepare declarations of AAB and Plaintiff Imperato, and prepare proposed Judgment. ● Unbilled	Imperato v. Commerce Casino					
06/27/2023	🕒	Research regarding motion for approval, and continue preparing motion. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	2.00h	\$850.00	-	\$1,700.00
06/21/2023	🕒	Prepare Motion for Approval of PAGA Settlement. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	4.20h	\$850.00	-	\$3,570.00
06/20/2023	🕒	Research in support of motion to approve PAGA settlement, and prepare Motion; Review and respond to emails regarding settlement. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	7.50h	\$850.00	-	\$6,375.00
06/19/2023	🕒	Research regarding motion for preliminary approval, and begin preparing same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	3.00h	\$850.00	-	\$2,550.00
06/14/2023	🕒	Review status of settlement, and confer with paralegal regarding same; Prepare Stipulation and Order regarding First Amended Complaint, and begin research regarding approval issues. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	2.00h	\$850.00	-	\$1,700.00
					224.00h		\$0.00 0.00h	\$189,290.00 224.00h

Activities Export

07/24/2023

12:20 PM

Date ▾	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
06/08/2023		Review and consider Joint Status Report, and review and respond to emails from co-counsel regarding same.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	0.50h	\$850.00	-	\$425.00
06/06/2023		Review of settlement issues, and confer with co-counsel regarding same; Conference call with M. Kemple regarding settlement and related issues.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00h	\$850.00	-	\$850.00
06/06/2023		Review and consider emails regarding settlement, and respond to same; Call with client regarding settlement.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	0.50h	\$850.00	-	\$425.00
06/01/2023		Review case for further handling, and conference call with RES regarding settlement.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	0.50h	\$850.00	-	\$425.00
05/30/2023		Review and revise First Amended Complaint, and review and respond to emails regarding same; Prepare email to OPC regarding settlement.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00h	\$850.00	-	\$850.00
05/26/2023		Review and consider PAGA settlement agreement and prepare for conference call, and participate in same; Revise PAGA settlement agreement, and conferences with	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	4.50h	\$850.00	-	\$3,825.00
					224.00h		\$0.00 0.00h	\$189,290.00 224.00h

Activities Export

07/24/2023

12:20 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		co-counsel regarding same; Conference calls with California State Controller's Office regarding cy pres; Prepare First Amended Complaint. ● Unbilled						
05/25/2023	🕒	Review and consider revisions to settlement agreements, and review and respond to emails from co- counsel regarding same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	2.00h	\$850.00	-	\$1,700.00
05/15/2023	🕒	Review and consider PAGA settlement agreement, and revise same; Conferences with RES regarding same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	4.50h	\$850.00	-	\$3,825.00
05/05/2023	🕒	Review and consider settlement issues, and confer with RES regarding same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00h	\$850.00	-	\$850.00
05/04/2023	🕒	Review and consider settlement terms, and begin preparing MOU; Review and revise PAGA letter; Conferences with OPC and RES regarding settlement. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	2.50h	\$850.00	-	\$2,125.00
05/03/2023	🕒	Continue preparing for Mediation, and review and respond to emails from mediator; Attend Mediation. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	10.50h	\$850.00	-	\$8,925.00
					224.00h		\$0.00 0.00h	\$189,290.00 224.00h

Activities Export

07/24/2023

12:20 PM

Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
05/03/2023		Continue researching relevant wage and hour issues, and prepare for Mediation; Review of emails from OPC and mediator, and confer with RES regarding same.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	3.50h	\$850.00	-	\$2,975.00
05/01/2023		Research regarding relevant cases in preparation for Mediation, and review and analyze voluminous Defendant's brief; Review and respond to emails from mediator.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	6.00h	\$850.00	-	\$5,100.00
04/25/2023		Review and consider relevant case documents, and conference with OPC regarding mediation; Confer with co-counsel regarding same.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	2.00h	\$850.00	-	\$1,700.00
04/20/2023		Review, revise and final Mediation Brief, and coordinate service.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00h	\$850.00	-	\$850.00
04/19/2023		Review and revise Mediation Brief, and research in support of same; Confer with co-counsel regarding same, and review and analyze exhibits.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	3.00h	\$850.00	-	\$2,550.00
03/29/2023		Review and consider mediation documents, and conference with mediator regarding case.	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00h	\$850.00	-	\$850.00
					224.00h		\$0.00 0.00h	\$189,290.00 224.00h

Activities Export

07/24/2023

12:20 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Unbilled						
03/27/2023	🕒	Review and consider damages model, and review and revise Mediation Brief. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00h	\$850.00	-	\$850.00
03/16/2023	🕒	Review and revise Mediation Brief, and review case in advance of call with mediator; Conference with co-counsel regarding same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.20h	\$850.00	-	\$1,020.00
03/15/2023	🕒	Review and consider prior settlements with Commerce Casino, and review of emails regarding mediation. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00h	\$850.00	-	\$850.00
03/06/2023	🕒	Review and consider emails regarding Mediation, and research in support of same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	0.50h	\$850.00	-	\$425.00
03/02/2023	🕒	Prepare Mediation Brief. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	2.50h	\$850.00	-	\$2,125.00
03/01/2023	🕒	Continue preparing Mediation Brief, and research in support of same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	3.50h	\$850.00	-	\$2,975.00
02/28/2023	🕒	Prepare Mediation Brief, and research in support of same.	00003-Imperato Imperato v. Commerce	Aaron Bartz	4.00h	\$850.00	-	\$3,400.00
					224.00h		\$0.00 0.00h	\$189,290.00 224.00h

Activities Export

07/24/2023

12:20 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Unbilled	Casino					
02/17/2023	⌚	Review and consider prior damages analysis, and confer with co-counsel regarding same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.50h	\$850.00	-	\$1,275.00
01/11/2023	⌚	Review and consider emails regarding case strategies, and respond to same; Conferences with potential witnesses in case. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	2.00h	\$850.00	-	\$1,700.00
12/06/2022	⌚	Review and consider case strategies post-arbitration hearing, and research regarding potential appeal issues. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	3.00h	\$850.00	-	\$2,550.00
11/04/2022	⌚	Continue preparing for arbitration hearing, and prepare argument outline; Attend motion hearing regarding same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	6.00h	\$850.00	-	\$5,100.00
11/03/2022	⌚	Review and consider motion to compel arbitration documents in preparation for hearing, and research in support of same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	5.50h	\$850.00	-	\$4,675.00
10/06/2022	⌚	Review, revise and finalize Supplemental Brief. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00h	\$850.00	-	\$850.00
					224.00h		\$0.00 0.00h	\$189,290.00 224.00h

Activities Export

07/24/2023

12:20 PM

Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
10/05/2022		Review and revise Supplemental Brief regarding motion to compel arbitration, and research in support thereof.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	2.50h	\$850.00	-	\$2,125.00
10/04/2022		Research in support of Supplemental Brief in opposition to motion to compel, and prepare same.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	5.00h	\$850.00	-	\$4,250.00
09/26/2022		Prepare Supplemental Brief regarding arbitration, and research in support thereof.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	2.00h	\$850.00	-	\$1,700.00
09/16/2022		Review of relevant case documents in preparation for hearing, and attend hearing.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.50h	\$850.00	-	\$1,275.00
08/24/2022		Review and consider issues relating to Viking River, and denial of petition for rehearing.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	0.50h	\$850.00	-	\$425.00
07/21/2022		Continue preparing for hearing, and review of relevant case law; Review tentative ruling, and review of petition for rehearing in Viking River; Attendance at hearing.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	3.20h	\$850.00	-	\$2,720.00
07/20/2022		Review motion to compel	00003-Imperato	Aaron Bartz	5.00h	\$850.00	-	\$4,250.00
					224.00h		\$0.00 0.00h	\$189,290.00 224.00h

Activities Export

07/24/2023

12:20 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		arbitration documents, and review cases in preparation for court hearing. ● Unbilled	Imperato v. Commerce Casino					
07/18/2022	🕒	Prepare Objections to Defendant's Reply Evidence and review and revise same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	2.50h	\$850.00	-	\$2,125.00
07/05/2022	🕒	Prepare Opposition to Motion to Compel Arbitration. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	7.00h	\$850.00	-	\$5,950.00
07/02/2022	🕒	Continue preparing Opposition to Motion to Compel Arbitration. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	4.00h	\$850.00	-	\$3,400.00
07/01/2022	🕒	Prepare Opposition to Motion to Compel Arbitration. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	8.00h	\$850.00	-	\$6,800.00
06/30/2022	🕒	Continue researching cases in support of Opposition to Motion to Compel Arbitration, and prepare Opposition. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	9.00h	\$850.00	-	\$7,650.00
06/29/2022	🕒	Research regarding motion to compel arbitration (3.5), and review and respond to posting in Case Anywhere (.5). ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	4.00h	\$850.00	-	\$3,400.00
06/28/2022	🕒	Begin preparing Opposition to	00003-Imperato	Aaron Bartz	4.00h	\$850.00	-	\$3,400.00
					224.00h		\$0.00	\$189,290.00
							0.00h	224.00h

Activities Export

07/24/2023

12:20 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		Motion to Compel Arbitration. ● Unbilled	Imperato v. Commerce Casino					
06/27/2022	🕒	Review Viking River and Sundance cases and analyze arbitration agreement regarding same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	3.00h	\$850.00	-	\$2,550.00
03/29/2022	🕒	Review and consider Case Anywhere posts, and review legal strategies regarding same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	0.50h	\$850.00	-	\$425.00
03/22/2022	🕒	Review and consider damages model, and prepare comments regarding same; Review and respond to emails from co-counsel, and conferences regarding same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	2.50h	\$850.00	-	\$2,125.00
03/17/2022	🕒	Review and revise settlement demand, and further research in support of same. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	2.50h	\$850.00	-	\$2,125.00
03/16/2022	🕒	Research regarding waiver and application of CA law in arbitration context; Prepare Settlement Demand. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	5.00h	\$850.00	-	\$4,250.00
03/15/2022	🕒	Research regarding arbitration waiver and related issues. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	5.50h	\$850.00	-	\$4,675.00
					224.00h		\$0.00 0.00h	\$189,290.00 224.00h

Activities Export

07/24/2023

12:20 PM

Date ▾	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
03/14/2022		Prepare Settlement Demand, and research regarding same.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	6.00h	\$850.00	-	\$5,100.00
03/14/2022		Conference call with RES regarding Mediation and damages issues.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	0.50h	\$850.00	-	\$425.00
02/08/2022		Review and consider correspondence regarding Mediation, and prepare responses to same; Confer with RES regarding legal strategies.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	0.70h	\$850.00	-	\$595.00
01/11/2022		Call with co-counsel regarding legal strategies; Conference call with OPC regarding Mediation.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00h	\$850.00	-	\$850.00
01/10/2022		Prepare Settlement Demand, and research regarding same.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	4.20h	\$850.00	-	\$3,570.00
01/06/2022		Review case documents and legal strategies regarding settlement demand and possible Mediation.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	4.00h	\$850.00	-	\$3,400.00
01/04/2022		Review email correspondence, and review legal strategies regarding demand and research regarding same.  Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	0.50h	\$850.00	-	\$425.00
					224.00h		\$0.00 0.00h	\$189,290.00 224.00h

EXHIBIT 7

Activities Export

07/24/2023

12:07 PM

Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
07/25/2023	\$	Delivery and copy charges re courtesy copy of Motion for PAGA Settlement to SSC-12 (anticipated). ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00	\$250.00	-	\$250.00
07/25/2023	\$	Motion for PAGA Settlement filing fees (anticipated). ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00	\$100.00	-	\$100.00
07/24/2023	\$	CaseAnywhere Fees. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00	\$214.00	-	\$214.00
07/21/2023	\$	Filing fees re First Amended Complaint. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00	\$17.15	-	\$17.15
07/07/2023	\$	Filing fees re Stipulation for filing FAC. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00	\$37.50	-	\$37.50
04/21/2023	\$	FedEx and copy costs re Mediation Brief. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00	\$54.38	-	\$54.38
03/01/2023	\$	Mediation Fees. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00	\$3,987.50	-	\$3,987.50
02/14/2023	\$	Case Anywhere fees. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00	\$131.33	-	\$131.33
11/09/2022	\$	CaseAnywhere Fees.	00003-Imperato	Aaron Bartz	1.00	\$126.00	-	\$126.00
							\$0.00 0.00h	\$5,111.36 0.00h

Activities Export

07/24/2023

12:07 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Unbilled	Imperato v. Commerce Casino					
10/06/2022	\$	Filing fees re Supplemental Brief. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00	\$16.70	-	\$16.70
07/18/2022	\$	One Legal Court filing ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Nestor Mejia	1.00	\$16.50	-	\$16.50
07/18/2022	\$	Filing Fees re: Objections to Evidence. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00	\$16.70	-	\$16.70
06/17/2022	\$	Document fees re: related cases. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00	\$23.60	-	\$23.60
05/11/2022	\$	Case Anywhere Fees. ● Unbilled	00003-Imperato Imperato v. Commerce Casino	Aaron Bartz	1.00	\$120.00	-	\$120.00
							\$0.00 0.00h	\$5,111.36 0.00h

EXHIBIT 8



**Settlement Administration Estimate
Imperato v California Commerce Club
May 30, 2023**

Prepared by:
Eric Bishop
Senior Vice President
612-359-2988
ebishop@rustconsulting.com

EXPERIENCE

With experience on approximately 3,500 labor and employment cases, we are the nation's largest labor and employment settlement administrator. We have managed employment settlements with class sizes ranging from dozens to multi-million class members. In fact, we've been trusted to administer many of the nation's largest settlements, including the nation's top wage-and-hour cases in recent years.

DATA SECURITY

Our internal data security practices meet or exceed today's exacting industry standards. Our enterprise-class data security measures are founded on standard business processes including a vigorous employee screening program, ongoing employee security training and a hardened production data center hosted at a Tier 1 network carrier, all designed for ensuring data integrity and security.

DEDICATED SPECIALISTS

Our labor and employment case team is strictly dedicated to managing settlement administration for cases involving matters such as wage-and-hour, FLSA, discrimination and ERISA. They're specialists, not generalists, with an industry reputation for responsiveness and expertise in relevant areas such as the applicable banking and tax regulations. We are confident that Rust is the best choice for the administration of your settlement.

Project Summary

Estimated Class Size 4,265

Project Cost

Mailed Notice & Fund Distribution	\$	9,685
Telephone Support	\$	1,405
Processing and Administration	\$	110
Project Management	\$	4,050
Other Out-of-pocket Expenses	\$	200
Total Project Cost	\$	15,450
	Discount	\$ (500)
Total Project Cost w/ Discount	\$	14,950

Key Assumptions

**3 Translations
Notice in English, Mandarin, Vietnamese and Tagalog
Notice & Checks Sent Together
1 Page Notice, 1 Page Check
Telephone Support Included
Payments Not Reportable**

Thank you for considering Rust Consulting, Inc. as your administrator -- we appreciate the opportunity to submit this estimate.



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Key Assumptions Used to Prepare this Estimate

Class Size	4,265	
Initial Mailed Notice:		
Mailed Notice	4,265	100.0%
Forwarded Notices	107	2.5%
Undeliverable Notices	427	10.0%
Re-Mailed Notices after Trace	341	80.0%
Telephone Support:		
Number of Telephone Contacts	341	8.0%
Connect Minutes per Call - CSRs	5.0	
Claimant Communications:		
Correspondence Received	-	0.0%
Payments	4,265	100.0%

Standard Hourly Rates*

SVP	\$175-\$275
Program Manager	\$160-\$180
Project Manager	\$100-\$140
Technical Consultant	\$110-\$180
Call Center Manager	\$125
CSR	\$ 43-\$ 50
Processor	\$ 43-\$ 50
Other	\$ 43-\$125

**Subject to change*

Additional Administration Assumptions Used to Prepare this Estimate:

Database Development: Receive and Process Database assumes that the data provided is complete with respect to the data components needed to mail and calculate settlement payments. Data that includes multiple records for individuals or work history that needs to be accumulated and totaled by individual generally requires additional efforts to bring to a point where it is final settlement data. These additional efforts can take a significant amount of time and should be considered when setting key settlement dates, especially the mailed notice deadline. Data must be provided in a complete, consistent, standardized electronic format. Rust's standard format is tab delimited text file with field headers, but without text qualifiers. Other formats may be accepted at Rust's discretion. Resources used to enhance or further develop non-standardized data will be billed on a time and materials basis according to Rust's Current Standard Hourly Rates.

CASS/NCOA/LACS: CASS - Coding Accuracy Support System; NCOA - National Change of Address; LACS - Locatable Address Conversion System.

Notice Package: Print and Mail per unit price is estimated. Actual prices will be provided after form is finalized prior to mailing.

Telephone Support included.

Processing & Administration: Receipt and Process Forms includes open, date stamp, label and data capture a 1-page form with up to five fields.

Project Management: Project Management fees are estimated and will be billed on actual time expended based on the rates found in the Current Standard Hourly Rates section above. The rates included in the estimate are a blended estimate of the rates listed above.

Out of Pocket Expenses: Includes post office box rental, overnight shipments, postage, labels, travel, long distance and other miscellaneous charges and expenses.

Pricing good for 90 days.



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Administrative Task	Estimated Quantity	Per Unit	Task Amount	Total
Database Development				
Receive and Process Database	2 Hours @	\$ 175	\$ 350	\$ 350
<i>Additional Efforts to Finalize Settlement Data</i>			<i>As Incurred</i>	
Initial Mailed Notice				
CASS / NCOA / LACS Processing			\$ 250	
Translations - Mandarin, Vietnamese, Tagalog	3 Languages @	\$ 400	\$ 1,200	
Print and Mail Notice & Check Package	4,265 Packages @	\$ 0.65	\$ 2,772	
Postage - 1 Ounce First Class	4,265 Packages @	\$ 0.53	\$ 2,260	
Check Processing	4,265 Payments @	\$ 0.20	\$ 853	
Monthly Bank Account Fee	6 Months @	\$ 75	\$ 450	\$ 7,786
Follow-up to Initial Notice				
Receive Undeliverable Notices and Update Database			\$ 150	
Address Trace	427 Traces @	\$ 1.00	\$ 427	
Remail Notice & Check Package	448 Notices @	\$ 0.75	\$ 336	
Remail Postage - 1 Ounce First Class	448 Notices @	\$ 0.53	\$ 237	\$ 1,150
Telephone Support				
Telephone Support	6 Months @	\$ 200	\$ 1,200	
800# Charges	1,706 Minutes @	\$ 0.12	\$ 205	\$ 1,405
Processing and Administration				
Receipt, Process, and Validate Correspondence	2 Hours @	\$ 55	\$ 110	
Setup and Monitor Email Account			NA	\$ 110
<i>Additional Administrative Services Requested by Client</i>			<i>As Incurred</i>	
Post Docs on Rust Website				
Post Final Approval Docs			<i>Waived</i>	\$ -
Tax Reporting				
Annual Fee -Qualified Settlement Fund	1 Year @	\$ 400	\$ 400	\$ 400
Project Management				
Senior Vice President	1 Hours @	\$ 200	<i>Waived</i>	
Project Management	18 Hours @	\$ 175	\$ 3,150	
Technical Consulting	5 Hours @	\$ 180	\$ 900	\$ 4,050
Other Charges and Out-of-pocket Costs				
				\$ 200
Total Settlement Administration Estimate				\$ 15,450



Settlement Administration Estimate
Imperato v California Commerce Club
May 30, 2023

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Terms and Conditions

All claims administration services to be provided by Rust Consulting to Customer shall be subject to the following terms and conditions:

1. **Services.** Subject to the terms hereof, Rust Consulting agrees to provide the Customer with claims administration services (hereinafter, "Claims Services") as specified in the Proposal provided to Customer to which these Terms and Conditions are attached.
2. **Term.** The terms of this agreement will remain in effect until completion of the Claims Services, unless earlier terminated in accordance with Section 10 hereof.
3. **Charges for Services.** Charges to the Customer for Claims Services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Customer to Rust Consulting. Actual fees charged by Rust Consulting to Customer may be greater or less than such estimate, and Customer shall be responsible for the payment of all such charges and expenses in accordance with Section 4 hereof. Furthermore, Customer will be responsible for payment of all state and local sales and use taxes, if any, levied upon the charges payable by the Customer hereunder. Rust Consulting may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.
4. **Payment of Charges.** Payment by Customer of Rust Consulting's monthly invoices shall be due upon receipt thereof. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Customer's liability to Rust Consulting for payment of Claims Services. Claims Services are not provided on a contingency fee basis.
5. **Confidentiality.** Rust Consulting agrees to implement and maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Customer data provided to Rust Consulting by Customer in connection herewith. Should Rust Consulting ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Customer, Rust Consulting will promptly notify the Customer, unless prohibited by applicable law. The Customer shall have the option to (1) provide legal representation at the Customer's expense to avoid such access or (2) promptly reimburse Rust Consulting for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If Rust Consulting is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, Rust Consulting will not be liable for breach of said obligation.
6. **Standard Banking Procedures.** In accordance with Rust Consulting's standard banking procedures, Rust Consulting will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. When directed to invest funds in an interest bearing or investment accounts, Rust Consulting intends to invest all funds in U.S. government backed securities, unless directed by the parties in writing or the settlement agreement or distribution plan to invest in other types of securities; however, even in cases where funds are temporarily placed in interest bearing or investment accounts, funds will eventually be migrated to a demand deposit checking account prior to a fund distribution.
7. **Rights in Data.** Rust Consulting does not convey nor does the Customer obtain any right in the programs, system data, or materials utilized or provided by Rust Consulting in the ordinary course of business in the performance of this Agreement.
8. **Document Retention.** Unless directed otherwise in writing by Customer, Rust Consulting will destroy undeliverable notice mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Rust will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Rust Consulting will retain all bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
9. **Limitation of Liability: Disclaimer of Warranty.** Rust Consulting warrants that our services will be performed with reasonable care in a diligent and competent matter. Our sole obligation will be to correct any non-conformance with this warranty. Rust Consulting shall not be liable, whether under theories of contract, negligence or other tort, statutory duty or other theories of liability in an amount exceeding the total charges to the Customer for the specific work affected by the error or omission. Rust Consulting will not be liable for any incidental, special, indirect, consequential or exemplary damages of any kind; or for any lost profits, lost opportunities, business interruption or for any liability incurred by the Customer or others to any third party. **THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE FOR PARTICULAR PURPOSE.**
10. **Termination.** The Claims Services to be provided under this Agreement may be terminated, at will by the Customer upon at least 30 calendar days' prior written notice to Rust Consulting. The Customer's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. Rust Consulting may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Customer is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Customer.
11. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of Rust Consulting or the Customer, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.
12. **Force Majeure.** To the extent performance by Rust Consulting of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond Rust Consulting's reasonable control, then such performance shall be excused and this Agreement, at Rust Consulting's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
13. **Nonwaiver of Rights.** No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.
14. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in the Court.
15. **Survival.** All accrued payment obligations hereunder, any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 7 (Rights in Data); Section 5 (Confidentiality); Section 9 (Limitation of Liability; Disclaimer of Warranty); and Section 14 (Jurisdiction).
16. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.