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9 **LEAD ATTORNEY IN CHARGE FOR**
10 **PLAINTIFF AND CLASS MEMBERS**

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 Timothy Bell, on Behalf of Himself and on) No.
14 Behalf of All Others Similarly Situated,)

15 Plaintiff,)

16 v.)

17) **COLLECTIVE AND CLASS ACTION**
18) **COMPLAINT**

19 TopGolf USA Riverwalk, LLC; TopGolf)
20 USA Gilbert, LLC; and TopGolf)
21 International, Inc.)

22) **(JURY TRIAL REQUESTED)**

23 Defendants.)
24)
25)

26 Plaintiff Timothy Bell on behalf of himself and on behalf of all others similarly
27 situated alleges as follows:

28 **I. SUMMARY**

29 1. Plaintiff worked for Defendants, TopGolf USA Riverwalk, LLC
30 (“Defendant Scottsdale”), TopGolf USA Gilbert, LLC (“Defendant Gilbert”), and
31 TopGolf International, Inc. (“Defendant International”) at Defendants’ Scottsdale,
32

1 Arizona location.¹ He files this lawsuit against Defendants for their violation of the Fair
2 Labor Standards Act (“FLSA”), the Arizona Wage Act, the Arizona Minimum Wage Act,
3 and for conversion.

4 2. Plaintiff seeks to certify this matter as a Fed. R. Civ. P. 23 class action for
5 the Arizona Wage Act, Arizona Minimum Wage Act, and conversion claims.

6 3. Plaintiff seeks to certify this matter as a collective action for the FLSA
7 violations.

8 4. The FLSA is designated to eliminate “labor conditions detrimental to the
9 maintenance of minimum standard of living necessary for health, efficiency and general
10 well-being of workers...” 29 U.S.C. § 202(a). To achieve its goals, the FLSA sets
11 minimum wage and overtime requirements for covered employees. 29 U.S.C. §§ 206(a)
12 and 207(a).

13 5. The FLSA allows employers to pay less than the minimum wage to
14 employees who receive tips. 29 U.S.C. § 203(m). In doing so, employers may take a “tip
15 credit,” which allows employers to include in their calculation of tipped employees’
16 wages the amount that an employee receives in tips. *Id.* An employer must advise an
17 employee *in advance of its use of the tip credit* pursuant to the provisions of section 3(m)
18 of the FLSA. That is, the employer must inform the employee (1) the amount of the cash
19 wage that is to be paid to the tipped employee (2) the amount by which the wages of the
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24 ¹ TopGolf Gilbert USA, LLC (“Defendant Gilbert”), TopGolf Riverwalk USA, LLC
25 (“Defendant Scottsdale”), TopGolf International, Inc. (Defendant International”) will be
collectively referred herein as “Defendants” or “TopGolf.”

1 tipped employee are increased on account of the tip credit (3) that all tips received by the
2 employee must be retained by the employee except for tips contributed to a valid tip pool
3 and (4) that the tip credit shall not apply to any employee who does not receive the
4 notice. *See* 29 C.F.R. § 531.59.

5 6. Under the FLSA, it is illegal to require tipped employees to share their tips
6 with non-tipped employees. If an employer requires tipped employees to share their tips
7 with non-tipped employees, the employer loses its ability to claim the tip credit privilege.
8

9 7. Defendants violated the FLSA in numerous respects. First, Defendants
10 required tipped employees to share their tips with non-tipped employees in violation of
11 29 U.S.C. § 203(m). Accordingly, Defendants are not able to use the tip credit privilege
12 and must pay the full minimum wage and overtime wage to all tipped employees that
13 participated in the illegal tip pool. Second, Defendants violated the FLSA by paying
14 Plaintiff less than minimum wage for time spent performing non-server duties such as
15 washing dishes. Defendants lost their right to take a tip credit for those periods.
16 Consequently, Defendants were required to but failed to pay those employees minimum
17 wage for such hours worked. Third, Defendants failed to correctly inform the wait staff
18 of its intent to rely on the tip credit provision prior to the use of the tip credit privilege.
19
20 *See*, 29 C.F.R. § 531.59.
21

22 8. As a result, of Defendants' FLSA violations, they can no longer rely on the
23 tip credit privilege found in 29 U.S.C. § 203(m).

24 9. Plaintiff and FLSA Class Members should be compensated at the full
25 minimum wage rate and overtime wage rate without regards to tips earned.

1 10. Defendants’ conduct violates the Fair Labor Standards Act (FLSA), which
2 requires non-exempt employees to be compensated for their overtime work at a rate of
3 one and one-half times their regular rate of pay. *See* 29 U.S.C. § 207(a).

4 11. Furthermore, Defendants’ practice of failing to pay tipped employees
5 pursuant to 29 U.S.C. § 203(m), violates the FLSA’s minimum wage provision. *See* 29
6 U.S.C. §§ 203, 206.

7 12. Plaintiff brings a collective action to recover the unpaid wages owed to him
8 and all other similarly situated employees, current and former, of Defendants throughout
9 Arizona. Members of the Collective Action are hereinafter referred to as “FLSA Class
10 Members.”
11

12 13. Additionally, Defendants’ failure to compensate Plaintiff and all other non-
13 exempt employees at a rate equal to or in excess of Arizona’s required minimum wage
14 violates the Arizona Wage Act, ARIZ. REV. STAT. ANN. § 23-350, et seq., and the Arizona
15 Minimum Wage Act, ARIZ. REV. STAT. ANN. § 23-363, et seq. Likewise, Defendants
16 failed to pay Plaintiff and other similarly situated non-exempt employees their overtime
17 rate timely as required by Arizona Wage Act, ARIZ. REV. STAT. ANN. § 23-350.
18

19 14. Defendants use of Plaintiff’s tips for purposes other than a valid tip pool is
20 conversion. Tips belong to the employee that received those tips, and Defendants’ use of
21 such tips for any purpose other than a valid tip pool is conversion.
22

23 15. Plaintiff, therefore, brings a class action pursuant to Rule 23 of the Federal
24 Rules of Civil Procedure to recover unpaid wages and other damages owed under the
25 Arizona wage laws and under a conversion cause of action. Members of the Rule 23

1 Class Action are hereinafter referred to as the “Arizona Class Members.”

2 **II. SUBJECT MATTER JURISDICTION AND VENUE**

3 16. This Court has jurisdiction over the subject matter of this action under 29
4 U.S.C. § 216(b) and 28 U.S.C. § 1331.

5 17. This Court also has supplemental jurisdiction over the state law claims
6 raised herein pursuant to 28 U.S.C. § 1367 because such claims do not raise novel or
7 complex issues of state law, and because those claims derive from a common nucleus of
8 operative facts from which the FLSA claims stated herein derive.

9 18. Venue is proper in the District of Arizona because a substantial portion of
10 the events forming the basis of this suit occurred in this District, and Defendants operate
11 in this District.

12 **III. PARTIES AND PERSONAL JURISDICTION**

13 9. Plaintiff Timothy Bell is an individual residing in Maricopa County,
14 Arizona. His consent to this action is attached hereto as Exhibit “A.”

15 10. The FLSA Class Members are all current and former employees who
16 received a direct hourly wage from Defendants at a rate of less than the FLSA’s
17 minimum rate of \$7.25 per hour at any time during the three years prior to the filing of
18 this Complaint to present.

19 11. The Arizona Class Members are all current and former employees who
20 received a direct hourly wage from Defendants at a rate of less than the Arizona’s
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1 minimum wage rate² at any time during the three years prior to the filing of this
2 Complaint to present.

3 12. Defendant TopGolf USA Riverwalk, LLC is a foreign limited corporation
4 organized under the laws of Delaware. Defendant may be served process through its
5 registered agent CT Corporation System, 3800 N. Central Ave. Ste. 460 Phoenix, AZ
6 85012.

7
8 13. Defendant TopGolf USA Gilbert, LLC is a foreign limited corporation
9 organized under the laws of Delaware. Defendant may be served process through its
10 registered agent CT Corporation System, 3800 N. Central Ave. Ste. 460 Phoenix, AZ
11 85012.

12
13 14. Defendant TopGolf International, Inc. is a foreign limited corporation
14 organized under the laws of Delaware. Defendant may be served process through its
15 registered agent CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

16 **IV. FLSA AND ARIZONA WAGE ACT COVERAGE**

17 13. At all material times, Defendants have been an employer within the
18 meaning of 3(d) of the FLSA. 29 U.S.C. § 203(d).

19 14. The Fair Labor Standards Act (“FLSA”) defines the term “employer”
20 broadly to include “any person acting directly or indirectly in the interest of an employer
21 in relation to any employee.” 29 U.S.C. § 203(d).
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25 ² The Arizona minimum wage for the last three years is as follows: 2014-\$7.90, 2015- \$8.05,
2016-\$8.05, 2017-\$10.00.

1 15. The statutory definition of “employer” is interpreted broadly and includes
2 corporate officers, participating shareholders, supervisors, managers, or other employees
3 when that individual exercises some supervisory authority over employees and is
4 responsible in whole or in part for the alleged violation. *See, e.g., id.; Boucher v. Shaw*,
5 572 F.3d 1087, 1090–91 (9th Cir. 2009); *Donovan v. Grim Hotel Co.*, 747 F.2d 966, 971–
6 72 (5th Cir. 1984).

7
8 16. At all material times, Defendants have been an enterprise in commerce or in
9 the production of goods for commerce within the meaning of 3(s)(1) of the FLSA
10 because they have had employees engaged in commerce. 29 U.S.C. § 203(s)(1).

11 17. Furthermore, Defendant has had, and continues to have, an annual gross
12 business volume in excess of \$500,000.

13
14 18. At all material times, Plaintiff and FLSA Class Members were individual
15 employees who engaged in commerce or in the production of goods for commerce as
16 required by 29 USC § 206-207.

17 19. Further, at all material times, Defendants have operated as a “single
18 enterprise” within the meaning of 3(r)(1) of the FLSA. 29 U.S.C. § 203(r)(1). That is,
19 Defendants perform related activities through unified operation and common control for a
20 common business purpose. *See Brennan v. Arnheim and Neely, Inc.*, 410 U.S. 512, 515
21 (1973); *Chao v. A-One Med. Servs., Inc.*, 346 F.3d 908, 914–15 (9th Cir. 2003).

22
23 20. Defendants advertise together, use the same logo, and use the same payroll
24 processing company.

1 21. Defendants require their servers, bussers, and bartenders, bar back, food
2 runner, waitresses, and bayhost to share tips with non-tipped employees.

3 22. Defendants offer identical services, food, and beverages to its patrons.

4 23. Defendants advertise the fact that a patron can have the same experience at
5 any of its locations.

6 24. Defendants employ workers under the same job titles. For example,
7 Defendant Gilbert and Defendant Scottsdale both hire bayhosts, bussers, muckers,
8 dishwashers, bartenders, and event hosts.

9 25. Defendants utilize the tip credit privilege to pay a direct wage less than the
10 applicable federal and state minimum wage to over 100 employees.

11 26. Defendant Scottsdale has utilized the FLSA's tip credit privilege to pay a
12 direct wage less than the applicable federal and state minimum wage to over 100
13 employees within the last three years.

14 27. Defendant Gilbert has utilized the FLSA's tip credit privilege to pay a
15 direct wage less than the applicable federal and state minimum wage to over 100
16 employees within the last three years.

17 28. Defendants are in violation of the FLSA's tipped-employee compensation
18 provision, 29 U.S.C. § 203(m). Defendants also violated 29 U.S.C. § 203(m) when it
19 failed to notify the Plaintiff and the FLSA Class Members about the tip credit allowance
20 (including the amount to be credited and that no nontipped employees would participate
21 in the tipped pool) before the credit was utilized. Furthermore, Defendants violated 29
22 U.S.C. § 203(m) because they did not allow Plaintiff and the FLSA Class Members to
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1 retain all of their tips and instead required that they divide their tips amongst other
2 employees who do not customarily and regularly receive tips. Because Defendants
3 violated the tip-pool law, Defendants lose the right to take a credit toward minimum
4 wage.

5 29. At all material times, Defendants have been an employer within the
6 meaning of ARIZ. REV. STAT. ANN. § 23-350(3) and ARIZ. REV. STAT. ANN. § 23-362(B).

7 30. At all material times, Plaintiff and the Arizona Class Members were
8 employees of Defendants within the meaning of ARIZ. REV. STAT. ANN. § 23-350(2) and
9 ARIZ. REV. STAT. ANN. § 23-362(A).

10 31. At all material times, Plaintiff and the Arizona Class Members were
11 employees of Defendants within the meaning of ARIZ. REV. STAT. ANN. § 23-350(2) and
12 ARIZ. REV. STAT. ANN. § 23-362(A).

13 32. Furthermore, Defendants are in violation of Arizona's tipped-employee
14 compensation provision, ARIZ. REV. STAT. ANN. § 23-363(C) by requiring their tipped
15 employees to share tips with nontipped employees.

16 33. Defendants failed to compensate Plaintiff at the minimum wage rate for
17 hours worked at or under 40 during a pay period violation of the Arizona Minimum
18 Wage Act.

19 34. Defendants failed to pay overtime wages timely in violation of the
20 Arizona Wage Act.

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24 **V. FACTS**

25 35. Defendants operate TopGolf facilities in Scottsdale and Gilbert, Arizona.

1 36. Defendants' headquarters is located in Dallas, Texas.

2 37. TopGolf is a driving range and a restaurant.

3 38. Defendant Scottsdale is located at 9500 E. Talking Stick Way Scottsdale,
4 AZ 85256.

5 39. Defendant Gilbert is located at 1689 S. SanTan Village Pkwy Gilbert,
6 AZ 85295.

7
8 40. Defendants employs tipped and nontipped employees at their
9 aforementioned locations.

10 41. Plaintiff Timothy Bell worked for Defendants as a bayhost and as an
11 event host from July 2015 until April 2017.

12 42. At both TopGolf locations in Arizona, Defendants employ an individual
13 in the role/job title of "mucker."

14 43. Muckers do not receive tips directly from customers and had no
15 interaction with customers. Muckers exclusively worked washing dishes alongside
16 dishwashers.
17

18 44. However, Defendants require Muckers to participate in the tip pool and
19 require that bayhosts, and other employees in customer facing positions, contribute a
20 portion of their tips to the Muckers. In other words, Defendants use the tips of customer
21 facing employees to subsidize the wages of back of the house employees that are
22 essentially dishwashers.
23

24 45. Plaintiff Timothy Bell was paid a direct hourly rate of less than \$7.25 per
25 hour.

1 46. Plaintiff worked on a regular basis for Defendants' TopGolf facility
2 located in Scottsdale, Arizona.

3 47. Plaintiff is not exempt from the overtime and minimum wage
4 requirements under the FLSA or Arizona law.

5 48. At each of its facilities, TopGolf employs tipped employees and such
6 employees are known, amongst other job titles, as "Bayhosts," "bussers," "event hosts,"
7 and "bartenders."

8 49. Defendants also hire nontipped employees and such employees are
9 known, amongst other job titles, as dishwashers and muckers.

10 50. TopGolf has employed at least 100 Bayhosts in the last three years at its
11 Scottsdale, Arizona location.

12 51. TopGolf has employed at least 500 Bayhosts in the last three years
13 throughout the state of Arizona.

14 52. The job duties of all Bayhosts employed by Defendants throughout
15 Arizona are the same.

16 53. The job duties of all bussers employed by Defendants throughout
17 Arizona are the same.

18 54. The job duties of all dishwashers employed by Defendants throughout
19 Arizona are the same.

20 55. The job duties of all muckers employed by Defendants throughout
21 Arizona are the same.

22 56. Defendants require tipped employees such as bayhost, bartenders, and
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1 bussers to participate in a tip pool with nontipped employees such as muckers.

2 57. The job duties of a mucker are to wash dishes.

3 58. Muckers do not have any interaction with customers.

4 59. Muckers are not engaged in an occupation where they receive tips.

5 60. Muckers are paid a direct hourly wage less than the FLSA's minimum
6 wage.

7 61. Muckers are required to participate in the tip pool.

8 62. Muckers are paid direct wages at a rate less than the Arizona required
9 minimum wage.
10

11 63. Defendants rely on the tip credit privilege to pay a direct wage less than
12 the federal or state minimum wage to the muckers.

13 64. Defendants use bayhosts', bartenders', and bussers' tips for purposes
14 other than a valid tip pool.

15 65. Defendants use bayhosts', bartenders', and bussers' tips to try and meet
16 Defendants' own minimum wage obligations with regards to muckers. In other words,
17 Defendants use tips for purposes of paying labor cost to employees engaged in nontipped
18 activities.
19

20 66. Although Plaintiff and FLSA Class Members are required to and do in
21 fact work more than forty (40) hours per workweek, they are not compensated at the
22 FLSA mandated time-and-a-half rate for hours in excess of forty (40) per workweek.

23 67. Defendants' conduct violates the minimum wage requirement of the
24 FLSA. *See* 29 U.S.C. § 206.
25

1 68. Defendants' failure to pay overtime to Plaintiff and Class Members, in
2 violation of the FLSA was willful and not based on a good faith belief that their conduct
3 did not violate the FLSA. As such, the foregoing conduct, as alleged, constitutes a
4 willful violation within the meaning of the FLSA. 29 U.S.C. § 255(a).

5 69. Defendants required tipped employees to share tips with nontipped
6 employees with the sole intent to avoid their employees in accordance to the FLSA.
7 There are multiple federal court opinions finding that this method of compensation is in
8 violation of the FLSA, and therefore, Defendants' conduct is willful.

9 70. Defendant's method of paying Plaintiff and the Arizona Class Members
10 was in violation of the Arizona Minimum Wage Act and Arizona Wage Law and was
11 willful and not based on a good faith and reasonable belief that its conduct complied with
12 Arizona Law.

13 71. In accordance with the Arizona Wage Act, Defendants are required to
14 notify their employees in writing each pay period of the amount per hour that the
15 employer intends to take as a tip credit.

16 72. Here, Defendants did not notify their tipped employees in writing each
17 pay period of the amount per hour that they intended to take as a tip credit.

18 73. As such, Defendants are prohibited from taking advantage of the Arizona
19 tip credit privilege.

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22 **VI. COLLECTIVE AND CLASS ACTION ALLEGATIONS**

23
24 **A. FLSA Class Members**

25 64. Plaintiff and FLSA Class Members incorporate all allegations contained in

1 the foregoing paragraphs.

2 65. Plaintiff brings this action as an FLSA collective action pursuant to 29
3 U.S.C. § 216(b) on behalf of all persons who were or are employed by Defendants and
4 required to participate in the tip pool at any time during the three (3) years prior to the
5 commencement of this action to present.

6 66. Plaintiff has actual knowledge that FLSA Class Members have also been
7 denied overtime pay for hours worked over forty hours per workweek and have been
8 denied pay at the federally mandated minimum wage rate. That is, Plaintiff worked with
9 other employees in Arizona who were required to participate in the illegal tip pool. As
10 such, they have first-hand personal knowledge of the same pay violations throughout
11 Defendants' multiple establishments. Furthermore, other employees at Defendants'
12 various establishments have similar pay violations as those described in this complaint.
13

14 67. Other employees similarly situated to the Plaintiff work or have worked for
15 Defendants' TopGolf locations in Arizona and were paid a direct wage below \$7.25 per
16 hour.
17

18 68. Other employees similarly situated to the Plaintiff work or have worked for
19 Defendants' TopGolf locations in Arizona and were paid a direct wage below \$10.88 per
20 hour for overtime hours worked.
21

22 69. Other employees similarly situated to the Plaintiff work or have worked for
23 Defendants' TopGolf locations in Arizona and were required to participate in a tip pool.
24
25

1 70. Other employees similarly situated to the Plaintiff work or have worked for
2 Defendants' TopGolf locations in Arizona and were required to share tips with
3 employees engaged in nontipped activities.

4 71. Although Defendants permitted and/or required the FLSA Class Members
5 to work in excess of forty hours per workweek, Defendants have denied them full
6 compensation for their hours worked over forty. Defendants have also denied them full
7 compensation at the federally mandated minimum wage rate.
8

9 72. FLSA Class Members perform or have performed the same or similar work
10 as the Plaintiff.

11 73. Specifically, all event hosts employed by Defendants within the last three
12 years perform similar job duties.

13 74. Specifically, all bussers employed by Defendants within the last three years
14 perform similar job duties.

15 75. Specifically, all muckers employed by Defendants within the last three
16 years perform similar job duties.

17 76. Specifically, all bayhost employed by Defendants within the last three years
18 perform similar job duties.
19

20 77. FLSA Class Members regularly work or have worked in excess of forty
21 hours during a workweek.
22

23 78. FLSA Class Members are not exempt from receiving overtime and/or pay
24 at the federally mandated minimum wage rate under the FLSA.
25

1 79. As such, FLSA Class Members are similar to Plaintiff in terms of job
2 duties, pay structure, and/or the denial of overtime and minimum wage.

3 80. Defendants' failure to pay overtime compensation and hours worked at the
4 minimum wage rate required by the FLSA results from generally applicable policies or
5 practices, and does not depend on the personal circumstances of the FLSA Class
6 Members.

7 81. The experiences of the Plaintiff, with respect to his pay, are typical of the
8 experiences of the FLSA Class Members.
9

10 82. The specific job titles or precise job responsibilities of each FLSA Class
11 Member does not prevent collective treatment.

12 83. All FLSA Class Members, irrespective of their particular job requirements,
13 are entitled to overtime compensation for hours worked in excess of forty (40) during a
14 workweek.
15

16 84. All FLSA Class Members, irrespective of their particular job requirements,
17 are entitled to compensation for hours worked at the federally mandated minimum wage
18 rate.
19

20 85. Although the exact amount of damages may vary among FLSA Class
21 Members, the damages for the FLSA Class Members can be easily calculated by a simple
22 formula.

23 86. The claims of all FLSA Class Members arise from a common nucleus of
24 facts. Liability is based on a systematic course of wrongful conduct by the Defendants
25 that caused harm to all FLSA Class Members.

1 87. As such, Plaintiff brings his FLSA overtime and minimum wage claims as
2 a collective action on behalf of the following class:

3 **The FLSA Class Members are all of Defendants' current and**
4 **former employees who worked in Arizona at any time starting three**
5 **years before this Complaint was filed up to the present and who**
6 **were required to participate in the tip pool.**

7 **B. Arizona Class Action**

8 59. Plaintiff and the Arizona Class Members incorporate all preceding
9 paragraphs as though fully set forth herein.

10 60. Plaintiff brings the Arizona wage claims and the conversion claim as a Rule
11 23 class action on behalf of the following class:

12 **The Arizona Class Members are all of Defendant's current and**
13 **former employees who worked in Arizona at any time starting three**
14 **years before this Complaint was filed up to the present and who**
15 **were required to participate in the tip pool.**

16 61. Numerosity. The number of members in the Arizona Class is believed to
17 be over one hundred (100). This volume makes bringing the claims of each individual
18 member of the class before this Court impracticable. Likewise, joining each individual
19 member of the Arizona Class as a plaintiff in this action is impracticable. Furthermore,
20 the identity of the members of the Arizona Class will be determined from Defendants'
21 records, as will the compensation paid to each of them. As such, a class action is a
22 reasonable and practical means of resolving these claims. To require individual actions
23 would prejudice the Arizona Class and Defendants.

24 62. Typicality. Plaintiff's claims are typical of the Arizona Class because like
25 the members of the Arizona Class, Plaintiff was subject to Defendants' uniform policies

1 and practices and were compensated in the same manner as others in the Arizona Class.
2 Defendants failed to pay non-exempt employees who worked at TopGolf overtime wages
3 for all of their overtime hours worked. All members of the Arizona Class worked more
4 than forty (40) hours in a workweek. Plaintiff and the Arizona Class were likewise not
5 paid minimum wage for all of their hours worked. Plaintiff and the Arizona Class have
6 been uncompensated and/or under-compensated as a result of Defendants' common
7 policies and practices which failed to comply with Arizona law. Moreover, Defendants'
8 repudiated Plaintiff's and Arizona Class Members' rights to their property, *i.e.* tips.
9 Defendants' requirement that Plaintiff and Arizona Class Members participate in an
10 illegal tip pool was a policy and practice common to all tipped employees and muckers.
11

12 63. Adequacy. Plaintiff is a representative party who will fairly and adequately
13 protect the interests of the Arizona Class because it is in his interest to effectively
14 prosecute the claims herein alleged in order to obtain the unpaid wages and penalties
15 required under Arizona law. Plaintiff has retained attorneys who are competent in both
16 class actions and wage and hour litigation. Plaintiff does not have any interest which
17 may be contrary to or in conflict with the claims of the Arizona Class he seeks to
18 represent.
19

20 64. Commonality. Common issues of fact and law predominate over any
21 individual questions in this matter. The common issues of fact include, but are not
22 limited to:
23

- 24 a. Whether Defendants' required Plaintiff and Arizona Class Members
25 to participate in an illegal tip pool;

1 b. Whether Defendants’ properly and accurately notified Plaintiff and
2 the Arizona Class Members of their intent to rely on their tips in
3 order to satisfy their minimum wage obligations;

4 c. Whether Defendants notified Plaintiff and the Arizona Class
5 Members in writing each pay period of the amount per hour that the
6 Defendants take as a tip credit;

7
8 a. Whether Defendants failed to pay Plaintiff and the Arizona Class
9 Members overtime wages for all hours worked over forty (40) hours
10 in a workweek;

11 b. Whether Defendants failed to pay Plaintiff and the Arizona Class
12 Members their minimum and overtime wages in a timely manner in
13 accordance with the Arizona Wage Act;

14 c. Whether Defendants failed to pay Plaintiff and Arizona Class
15 Members the minimum wage for all hours worked; and

16 d. Whether Defendants converted Plaintiff’s and Arizona Class
17 Members’ tips.
18

19 65. The common issues of law include, but are not limited to:
20

21 a. Whether Defendants are entitled to take advantage of the Arizona tip
22 credit and pay a direct wage less than the Arizona minimum wage;

23 b. Whether Plaintiff and the Arizona Class Members are entitled to a
24 return of all their tips illegally taken;
25

- 1 c. Whether Plaintiff and the Arizona Class Members are entitled to
- 2 compensatory damages;
- 3 d. The proper measure of damages sustained by Plaintiff and the
- 4 Arizona Class; and
- 5 e. Whether Defendants' actions were "willful."

6 66. Superiority. A class action is superior to other available means for the fair
7 and efficient adjudication of this lawsuit. Even in the event any member of the Arizona
8 Class could afford to pursue individual litigation against companies the size of
9 Defendants, doing so would unduly burden the court system. Individual litigation would
10 magnify the delay and expense to all parties and flood the court system with duplicative
11 lawsuits. Prosecution of separate actions by individual members of the Arizona Class
12 would create the risk of inconsistent or varying judicial results and establish incompatible
13 standards of conduct for Defendants.
14

15 67. A class action, by contrast, presents far fewer management difficulties and
16 affords the benefits of uniform adjudication of the claims, financial economy for the
17 parties, and comprehensive supervision by a single court. By concentrating this litigation
18 in one forum, judicial economy and parity among the claims of individual Arizona Class
19 Members are promoted. Additionally, class treatment in this matter will provide for
20 judicial consistency. The identity of members of the Arizona Class is readily identifiable
21 from Defendants' records.
22

23 68. This type of case is well-suited for class action treatment because: (1)
24 Defendants' practices, policies, and/or procedures were uniform; (2) the burden is on the
25

1 Defendants to prove they properly compensated their employees; and (3) the burden is on
2 the Defendants to accurately record hours worked by employees and tip credit taken.

3 69. Ultimately, a class action is a superior forum to resolve the Arizona claims
4 detailed herein because of the common nucleus of operative facts centered on the
5 continued failure of Defendants to pay Plaintiff and the Arizona Class Members
6 according to applicable Arizona laws and the conversion of Plaintiff's and Arizona Class
7 Members' tips
8

9 70. Nature of notice to be proposed. As to the Rule 23 Class, it is contemplated
10 that notice would be issued giving putative class members an opportunity to opt out of
11 the class if they so desire, *i.e.* "opt-out notice." Notice of the pendency and resolution of
12 the action can be provided to the Arizona class by mail, electronic mail, print, broadcast,
13 internet and/or multimedia publication.
14

15 **VII. CAUSES OF ACTION**

16 **COUNT I** 17 **VIOLATION OF THE FAIR LABOR STANDARDS ACT** 18 **FAILURE TO PAY OVERTIME** 19 **(COLLECTIVE ACTION)**

20 50. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

21 51. Because Defendants required tipped employees to share tips with nontipped
22 employees, Defendants can no longer take advantage of the tip credit privilege and must
23 pay its employees a direct wage of at least \$7.25 per hour for every hour worked during
24 the three years prior to the filing of this Complaint to present.
25

1 52. Defendants' practice of failing to pay Plaintiff and FLSA Class Members
2 time-and-a-half rate for hours in excess of forty (40) per workweek violates the FLSA. 29
3 U.S.C. § 207.

4 53. None of the exemptions provided by the FLSA regulating the duty of
5 employers to pay overtime at a rate not less than one and one-half times the regular rate
6 at which its employees are employed are applicable to the Defendants, Plaintiff, or FLSA
7 Class Members.
8

9 **COUNT II**
10 **VIOLATION OF THE FAIR LABOR STANDARDS ACT**
11 **FAILURE TO PAY THE MINIMUM WAGE**
12 **(COLLECTIVE ACTION)**

13 54. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

14 55. Defendants' practice of failing to pay Plaintiff and FLSA Class Members at
15 the required minimum wage rate violates the FLSA. 29 U.S.C. § 206.

16 56. Defendants pay Plaintiff and other tipped and nontipped employees at a rate
17 of less than \$7.25 per hour.

18 57. Defendants violated the tip credit provision under the FLSA as described
19 above and as such cannot take advantage of the tip credit privilege. Accordingly,
20 Defendants' direct payment of wages at less than \$7.25 per hour is in violation of the
21 FLSA's minimum wage provisions.

22 58. None of the exemptions provided by the FLSA regulating the duty of
23 employers to pay employees for all hours worked at the required minimum wage rate are
24 applicable to the Defendants, Plaintiff, or FLSA Class Members.
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COUNT III
VIOLATION OF ARIZONA MINIMUM WAGE ACT
FAILURE TO PAY MINIMUM WAGE
(CLASS ACTION)

59. Plaintiff and Arizona Class Members incorporate all allegations contained in the foregoing paragraphs.

60. Defendants' practice of willfully failing to pay Plaintiff and Arizona Class Members wages at the rate of the Arizona Minimum Wage and failure to provide proper notification of Defendants' intention to rely on the tip credit violates the Arizona Minimum Wage Act. ARIZ. REV. STAT. ANN. § 23-363(A), (C).

COUNT IV
VIOLATION OF ARIZONA WAGE LAW
FAILURE TO PAY WAGES DUE
(CLASS ACTION)

89. Plaintiff and Arizona Class Members incorporate all allegations contained in the foregoing paragraphs.

90. Defendants' practice of willfully failing to timely pay Plaintiff and Arizona Class Members wages for labor performed at the Arizona minimum and overtime rates violates Arizona Wage Law. ARIZ. REV. STAT. ANN. § 23-351(C).

COUNT V
CONVERSION
(CLASS ACTION)

91. Conversion is the repudiation of the owner's right or an exercise of dominion over the property, wrongfully, and in denial of or inconsistent with that right; or, as the rule has been otherwise stated, conversion is an illegal assumption of ownership.

1 100. Plaintiff, FLSA Class Members, and Arizona Class Members are also
2 entitled to all of the misappropriated tips.

3 101. Plaintiff and FLSA Class Members are also entitled to an amount equal to
4 all of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).

5 102. Plaintiff and FLSA Class Members are entitled to recover their attorney's
6 fees and costs as required by the FLSA. 29 U.S.C. § 216(b).

7 103. Plaintiff and Arizona Class Members are entitled to an amount equal to
8 wages owed, interest thereon, and an additional amount equal to twice the underpaid
9 wages. ARIZ. REV. STAT. ANN. § 23-364(G).

10 104. Plaintiff and Arizona Class Members are entitled to treble the amount of
11 wages unpaid under Arizona Wage Law. ARIZ. REV. STAT. ANN. § 23-355(A).

12 105. Plaintiff and Arizona Class Members are entitled to recover attorney's fees
13 and costs under ARIZ. REV. STAT. ANN. §§ 12-341, 12-341.01, 23-364(G).

14 106. Plaintiff and Arizona Class Members are entitled to recover their converted
15 tips.

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18 **IX. JURY DEMAND**

19 100. Pursuant to his rights under the Constitution of the United States, U.S.
20 Const. amend VII, and Fed. R. Civ. P. 38(a), Plaintiff hereby demands a trial by jury.

21
22 **PRAYER FOR RELIEF**

23 101. For these reasons, Plaintiff, FLSA Class Members, and Arizona Class
24 Members respectfully request that judgment be entered in their favor awarding the
25 following relief:

- a. Overtime compensation for all hours worked over forty in a workweek at the applicable time-and-a-half rate;
- b. All unpaid wages at the FLSA and/or Arizona mandated minimum wage rate;
- c. All misappropriated funds;
- d. An equal amount of all owed wages as liquidated damages as allowed under the FLSA;
- e. An amount equal to wages owed, interest thereon, and an additional amount equal to twice the underpaid wages pursuant to ARIZ. REV. STAT. ANN. § 23-364(G);
- f. An amount equal to treble the amount of wages unpaid under Arizona Wage Law and liquidated damages pursuant to ARIZ. REV. STAT. ANN. § 23-355(A);
- g. Prejudgment and post-judgment interest on unpaid back wages pursuant to the FLSA and/or ARIZ. REV. STAT. ANN. § 23-364(G);
- h. Reasonable attorney's fees, costs and expenses of this action as provided by the FLSA and ARIZ. REV. STAT. ANN. §§ 12-341, 12-341.01, 23-364(G);
- i. In the event Defendants fail to satisfy any judgment for Plaintiff with respect to the Arizona wage claims, an award that Defendants shall pay Plaintiff an amount which is treble the amount of the outstanding judgment with interest thereon at the then legal rate in accordance with ARIZ. REV. STAT. ANN. § 23-360; and
- j. Such other and further relief to which Plaintiff and Class Members may be entitled, at law or in equity.

Dated this April 14, 2017.

Respectfully submitted,

By: /s/ Beatriz Sosa-Morris
Beatriz Sosa-Morris

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LEAD ATTORNEY IN CHARGE FOR PLAINTIFF
AND CLASS MEMBERS

OF COUNSEL:

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**CONSENT FORM
FOR WAGE CLAIM AGAINST TOPGOLF**

- I, Timothy Wayne Bell (print name), consent and agree to pursue my claims for unpaid overtime and/or minimum wage through a lawsuit brought under the Fair Labor Standards Act and any state wage and hour law.
- I intend to pursue my claim individually, unless and until the court certifies this case as a collective or class action. I agree to serve as the class representative if I am selected by Plaintiff's counsel.
- If I am not the class representative, I authorize the named Plaintiff to file and prosecute my claim for unpaid wages in my name, and on my behalf, and designate the named Plaintiff to make decisions on my behalf concerning the litigation, including negotiating a resolution of my claims, entering into an agreement with the lawyers in this case, and I understand I will be bound by such decisions.
- I agree to be represented by Sosa-Morris Neuman Attorneys at Law.
- If my consent form is stricken or if I am for any reason not allowed to participate in this case, I authorize Plaintiff's counsel to use this Consent Form to re-file my claims in a separate or related action against my employer.

(Signature) Timothy Wayne Bell (Date Signed) 04/06/2017

Exhibit A

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Timothy Bell, on behalf of himself and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Maricopa, AZ (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Sosa-Morris Neuman Attorneys at Law, 5612 Chaucer Dr., Houston, Texas 77005, 281-885-8844

DEFENDANTS

TopGolf USA Riverwalk LLC; TopGolf USA Gilbert, LLC; Top Golf International, Inc.

County of Residence of First Listed Defendant Maricopa, AZ (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Fair Labor Standards Act, 29 U.S.C. 201, et seq.

Brief description of cause: Failure to pay overtime and the minimum wage

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/14/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Beatriz Sosa-Morris

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Dish Washer Tees Off Against TopGolf in Class Action Over Illegal Tip Pool](#)
