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FILED
Clerk of the Superior Court

MAY 28 2020

By: P. Viernes

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF SAN DIEGO**

11 JACQUELINE BALTAZAR an individual, on
12 behalf of herself, and on behalf of all persons
13 similarly situated,

14 Plaintiffs,

15 vs.

16 WESTGATE HOTEL COMPANY, a
17 Corporation; SINCLAIR SERVICES
18 COMPANY, a Corporation; GRAND
19 AMERICAN HOTELS & RESORTS, INC.; and
20 DOES 1 through 30, Inclusive;

21 Defendants.

Case No. 37-2020-00005102-CU-OE-CTL

FIRST AMENDED CLASS
ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
4. FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351;
5. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
9. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

REPRESENTATIVE ACTION

10. VIOLATION OF THE PRIVATE
ATTORNEY GENERAL ACT
("PAGA") AT CAL. LABOR CODE
§§2698 *ET SEQ.*

DEMAND FOR JURY TRIAL

Plaintiff Jacqueline Baltazar ("PLAINTIFF"), an individual, on behalf of herself and all other similarly situated current and former employees alleges on information and belief, except her own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant Westgate Hotel Company is a Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

2. Defendant Sinclair Services Company is a Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

3. Defendant Grand American Hotels & Resorts, Inc. is a corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

4. Defendant Westgate Hotel Company, Sinclair Services Company and Grand American Hotels & Resorts, Inc. were the joint employers of PLAINTIFF as evidenced by pay stubs, company handbook and other employment documents and by the company PLAINTIFF performed work for respectively, and are therefore joint responsible as employers for the conduct alleged herein, and are therefore collectively referred to herein as DEFENDANT.

5. PLAINTIFF was employed by DEFENDANT in California at the Westgate Hotel as a non-exempt employee entitled from December of 2018 to December of 2019 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

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6. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined as all individuals who are or previously were employed by Westgate Hotel Company and/or Sinclair Services Company and/or Grand American Hotels & Resorts, Inc. in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the periods beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

7. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

8. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

9. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein

1 on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each
2 Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally
3 liable to PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as a
4 proximate result of the conduct of the Defendants' agents, servants and/or employees.

5 THE CONDUCT

6 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
7 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning
8 the time during which an employee is subject to the control of an employer, including all the time the
9 employee suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA
10 CLASS Members to work without paying them for all the time they were under the DEFENDANT's
11 control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was
12 supposed to be PLAINTIFF's off duty meal break due to DEFENDANT's thirty (30) minute automatic
13 deduction policy. PLAINTIFF was from time to time interrupted by work assignments while clocked
14 out for what should have been PLAINTIFFS off-duty meal break. As a result, the PLAINTIFF and
15 other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
16 regularly working without their time being accurately recorded and without compensation at the
17 applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay
18 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
19 DEFENDANT's business records.

20 11. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
21 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks and
22 were not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS
23 Members were from time to time required to perform work as ordered by DEFENDANT for more than
24 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT from
25 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-
26 duty meal period from time to time in which these employees were required by DEFENDANT to work
27 ten (10) hours of work from time to time. PLAINTIFF and the other CALIFORNIA CLASS Members
28 therefore forfeited meal breaks without additional compensation and in accordance with

1 DEFENDANT's strict corporate policy and practice. DEFENDANT failed to maintain adequate
2 staffing levels while increasing the production levels for each employee at the busy airports they
3 operated at.

4 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA
5 CLASS Members were from time to time also required to work in excess of four (4) hours without
6 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
7 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first
8 and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight
9 (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of
10 ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members
11 were also not provided with one hour wages in lieu thereof.

12 13. During the CALIFORNIA CLASS PERIOD, pursuant to DEFENDANT's company
13 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
14 gratuities left for them by customers to DEFENDANT's agents who provided no service to the
15 customers that resulted in the gratuity. DEFENDANT routinely added anywhere from 18%-22%
16 service charges to its food and beverage banquet bills. These service charges were in the form of
17 automatic charges which customers are required to pay, and which reasonably appear to be gratuities
18 for the service staff. It is typical and customary in the hospitality industry that establishments impose
19 gratuity charges, it is reasonable for them to have believed they were gratuities to be paid to service
20 staff. Indeed, because many of these charges are depicted to customers, and the custom in the food and
21 beverage industry that gratuities on the range of 18%-22% are paid for food and beverage service,
22 customers have paid these charges reasonably believing they were remitted to the service staff.
23 However, DEFENDANT has not remitted the total proceeds of these gratuities to the non-managerial
24 employees who serve the food and beverages. Instead, DEFENDANT has a policy and practice of
25 retaining for itself a portion of these gratuities and/or using a portion of these gratuities to pay managers
26 or other non-service employees. As a result, PLAINTIFF and CALIFORNIA CLASS Members have
27 not received the total proceeds of the gratuities, to which they are entitled to under California law.

28 14. DEFENDANT is generally in the business of owning and operating hotels, including

1 the pubs and restaurant in the hotels. In addition, DEFENDANT also provides banquet services to large
2 groups, such as wedding parties and other banquet events. During the CALIFORNIA CLASS PERIOD,
3 PLAINTIFF and other CALIFORNIA CLASS Members were in the "chain of service" and earned
4 gratuities based on their service for their customers. However, PLAINTIFF and CALIFORNIA CLASS
5 Members were forced to forfeit their portions of their gratuities, which said gratuities were kept by
6 DEFENDANT and their agents who were not in the chain of service from which the gratuity resulted.
7 PLAINTIFF and other CALIFORNIA CLASS Members contend that any gratuities kept by
8 DEFENDANT were illegal and in violation of California law because PLAINTIFF and other
9 CALIFORNIA CLASS Members, not DEFENDANT, provided the service for to whom the gratuity
10 should have been paid.

11 15. California Labor Code § 351 established the requirements for an employer regarding
12 the payment gratuities. Specifically, gratuities are the sole property of the employees. California Labor
13 Code § 351 expressly prohibits employers and their agents from collecting, taking, or receiving any
14 portion of a gratuity. California Labor Code § 350(c) defines the term "gratuity" as including any
15 money that has been paid or given or left for an employee by a patron of a business over and above the
16 actual; amount due the business for services rendered or for goods, food, drink or articles sold or served
17 to such patron. Labor Code § 353 requires employers to keep accurate records of all gratuities they
18 receive, directly or indirectly.

19 16. Although tip pooling is not expressly prohibited by the Labor Code, employees who
20 mandate tip pooling must only distribute pooled tips to employees in the "chain of service." By
21 distributed tips to DEFENDANT has violated and continue to violate the legal requirements for
22 handling pooled tips and violated the holding in *O'Grady v. Merchant Exchange Productions, Inc.*, No.
23 A148513 (Court of Appeals of California, First District, Division Two.)

24 17. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record
25 and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these
26 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
27 required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, meaning
28 the time during which an employee was subject to the control of an employer, including all the time

the employee was permitted or suffered to permit this work. DEFENDANT required these employees to work off the clock without paying them for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime wage rates. To the extent that the time worked off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1

18. DEFENDANT intentionally and knowingly failed to reimburse and indemnify PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred by PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

19. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS Members as a business expense, were required by DEFENDANT to use their own personal cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cellular phones to for work related issues. As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred reimbursed business expenses which included, but were not limited to, costs related to the use of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

20. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned and correct amount of time worked. Additionally, DEFENDANT violated Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

21. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company policy, practice and procedure, intentionally and knowingly and systematically failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment for all time worked as required by California law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

22. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy and procedure which failed to accurately calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA CLASS Members. The proper recording of these employees' missed meal and rest breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all required compensation for work performed by the members of the

1 CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
2 thereunder as herein alleged.

3 23. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally required
4 off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor Code and
5 dialed to pay her all minimum and overtime wages due to her. DEFENDANT did not have a policy or
6 practice which provided timely off-duty meal and rest breaks to PLAINTIFF and also failed to
7 compensate PLAINTIFF for her missed meal and rest breaks. The nature of the work performed by the
8 PLAINTIFF did not prevent her from being relieved of all her duties for the legally required meal
9 periods is evidenced by DEFENDANT's business records. As a result of DEFENDANT not accurately
10 recording all missed meal and rest periods and/or minimum and overtime wages due, the wage
11 statements issued to PLAINTIFF by DEFENDANT violation California law, and in particular, Labor
12 Code Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of her wages due to her
13 and DEFENDANT has failed to pay any penalty wages owed to her under California Labor Code
14 Section 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or
15 value of \$75,000.

16 JURISDICTION AND VENUE

17 24. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is
19 brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT
20 pursuant to Cal. Code of Civ. Proc. § 382.

21 25. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
22 395 and 395.5, because PLAINTIFF (i) currently maintains and at all relevant times maintained offices
23 and facilities in this County and/or conducts substantial business in this County, and (ii) committed the
24 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

25 THE CALIFORNIA CLASS

26 26. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
27 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
28 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals

who are or previously were employed by Westgate Hotel Company and/or Sinclair Service Company and/or Grand American Hotel & Resorts, Inc. in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning on the date four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

27. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

28. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal and rest breaks missed by PLAINTIFF and the other members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this overtime work.

29. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This common business practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

30. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS Members is impracticable.

31. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under California law by:

- (a) Committing an act of unfair competition in violation of the California Unfair

Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly, and/or deceptively having in place a company policy, practice and procedures that uniformly failed to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, including minimum wages owed and overtime wages owed for work performed by these employees;

(b) Committing an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods;

(c) Committing an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with all gratuities in violation of Cal. Lab. Code Section 351; and,

(d) Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violation Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties.

32. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

(a) The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

(b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS and will apply uniformly to every CALIFORNIA CLASS Member;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS Members, was classified as a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's deceptive practice and policy

which failed to provide legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,

- (d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who is competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the CALIFORNIA CLASS Members that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

33. In addition to meeting the statutory prerequisites to a Class Action, this Action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- (a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:
- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
 - 2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted on grounds generally applicable to the CALIFORNIA CLASS making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim the PLAINTIFF seeks declaratory relief holding that DEFENDANT's policy and practices constitute unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to members of the CALIFORNIA CLASS with respect to the practices and violations of California as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interest of the CALIFORNIA CLASS Members in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to

individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A Class Action is superior to any other available method for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

34. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

(a) The question of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS;

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual

CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

(c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;

(d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

(e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;

(f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

(g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;

(h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and,

(i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

35. DEFENDANT maintains records from which the Court can ascertain and identify by job title each of DEFEDANT's employees who have been systematically, intentionally and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of similarly situated employees when they have been identified.

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THE CALIFORNIA LABOR SUB-CLASS

36. Plaintiff further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by Westgate Hotel Company and/or Sinclair Services Company and/or Grand America Hotel & Resort, Inc. in California (the "CALIFORNIA LABOR SUB-CLASS") pursuant to Cal. Code of Civ. Proc § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

37. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare Commission ("IWC") Wage Order requirements intentionally, knowingly, and willfully engaged in a practice whereby DEFENDANT failed to correctly calculate compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

38. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT's employees who have been systematically, intentionally and uniformly misclassified as independent contractors as a matter of DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include these additional job titles when they have been identified.

39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable.

40. Common questions of law and fact exist as to members of the CALIFORNIA LABOR SUB-CLASS, including, but not limited to, the following:

- (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime compensation to members of the CALIFORNIA LABOR SUB-CLASS for missed meal and rest breaks in violation of the California Labor Code and California regulations and the applicable California Wage Order;
- (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (d) The proper measure of damages and penalties owed to the members of the members of CALIFORNIA LABOR SUB-CLASS; and,
- (e) Whether DEFENDANT's conduct was willful

41. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

- (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate itemized statement in writing showing the itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF

and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty rest breaks;

- (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment;
- (f) Violation Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties; and,
- (g) Violating Cal. Lab. Code § 351 by failing to pay PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS all gratuities.

42. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all other members of the CALIFORNIA LABOR SUB-CLASS, was non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the

CALIFORNIA LABOR SUB-CLASS. PLAINTIFF and all the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,

- (d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

43. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- (a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk of:
- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
 - 2) Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR

1 SUB-CLASS, making appropriate class-wide relief with respect to the
2 CALIFORNIA LABOR SUB-CLASS as a whole in that the DEFENDANT
3 uniformly fails to pay all wages due. Including the correct wages for all time
4 worked by the members of the CALIFORNIA LABOE SUB-CLASS as required
5 by law;

6 (c) Common questions of law and fact predominate as to the members of the
7 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
8 of California law as listed above, and predominate over any question affecting
9 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
10 Action is superior to other available methods for the fair and efficient adjudication
11 of the controversy, including consideration of:

- 12 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS
13 in individually controlling the prosecution or defense of separate actions in
14 that the substantial expense of individual actions will be avoided to recover
15 the relatively small amount of economic losses sustained by the individual
16 CALIFORNIA LABOR SUB-CLASS Members when compared to the
17 substantial expense and burden of individual prosecution of this litigation;
- 18 2) Class certification will obviate the need for unduly duplicative litigation that
19 would create the risk of:
 - 20 A. Inconsistent or varying adjudications with respect to individual members
21 of the CALIFORNIA LABOR SUB-CLASS, which would establish
22 incompatible standards of conduct for the DEFENDANT; and/or,
 - 23 B. Adjudications with respect to individual members of the CALIFORNIA
24 LABOR SUB-CLASS would as a practical matter be dispositive of the
25 interests of the other members not parties to the adjudication or
26 substantially impair or impede their ability to protect their interests;
- 27 3) In the context of wage litigation because a substantial number of individual
28 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their

legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

44. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and

in obtaining adequate compensation for the damages and injuries which
DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-
CLASS;

(f) There is a community of interest in ensuring that the combined assets of
DEFENDANT are sufficient to adequately compensate the members of the
CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

(g) DEFENDANT has acted or refused to act on grounds generally applicable to the
CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

(h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable
from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-
CLASS consists of all CALIFORNIA CLASS Members who are or previously were
employed by DEFENDANT in California as Drivers and classified as independent
contractors during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

(i) Class treatment provides manageable judicial treatment calculated to bring a
efficient and rapid conclusion to all litigation of all wage and hour related claims
arising out of the conduct of DEFENDANT as the members of the CALIFORNIA
LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)

45. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

46. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code §
17021.

47. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines unfair
competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes

1 injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

2 Any person who engages, has engaged, or proposes to engage in unfair competition
3 may be enjoined in any court of competent jurisdiction. The court may make such
4 orders or judgments, including the appointment of a receiver, as may be necessary to
5 prevent the use or employment by any person of any practice which constitutes unfair
6 competition, as defined in this chapter, or as may be necessary to restore to any person
7 in interest any money or property, real or personal, which may have been acquired
8 by means of such unfair competition.

9 Cal. Bus. & Prof. Code § 17203.

10 48. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in
11 a business practice which violates California law, including but not limited to, the applicable Industrial
12 Wage Order(s), the California Code of Regulations and the California Labor Code including Sections
13 204(d), 210, 226.7, 351, 510, 512, 1194, 1197, 1197.1, 1198 & 2802, for which this Court should issue
14 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary
15 to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages
16 wrongfully withheld.

17 49. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair in
18 that these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
19 substantially injurious to employees, and were without valid justification or utility for which this Court
20 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
21 Professions Code, including restitution of wages wrongfully withheld.

22 50. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent
23 in that DEFENDANT's uniform policy and practice failed to provide the legally mandated meal and
24 rest periods, the required amount of compensation for missed meal and rest periods and overtime and
25 minimum wages owed, failed to timely pay wages, failed to pay all gratuities, and failed to reimburse
26 all necessary business expenses incurred, due to a systematic business practice that cannot be justified,
27 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
28 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and
equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
withheld.

51. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and

deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other members of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

52. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide ll legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

53. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

54. PLAINTIFF further demands on behalf of herself and on behalf of each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not timely provided as required by law.

55. By and through the unlawful and unfair business practices described herein, DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who comply with the law.

56. All the acts described herein as violations of, among other things, the Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

57. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA

CLASS have been deprived, by means of the above described unlawful and unfair business practices, including earned but unpaid wages for all time worked.

58. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair business practices in the future.

59. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

For Failure to Pay Overtime Compensation

[Cal. Lab. Code §§ 1194, 1197 and 1197.1]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

60. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

61. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

62. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

63. Cal. Lab. Code § 1197 provided the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees. And the payment of a less wage than the

1 minimum so fixed in unlawful

2 64. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
3 including overtime compensation and interest thereon, together with the costs of suit.

4 65. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of
6 overtime worked and correct applicable overtime rate for the amount of overtime they worked. As set
7 forth herein, DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny
8 timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR
9 SUB-CLASS

10 66. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
11 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
12 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF and
13 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

14 67. In committing these violations of the California Labor Code, DEFENDANT
15 inaccurately calculated the correct time worked and consequently underpaid the actual time worked
16 by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT
17 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
18 the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws
19 and regulations.

20 68. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
21 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive the
22 correct minimum wage compensation for their time worked for DEFENDANT.

23 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were
25 entitled to, constituting a failure to pay all earned wages.

26 70. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
27 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for the true time
28 they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS have

1 suffered and will continue to suffer an economic injury in amounts which are presently unknown to
2 them and which will be ascertained according to proof at trial.

3 71. DEFENDANT knew or should have known that PLAINTIFF and the other members of
4 the CALIFORNIA LABOR SUB-CLASS are under compensated for their time worked.
5 DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to
6 not pay employees for their labor as a matter of uniform company policy, practice and procedure, and
7 DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
8 members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time
9 worked.

10 72. In performing the acts and practices herein alleged in violation of California labor laws,
11 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time
12 worked and provide them with the requisite overtime compensation, DEFENDANT acted and
13 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
14 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their
15 legal rights, or the consequences to them, and with the despicable intent of depriving them of their
16 property and legal rights, and otherwise causing them injury in order to increase company profits at
17 the expense of these employees.

18 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
19 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as
20 the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
21 Labor Code and/or other applicable statutes. To the extent minimum wage compensation is
22 determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated
23 their employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and
24 therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203,
25 which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members.
26 DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further,
27 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and
28 recover statutory costs.

1 **THIRD CAUSE OF ACTION**

2 **For Failure to Pay Minimum Wages**

3 **[Cal. Lab. Code §§ 510, *et seq.*]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

5 74. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB- CLASS,
6 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 75. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring
9 a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
10 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for
11 all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
12 twelve (12) hours in a workday, and/or forty (40) hours in any work week.

13 76. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
14 policy, an employer must timely pay its employees for all hours worked.

15 77. Cal. Lab. Code § 510 further provided that employees in California shall not be
16 employed more than eight (8) hours per workday and more than forty (40) hours per workweek unless
17 they receive additional compensation beyond their regular wages in amounts specified by law

18 78. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
19 including minimum wage compensation and interest thereon, together with the costs of suit. Cal. Lab.
20 Code § 1198 further states that the employment of an employee for longer hours than those fixed by
21 the Industrial Welfare Commission is unlawful

22 79. During the CALIFORNIA LABOR SUB-CLASS PERIODS, PLAINTIFF and
23 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
24 DEFENDANT and were not paid for all the time they worked, including overtime work.

25 80. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
27 implementing a uniform policy and practice that failed to accurately record overtime worked by
28 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate

compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek

81. In committing these violations of the California Labor Code, DEFENDANT inaccurately recorded overtime worked and consequently underpaid the actual time worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

82. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime worked.

83. Cal. Lab. Code § 515 set out various categories of employees who are exempt from the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid collective bargaining agreement that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of California.

84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for overworked that they were entitled to, constituting a failure to pay all earned wages.

85. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in excess of the maximum hours permissible by law as required by Cal. Lab. Code § 510, 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT's business records and

1 witnessed by employees.

2 86. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
3 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for the true time
4 they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS have
5 suffered and will continue to suffer an economic injury in amounts which are presently unknown to
6 them and which will be ascertained according to proof at trial.

7 87. DEFENDANT knew or should have known that PLAINTIFF and the other members of
8 the CALIFORNIA LABOR SUB-CLASS were under compensated for their time worked.
9 DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to
10 not pay employees for their labor as a matter of uniform company policy, practice and procedure, and
11 DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

13 88. In performing the acts and practices herein alleged in violation of California labor laws,
14 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time
15 worked and provide them with the requisite compensation, DEFENDANT acted and continues to act
16 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
17 CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or
18 the consequences to them, and with the despicable intent of depriving them of their property and legal
19 rights, and otherwise causing them injury in order to increase company profits at the expense of these
20 employees.

21 89. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
22 therefore request recovery of all overtime wages, according to proof, interest, statutory costs, as well
23 as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
24 California Labor Code and/or other applicable statutes. To the extent minimum wage compensation
25 is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated
26 their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and
27 therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203,
28 which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members.

1 DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further,
2 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and
3 recover statutory costs.

4 **FOURTH CAUSE OF ACTION**

5 **For Failure to Provide Required Meal Periods**

6 **[Cal. Lab. Code §§ 351, *et seq.*]**

7 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

8 90. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
9 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
10 Complaint.

11 91. DEFENDANT's conduct, as set forth above, in failing to remit to non-managerial
12 banquet service employees the total proceeds of gratuities added to banquet customers' bills
13 constitutes a violation of California Labor Code Section 351. This violation is enforceable pursuant to
14 the California Unfair Competition Law, Cal. Bus. And Prof. Code 17200 *et seq.* DEFENDANT's
15 conduct constitutes unlawfully, unfair, and/or fraudulent business acts or practice, in that
16 DEFENDANT has violated California Labor Code Section 351 in not remitting to the non-managerial
17 service employees the total gratuities that were charged to customers.

18 92. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA
19 LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial,
20 including the loss of gratuities to which they were entitled, and seek all wages earned and due, interest,
21 penalties, expenses and costs of suit.

22 **FIFTH CAUSE OF ACTION**

23 **For Failure to Provide Required Rest Periods**

24 **[Cal. Lab. Code §§ 226.7 & 512]**

25 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

26 93. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
27 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
28 Complaint.

94. During the CALIFORNIA CLASS PERIODS, DEFENDANT from time to time failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal periods in some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

95. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

96. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

97. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,

reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

98. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees from time to time were denied their first rest periods of at least (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second, and third rest periods of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hours wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

99. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a rest periods, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest periods was not provided.

100. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof of trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SEVENTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 204(d) and 210]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

101. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

102. Cal. Lab. Code § 204 provides:

All wages...earned by any person I any employment are due and payable twice during each

calendar month, on days designated in advance by the employer as the regular paydays.

103. Cal. Lab. Code § 204(d) provides:

The requirement of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close the payroll period.

104. Cal. Lab. Code § 210 provides:

[I]n addition to, and entirely independent and apart from, any other penalty provided this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

105. DEFENDANT from time to time failed to pay PLAINTIFF and membe4rs of the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days pf the close of payroll periods in accordance with Cal. Lab. Code § 204(d).

106. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of one hundred dollars (\$100) for the initial pay period in which the violation occurred, and two hundred dollars (\$200) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 210, in an amount according to proof at the time of trial.

EIGHTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code §§ 226]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

107. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this inference, as though fully set forth herein, the prior paragraphs of this Complaint.

108. Cal. Lab. Code § 226 provides that an employer must furnish employees with an

1 "accurate itemized" statement in writing showing:

- 2 (1) gross wages earned,
- 3 (2) total hours worked by the employee, except for any employee whose compensation
- 4 is solely based on a salary and who is exempt from payment of overtime under
- 5 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
- 6 Commission,
- 7 (3) the number of piece rate unites earned and any applicable piece rate of the employee
- 8 is paid on a piece-rate basis,
- 9 (4) all deduction, provided that all deductions made on written orders of the employee
- 10 may be aggregated and shown as one item,
- 11 (5) net wages earned,
- 12 (6) the inclusive dates of the period for which the employee is paid,
- 13 (7) the name of the employee and his or her social security number, except that by
- 14 January 1,2008, only the last four digits of his or her social security number or an
- 15 employee identification number other than a social security number may be shown
- 16 on the itemized statement,
- 17 (8) the name and address of the legal entity that is the employer, and
- 18 (9) all applicable hourly rates in effect during the pay period and the corresponding
- 19 number of hours worked at each hourly rate by the employee.

20 109. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other

21 members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage

22 statements which failed to show, among other things, the correct gross and net wages

23 earned. Additionally, DEFENDANT violated Cal. Lab. Code Section 226(a)(7)(8) as

24 DEFENDANT dialed to list the employee's name and/or last four digits of their social

25 security number and/or employee identification number and also failed to list the name of

26 legal entity that employed PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS

27 Members. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or

28 her employee with an accurate itemized wage statement in writing showing, among other

things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 et seq. As a result, DEFEDNAT from time to time provided PLAINTIFF and the other members of the CALIFORNIA CLAS with wage statements which violated Cal. Lab. Code § 226.

110. DEFENDANT knowingly and intentionally failed to comply with the Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOE SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for the PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

NINTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

111. PLAINTIFF, and the other member of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

112. Cal. Lab. Code. § 200 provides that:

As used in this article:

(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.

(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment

113. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

114. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not have a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designated a mailing address. The date if the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

115. There was no definite term in PLAINTIFF's or any CALIFORNIA SUB-CLASS Members' employment contract.

116. CAL. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202 and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

117. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members has terminated and DEFENDANT has not tendered payment wages, to these employees

1 who missed meal and rest breaks, as required by law.

2 118. Therefore, as provided by Cal. Lab. Code § 203, on behalf pf herself and the members
3 of CALIFORNIA LABOR SUB-CLASS whose employment has terminated, PLAINTIFF demands
4 up to thirty days of pay as penalty for not paying all wages due at time of termination for all employees
5 who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD, and
6 demands an accounting and payment of all wages due, plus interest and statutory coasts as allowed
7 by law.

8 **TENTH CAUSE OF ACTION**

9 **Violation of the Private Attorney General Act**

10 **[Cal. Labor Code §§ 2698 *et seq.*]**

11 **(By PLAINTIFF on behalf of the State of California and fellow Aggrieved Employees**
12 **against DEFENDANTS)**

13 1. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
14 herein, the prior paragraphs of this Complaint.

15 2. PAGA is a mechanism by which the State of California itself can enforce state labor
16 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor
17 law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
18 enforcement action designed to protect the public and not to benefit private parties. The purpose of
19 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
20 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
21 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
22 general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly,
23 PAGA claims cannot be subject to arbitration.

24 3. PLAINTIFF brings this Representative Action on behalf of the State of California with
25 respect to himself and all of DEFENDANT's current and former non-exempt employees employed in
26 California ("AGGRIEVED EMPLOYEES") between January 17, 2019 and a future date set by this
27 Court ("PAGA PERIOD").

28 4. At all relevant times, for the reasons described herein, and others, PLAINTIFF and

1 similarly situated employees were aggrieved employees of DEFENDANTS within the meaning of
2 Labor Code Section 2699(c).

3 5. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
4 PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil action to
5 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

6 6. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
7 Section 2699.3. By certified letter, return receipt requested, dated February 13, 2020, PLAINTIFF
8 gave written notice to the Labor and Workforce Development Agency ("LWDA") and to
9 DEENDANTS of the specific provisions of the Labor Code alleged to have been violated, including
10 the facts and theories to support the alleged violations.

11 7. As of the date of this filing, the LWDA has not provided any notice by certified mail of
12 its intent to investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section
13 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may
14 commence and is authorized to pursue this cause of action.

15 8. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and similarly
16 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor
17 Code Section 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5,
18 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2804 in the following amounts:

19 a. For violation of Labor Code Sections 201, 202, 203, and 204, one
20 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay
21 period for the initial violation and two hundred dollars (\$200) for
22 AGGIEVED EMPLOYEE per pay period for each subsequent violation
23 [penalty per Labor Code Section 2699(f)(2)];

24 b. For violations of Labor Code Section 226(a), a civil penalty in the
25 amount of two hundred fifty dollars (\$250) for each AGGRIEVED
26 EMOPLOYEE for any initial violation and one thousand dollars for each
27 subsequent violation [penalty per Labor Code Section 226.3];

28 c. For violations of Labor Code Sections 204, a civil penalty in the

1 amount of one hundred dollars (\$100) for each AGGRIEVED
2 EMPLOYEE for any initial violation and two hundred dollars (\$200) for
3 AGGRIEVED EMPLOYEE for each subsequent violation [penalty per
4 Labor Code Section 210];

5 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil
6 penalty in the amount of fifty dollars (\$50) for each underpaid
7 AGGRIEVED EMPLOYEE for the initial violation and hundred dollars
8 (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent
9 violation [penalty per Labor Code Section 558];

10 e. For violations of Labor Code Section 2269(a), a civil penalty in
11 the amount of two hundred fifty dollars (\$250) per AGGRIEVED
12 EMPLOYEE per violation in an initial citation and one thousand dollars
13 (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation
14 [penalty per Labor Code Section 226.3];

15 f. For violations of Labor Code Section 1174(d), a civil penalty in
16 the amount of five hundred (\$500) dollars for per AGGRIEVED
17 EMPLOYEE [penalty per Labor Code Section 1174.5].

18 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198
19 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per
20 AGGRIEVED EMPLOYEE per pay period for the initial violation and
21 two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay
22 period for each subsequent violation [penalty per Labor Code Section].

23 9. For all provisions of the Labor Code for which civil penalty is not specifically provided,
24 Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each
25 AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200)
26 for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and
27 the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
28 connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;

C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

D) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is

commenced, in accordance with Cal. Lab. Code § 203.

E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and cost of suit;

G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and,

H) The greater of all actual damages or one hundred dollars (\$100) for the initial pay period in which a violation occurs and two hundred dollars (\$200) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, for violation of Cal. Lab. Code § 204(d), in accordance with Cal. Lab. Code § 210.

3. On behalf of the State of California and the AGGRIEVED EMPLOYEES

A) For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, *et seq.*;

B) For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and

C) For such other relief as the Court deems just and proper.

4. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

B) Such other and further relief as the Court deems just and equitable; and,

C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §§ 226, 1194 and/or 2802.

Dated: May 11, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on all issues triable to a jury.

Dated: May 11, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

CASE NAME : *Baltazar v. Westgate Hotel Company*
CASE NO. : 37-2020-00005102
JUDGE : Hon. Timothy Taylor
DEPT. : 72

PROOF OF SERVICE

I, the undersigned, employee of the JCL Law Firm, certify and declare that I am over the age of 18 years and not a party to this action. My business address is JCL Law Firm, located at 3990 Old Town Avenue, Suite C204, San Diego, CA 92131.

I declare that May 11, 2020 I served the following document(s) on all interested parties in this action as stated on the attached service list:

**STIPULATION AND [PROPOSED] ORDER FOR LEAVE FOR PLAINTIFF TO
FILE FIRST AMENDED COMPLAINT**

- ☐ **BY MAIL** - I deposited such envelope in the mail at San Diego, California. The envelope was mailed with sufficient postage thereon. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with sufficient postage thereon at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing affidavit.
- ☐ **BY PERSONAL SERVICE** - I caused such envelope to be delivered by a process server employed by _____.
- ☐ **VIA FACSIMILE** - I faxed said document, to the office(s) of the addressess(s) shown on the attached Service List and the transmission was reported as complete and without error.
- ☒ **BY ELECTRONIC TRANSMISSION** - I transmitted a PDF version of this document by electronic mail to the party(s) identified at the email address listed on the attached service list.
- ☐ **BY OVERNIGHT DELIVERY** - I deposited such envelope for collection and delivery by FedEx with delivery fees paid or provided for in accordance with ordinary business practices. I am "readily familiar" with the firm's practice of collection and processing

1 packages for overnight delivery by FedEx. They are deposited with a facility regularly
2 maintained by FedEx for receipt on the same day in the ordinary course of business.

3 [X] (STATE) I declare under penalty of perjury under the laws of the State of California
4 that the above is true and correct.

5 [] (FEDERAL) I declare that I am employed in the office of a member of the bar of this
6 Court at whose direction the service was made.

7 Executed on May 11, 2020 at San Diego.

8 /s/ Tesla Stone
9 Tesla Stone

SERVICE LIST

Baltazar v. Westgate Hotel Company, et al.
San Diego Superior Court Case No. 37-2020-00005102

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