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SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF LOS ANGELES**

JOSHUA RUCKMAN,

Plaintiff,

vs.

LEE'S 4 COCKTAILS INC.; JENNIFER
KELLEY; and DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: **20STCV49522**

)

) **COMPLAINT FOR DAMAGES FOR:**

)

) **1) FAILURE TO COMPENSATE FOR
ALL HOURS WORKED;**

)

) **2) FAILURE TO PAY MINIMUM
WAGES;**

)

) **3) FAILURE TO PAY OVERTIME;**

)

) **4) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS;**

)

) **5) FAILURE TO PAY WAGES OWED
EVERY PAY PERIOD;**

)

) **6) VIOLATION OF LABOR CODE
SECTION 558;**

)

) **7) FAILURE TO MAINTAIN
ACCURATE RECORDS;**

)

) **8) FAILURE TO GIVE REST BREAKS;**

)

) **9) FAILURE TO GIVE MEAL BREAKS;**

)

) **10) PRIVATE ATTORNEYS GENERAL
ACT ("PAGA");**

)

) **11) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE SECTION 17200.**

)

) **12) FAILURE TO PAY WAGES WHEN
EMPLOYMENT ENDS**

)

) **13) FAILURE TO REIMBURSE
BUSINESS EXPENSES**

)

)

) **DEMAND FOR JURY TRIAL**

)

)

COMES NOW Plaintiff, JOSHUA RUCKMAN (hereinafter "Plaintiff"), and alleges:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants LEE'S 4 COCKTAILS INC.; JENNIFER KELLEY; and DOES 1 to 25, inclusive, do business in the County of Los Angeles, and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant LEE'S 4 COCKTAILS INC. was and is a domestic California corporation organized and operating in the County of Los Angeles, State of California. LEE'S 4 COCKTAILS INC. owns and operates "Lee's 4 Cocktails", which is a bar, located at 17040 Devonshire St., Northridge, CA 91325. Plaintiff is further informed and believes that at all times herein mentioned, Defendant JENNIFER KELLEY is and was a female resident of the State of California and the owner/managing agent for LEE'S 4 COCKTAILS and who personally managed and operated the business. Defendant JENNIFER KELLEY is being sued herein individually under Labor Code Section 558.1 because she was personally involved in the day-to-day operations of the bar and controlled the employees' (including Plaintiff's) wages, hours, and working conditions. LEE'S 4 COCKTAILS INC. and JENNIFER KELLEY are collectively referred to as "LEE'S" or "Defendants".

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner

1 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
2 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
3 and capacities of these fictitiously named defendants.

4 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
5 that information and belief, alleges that at all times herein mentioned, each of the remaining
6 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
7 under the authority of their agency, employment, or representative capacity, with the consent
8 of his/her codefendants.
9

10 **GENERAL ALLEGATIONS**

11 6. Plaintiff started working at LEE'S as a bartender on or around 2004 or 2005 (while it
12 was under different ownership) and continued to work there when Jennifer Kelley took over as
13 the owner a few years back. Plaintiff was considered an hourly, non-exempt employee and his
14 latest rate of pay was \$12 per hour.

15 7. Over the last several years, Plaintiff generally worked 2 to 4 days per week and his
16 scheduled hours were generally from 6pm to 2am. Plaintiff only got paid for those set hours
17 irrespective of the actual length of his work shifts, which exceeded 8 hours on every single
18 occasion worked. Plaintiff and other employees got paid weekly. LEE'S did not have a clock-
19 in/clock-out system in place nor were there timesheets to be filled out. Plaintiff's employment
20 with LEE'S ended on or around December 28, 2019.

21 8. It is our position that LEE'S has violated numerous Labor Code Sections against
22 Plaintiff and other similarly situated aggrieved employees:

23 9. LEE'S did not provide Plaintiff and other similarly situated aggrieved employees with
24 the minimum wages to which they were entitled for all work performed and as such did
25 compensate him and others for all hours worked pursuant to California Labor Code sections
26 1194, 1197 and 1197.1. This is so because Plaintiff's shift would consistently be from 6am to
27 2pm and he would only be paid for those 8 hours despite always working longer hours. The
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1 latter is unequivocally true because Plaintiff typically had to close down the bar alone. This
2 meant that after kicking patrons out around 1:45am-1:50am, Plaintiff had to perform a variety
3 of tasks before locking up the bar and leaving. These tasks include, but are not limited to, re-
4 stocking all beers and hard liquor, cleaning up the tables, cleaning the popcorn machine,
5 cleaning the wells, wiping down the bar, checking the kegs (and if empty, changing them),
6 checking the bathrooms for graffiti and making sure they were in order, taking out the trash, re-
7 stocking the back fridge, and completing his paperwork, which included counting the money
8 and reconciling it with the receipts (which itself would take 10 to 15 minutes alone). Ms.
9 Kelley unequivocally knew that Plaintiff was staying way past 2am on a regular and consistent
10 basis due to the clean-up duties and closing duties involved. Furthermore, there are cameras
11 inside the bar that would corroborate the fact that Plaintiff generally finished up around 3am-
12 3:30am (with the latest being 4am and the earliest being 2:15-2:30am). In addition, the “off the
13 clock” work would also include Plaintiff being ordered to pick up plastic cups, liquor, or other
14 items from the “Smart and Final” store before reporting for his shift. Plaintiff would utilize his
15 personal vehicle to complete these work-related tasks.

16 10. LEE’S also violated Labor Code §510 because it failed to pay Plaintiff and other
17 similarly situated aggrieved employees overtime, even though they worked more than 8 hours
18 per day and/or 40 hours per week throughout their employment. As alluded to above, the latter
19 is a function of Plaintiff and other aggrieved employees not being compensated for all hours
20 worked (due to not being compensated for “off the clock” work) and not getting credit for all
21 hours worked, which would translate into daily overtime not being paid.

22 11. LEE’S also violated Labor Code § 226.7 and the appropriate Industrial Welfare
23 Commission Wage Order (Wage Order no. 5) because it failed to provide Plaintiff and others
24 with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout
25 their employment. LEE’S did not completely relieve Plaintiff and others of all duty during said
26 rest periods. LEE’S did not pay to Plaintiff and others one additional hour of pay at Plaintiff’s
27 regular rate of compensation for each workday that one or more statutory rest periods was not
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1 provided. It was not company policy and not part of the culture for employees such as Plaintiff
2 and others to take rest breaks. As such, the culture at LEE'S did not lend itself to the employees
3 receiving statutory breaks wherein they were relieved of all work duties. It was the normal
4 practice and custom of LEE'S not to authorize, permit, and enforce statutory rest periods. Since
5 Plaintiff was generally the only bartender on his shifts and did not have anyone to relieve him
6 of his duties, he was not able to take two uninterrupted ten-minute rest breaks per shift throughout
7 his employment wherein he was relieved of all duties. It simply was not possible due to being
8 the only bartender on duty serving customers and maintaining the bar. Furthermore, Plaintiff
9 could not exactly leave the bar area unattended for any extended period of time for safety and
10 liability reasons.

11 12. LEE'S violated Labor Code §§ 512 and 226.7 along with the appropriate Industrial
12 Welfare Commission Wage Order (Wage Order no. 5) because it failed to provide Plaintiff and
13 others the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work
14 throughout their employment. LEE'S did not completely relieve Plaintiff and others of all duty
15 during said meal periods. LEE'S did not pay to Plaintiff and others one additional hour of pay
16 at Plaintiff's regular rate of compensation for each workday that one or more statutory meal
17 periods was not provided. Like the rest breaks, receiving a thirty-minute uninterrupted meal
18 break was not part of the culture and was not strictly enforced by LEE'S. It was the normal
19 practice and custom of LEE'S not to authorize, permit, and enforce statutory meal periods.
20 Plaintiff always ate while working behind the bar and was not getting an uninterrupted meal
21 period. He would often order his food to be delivered to the bar or would have a customer bring
22 him food and would eat and work simultaneously. Plaintiff is not aware of signing any "On
23 Duty Meal Period Agreement" and even if he did, it would not be valid and enforceable since
24 the nature of Plaintiff's job did not prevent him from relieved of all duty and taking an
25 uninterrupted meal period.

26 13. Furthermore, during the relevant time period, LEE'S failed to pay Plaintiff and others
27 all wages due to them within any time period specified by California Labor Code section 204.
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1 14. LEE'S was also in violation of California Labor Code section 226(a), by failing to
2 provide accurate, itemized wage statements and include pertinent information on the wage
3 statements, including but not limited to, all hours worked (minimum wage and overtime), the
4 applicable hourly rates, the legal name and address of the employer, gross wages earned, net
5 wages earned, premium pay for the missed meal and rest breaks, and the correct start and end of
6 each pay period, among others. As such, LEE'S did not provide Plaintiff and other similarly
7 situated aggrieved employees with complete, accurate itemized wage statements.

8 15. During the relevant time period, LEE'S also failed to keep accurate and complete payroll
9 records showing the actual hours worked per day and the wages paid to Plaintiff and others
10 pursuant to California Labor Code sections 1174(d).

11 16. LEE'S also violated Labor Code § 203 because it willfully failed to pay Plaintiff and
12 other similarly situated aggrieved employees earned and due wages upon separation of
13 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
14 These earned but unpaid wages include minimum wages and compensation for all hours worked,
15 overtime compensation, premium pay for missed meal and rest breaks, and business expense
16 reimbursement, among others.

17 17. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
18 business-related expenses and costs that were not reimbursed by LEE'S. These costs include,
19 but are not limited to, gas/mileage reimbursement. Accordingly, LEE'S was in violation of
20 California Labor Code sections 2800 and 2802.

21 18. Moreover, LEE'S failed to provide sick pay pursuant to Labor Code section 246.

22
23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

25 **(California Industrial Welfare Commission Order 5-2001, California Code of**
26 **Regulations Title 8 Section 11050, and California Labor Code Section 1198)**

27 **(Plaintiff against all named defendants and all DOE defendants)**
28

1 19. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.

3 20. At all times relevant herein, Defendants were required to compensate its employees for
4 all hours worked upon reporting for work at the appointed time stated by the employer
5 pursuant to Industrial Welfare Commission Order 5-2001, California Code of Regulations,
6 Title 8, Section 11050.

7 21. For the three (3) years preceding filing of this action, Defendants failed to compensate
8 Plaintiff for all hours worked.

9 22. Under the aforementioned wage order and regulations, Plaintiff is to recover
10 compensation for all hours worked but not paid by Defendants for the three (3) years
11 preceding the filing of this Complaint.

12 23. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
13 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
14 this Court.

15 24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
16 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
17 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
18 reasonable attorney's fees and costs of suit.

19 25. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
20 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
21 amount known to Plaintiff once he has obtained all of his payroll records from
22 Defendants.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY MINIMUM WAGES**

25 **(California Labor Code Sections 1194, 1194.2, 1197)**

26 **(Plaintiff against all named defendants and all DOE defendants)**

27 26. Plaintiff re-alleges and incorporates by reference each and every allegation in
28

1 paragraphs 1 through 25, inclusive, of this Complaint as though fully set forth herein.

2 27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
3 to suffer or permit a California employee to work without paying wages at the minimum wage
4 rate for all hours worked as required by the applicable Industrial Welfare Commission
5 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title
6 8, Section 11050, subdivision 4.

7 28. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K), at all relevant times, "hours
8 worked" included "the time during which an employee is subject to the control of an employer,
9 and includes all the time the employee is suffered or permitted to work, whether or not required
10 to do so..."

11 29. During his employment, Plaintiff was regularly required as a matter of uniform
12 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
13 was paid less than the minimum wage rate by Defendants for hours worked in violation of
14 California Labor Code Section 1197 and the applicable California Industrial Wage
15 Commission wage order(s).

16 30. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
17 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
18 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
19 to believe that their acts or omissions were not contrary to California law.

20 31. For all hours worked by Plaintiff for which he was paid less than the minimum wage
21 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
22 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
23 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
24 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

25 32. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
26 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
27 trial.
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overtime worked, and the amount of unpaid overtime due.

42. As a proximate result of Defendants' violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus reasonable attorney's fees and costs of suit.

44. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code Section 226)

(Plaintiff against all named and all DOE defendants)

45. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

46. Pursuant to California Labor Code Section 226, every employer must furnish each employee an itemized statement of wages and deductions at the time of payment of wages.

47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that accurately reflected all information required by Labor Code Section 226, including but not limited to, gross wages earned, including overtime, net wages earned, total hours worked by the employee, all deductions, and premium pay for missed meal breaks and rest breaks. Therefore, Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in accordance with California Labor Code Section 226(a).

48. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation

1 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
2 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
3 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
4 the 1-year period immediately preceding the date this lawsuit was filed.

5 49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
6 sustained damages, including loss of earnings, in an amount to be established at trial. As a
7 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
8 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
9 and attorney's fees pursuant to statute.

10 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
11 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
12 trial.

13 **FIFTH CAUSE OF ACTION**

14 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

15 **(California Labor Code Section 204)**

16 **(Plaintiff against all named defendants and all DOE defendants)**

17 51. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

19 52. California Labor Code Section 204 establishes the fundamental right of all employees
20 in the State of California to be paid wages in a timely fashion for their work.

21 53. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
22 full amount of all owed wages when due as required by California Labor Code Section 204.

23 54. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
24 informed, believes, and thereon alleges, that all times relevant during the liability period,
25 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
26 including overtime hours and the minimum wage along with premiums for missed meal breaks
27 and rest breaks.
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1 55. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
2 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
3 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
4 from Defendants' records or indirectly based on information from Defendants' records.

5 56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
7 trial.

8 **SIXTH CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE SECTION 558**

10 **(California Labor Code Section 558)**

11 **(Plaintiff against all named defendants and all DOE defendants)**

12 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

14 58. California Labor Code Section 558 states that any person acting on behalf of an
15 employer who violates, or causes to be violated, a section of this chapter or any provision
16 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
17 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
18 employee for each pay period for which the employee was underpaid in addition to an amount
19 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one
20 hundred dollars (\$100) for each underpaid employee for each pay period for which the
21 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
22 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
23 filed.
24

25 59. Plaintiff hereby alleges that named Defendants violated Labor Code Section 558. Thus,
26 Defendants are subject to civil penalties under the following laws:

- 27 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular
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1 wages, including minimum wages for all hours worked and overtime wages for
2 overtime hours worked. As such, Defendants violated Section 558 under which
3 penalties are due. Plaintiff therefore prays for penalties of \$50.00 for the first pay
4 period and \$100.00 for each subsequent violation for each pay period for which
5 Plaintiff was underpaid in addition to an amount sufficient to recover underpaid
6 wages.

7
8 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for
9 relief associated with Plaintiff's prosecution of this cause of action under California
10 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
11 paying Plaintiff for his overtime hours worked and minimum wages for all hours
12 worked.

13 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
14 fees for relief associated with Plaintiff's prosecution of this cause of action under
15 California Labor Code Sections 200, et seq.
16

17 60. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under
18 the statutes, regulations, and wage orders alleged in this cause of action along with any
19 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

20 61. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs and
21 attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO MAINTAIN ACCURATE RECORDS**

24 **(California Labor Code Section 1174(d))**

25 **(Plaintiff against all named defendants and all DOE defendants)**

26 62. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 61, inclusive, of this Complaint as though fully set forth herein.
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1 63. Labor Code section 1174(d) requires that employers, including Defendants, maintain
2 accurate records showing the hours worked daily by its employees and to whom wages were
3 paid.

4 64. Additionally, the “Records” section of the applicable IWC Wage Order obligates the
5 employer, including Defendants, to keep accurate information with respect to each one of their
6 employees including, but not limited to, the total wages paid each payroll period, and time
7 records showing when the employee begins and ends each work period, meal periods, split
8 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
9 the applicable rates of pay.

10 65. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails
11 to maintain accurate and complete records required by Labor Code section 1174(d) is subject
12 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate
13 records of Plaintiff’s total daily hours, the total hours worked in the payroll period, the
14 applicable rates of pay, and total wages earned for the payroll period.

15 66. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and
16 continues to suffer substantial losses related to Defendants’ failure to record and maintain
17 records of meal and rest periods as well as time records.

18 67. Plaintiff seeks all available remedies for Defendants’ violations including, but not
19 limited penalties, and costs to the extent permitted by law and according to proof at trial.

20 **EIGHTH CAUSE OF ACTION**

21 **FAILURE TO GIVE REST BREAKS**

22 **(Plaintiff against all named defendants and all DOE defendants)**

23 68. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.

25 69. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 26 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which
27 provides that every employer shall authorize and permit all employees to take rest
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periods, which insofar as practicable shall be in the middle of each work period.

The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

- b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;
- c. Title 8 of the California Code of Regulations sections 11050(20)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

70. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest break after every four (4) hours of work or major fraction thereof, as required by California law.

71. Under this cause of action, Plaintiff prays for wages due to him under the statutes,

1 regulations, and wage orders alleged in this cause of action along with any allowable interest,
2 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
3 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

4 72. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
5 fees as well as interest under Labor Code section 218.6.

6 73. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
7 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
8 trial.

9 10 **NINTH CAUSE OF ACTION**

11 **FAILURE TO GIVE MEAL BREAKS**

12 **(Plaintiff against all named defendants and all DOE defendants)**

13 74. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.

15 75. Plaintiff brings this cause of action under the following laws, for the following
16 reasons:
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- 18 a. California Labor Code section 512(a), which requires that employees be given a 30-
19 minute uninterrupted meal break after five (5) hours of work, and a second
20 uninterrupted meal break after ten (10) hours of work;
- 21 b. California Labor Code section 226.7, which states that (a) no employer shall require
22 any employee to work during any meal period mandated by an applicable order of
23 the Industrial Welfare Commission, and (b) if any employer fails to provide an
24 employee a meal period in accordance with an applicable order of the Industrial
25 Welfare Commission, the employer shall pay the employee one (1) additional hour
26 of pay at the employee's regular rate of compensation for each workday that the
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meal period is not provided;

- c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11050, which states that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11050, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as codified under California Code of Regulations Section 11050, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5) as enforceable law.

76. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work

1 duty. California Labor Code section 226.7 provides that employers may not require their
2 employees to work through their meal periods. California Labor Code section 226.7 and
3 California Code of Regulations section 11050 requires that if the employer fails to provide the
4 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
5 of pay for each work day that the meal period is not given.

6 77. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
7 regulations, and wage orders alleged in this cause of action along with any allowable interest,
8 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
9 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

10 78. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
11 fees as well as interest under Labor Code section 218.6.

12 79. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
13 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
14 trial.

15
16 **TENTH CAUSE OF ACTION**

17 **PRIVATE ATTORNEYS GENERAL ACT**

18 **Individual and Representative Claim for PAGA penalties under California Labor Code**
19 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 232, 246, 510, 512, 558,**
1174, 1174.5, 1194, 1197, 1198, 2802)

20 **(Plaintiff Against all Named Defendants and all DOE Defendants)**

21 80. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.

23 81. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
24 Defendants of the specific violations of the California Labor Code that Defendants
25 and DOE defendants have violated and continue to violate.

26 82. Pursuant to California Labor code section 2699.3, no response was received from the
27 LWDA within 65 days of the postmark date of the above-alleged letter.

1 83. Plaintiff therefore has exhausted all administrative remedies required of him under
2 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
3 cause of action and pursue penalties in a representative action for Defendants' violations of the
4 Labor Code.

5 84. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
6 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
7 departments, divisions, commissions, boards, agencies, or employees for violation of the code
8 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
9 on behalf of himself or herself and other current or former employees pursuant to the
10 procedures specified in California Labor Code section 2699.3.

11 85. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
12 violator and had one or more of the alleged violations committed against her, and therefore is
13 properly suited to represent the interests of other current and former hourly, non-exempt
14 employees who worked for LEE'S during the relevant PAGA Period.

15 86. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
16 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
17 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

18 87. Plaintiff therefore has exhausted all administrative remedies required of him under
19 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
20 cause of action and pursue penalties in a representative action for Defendants' violations of the
21 Labor Code.

22 88. California Labor Code section 2699 et seq. imposes penalties upon culpable
23 Defendants for violating the Labor Code.

24 89. California Labor Code section 558 establishes a civil penalty as follows: Any
25 employer or other person action on behalf of an employer who violates, or causes to be
26 violated, a section of this chapter or any provision regulating hours and days of work in any
27 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
28

1 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
2 dollars (\$50) for each underpaid employee for each pay period for which the employee was
3 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
4 employee for each pay period for which the employee was underpaid...

5 90. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
6 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
7 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
8 employees in this specific cause of action under the Private Attorneys General Act.

9
10 91. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
11 the following:

12 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
13 226.3, 226.7, 226.8, 232, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802
14 via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage
15 Order Provisions (no. 5) violated based on the facts alleged in this Complaint.

16 92. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
17 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
18 employees as alleged herein in an amount to be shown according to proof at trial and within the
19 jurisdictional limits of this Court.

20 **ELEVENTH CAUSE OF ACTION**

21 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

22 **(California Business and Professions Code Section 17200)**

23 **(Plaintiff against corporate Defendant LEE'S 4 COCKTAILS INC. and all DOE**
24 **defendants)**

25 93. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 92, inclusive, of this Complaint as though fully set forth herein.

27 94. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendant
28

1 constitutes unfair and unlawful business practices under California Business
2 and Professions Code Section 17200, et seq.

3 95. Defendant's violations of California labor laws constitutes a business practice because
4 it was done repeatedly over a significant period of time in a systematic manner that was
5 detrimental to Plaintiff and other similarly situated aggrieved employees.

6 96. For the four years preceding the filing of this action, Plaintiff has suffered damages
7 and request damages and/or restitution of all monies and profits to be disgorged from
8 Defendant in an amount according to proof at time of trial, but in excess of the
9 jurisdiction of this Court.

10 **TWELFTH CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

12 **(California Labor Code Sections 201, 202, 203)**

13 **(Plaintiff against all named defendants and all DOE defendants)**

14 97. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 96, inclusive, of this Complaint as though fully set forth herein.

16 98. Pursuant to California Labor Code Section 201(a), an employer who discharges an
17 employee must immediately pay for all compensation due and owing.

18 99. Pursuant to California Labor Code Section 202, when an employee resigns, the
19 employer must pay all compensation due and owing within 72 hours of resignation, or on the
20 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

21 100. Pursuant to California Labor Code Section 203, if an employer willfully fails to
22 pay, without abatement or reduction, any wages of an employee whose employment ends, the
23 wages of the employee shall continue as a penalty from the due date at the same rate until paid
24 or until an action is commenced; however, the wages shall not continue for more than 30 days
25 for failure to pay an employee owed wages.

26 101. After Plaintiff's employment with Defendants ended, Defendants willfully
27 refused and continue to refuse to pay his unpaid wages as required by Labor Code Section 203.
28

102. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately preceding the filing of this lawsuit.

103. Under this cause of action, Plaintiff also prays for attorney's fees and costs under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

104. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

THIRTEENTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Plaintiff against all Defendants and DOE Defendants, and each of them)

105. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 104, inclusive, of this Complaint as thought fully set forth herein.

106. Labor Code section 2802 provides that “[a]n 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.”

107. Beginning at least 3 years prior to the filing of this complaint, in order to discharge their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of completing his job duties, which were not reimbursed by Defendant. These expenses include, but are not limited to gas/mileage reimbursement for using their personal vehicles for work purposes.

108. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and attorney's fees and costs, under Labor Code section 2802.

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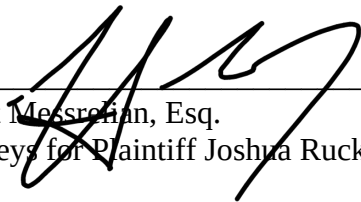
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1. For special and consequential damages to the extent allowed by law;
2. For damages for minimum wages/regular wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
4. For restitution and disgorgement for all unfair business practices by corporate Defendant LEE'S 4 COCKTAILS INC. against Plaintiff in an amount subject to proof at trial;
5. For an order enjoining corporate Defendant LEE'S 4 COCKTAILS INC. from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
6. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
7. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
8. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants described more particularly in the Complaint and representative PAGA claims;
9. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof;
10. For the imposition of civil penalties and/or statutory penalties;

- 1 11. For all interest as allowed by law;
2 12. For all costs and disbursements incurred in this suit;
3 13. Reasonable attorney's fees where available by law, including but not limited to,
4 pursuant to Labor Code section 2698 et seq. and/or other applicable laws; and
5 14. For such other and further relief as the Court deems just and proper.
6

7 **DATED:** December 29, 2020

MESSRELIAN LAW INC.

9 By 
10 Harout Messrelian, Esq.
11 Attorneys for Plaintiff Joshua Ruckman
12

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
15

16 **DATED:** December 29, 2020

MESSRELIAN LAW INC.

18 By 
19 Harout Messrelian, Esq.
20 Attorneys for Plaintiff Joshua Ruckman
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