

1 JOCELYN BURTON, SBN 135879
SCOTT S. NAKAMA, SBN 296732
2 BURTON EMPLOYMENT LAW
1939 Harrison Street, Suite 400
3 Oakland, CA 94612
4 Ph: (510) 350-7025
5 Fax: (510) 473-3672
6 e-mail: jbarton@burtonemploymentlaw.com
e-mail: snakama@burtonemploymentlaw.com

7 Attorneys for Plaintiff
8 NICHOLAS M. SMITH

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 NICHOLAS M. SMITH, individually, and on)
13 behalf of the general public, and as an)
14 "aggrieved employee" under the California)
Labor Code Private Attorney Generals Act,)
15 Plaintiff,)
16 vs.)
17)
18 GOLDEN STATE WARRIORS, LLC,)
19)
20 Defendant.)

Case No.
COMPLAINT FOR DAMAGES
DEMAND FOR JURY TRIAL

21
22
23 Plaintiff NICHOLAS M. SMITH (hereinafter "Plaintiff") respectfully alleges as follows:

24
25 **PRELIMINARY STATEMENT**

26 Plaintiff NICHOLAS M. SMITH brings this action for monetary damages and injunctive
27 relief under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, Title VII of the Civil
28

1 Rights Act of 1964 as amended effective January 29, 2009, 42 U.S.C. § 2000e *et seq.* (hereinafter
2 “Title VII”), the California Fair Employment and Housing Act, California Gov’t Code § 12940 *et*
3 *seq.* (hereinafter “FEHA”), and the California Labor Code. Plaintiff seeks redress for injuries he
4 sustained from Defendant GOLDEN STATE WARRIORS, LLC’s (“GSW” or “Defendant”)
5 unlawful employment discrimination against him because of disability and retaliation for engaging in
6 protected activity. In addition, Plaintiff seeks redress for injuries he and other aggrieved employees
7 sustained from Defendant GSW’s failure to provide them with 1) their final wages as required by
8 state law, 2) all sales commission earned, and 3) wage statements that complied with California Labor
9 Code § 226(a).
10

11 JURISDICTION

12
13 1. This Court has jurisdiction over the subject matter and the parties pursuant to 28
14 U.S.C. §§ 1331, 1343 and 42 U.S.C. § 2000e-5 to enforce the provisions of Title VII, 42 U.S.C. §
15 2000e *et seq.* and the provisions of the Americans with Disabilities Act of 1990, as amended, 42
16 U.S.C. § 12101 *et seq.*, and conferring original jurisdiction upon this court of any civil action to
17 recover damages or to secure equitable relief under any Act of Congress providing for the protection
18 of civil rights, under the Declaratory Judgment Statute, 28 U.S.C. § 2201.
19

20 2. This Court has supplemental jurisdiction over the related state claims under 28 U.S.C.
21 § 1367. Plaintiff’s claims pursuant to the FEHA, Cal. Gov’t Code §§ 12940(a), (h), (k), and (m), his
22 claim of wrongful discharge in violation of public policy, breach of contract claim, and his claims
23 under the California Labor Code are related, as all of Plaintiff’s claims share common operative facts.
24 Resolving all state and federal claims in a single action serves the interests of judicial economy,
25 convenience, and fairness to the parties.
26
27
28

1 participant takes a protected leave of absence in accordance with State and Federal law, the
2 Participant's sales quota will be prorated to account for the protective leave of absence."

3 14. For the 2016-2017 season, Plaintiff and Defendant signed an Individual Sales
4 Compensation Plan indicating that Plaintiff's base salary was \$37,000 and that he received three
5 percent commission for individual sales and one percent commission rate "for Equal Split for Pooled
6 Sales." He also received a non-discretionary bonus based on the amount of revenue from ticket sales
7 and another non-discretionary bonus based on the department's group sales. Defendant did not
8 assign him a sales quota. On page 1 of the plan, it states the following: "If the participant takes a
9 protected leave of absence in accordance with State and Federal law, the Participant's sales quota will
10 be prorated to account for the protective leave of absence." The 2015-2016 and 2016-2017
11 commission agreements did not contain any clause reducing Plaintiff's commission because of an
12 arena fee. Plaintiff is informed and believed that he never signed a commission agreement with
13 Defendant authorizing Defendant to deduct an arena fee from Plaintiff's total sales.
14
15

16 15. Plaintiff was consistently ranked among the top performers in the NBA in group ticket
17 sales. Senior Vice President, Business Development Brandon Scheider informed Plaintiff of the
18 following via email: "We just received word from the NBA that you were number one in the league
19 in group sales revenue for the 2015-16 season! Congratulations on this unbelievable
20 accomplishment!"
21

22 16. In 2015, Plaintiff earned approximately \$141,000 in wages. In 2016, Plaintiff earned
23 approximately \$140,419 despite his commission rate decreasing significantly. In 2017, even though
24 the GSW reduced his commission rate and Plaintiff missed time during the NBA season due to his
25 disability, he still earned approximately \$82,600.
26
27
28

1 17. Plaintiff's commission would have been higher if Defendant did not illegally deduct
2 an Arena Debt Fund Fee from Plaintiff's commission throughout his employment in violation of
3 Labor Code §§ 221, 224, 2802. Specifically, before the commission was calculated, GSW sent
4 Plaintiff spreadsheets instructing him to update the spreadsheets by deducting approximately a five
5 percent Arena Debt Fund Fee from his sales. After the arena fee deduction, GSW calculated the
6 commission earned by Plaintiff from the remaining sales. Because Plaintiff was not paid all
7 commission earned, the itemized wage statements also did not accurately show the gross wages
8 earned and the net wages earned. Plaintiff's wage statements failed to list the Arena Debt Fund Fee
9 as a deduction. Plaintiff is informed and believed GSW illegally deducted an arena fee from the
10 commission of other employees.
11

12 18. When Plaintiff's employment ended in March 2018, he was not paid all wages (e.g.,
13 commission and bonuses) owed to him in a timely manner as required by Labor Code §§ 202 and
14 204. Accordingly, Defendant is liable for waiting time penalties pursuant to Labor Code § 203.
15

16 19. Defendant also issued Plaintiff and other aggrieved employees with itemized wage
17 statements that do not comply with Labor Code section 226(a)(8). The wage statements do not
18 accurately show the name of the legal entity that is the employer. Instead, the wage statements list
19 the employer's name only as "GOLDEN STATE WARRIORS" instead of its full legal name
20 (GOLDEN STATE WARRIORS, LLC).
21

22 20. To further add to the confusion regarding Plaintiff's employer, there are multiple legal
23 entities with similar names. For example, the following corporations are registered or were
24 previously registered as active corporations with the California Secretary of State: (1) GOLDEN
25 STATE WARRIORS, INC., (2) GOLDEN STATE WARRIORS COMMUNITY FOUNDATION,
26 and (3) WARRIORS, INC. Moreover, GOLDEN STATE WARRIORS, LLC and GOLDEN STATE
27
28

1 WARRIORS COMMUNITY FOUNDATION have the same address of 1011 Broadway, Oakland,
2 CA 94607. From the wage statement alone, Plaintiff cannot distinguish “GOLDEN STATE
3 WARRIORS” (name listed on the wage statements) from other corporations with similar names.

4 21. Because Plaintiff was not paid all commission and bonuses that he earned, the
5 itemized wage statements that Plaintiff received from Defendant did not accurately show the gross
6 wages earned and the net wages earned.

8 **DISCRIMINATION AND RETALIATION CLAIMS**

9 22. On or around November 24, 2017, Plaintiff went on disability leave.

10 23. On or around February 22, 2018, Plaintiff returned from medical leave. Soon after, he
11 complained to Vice President of Human Resources Gracie Mercado that Defendant failed to pay him
12 all overtime wages. While Plaintiff complained, Ms. Mercado cut him off mid-sentence and changed
13 the subject of the conversation. After Plaintiff insisted on talking about his complaint, Ms. Mercado
14 finally promised to investigate his concerns.

15 24. On March 9, 2018, Plaintiff drafted a letter that he planned to send to NBA
16 Commissioner Adam Silver. Plaintiff decided to write the letter directly to Mr. Silver as Mr. Silver
17 encouraged all employees of an NBA team to use a hotline to report workplace misconduct. In the
18 letter, Plaintiff complained about (1) Mr. Murphy harassing employees based on their race and sex,
19 (2) the failure of Defendant to pay him all overtime wages earned, (3) the failure of Defendant to pay
20 all bonuses, (4) Ms. Mercado’s reluctance to address his complaints of overtime, and (5) unsafe
21 working conditions. Further, Plaintiff documented his physical and mental disabilities.

22 25. In the letter, Plaintiff complained that Mr. Murphy constantly racially harassed and
23 made sexist comments toward two Filipino employees: Ms. Valdehueza and Anna Cuartero. Plaintiff
24
25
26
27
28

1 alleged Mr. Murphy “thought it was okay to constantly harass and make sexist comments about their
2 ethnicity.” Plaintiff also alleged that Mr. Murphy made Ms. Valdehueza cry.

3 26. In the letter, Plaintiff complained about the lack of overtime pay. He stated that “We
4 are pushed so hard and work unprecedented hours in office and even more notably outside of office
5 to try to fulfill these lofty goals.” Plaintiff claimed that “[w]ork loads are 60 hours a week on
6 average from at least August - February.” Plaintiff also stated the following:

8 Now let me make note here: I’ve been paid overtime but not all of it. Overtime for
9 games only but being a group sales account executive requires additional hours
10 outside of 8:30am-5:30 pm to prepare for events and to try to meet sales goals. It is
11 not okay to slave me and not pay me for my hard worked overtime hours. [*sic*] Whats
12 upsetting is that our company will not give the overtime but expects us to work the
13 hours in order to achieve the goals. [*sic*] Ive been told “you work hard and you will
14 be compensated through commission but we cannot pay you all that overtime,” “if
15 you are working too much, maybe you should give up some of your accounts”
16 (accounts I worked hard to get compensated on mind you) or being blamed for not
17 working hard enough during the regular 8 hour shift. The problem with this tactic is
18 that it has come with threats and meetings where we are constantly yelled at and
19 ridiculed with comments like “you guys are sloppy” “step up your game” and “you
20 aren’t working hard enough”. The tone on these comments is unbearable. These words
21 are extremely hurtful knowing all the unpaid hours and time a lot of us have
22 committed to the organization. The threats consist of firing or replacing us with
23 comments like “we are the Golden State Freaking Warriors, if you don’t want to work
24 we have a lot of people that do,” “If you don’t want to work hard, door is right there
25 guys,” “You know how many resumes we have, people are begging to work with us.”
26 The employee handbook which states that if we try to claim overtime without
27 approval it could lead to termination. I see that as a manipulation tactic to scare us. I
28 understand the need to not overpay employees OT because it gets expensive. However,
I’ve asked numerous of times and been granted a few hours during one week in
August. We have asked and been denied OT even though our workload demands it
and they expect us to work it. It has become an accepted part of our job and we just
assume [*sic*] thats the way it goes.

27 27. Plaintiff also complained of the following: “Our commission structure has been cut
28 even though we have continued to sell more revenue each season. There are bonuses that have not
been paid in a year this April, that were promised in January 2018. I find this business practice very
unethical and I believe in the state of California it is illegal to not pay hourly sales employees

1 overtime.” Further, Plaintiff complained that Ms. Mercado ignored his complaints of lack of overtime
2 pay.

3 28. In the letter, Plaintiff reported his physical and mental disabilities. Specifically, he
4 stated, “I have had two hernia surgeries, testicle surgery and slipped discs, pinched nerves in my
5 back.” Plaintiff also stated: “[sic] Ive been hospitalized in the ER with a panic attack and continue to
6 have severe anxiety/depression, seen a psychiatrist, and prescribed medications for depression and
7 anxiety. I am just not the same person right now physically or mentally.”

9 29. Plaintiff also complained about the unsafe working conditions of Oracle Arena. He
10 stated:

11 Oracle [sic] arena is the NBA’s oldest arena and the workplace set up is horrendous.
12 My client, Enrique Ovando The Salvation Army, slipped and fell (hurt himself in the
13 process) on built up water on the floor. When it rains, puddles build up in our group
14 walkway. [sic] Ive reported it in the past. But I’ve seen it continue to be a problem.
15 As a group sales representative, we host many special events with lots of giveaway
16 boxes and moving parts that keep us running around throughout the game. We have
17 been given parking passes at Oracle Arena and instructed to park in B lot. A number
18 of us have had to lug heavy boxes across the parking lot which I estimate from lot to
entrance to be about 100-200 yards depending on where you park. [sic] Ive tried to
park in closer lots with success sometimes but not others. [sic] Ive asked for a better
parking pass but declined.

19 Finding an arena dolly (our department doesn’t have a dedicated one) is a crap shoot.
20 Sometimes you can find one in a timely matter, sometimes not. Elevators have been
21 known to break down on more than one occasion leaving event set up on the 200 level
22 to carrying heavy boxes up 5 flights of stairs. I was once told, “doors open in 30
23 minutes, you better find a way to get setup.” I estimate about 3-5 miles of walking
24 around the arena up and down stairs for most worked home games. My [sic] co
worker, Ashley Tow had to get up on the catwalk for giveaways. She said she was
scared being that high. This type of physical activity was never stated in my job
description so unfortunately I was never given a choice to accept this type of work.

25 30. Plaintiff also complained that Mr. Murphy threatened him physically by grabbing his
26 arm, pulling him into a stairway and screaming at him during an NBA game at Oracle Arena.

27 Plaintiff also stated: “[Mr. Murphy] was a bully as my boss and when I stood up for myself I was
28

1 pulled into Director of Ticket Sales, John [sic] Beavens office and told ‘not to be combative with my
2 boss’ and that it was not a good look.”

3
4 31. Plaintiff wanted to share the letter with Vice President of Ticket Sales Jonathan
5 Beaven before he sent the letter in order to give Defendant a chance to address his complaints. On or
6 around March 14, 2018, Plaintiff read the letter in its entirety to Mr. Beaven. Plaintiff also
7 complained to Mr. Beaven about the 5 percent Arena Debt Fund Fee deducted from his commission.
8 In response, Mr. Beaven was defensive and alleged that the fee is part of the sales process and part of
9 the agreement with the Oracle Arena.
10

11 32. On or around March 16, 2018, Plaintiff had a meeting with Mr. Beaven and Ms.
12 Mercado. During the meeting, Mr. Beaven told Plaintiff that, “We know you’re not 100 percent and
13 we want to help soften the blow.” Mr. Beaven also stated that the company lawyer will draft an exit
14 contract for Ms. Smith.
15

16 33. On March 16, 2018, Ms. Mercado emailed Plaintiff and enclosed a separation
17 agreement. In response, Plaintiff wrote an email stating that the letter inaccurately represented their
18 communications earlier that day. Plaintiff complained that he did “not want to be punished for
19 moving forward to support the organization with these potential challenging issues I have raised.” He
20 also stated he was “prepared to continue to work for the Golden State Warriors as a current
21 employee.”
22

23
24 34. On March 16, 2018, GSW General Counsel David Kelly emailed Plaintiff and carbon
25 copied Ms. Mercado. In the email, Mr. Kelley stated the following: “However, unless we receive
26 confirmation from you today that you are resigning effective today, your employment with GSW will
27 be terminated effective today.” In Plaintiff’s response email, he stated: “Sounds like I’ve been
28

1 terminated for bringing up the misconduct. No other reason was stated.” Mr. Kelly responded by
2 email stating: “To clarify, you have been terminated for poor performance.” In response, Plaintiff
3 informed Mr. Kelley and Ms. Mercado of the following via email on March 16, 2018:

4 I just returned from disability and have been the number 1 rep in our department since
5 [sic] i started in 2012 and number 1 in the NBA the last two years. I also have sick
6 and personal time [sic] to use that I was using for my discomfort and pain. How is this
remotely possible that I have underperformed?

7 35. In another email to Mr. Kelley on that same day, Plaintiff stated: “I should also
8 mention that I am 3rd out of 5 Sales reps in our department in sales this season and I missed three
9 months due to disability. So if I am underperforming then what are the two people below me doing?”
10 Mr. Kelley and Ms. Mercado never responded to Plaintiff’s email.

11
12 **EXHAUSTION OF DISCRIMINATION ADMINISTRATIVE REMEDIES**

13 36. On or about April 27, 2018, Plaintiff submitted a complaint of discrimination against
14 Defendant with the Equal Employment Opportunity Commission (“EEOC”) and the California
15 Department of Fair Employment and Housing (“DFEH), EEOC Charge No. 555-2018-01274.

16
17 37. On or about August 10, 2018, the EEOC mailed Plaintiff Right to Sue Letters from the
18 EEOC and DFEH.

19
20 **PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS**

21 38. The Labor Code Private Attorneys General Act of 2004 (“PAGA”), as set forth at
22 Labor Code section 2698 et seq., is and at all times relevant, was applicable to Plaintiff’s employment
23 with Defendant.

24 39. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which
25 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
26 Agency (“LWDA”) for violations of the Labor Code may, as an alternative, be recovered through a
27
28

1 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
2 former employees pursuant to the procedures outlined in Labor Code section 2699.3.

3
4 40. Plaintiff was employed by Defendant, and the alleged violations were committed
5 against him in relation to his employment with Defendant. Plaintiff is, therefore, an aggrieved
6 employee as defined by Labor Code section 2699(c). Other employees, current and former, are also
7 aggrieved employees in that one or more of the alleged violations were also committed against them
8 in relation to their employment with Defendant.

9
10 41. Pursuant to Labor Code section 2699(g), an aggrieved employee may recover the civil
11 penalty on behalf of himself or herself and other current or former employees against whom one or
12 more of the alleged violations was committed. Furthermore, any employee who prevails in any such
13 action shall be entitled to an award of reasonable attorney's fees and costs.

14
15 42. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil
16 action under the PAGA after the following requirement have been met:

- 17
- 18 a. The aggrieved employee has provided written notice by online filing to the LWDA
19 and by certified mail to the employer (hereinafter "Employee's Notice") of the
20 specific provisions of the Labor Code alleged to have been violated, including the
21 facts and theories to support the alleged violations; and
 - 22 b. The LWDA has provided notice (hereinafter "LWDA's Notice") to the employer
23 and the aggrieved employee by certified mail that it does not intend to investigate
24 the Employee's claims. Upon receipt of the LWDA's Notice, or if the LWDA
25 does not provide such Notice within 65 calendar days of the postmark date of the
26 Employee's Notice, the aggrieved employee may commence a civil action
27
28

1 pursuant to Labor Code section 2699 to recover civil penalties in addition to any
2 other penalties to which the employee may be entitled.

3
4 43. On May 8, 2018, Plaintiff provided written notice by online filing to the LWDA and
5 by certified mail to GSW of specific provisions of the Labor Code alleged to have been violated by
6 GSW, including the facts and theories to support the alleged violations.

7
8 44. GSW failed to cure the alleged violations of Labor Code section 226(a)(8).

9
10 45. As of November 8, 2018, the LWDA has not provided Plaintiff with written notice
11 that it intends to investigate the alleged violations of the Labor Code. Accordingly, Plaintiff has
12 satisfied the administrative prerequisites under Labor Code section 2699.3 to bring a civil action to
13 recover civil penalties under the PAGA, in addition to other remedies.

14
15 46. Pursuant to Labor Code section 2699.3(d), the aforementioned 65-day “exhaustion
16 period” is not counted as part of the time limited for the commencement of a civil action to recover
17 civil penalties under the PAGA.

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**
20 **VIOLATION OF 42 U.S.C. §§ 12101 ET SEQ.**
21 **(Disability Discrimination – ADA)**
22 **Against Defendant**

23 47. Plaintiff realleges and incorporates by reference Paragraphs 1 through 46 above as
24 though fully set forth.

25 48. The Americans with Disabilities Act provides that covered entities may not
26 discriminate against qualified individuals on the basis of disability regarding the hiring, advancement,
27 or discharge of employees, employee compensation, job training, and other terms, conditions, and
28 privileges of employment.

1 49. Plaintiff suffers from a disability because he possesses a physical and/or mental
2 impairment that substantially limits one or more of his major life activities, he has a record of such
3 impairment, or he was regarded as having such impairment.

4
5 50. Plaintiff is a qualified individual with a disability who, with or without reasonable
6 accommodation, could perform the essential functions of the position he held.

7
8 51. As set forth above, Defendant discriminated against Plaintiff on the basis of his
9 disability.

10 52. The acts taken toward Plaintiff were carried out by and/or ratified by Defendant and/or
11 managing agents/employees of Defendant acting in an oppressive, fraudulent and malicious manner
12 to injure or damage Plaintiff, justifying an award of punitive damages.

13
14 53. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered
15 damages and requests relief as provided.

16
17 **SECOND CAUSE OF ACTION**
18 **VIOLATION OF CAL GOV. CODE § 12940(a)**
19 **(Disability Discrimination – FEHA)**
20 **Against Defendant**

21 54. Plaintiff realleges and incorporates by reference Paragraphs 1 through 46 above as
22 though fully set forth.

23 55. The FEHA explicitly prohibits an employer from refusing to hire or employ a person,
24 discharging a person from employment, or discriminating against such person in compensation or in
25 terms, conditions or privileges of employment on the basis of race, religious creed, color, national
26 origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital
27 status, sex, gender, gender identity, gender expression, age, sexual orientation or military and veteran
28 status. CAL. GOV. CODE § 12940(a). "Race, religious creed, color, national origin, ancestry, physical

1 disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or military
2 and veteran status" includes a perception that the person has any of those characteristics or that the
3 person is associated with a person who has, or is perceived to have, any of those characteristics. CAL.
4 GOV. CODE § 12926(n).

5
6 56. At all times relevant herein mentioned, Plaintiff was qualified for the position he held
7 with Defendant.

8
9 57. Defendant was Plaintiff's employer under California Government Code section
10 12926(d) and was therefore barred from discriminating in its employment decisions in violation of
11 Government Code section 12940(a).

12
13 58. As set forth above, Defendant discriminated against Plaintiff based on his disability,
14 perceived disability, and/or future perceived disability, in violation of Government Code section
15 12940(a).

16
17 59. The acts taken toward Plaintiff were carried out by and/or ratified by Defendant and/or
18 managing agents/employees of Defendant acting in an oppressive, fraudulent and malicious manner
19 to injure or damage Plaintiff, justifying an award of punitive damages.

20
21 60. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered
22 damages and requests relief as provided.

23 **THIRD CAUSE OF ACTION**
24 **Retaliation**
25 **(California Government Code § 12940(h))**
26 **Against Defendant**

27 61. Plaintiff realleges and incorporates by reference Paragraphs 1 through 46 above as
28 though fully set forth.

1 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of
2 Section 515 or any applicable order of the Industrial Welfare Commission, [. . .] (4) all deductions,
3 provided that all deductions made on written orders of the employee may be aggregated and shown
4 on one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
5 paid, (7) the name of the employee and only the last four digits of his or her social security number or
6 an employee identification number other than a social security number, (8) the name and address of
7 the legal entity that is the employer [. . .] and (9) all applicable hourly rates in effect during the pay
8 period and the corresponding number of hours worked at each hourly rate by the employee[.]”
9

10
11 83. An employee suffering injury as the result of a knowing and intentional failure by an
12 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
13 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
14 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the
15 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
16 reasonable attorney’s fees. Labor Code § 226(e)(1).
17

18 84. An employee is deemed to suffer injury if the employer fails to provide a wage
19 statement or if the employer fails to provide accurate and complete information as required by any
20 one or more of the items (1) through (9), inclusive, of subdivision (a) of Labor Code section 226 and
21 the employee cannot promptly and easily determine from the wage statement alone: (i) the amount of
22 the gross wages or net wages paid to the employee during the pay period or any of the other
23 information required to be provided on the itemized wage statement pursuant to items (2) to (4),
24 inclusive, (6), and (9) of subdivision (a); (ii) which deductions the employer made from gross wages
25 to determine the net wages paid to the employee during the pay period; (iii) the name and address of
26 the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section
27
28

1 1682, the name and address of the legal entity that secured the services of the employee during the
2 pay period; and (iv) the name of the employee and only the last four digits of his or her social security
3 number or an employee identification number other than a social security number. Labor Code §
4 226(e)(2)(A), (e)(2)(B)(i)-(iv). “Promptly and easily determine” means a reasonable person would be
5 able to readily ascertain the information without reference to other documents or information. Labor
6 Code § 226(e)(2)(C).
7

8 85. During the relevant time period(s) and as set forth above, Defendant failed to provide
9 accurate and complete itemized wage statements to Plaintiff, in violation of Labor Code section
10 226(a).
11

12 86. Labor Code section 226.3 provides the following in pertinent part: “[a]ny employer
13 who violates subdivision (a) Section 226 shall be subject to a civil penalty in the amount of two
14 hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars
15 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to
16 provide the employee a wage deduction statement or fails to keep the records required in subdivision
17 (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty
18 provided by law.
19
20

21 87. Defendant failed to provide Plaintiff and other aggrieved employees with wage
22 statements that stated the accurate: a) gross wages earned, b) net wages earned, c) name of the legal
23 entity that is the employer, and d) all deductions.
24

25 88. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
26 provided. Plaintiff also hereby requests the civil penalties, attorney’s fees, and costs recoverable in a
27
28

1 civil action brought by an aggrieved employee on behalf of himself and, as a proxy for the LWDA,
2 on behalf of Defendant's other current and former employees.

3 **SEVENTH CAUSE OF ACTION**
4 **VIOLATION OF LABOR CODE § 204**
5 **(Failure to Timely Pay Wages – PAGA)**
6 **Against Defendant**

7 89. Plaintiff realleges and incorporates by reference Paragraphs 1 through 46 as though
8 fully set forth.

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

16 91. During the relevant time period, Defendant failed to pay Plaintiff in a timely manner
17 his wages earned, in violation of Labor Code section 204.
18

19 92. Pursuant to Labor Code section 218.5, in any action brought for the nonpayment of
20 wages, fringe benefits, or health and welfare pension fund contributions, a prevailing plaintiff shall be
21 entitled to an award of attorney's fees and costs if requested upon the initiation of the action.
22

23 93. Plaintiff has been injured and requests relief. Plaintiff also requests the civil penalties,
24 attorney's fees, and costs recoverable in a civil action brought by an aggrieved employee on behalf of
25 himself and, as a proxy for the LWDA, on behalf of Defendant's other current and former employees.
26
27

28 **EIGHTH CAUSE OF ACTION**

1 **VIOLATION OF LABOR CODE §§ 201, 202**
2 **Failure to Pay Timely Wages Upon Resignation or Discharge-PAGA**
3 **Against Defendant**

4 94. Plaintiff hereby realleges and incorporates by reference Paragraphs 1 through 46 above
5 as though fully set forth.

6 95. At all times set forth, California Labor Code §§ 201 and 202 provide that if an
7 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
8 payable immediately, and if an employee voluntarily leaves his or her employment, his or her wages,
9 will become due by seventy-two (72) hours thereafter, unless the employee has given seventy-two
10 (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his
11 or her wages at the time of quitting.

12 96. During the relevant period, Defendant willfully failed to pay Plaintiff and other
13 aggrieved employees who are no longer employed by Defendant their wages, earned and unpaid,
14 either at the time of discharge or within seventy-two (72) hours of their leaving Defendant's employ.

15 97. Defendant's failure to pay Plaintiff and other aggrieved employees who are no longer
16 employed by Defendant their wages earned and unpaid at the time of discharge, or within seventy-
17 two (72) hours of their leaving Defendant's employ, violates California Labor Code §§ 201 and 202.

18 98. Pursuant to Labor Code § 2699(f), if a person employs one or more persons, the civil
19 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
20 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
21 subsequent violation.

22 99. Under California Labor Code § 2699, Plaintiff, on behalf of himself and other
23 aggrieved employees, seeks to recover civil penalties, attorneys' fees, and costs.
24
25
26
27
28

1 pay all wages (e.g., commission and bonuses) violate the California Labor Code and constitute unfair
2 business practices in violation of California Business & Professions Code §§ 17200 *et seq.*

3
4 107. Plaintiff and other aggrieved employees have been injured by Defendant’s unlawful
5 business acts and practices as alleged, including but not limited to the loss of money or property.
6 Defendant has reaped unfair benefits and illegal profits at Plaintiff’s and other aggrieved employee’s
7 expense.

8
9 108. Plaintiff and other aggrieved employees are entitled to immediate possession of all
10 amounts owed to Plaintiff and other aggrieved employees by Defendant, with interest.

11
12 109. Defendant’s unfair business practices entitle Plaintiff to seek preliminary and
13 permanent injunctive relief, including but not limited to orders that Defendant account for, disgorge,
14 and restore to Plaintiff and other aggrieved employees, the compensation unlawfully withheld from
15 Plaintiff and other aggrieved employees.

16
17 **TENTH CAUSE OF ACTION**
18 **Violation of Labor Code §§ 221 & 223**
19 **(Unlawful Deductions – PAGA)**
20 **Against Defendant**

21
22 110. Plaintiff realleges and incorporates by reference Paragraphs 1 through 46 as though
23 fully set forth.

24
25 111. Under Labor Code Section 221, “It shall be unlawful for any employer to collect or
26 receive from an employee any part of wages theretofore paid by said employer to said employee.”

27
28 112. Under Labor Code Section 223, “Where any statute or contract requires an employer
to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
purporting to pay the wage designated by statute or by contract.”

1 113. Under Labor Code Section 225.5, “In addition to, and entirely independent and apart
2 from, any other penalty provided in this article, every person who unlawfully withholds wages due
3 any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as
4 follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each
5 employee. (b) For each subsequent violation, or any willful or intentional violation, two hundred
6 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
7 withheld.”
8

9
10 114. During the relevant time period, Defendant illegally deducted from Plaintiff’s total
11 sales an arena fee, which resulted in Plaintiff earning a lower commission.

12 115. Wherefore, Plaintiff has been injured and requests relief. Plaintiff also requests the
13 civil penalties, attorney’s fees, and costs recoverable in a civil action brought by an aggrieved
14 employee on behalf of himself and, as a proxy for the LWDA, on behalf of Defendant’s other current
15 and former employees.
16

17 **ELEVENTH CAUSE OF ACTION**
18 **BREACH OF CONTRACT**
19 **Against Defendant**

20 116. Plaintiff realleges and incorporates by reference Paragraphs 1 through 46 as though
21 fully set forth.

22 117. Defendant breached its sales commission agreement with Plaintiff by failing to pay
23 Plaintiff the agreed commissions throughout his employment.
24

25 118. Plaintiff was harmed by Defendant’s breach of the agreement.
26

27 119. Defendant’s breach of the contract was a substantial factor in causing Plaintiff’s harm.
28

1 120. Defendant deprived Plaintiff of his rightfully earned commission as a direct and
2 proximate result of Defendant's failure to pay said commission.

3 **TWELFTH CAUSE OF ACTION**
4 **(VIOLATION OF LABOR CODE § 98.6)**
5 **Against Defendant**

6 121. Plaintiff realleges and incorporates by reference Paragraphs 1 through 46 as though
7 fully set forth.

8 122. Under Labor Code Section 98.6(a), "[a] person shall not discharge an employee or in
9 any manner discriminate, retaliate, or take any adverse action against any employee or applicant for
10 employment because the employee or applicant engaged in any conduct delineated in this chapter,
11 including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with
12 Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed
13 a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating
14 to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral
15 complaint that he or she is owed unpaid wages, or because the employee has initiated any action or
16 notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that
17 section, or because of the exercise by the employee or applicant for employment on behalf of himself,
18 herself, or others of any rights afforded him or her.

19 123. Under Labor Code Section 98.6(b)(1), "Any employee who is discharged, threatened
20 with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other
21 manner discriminated against in the terms and conditions of his or her employment because the
22 employee engaged in any conduct delineated in this chapter, including the conduct described in
23 subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2,
24 or because the employee has made a bona fide complaint or claim to the division pursuant to this part,

1 or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled
2 to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the
3 employer.”

4
5 124. During the relevant period, Defendant retaliated against Plaintiff because he
6 complained about not receiving all of his earned commission and the failure of Defendant to pay him
7 all overtime wages he believed that he earned.

8
9 125. As a direct and proximate result of Defendant’s conduct, Plaintiff has suffered
10 damages and requests relief.

11
12 126. Wherefore, Plaintiff has been injured and requests relief.

13 **THIRTEENTH CAUSE OF ACTION**
14 **Retaliation**
15 **(California Labor Code § 6310 -PAGA)**
16 **Against Defendant**

17 127. Plaintiff realleges and incorporates by reference Paragraphs 1 through 46 as though
18 fully set forth.

19 128. Plaintiff engaged in protected activity by including, but not limited to complaining to
20 Defendant of the unsafe working conditions of Oracle Arena and that Mr. Murphy previously
21 physically grabbed his arm and pulled him into a stairway during an NBA game at Oracle Arena.

22
23 129. Defendant and its agents knew of Plaintiff’s protected activity and retaliated against
24 him because of his protected activity. After Defendant learned of Plaintiff’s protected activity, it took
25 adverse actions against him, including but not limited to terminating Plaintiff’s employment.
26
27
28

1 138. Plaintiff's protected activity of requesting an appropriate accommodation was a
2 substantial motivating reason for the adverse actions taken against him.

3
4 139. Plaintiff has suffered and continues to suffer economic and emotional distress damages
5 resulting from the retaliation.

6 140. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

7
8 141. In doing the acts herein alleged, Defendant acted with oppression, fraud, malice and in
9 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages in an
10 amount according to proof at trial.

11
12 142. Plaintiff has incurred and continues to incur attorneys' fees and legal expenses in an
13 amount according to proof at trial.

14 **FIFTEENTH CAUSE OF ACTION**
15 **Whistleblower Retaliation - PAGA**
16 **(Labor Code § 1102.5(b))**
17 **(Against Defendant)**

18 143. Plaintiff realleges and incorporates by reference Paragraphs 1 through 46 as though
19 fully set forth.

20 144. Labor Code § 1102.5(b) provides that "[a]n employer, or any person acting on behalf
21 of the employer, shall not retaliate against an employee for disclosing information, or because the
22 employer believes that the employee disclosed or may disclose information, to a government or law
23 enforcement agency, to a person with authority over the employee or another employee who has the
24 authority to investigate, discovery, or correct the violation or noncompliance, or for providing
25 information to, testifying before, any public body conducting an investigation, hearing, or inquiry, if
26 the employee has reasonable cause to believe that the information discloses a violation of state or
27
28

1 federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation,
2 regardless of whether disclosing the information is part of the employee's job duties.”

3
4 145. Plaintiff informed Defendant that he intended to file a complaint with the NBA
5 Commissioner.

6
7 146. Defendant retaliated against Plaintiff by terminating his employment because it
8 believed he may file a complaint with the NBA Commissioner.

9
10 147. An employer that is a corporation or limited liability company is liable for a civil
11 penalty not exceeding \$10,000.00.

12
13 148. The acts taken toward Plaintiff were carried out by and/or ratified by Defendant and/or
14 managing agents/employees of Defendant acting in an oppressive, fraudulent and malicious manner
15 to injure or damage Plaintiff, thereby justifying an award of punitive damages.

16
17 149. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered
18 damages and requests relief.

19
20 150. Wherefore, Plaintiff and other aggrieved employees have been injured and request the
21 civil penalties, attorney's fees, and costs recoverable in a civil action brought by an aggrieved
22 employee on behalf of himself and, as a proxy for the LWDA on behalf of Defendant's other current
23 and former employees.

24 RELIEF REQUESTED

25 WHEREFORE, Plaintiff respectfully requests that this Court assume jurisdiction in this entire
26 matter and:

27 1. Grant a declaratory judgment that Defendant violated the laws of the United States and
28 the State of California;

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Ex-Golden State Warriors Ticket Exec Files Class Action Over Allegedly Unpaid Commissions, Retaliation, Discrimination](#)
