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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO
10

11 AURIA THAOHO, on behalf of herself and all
12 others similarly situated, aggrieved employees,
and the State of California,

13 Plaintiff,

14 v.

15 CAPITOL CASINO, INC. and DOES 1
16 through 25, inclusive,

17 Defendants.

Case No. 34-2018-00228073-CU-OE-GDS

**ANSWER TO SECOND AMENDED
CLASS ACTION COMPLAINT**

18
19 Defendant CAPITOL CASINO, INC., a California Corporation ("Defendant") hereby answers
20 the Second Amended Class Action Complaint for Damages filed by Plaintiff AURIA THAOHO
21 individually and on behalf of those similarly situated, as follows:

22 **GENERAL DENIAL**

23 Pursuant to California Code of Civil Procedure section 431.30(d), Defendant denies generally
24 and specifically each and every allegation set forth in the Complaint. Defendant denies that Plaintiff
25 is entitled to the relief requested or any relief at all, that Plaintiff sustained or will sustain damages in
26 manner or sums alleged, or otherwise, by any act or omission, or any other conduct or absence of
27 conduct on the part of Defendant.
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FIRST DEFENSE

As a separate and distinct defense, Defendant alleges that Plaintiff's claims are barred by virtue of California Labor Code sections 2854 and 2856 in that Plaintiff failed to use ordinary care and diligence in the performance of her duties and failed to comply substantially with the reasonable directions of her employer.

SECOND DEFENSE

As a separate and distinct defense, Defendant alleges that Plaintiff or the putative class members have not suffered any losses and Defendant has not been unjustly enriched as a result of any action or inaction by Defendant or its agents.

THIRD DEFENSE

As a separate and distinct defense, Defendant alleges that all or portions of the causes of action are barred by the applicable statute of limitations, including, but not limited to, California Code of Civil Procedure Sections 337, 338, 339, 340, 343 and California Business and Professions Code sections 16750.1 and 17208.

FOURTH DEFENSE

As a separate and distinct defense, Defendant alleges that the Complaint and each cause of action set forth therein cannot be maintained because, without admitting that any violation took place, Defendant alleges that any violation of the California Labor Code or the applicable Wage Order was an act or omission made in good faith in conformity with and in reliance on regulations, statutes and case law, and that in any participation in such acts, Defendant had reasonable grounds for believing that the act or omission was not a violation of the law.

FIFTH DEFENSE

As a separate and distinct defense, Defendant alleges that Plaintiff lacks standing to bring claims on behalf of other employees, as Plaintiff is not similarly situated to them.

SIXTH DEFENSE

As a separate and distinct defense to all causes of action, Defendant alleges that to the extent any amount of wages are found to be due and owing to Plaintiff or putative class members, Defendant is entitled to a set-off for any amount of wages paid as well as any amounts that were overpaid to

1 those individuals.

2 **SEVENTH DEFENSE**

3 As a separate and distinct defense, the claim relating to meal periods alleged on behalf of
4 Plaintiff and the putative class members are barred from this litigation by the doctrine of waiver or to
5 the extent Plaintiff and putative class members chose not to take such periods or other reasons not
6 attributable to Defendant.

7 **EIGHTH DEFENSE**

8 As a separate and distinct defense, Plaintiff's claims are barred by the doctrine of accord and
9 satisfaction. Specifically, Plaintiff has been compensated for all work performed for Defendant and
10 Plaintiff's respective acceptances of these payments constituted an accord and satisfaction for all
11 debts, if any, owed by Defendant to Plaintiff.

12 **NINTH DEFENSE**

13 As a separate and distinct affirmative defense, Defendant alleges that the Complaint, and each
14 purported cause of action therein, and the recovery of damages thereon, is barred in whole or in part
15 based on bona fide, good faith disputes that any amount is due and owing.

16 **TENTH DEFENSE**

17 As a separate and distinct defense, Defendant alleges that the Complaint, and each purported
18 cause of action therein, and the recovery of damages thereon, is barred in whole or in part based on
19 bona fide, good faith disputes that any amount is due and owing.

20 **ELEVENTH DEFENSE**

21 As a separate and distinct defense, Defendant alleges that assuming *arguendo* Plaintiff and
22 putative class members are entitled to additional compensation, Defendant did not act intentionally,
23 willfully or with reckless disregard for obligations under the California Labor Code or applicable
24 Industrial Wage Order.

25 **TWELFTH DEFENSE**

26 As a separate and distinct defense, Defendant alleges that the Complaint, and each and every
27 alleged cause of action therein is barred in whole or in part by the equitable doctrine of laches.
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THIRTEENTH DEFENSE

As a separate and distinct defense, Defendant alleges that the Complaint, and each and every alleged cause of action therein is barred in whole or in part by the doctrine of unclean hands.

FOURTEENTH DEFENSE

As a separate and distinct defense, Defendant alleges that Plaintiff and the putative class members are estopped by their conduct from asserting each of the causes of action upon which they seek relief.

FIFTEENTH DEFENSE

As a separate and distinct defense, Plaintiff's claims are barred to the extent any putative class member previously released such claims.

SIXTEENTH DEFENSE

As a separate and distinct defense, Defendant alleges that Plaintiff is barred from obtaining relief pursuant to her cause of action for violation of Business and Professions Code section 17200 *et seq.* because California law does not permit representative actions where liability can only be determined through fact-intensive individualized assessments of alleged wage and hour violations.

SEVENTEENTH DEFENSE

As a separate and distinct defense, Defendant alleges that the request for restitution, declaratory relief or injunctive relief is barred with respect to any and all alleged violations of the Business and Professions Code section 17200 *et seq.* that have ceased and are not likely to recur.

EIGHTEENTH DEFENSE

As a separate and distinct defense, Defendant alleges that any award of penalties sought by Plaintiff under PAGA or otherwise, would violate the due process and excessive fine clauses of the Fifth, Eighth and Fourteenth Amendments to the United States Constitution, as well as the due process and excessive fine provisions of the California Constitution.

NINETEENTH DEFENSE

Defendant alleges that any alleged failure to comply with California Labor Code section 226(a) was not a "knowing and intentional" failure under California Labor Code section 226(e) and neither Plaintiff nor any member of the punitive class was injured by the failure.

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RESERVATION

Defendant does not presently know all facts concerning the conduct of Plaintiff and her claims sufficient to state all defenses at this time. The Complaint makes allegations regarding putative class members, however, no class has been certified. Defendant will seek leave of Court to amend this Answer should it later discover facts demonstrating the existence of additional affirmative defenses or in the event that Plaintiff is able to certify a class or subclasses.

PRAYER

WHEREFORE, Defendant prays for judgment from this Court as follows:

1. Plaintiff take nothing by way of the Complaint;
2. The Complaint be dismissed with prejudice and that judgment be entered against Plaintiff and in favor of Defendant on each cause of action;
3. That Defendant be awarded its attorneys' fees and costs of suit herein to the extent permitted by applicable law; and
4. Such other and further relief as the Court deems appropriate and proper

Dated: April 08, 2019

MCCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

By: 

Christina C. Tillman
Attorneys for Defendant Capitol Casino, Inc.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF FRESNO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Fresno, State of California. My business address is 7647 North Fresno Street, Fresno, CA 93720.

On April 8, 2019, I served true copies of the following document(s) described as **ANSWER TO SECOND AMENDED CLASS ACTION COMPLAINT** on the interested parties in this action as follows:

HOYER & HICKS
Richard A. Hoyer
Ryan L. Hicks
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PC**
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Co-Counsel for Plaintiff

Co-Counsel for Plaintiff

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 8, 2019, at Fresno, California.


Tristan E. Matthews