

FILED
LOS ANGELES SUPERIOR COURT

DEC 02 2008

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7 Attorneys for Plaintiff Lucy Messerschmidt

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

BC403087

10 Lucy Messerschmidt, individually and on
11 behalf of all others similarly situated,

12 Plaintiff,

13 vs.

14 VH Property Corporation dba Trump National
15 Golf Club, a Delaware Corporation, and DOES
16 1 through 100,

17 Defendants.

Case Number

CLASS ACTION

Plaintiff Lucy Messerschmidt's
Complaint for

(1) Failure to Provide Rest and Meal
Breaks (Labor Code § 226.7 (Class
Action)

(2) Business & Professions Code §
17200 et seq (Class Action)

(3) Violation of Labor Code § 98.5

(4) Wrongful termination in violation of
public policy

(5) Violation of Government Code §
12940(h) Retaliation for Opposing Age
Discrimination

(6) Failure to Pay Wages and Violation
of Labor Code § 203

Demand for Trial by Jury

General Allegations

1. This lawsuit arises from two matters. The first is the unlawful practice at the Trump
National Golf Club that mogul Donald Trump operates in Rancho Palms
refusing to let employees in the restaurant take either the full 10 minute paid breaks or
30 minute unpaid breaks to which California employees are entitled. The second matter

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DOES 1-100

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is the golf club's firing of employee Lucy Messerschmidt after she opposed both age discrimination and also the foregoing rest and meal break violations.

2. Plaintiff Lucy Messerschmidt ("Ms. Messerschmidt" or "Plaintiff") is an individual who at all relevant times was residing and doing business in Los Angeles County, California.

3. Defendant VH Property Corporation ("Defendant" or "Trump") at all relevant times was a Delaware corporation doing business in Los Angeles County, California as Trump National Golf Club

4. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants Does 1 through 100, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names. Plaintiff will ask leave of court to amend this complaint and insert the true names and capacities of said defendants when she has ascertained them.

5. Each of the DOE defendants was the alter ego, agent, servant, employee, bailee, licensee, assignee, successor in interest, conspirator, or partner of each of the other defendants and was acting within the course and scope of said agency, service, employment, bailment, lease, license, assignment, successor in interest, or partnership with the knowledge, permission and consent of each of the other named defendants. Each of the defendants ratified or approved the acts of the other defendants.

6. Trump operates a golf club in Rancho Palos Verdes known as the Trump National Golf Club ("the golf club").

7. At all relevant times, Trump had an unwritten policy that prohibited its hostesses (and perhaps other employees) from taking either the paid ten minute breaks to which they were entitled upon having worked 4 hours or the unpaid 30 minute breaks to which they were entitled upon working 5 or more hours.

8. In approximately August 2006, Trump hired Plaintiff to work as a hostess in the golf club's restaurant. As such, she was a non-exempt employee under California law.

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- 1 9. Initially and through about June 20, 2007, Plaintiff worked a six hour shift between four
2 to five days a week. Thereafter, Plaintiff regularly worked an 8 hour shift (from 7 a.m.
3 to 3 p.m.) five days a week.
- 4 10. Throughout her employment, the golf club's managers would deny Plaintiff permission
5 to take either the meal breaks (unpaid 30 minutes) or rest breaks (two paid ten minute
6 breaks) that California law requires for employees working an eight hour day. Requests
7 to managers to take such breaks – including an (approximately) April 2008 request to
8 manager Brian Wolbers – were ignored. As a result, Plaintiff often had to work eight
9 hours without being able to go to the bathroom or eat.
- 10 11. In April 2008 an incident occurred when manager Brian Wolbers said he was going to
11 change Plaintiff's work schedule by not having her work for several days when Donald
12 Trump was scheduled to be in on the premises. Mr. Wolbers told Plaintiff he was doing
13 this because Mr. Trump "likes to see fresh faces" and "young girls." Plaintiff – age 45 at
14 the time – complained initially to a manager in the restaurant named Sue Kwiatkowski
15 and then to manager Lili Amini (an event coordinator who worked closely with the
16 club's general manager David Conforti), which resulted in her keeping her shift but also
17 having Mr. Wolbers loudly berate her for "opening your mouth."
- 18 12. On April 21, 2008 Plaintiff was asked by manager Brian Wolbers to work overtime to
19 receive training on new restaurant reservation software that had been installed that day.
20 Plaintiff objected because (a) she had received no breaks (not even to go to the
21 bathroom), was tired after working eight hours on her feet, and wanted a break; and (b)
22 she already has learned that day how to operate the software from the persons who had
23 installed it while she was on duty. This resulted in a confrontation with Mr. Wolbers in
24 which he publicly berated her in front of other employees while eventually acquiescing
25 and begrudgingly telling Plaintiff she could go home.
- 26 13. Several days later, manager Wolbers falsely claimed that Plaintiff had given notice of
27 the resignation of her employment and tried to coerce her (unsuccessfully) into signing a
28 document stating that she was quitting her job.

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21. The members of the class are so numerous that joinder of all members would be unfeasible and not practicable. Although the precise membership of the entire class is now unknown to Plaintiff, she is informed and believes that the entire class is greater than 25 persons and that the identity of such membership is readily ascertainable via inspection of the personnel records and other documents maintained by defendant Trump and can and will be ascertained after Plaintiff receives a reasonable opportunity to conduct discovery.

22. There are common questions of law and fact as to the class which predominate over questions affecting only individual members including, without, limitation the following:

(a) whether Trump either regularly failed to ensure that its employees took the paid 10 minute rest breaks that California law requires or prevented them from taking such breaks;

(b) whether Trump either regularly failed to ensure that its employees took the unpaid 30 minute meal breaks that California law requires or prevented them from taking such breaks;

(c) whether the foregoing actions were part of a practice and policy set by the managing agents or officers or directors of Trump.

(d) the appropriate measure of injunctive relief

(e) the appropriate sum of disgorgement of lost profits or restitution or payment of owed wages

23. The wage claims of Plaintiff pled as class action claims are typical of the claims of all members of the class. Plaintiff, as a representative party, will fairly and adequately protect the interests of the class by vigorously pursuing this suit through her lawyers, who are skilled and experienced in handling matters of this type.

24. A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by each individual class

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member likely will be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Trump's conduct. Therefore, it would be impracticable if not virtually impossible for the class members individually to effectively redress the wrongs done to them. Moreover, even if *arguendo* the class members could afford individual actions, it would still not be preferable to class wide litigation. Individualized actions present the potential for inconsistent or contradictory judgments. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

25. Plaintiff reserves the right to modify or amend the class definition as appropriate, including for the purpose of conforming with discovery, and/or to seek certification of subclasses and or limited issues pursuant to California Rule of Court 3.765(b).

26. Plaintiff also seeks preliminary and permanent injunctive relief barring Defendants from continuing to violate these statutes so as to prevent irreparable harm against Plaintiff and her fellow class members from the psychological, emotional and physical injuries suffered from being unable to enjoy the rest and meal breaks to which they are legally entitled.

Second Cause of Action – Violation of Business & Professions Code § 17200 et seq
(Against All Defendants)

27. Plaintiff incorporates the allegations in Paragraphs 1 through 10 and 17 through 26 above as if set forth in full.

28. Because the foregoing conduct violates the cited statutes, it constitutes an unlawful or unfair business practice and so violates B&P § 17200 et seq.

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- 1 29. By engaging in the aforementioned unfair business acts and practices, Trump and
- 2 the defendants enriched themselves at the expense of Plaintiff and the Plaintiff
- 3 Class and gained an unfair advantage over its competitors and employees.
- 4 30. As a result of its unfair business practices, Defendants have reaped unfair benefits
- 5 and illegal profits at the expense of Plaintiff and its other current and former
- 6 employees that comprise the Plaintiff Class. Defendants should be made to
- 7 disgorge their ill-gotten gains and restore such monies to Plaintiff and the Class.
- 8 31. The foregoing unfair business practices of Trump and the defendants entitle
- 9 Plaintiff and the Class to seek preliminary and permanent injunctive relief,
- 10 including but not limited to, orders that Defendants account for, disgorge and
- 11 restore to Plaintiff and the Class the compensation unlawfully withheld from
- 12 them. Accordingly, Plaintiff seeks seek disgorgement of all profits resulting from
- 13 these unlawful, unfair, and fraudulent business practices, restitution, and other
- 14 appropriate relief as provided for by Business & Professions Code §17203.
- 15 32. Plaintiff and the Class also seek preliminary and permanent injunctive relief,
- 16 including but not limited to, orders that Trump account for, disgorge and restore
- 17 the compensation unlawfully withheld from them. Accordingly, Plaintiff seeks
- 18 disgorgement of all profits resulting from these unlawful, unfair, and fraudulent
- 19 business practices, restitution, and other appropriate relief as provided for by
- 20 Business & Professions Code §17203.
- 21 33. Plaintiff also seeks an injunction providing that Trump is enjoined from similar
- 22 future violations of the law in its wage

Third Cause of Action – Violation of Labor Code § 98.5
(Against All Defendants)

- 26 34. Plaintiff incorporates the allegations in Paragraphs 1 through 15 above as if set forth in
- 27 full.
- 28

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12-1-11
CROSS EXAMINATION

- 1 35. On or about April 29, 2008, Defendants fired Plaintiff in retaliation for her objections to
- 2 the foregoing violations of the Labor Code and her exercising of rights under the Labor
- 3 Code. The foregoing termination of Plaintiff's employment therefore violated Labor
- 4 Code § 98.6(a).
- 5 36. As a result, Plaintiff is entitled to reimbursement for all lost wages and work benefits
- 6 pursuant to Labor Code § 98.6(b). Such wages and benefits are in an amount to be
- 7 proved at trial but believed to exceed \$15,000.
- 8

9 **Fourth Cause of Action – Wrongful Termination in Violation of Public Policy**
10 **(Against All Defendants)**

- 11 37. Plaintiff incorporates the allegations in Paragraphs 1 through 15 above as if set forth in
- 12 full.
- 13 38. The Labor Code (including § 226) contains important public policies enacted for the
- 14 public's benefit. These policies include the requirement that employees be allowed to
- 15 take breaks (both paid and unpaid) for meals and rests (the latter allowing opportunities
- 16 to conduct such basic functions as use a restroom or drink a beverage to stay hydrated).
- 17 Equally important public policies are codified in the Fair Employment & Housing Act
- 18 (FEHA), which bars discrimination in the workplace on the basis of, *inter alia*, age. The
- 19 FEHA also bars retaliating against an employee for opposing age discrimination.
- 20 Similar policies are embedded in the federal civil rights statute prohibiting age
- 21 discrimination.
- 22 39. Defendants' termination of Plaintiff's employment because she opposed and objected to
- 23 the foregoing violations of the Labor Code or the foregoing age discrimination
- 24 constitutes a wrongful termination in violation of public policy.
- 25 40. As a result of the foregoing unlawful termination of her employment, Plaintiff has
- 26 suffered lost income damages in an amount to be proved at trial but already believed to
- 27 exceed \$15,000. The termination of her employment also caused Plaintiff to suffer
- 28

1 significant emotional distress and depression, thereby entitling her to general damages in
2 a sum to be proved at trial but within the jurisdiction of this Court.

- 3 41. The foregoing conduct was ratified or authorized by persons who had the power to hire
4 or fire employees and therefore were managing agents of Trump. As a result, Plaintiff is
5 entitled pursuant to C.C. § 3294(a) to punitive damages in an amount to be proved at
6 trial but sufficient to punish Trump and the other defendants and make examples of
7 them and deter them and others from engaging in such conduct in the future.

8
9 **Fifth Cause of Action – Violation of Government Code § 12940(h)**

10 **(Against All Defendants)**

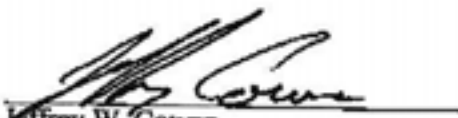
- 11 42. Plaintiff Lucy Messerschmidt incorporates the allegations in Paragraphs 1 through 15
12 above as if set forth in full.
- 13 43. Ms. Messerschmidt's opposition to Trump's use of age as a primary basis in making
14 staffing decisions and reducing her scheduled hours was a protected activity under the
15 FEHA, which prohibits workplace discrimination in California on the basis of gender (as
16 codified in Government Code § 12940(a)).
- 17 44. Trump fired Ms. Messerschmidt in retaliation for her having opposed the foregoing age
18 discrimination. In so doing, it violated Government Code § 12940(h).
- 19 45. Ms. Messerschmidt submitted a complaint regarding the foregoing conduct to the
20 California Department of Fair Employment and Housing and received a right to sue
21 letter, copies of which are attached hereto as Exhibit A.
- 22 46. As a result of the foregoing unlawful termination of her employment, Plaintiff has
23 suffered lost income damages in an amount to be proved at trial but already believed to
24 exceed \$15,000.
- 25 47. The termination of her employment also caused Plaintiff to suffer significant emotional
26 distress, thereby entitling her to general damages in a sum to be proved at trial but within
27 the jurisdiction of this Court.
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- 19. For legal fees pursuant to statute (including but not limited to Labor Code §218.5 and California Code of Civil Procedure § 1021.5 and Government Code § 12964(b))
- 20. For such other and further relief as the Court deems just or proper.

THE COWAN LAW FIRM

DATED: December 1, 2008

By: 
Jeffrey W. Cowan
Attorney for Plaintiff Lucy Messerschmidt



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PLAINTIFF'S DEMAND FOR JURY TRIAL

Plaintiff Lucy Messerschmidt demands a trial by jury.

THE COWAN LAW FIRM

DATED: December 1, 2008

By: *Jeffrey W. Cowan*
Jeffrey W. Cowan
Attorney for Plaintiff Lucy Messerschmidt



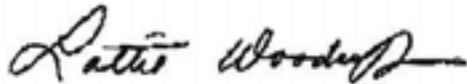
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Notice of Case Closure
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,



Lottie Woodruff
District Administrator

cc: Case File

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