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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

DANTE ANGOTTI, on behalf of the State of
California and all aggrieved employees,

Plaintiff,

vs.

AZUL HOSPITALITY GROUP, LLC; AZUL
HOSPITALITY MANAGEMENT, LLC;
AZUL HOSPITALITY, LLC; AZUL
HOSPITALITY – BROADWAY, LLC;
AZUL HOSPITALITY – GLENDALE, LLC;
AZUL HOSPITALITY – NORTH BAY,
LLC; AZUL HOSPITALITY – PASO
ROBLES, LLC; AZUL HOSPITALITY –
PH, LLC; AZUL HOSPITALITY – RB, LLC;
AZUL HOSPITALITY – SACRAMENTO,
LLC; AZUL HOSPITALITY – SRSB, LLC;
AZUL HOSPITALITY – GASLAMP, LLC;
and DOES 1 through 20, inclusive,

Defendants.

Case No. 37-2020-00019008-CU-OE-CTL

Assigned to the Hon. Joel R. Wohlfeil

**FIRST AMENDED
REPRESENTATIVE ACTION
COMPLAINT**

**1. CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004 (LABOR CODE § 2698
ET SEQ.)**

Case Filed: June 5, 2020

CMC: Sept. 10, 2021 at 2:30 p.m., Dept. C-73

Trial Date: Not Set

1 Plaintiff DANTE ANGOTTI (“Plaintiff”) on behalf of the State of California and as an
2 “aggrieved employee” acting as a private attorney general under the Labor Code Private
3 Attorneys General Act of 2004 (“PAGA,” Labor Code § 2698 *et seq.*) brings this representative
4 action against Defendants AZUL HOSPITALITY GROUP, LLC.; AZUL HOSPITALITY
5 MANAGEMENT, LLC; AZUL HOSPITALITY, LLC; AZUL HOSPITALITY –
6 BROADWAY, LLC; AZUL HOSPITALITY – GLENDALE, LLC; AZUL HOSPITALITY –
7 NORTH BAY, LLC; AZUL HOSPITALITY – PASO ROBLES, LLC; AZUL HOSPITALITY
8 – PH, LLC; AZUL HOSPITALITY – RB, LLC; AZUL HOSPITALITY – SACRAMENTO,
9 LLC; AZUL HOSPITALITY – SRSB, LLC; AZUL HOSPITALITY – GASLAMP, LLC; and
10 DOES 1 through 20 (collectively referred to herein as a joint employer and integrated
11 enterprise, “AZUL” or “Defendant”) and alleges on information and belief as follows:

12 **NATURE OF ACTION**

13 1. This is a civil enforcement action brought under Labor Code § 2698 *et seq.*
14 Plaintiff seeks to recover civil penalties for each violation of the Labor Code committed by
15 AZUL.

16 2. “Notwithstanding any other provision of law, any provision of this code that
17 provides for a civil penalty to be assessed and collected by the Labor and Workforce
18 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
19 employees, for a violation of this code, may, as an alternative, be recovered through a civil
20 action brought by an aggrieved employee on behalf of himself or herself and other current or
21 former employees pursuant to the procedures specified in Section 2699.3.” (Labor Code
22 § 2699(a)).

23 3. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and
24 on behalf of the State of California and all other current and former non-exempt employees of
25 AZUL who work or worked within the State of California within the one-year period prior to
26 the date on which Plaintiff provided written notice to the Labor and Workforce Development
27 Agency (“LWDA”) and AZUL under Labor Code § 2699.3 and continuing through the present.

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4. Plaintiff worked during this period and is an “aggrieved employee” because Plaintiff was employed by AZUL and suffered one or more of the Labor Code violations committed by AZUL which are alleged in this Representative Action Complaint.

5. On March 31, 2020, Plaintiff gave written notice by online filing with the LWDA and by certified mail to all of the AZUL defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff paid the requisite filing fee to the LWDA.

6. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, the AZUL defendants did not give written notice by certified mail to Plaintiff providing a description of any actions taken to cure the alleged violations.

7. Once at least 65 days passed from Plaintiff notifying the AZUL defendants of these violations, without any notice of cure from them or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff exhausted all prerequisites and commences this civil action under Labor Code § 2699 by filing the Representative Action Complaint.

8. On April 9, 2021, Plaintiff filed a supplemented PAGA notice, and Plaintiff has exhausted any and all administrative notice and exhaustion requirements as to the facts, allegations and Labor Code provisions set forth therein as of the date of filing of this First Amended Representative Action Complaint.

JURISDICTION

9. Jurisdiction of this action is proper in this Court under Article VI, § 10 of the California Constitution. The civil penalties sought in this action exceed the minimum jurisdictional limits of this Court. All of Plaintiff's claims arise under California law.

VENUE

10. Venue as to each defendant is proper in this judicial district under Code of Civil Procedure §§ 395 and 395.5 because AZUL conducts substantial business in this county, employed Plaintiff in this county, and committed at least some of the alleged violations in this county.

AGGRIEVED EMPLOYEES

11. Plaintiff DANTE ANGOTTI worked for AZUL in San Diego County until he was laid off due to COVID-19 in March 2020. AZUL classified Plaintiff as an hourly, non-exempt employee. Plaintiff worked as a server.

12. The State of California, via the LWDA, is the real party in interest in this action.

13. The “aggrieved employees” in this action are all current and former non-exempt employees of AZUL who work or worked within the State of California and who experienced one or more of the Labor Code violations committed by AZUL during the period from March 31, 2019 continuing through the present.

14. Unless otherwise stated, all allegations in this Representative Action Complaint occurred during the period from March 31, 2019 through the present (the “PAGA Period”).

AZUL DEFENDANTS

15. Defendants AZUL HOSPITALITY GROUP, LLC; AZUL HOSPITALITY MANAGEMENT, LLC; AZUL HOSPITALITY, LLC; AZUL HOSPITALITY – BROADWAY, LLC; AZUL HOSPITALITY – GLENDALE, LLC; AZUL HOSPITALITY – NORTH BAY, LLC; AZUL HOSPITALITY – PASO ROBLES, LLC; AZUL HOSPITALITY – PH, LLC; AZUL HOSPITALITY – RB, LLC; AZUL HOSPITALITY – SACRAMENTO, LLC; AZUL HOSPITALITY – SRSB, LLC; AZUL HOSPITALITY – GASLAMP, LLC are each respectively California domestic limited liability companies that do business throughout California.

16. AZUL’s corporate headquarters where employment decisions are made by management and where payroll and employee recordkeeping functions are performed is in San Diego County.

17. AZUL represents that it is a high-end luxury hotel and resort management company. AZUL’s website states that “AZUL has a robust infrastructure of industry professionals with extensive experience and expertise in all aspects of hotel management. AZUL management will maximize property revenues, including each business outlet in the hotel or resort. Top-line emphasis is paired with rigorous cost controls and best-in-class service

standards, to ensure the strongest possible bottom line.” (AZUL Hospitality Group | San Diego, California, <https://azulhospitalitygroup.com> [June 3, 2020]).

18. AZUL is structured such that each of its luxury hospitality properties is a separate limited liability company, but are run by common management under common employment policies and control from a central location. AZUL’s properties include AZUL HOSPITALITY – BROADWAY, LLC, AZUL HOSPITALITY – GLENDALE, LLC, AZUL HOSPITALITY – NORTH BAY, LLC, AZUL HOSPITALITY – PASO ROBLES, LLC, AZUL HOSPITALITY – PH, LLC, AZUL HOSPITALITY – RB, LLC, AZUL HOSPITALITY – SACRAMENTO, LLC; AZUL HOSPITALITY – SRSB, LLC, AZUL HOSPITALITY – GASLAMP, LLC. Plaintiff is informed, believes and alleges that each of the foregoing entities represents a separate property where aggrieved employees work, though AZUL itself constitutes a single employer under California law.

19. Plaintiff alleges on information and belief that AZUL HOSPITALITY GROUP, LLC., AZUL HOSPITALITY MANAGEMENT, LLC and/or AZUL HOSPITALITY, LLC are joint employers of Plaintiff and the aggrieved employees and part of a common integrated enterprise with each other and with the other AZUL defendants. Plaintiff alleges that these entities, in particular, are responsible for hiring and firing aggrieved employees, supervising and controlling their hours, schedules and conditions of employment, determining their rate of pay and method of payment, maintaining employment records, and otherwise engaging, suffering or permitting to the aggrieved employees to work at each of the properties mentioned in the preceding paragraph.

20. Although the aggrieved employees work at different properties throughout California under the AZUL portfolio of properties, AZUL operates as a joint employer and as a single and common integrated enterprise. AZUL, through its management and human resources team, operates as a single unit with respect to employment and personnel decisions to maximize internal efficiency and reduce redundancy within the AZUL organization. Numerous written employment policies, notices, and correspondence evidence the interrelation of operations and the common management and control AZUL maintains over its individual properties.

1 21. AZUL's interrelation of operations, common management, centralized control
2 over labor relations, and common ownership and financial control render AZUL a joint
3 employer and integrated enterprise with respect to Plaintiff and the other aggrieved employees.
4 The following facts are illustrative of AZUL integrated operations and employment of the
5 aggrieved employees, such that it is jointly and severally liable for civil penalties under the
6 PAGA:

7 22. Plaintiff worked at an AZUL hotel in downtown San Diego. Plaintiff's wage
8 statements list AZUL HOSPITALITY- BROADWAY, LLC as the employer.

9 23. The Labor Code § 2810.5 "Notice to Employee" that AZUL provided to Plaintiff
10 and, on information and belief, other aggrieved employees, upon hire list the following AZUL
11 defendants as the employer:

12 a. The "Legal Name of Hiring Employer" is AZUL HOSPITALITY, LLC;
13 AZUL HOSPITALITY – BROADWAY, LLC; AZUL HOSPITALITY –
14 GASLAMP, LLC; AZUL HOSPITALITY – GLENDALE, LLC; AZUL
15 HOSPITALITY – NORTH BAY, LLC; AZUL HOSPITALITY – PH, LLC;
16 AZUL HOSPITALITY – RB, LLC; AZUL HOSPITALITY- SRSB, LLC.

17 b. The "Physical Address of Hiring Employer's Main Office" is 800 W Ivy
18 Street, San Diego, CA 92101, which is the corporate headquarters for AZUL.

19 c. The "Hiring Employer's Telephone Number" is for the corporate
20 headquarters for all AZUL defendants.

21 d. The Notice is signed and acknowledged by the Corporate Director of Human
22 Resources for all AZUL defendants.

23 24. The "Mutual Agreement to Arbitrate Claims," which AZUL required aggrieved
24 employees like Plaintiff to sign and which prevents them from pursuing a wage claim in civil
25 court on a class-wide basis, lists "Azul Hospitality Group" as the "Employer" and "Company"
26 to whom Plaintiff is bound to arbitrate all employment-related claims against: "Differences may
27 arise between the Employer and Employee during or following Employee's employment with
28 the Company." AZUL's arbitration agreement, applicable to Plaintiff and, on information and

1 belief, other aggrieved employees, is drafted as applying to all disputes between AZUL and the
2 employee-signatory, including “owners, directors, officers, employees, agents, related and
3 affiliated entities. The employer-signatory for AZUL on the arbitration agreement is the
4 Corporate & Staff Services Manager for all AZUL defendants.

5 25. AZUL maintains a common “AZUL HOSPITALITY” employee handbook,
6 which provides company-wide employment policies, procedures and practices that apply to
7 Plaintiff and other aggrieved employees at various properties. In addition to including AZUL’s
8 company-wide philosophies, policies, rules, benefits, pay and paycheck practices, performance
9 review and disciplinary regulations, and leave entitlements, the AZUL handbook includes a
10 statement from the Chief Executive Officer and Chief Operating Officer welcoming all
11 aggrieved employee staff members to the AZUL team.

12 26. AZUL’s “Meal Period Waiver Request” document applies to Plaintiff and all
13 AZUL aggrieved employees on a company-wide basis and is also signed by the Corporate &
14 Staff Services Manager for all AZUL defendants on the waiver form provided to Plaintiff.

15 27. AZUL’s application form for new hires used for aggrieved employees, including
16 Plaintiff, seeks applicant certification for AZUL HOSPITALITY, LLC to make the hiring
17 decision for Plaintiff and other aggrieved employees by conducting background checks,
18 examining references, conducting pre-hire drug and alcohol testing, among other actions
19 relating to AZUL’s employment, and hiring and firing of Plaintiff and other aggrieved
20 employees.

21 28. Plaintiff alleges that AZUL’s payroll systems are coded in the same way for all
22 aggrieved employees, such that the payroll violations alleged in this Representative Action
23 Complaint occurred for all aggrieved employees of AZUL regardless of the property the
24 aggrieved employee worked at (e.g., AZUL HOSPITALITY – BROADWAY, LLC, AZUL
25 HOSPITALITY – GASLAMP, LLC, et al.). AZUL maintained a centralized human resource
26 department at its corporate headquarters with personnel who oversaw and controlled the day to
27 day operations of the organization, including the payroll policies and practices that applied to
28 Plaintiff and other aggrieved employees who worked throughout California. AZUL issued the

1 same uniform and formatted wage statements and payment mechanisms for all non-exempt,
2 hourly employees in California, irrespective of their location or position. AZUL maintained
3 common payroll and time records using common software and data entry systems. AZUL
4 utilized the same methods and formulas when calculating and paying wages due to Plaintiff
5 and other aggrieved employees in California. AZUL maintained common policies with respect
6 to the payment of wages and meal and rest period premiums for its workforce. AZUL
7 developed and implemented the respective company-wide employment policies and practices
8 and maintained employment records at the corporate headquarters.

9 29. Dozens of other employment policies and practices reflect AZUL's common
10 employment of Plaintiff and the aggrieved employees. AZUL acts directly and indirectly in a
11 joint and single interest in relation to its employment and management of the aggrieved
12 employees.

13 30. Indeed, all defendants in this action are employers or joint employers and part of
14 a common integrated enterprise in their capacity and operation of AZUL, as each defendant
15 exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved
16 employees, suffers and permits them to work, and engages the workforce creating a common
17 law employment relationship. Additionally, all defendants have common ownership, common
18 management, interrelationship of operations, and centralized control over labor relations and are
19 therefore part of a common integrated enterprise.

20 31. Plaintiff further alleges that each defendant acted in all respects pertinent to this
21 action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in a
22 common integrated enterprise, or in some other capacity on behalf of the employers of Plaintiff
23 and the aggrieved employees, such that the acts and omissions of each defendant are legally
24 attributable to all others rendering each of them liable for the violations and civil penalties plead
25 in this action.

26 32. The true names and capacities, whether individual, corporate, associate, or
27 otherwise, of the parties sued as Defendants DOES 1 through 20, inclusive, are unknown to
28 Plaintiff, who sues them by such fictitious names under Code of Civil Procedure § 474. On

1 information and belief, Plaintiff alleges Defendants DOES are legally responsible in some
2 manner for the acts and omissions alleged herein. Plaintiff will seek leave to amend this
3 Complaint to reflect the true names and capacities of DOE Defendants when they become
4 known. All references to Defendant in this Representative Action Complaint mean and refer to
5 Defendant DOES 1 through 20, inclusive.

6 **GENERAL ALLEGATIONS**

7 33. ***Overtime (Regular Rate of Pay) Violations.*** Defendant violated Labor Code
8 §§ 204, 510, 558, 1194, and 1198 and the IWC Wage Orders by failing to timely pay wages
9 owed at the lawful regular rate of pay for all overtime hours worked by Plaintiff and the
10 aggrieved employees. In pay periods when Plaintiff and other aggrieved employees worked
11 overtime and were paid a portion of mandatory service charges (i.e., automatic 18 percent
12 customer charge), Defendant did not factor this sum into their regular rate of pay for purposes
13 of overtime calculation and payment. Plaintiff's wage statement with the pay date of
14 12/20/2019 provides one example of Defendant's regular rate violation that applies to other
15 aggrieved employees. Plaintiff was paid overtime at a rate of \$18.00 per hour, which was one
16 and one-half times his straight time hourly rate of \$12.00. In this pay period, Plaintiff also
17 earned Banquet Tips, Charge Tips, and Service Charges. Plaintiff alleges that some of these
18 sums were not gratuities which may be excluded from the regular rate of pay under California
19 law, but rather automatic charges of 15 to 18 percent of the customer bill, which Defendant
20 pays to aggrieved employees as additional compensation. Defendant's policy is to charge
21 customers mandatory service charges for banquets or large groups, for events, for vouchers,
22 among other reasons, and then pay a portion of that automatic charge as additional
23 remuneration to the aggrieved employees. However, unlike gratuities, these amounts must be
24 factored into the regular rate of pay when aggrieved employees earn overtime, such that the
25 overtime rate for Plaintiff would be higher than a one and one-half time multiple of the straight
26 time hourly rate for Plaintiff and aggrieved employees. As a result of this company-wide
27 practice, Defendant failed to pay Plaintiff and the other aggrieved employees all wages owed at
28

1 the lawful rate on regularly scheduled paydays in Labor Code §§ 204, 510, 558, 1194, and
2 1198.

3 34. ***Unlawful Gratuity Practices.*** Defendant violated Labor Code §§ 351 and 353
4 by maintaining an unlawful tip pooling policy that applied to all aggrieved employees who
5 earned such tips, gratuities and mandatory service charges. Plaintiff alleges that the tips and
6 gratuities owed under this section were untimely paid, miscalculated and shorted, and included
7 unlawful deductions. Plaintiff alleges that managers and/or the employer entity shared in the
8 earnings under the pooling policy and that the pooling policy was unlawful because employees
9 not on the particular shift or in the line of service also shared in the tips, to the loss of the
10 employee who earned those tips. Furthermore, Defendant's policy constitutes an illegal taking
11 of gratuities under the arrangement because Defendant prohibited Plaintiff and other employees
12 from accepting voluntary tips when the customer also paid a mandatory service charge (i.e.,
13 charged pursuant to a voucher payment). Specifically, Plaintiff alleges that Defendant shorted
14 pay for Plaintiff and other aggrieved employees where a customer paid with a hotel voucher
15 (triggering the automatic service charge) and then left an additional tip. Plaintiff alleges that in
16 such cases the tips of employees were reduced or withheld under the vague and/or unwritten
17 policy of Defendant. Defendant failed to maintain an unambiguous written tip or tip pooling
18 policy, in further violation of these sections. Because Defendant failed to provide Plaintiff and
19 other aggrieved employees records of such remuneration earned upon request, Plaintiff cannot
20 fully calculate Defendant's underpayments at this time. Plaintiff alleges that Defendant failed
21 to keep accurate records of the gratuities (and failed to make the records open to inspection) in
22 violation of Labor Code § 353.

23 35. ***Meal Period Violations.*** Defendant violated Labor Code §§ 226.7 and 512 and
24 the IWC Wage Orders by failing to provide compliant meal periods or pay meal period
25 premiums in lieu thereof. For a portion of the PAGA Period for Plaintiff and for some or all of
26 the PAGA Period for other aggrieved employees, Defendant did not maintain a lawful meal
27 period waiver that allowed for Defendant and the aggrieved employees to waive meal periods
28 for shifts of less than six hours in length. During such times, Defendant required Plaintiff and

1 other aggrieved employees to work shifts of five hours or more, but did not provide a timely,
2 uninterrupted 30-minute meal period or a payment of a meal period premium in lieu thereof for
3 those shifts in excess of five hours (with no meal period waiver in effect). Additionally, on
4 days in which Plaintiff and other aggrieved employees did not receive an uninterrupted 30-
5 minute meal period within the first five hours of their shift, Defendant failed to pay a
6 corresponding meal period premium at one hour their regular rate of compensation. Plaintiff
7 alleges, on information and belief, that this practice extends to second meal periods for shifts in
8 excess of 10 hours in a workday, as Defendant had a policy and frequent practice of not paying
9 meal period premiums when due to the aggrieved employees. Additionally, throughout the
10 entire PAGA Period, on occasions when Defendant did pay meal period premiums, Defendant
11 paid them at the respective straight time hourly rate rather than the “regular rate of
12 compensation” applicable to each aggrieved employee. Plaintiff and the aggrieved employees
13 experienced missed, short, interrupted, and late meal periods. Defendant’s handbook states that
14 a “Meal Period Penalty is applied when ... Employee does not clock out for lunch by the end of
15 the 5th or 10th hour where applicable” yet Defendant did not follow this policy and pay such
16 premiums during the PAGA Period and when meal period waivers were not in effect.
17 Defendant also failed to pay all meal period premiums for all non-compliant first or second
18 meal periods (i.e., missed, short, and interrupted meal periods).

19 36. ***Rest Period Violations.*** Defendant violated Labor Code § 226.7 and the IWC
20 Wage Orders by failing to authorize and permit compliant rest periods for every 4 hours worked
21 or major fraction thereof or pay rest period premiums in lieu thereof. Additionally, on days in
22 which Plaintiff and other aggrieved employees did not receive at least one 10-minute rest period
23 for each four-hour period worked (or major fraction thereof), Defendant failed to pay a
24 corresponding rest period premium at one hour their regular rate of compensation. Unlike meal
25 period premiums, Defendant never paid rest period premiums to Plaintiff or, on information and
26 belief, other aggrieved employees despite substantial work performed during rest periods due to
27 business demands and understaffing. Defendant’s employee handbook does not include a
28 written policy stating that rest period premiums will be paid for non-compliant rest periods.

1 37. ***Failure to Timely Pay Wages.*** Defendant violated Labor Code § 204 and the
2 IWC Wage Orders by failing to pay all wages earned at least twice each calendar month on
3 days designated in advance as the regular paydays. Defendant committed a series of Labor
4 Code violations which resulted in underpayment of wages, overtime and premiums to Plaintiff
5 and the aggrieved employees. As a result, Defendant has failed to timely pay those wages.

6 38. ***Failure to Pay All Wages Upon Separation.*** Defendant violated Labor Code
7 § 201, 202 and 203 by failing to timely pay all wages and premiums owed to the aggrieved
8 employees who terminated their employment during the PAGA Period on their final day of
9 employment (for those who were terminated or quit by giving at least 72 hours' prior notice) or
10 within 72 hours thereof (for who quit without giving notice), as applicable. Defendant failed to
11 pay waiting time penalties when owed based on its failure to pay all wages upon termination.
12 Wages were owed and unpaid for the aggrieved employees upon termination of employment
13 due to Defendant's policies and practices of failing to pay all wages owed at the lawful rate

14 39. ***Wage Statement Violations.*** Defendant violated Labor Code § 226 and the IWC
15 Wage Orders by failing to accurately state the gross wages earned, total hours worked, net
16 wages earned, and all hourly rates in effect and the total number of hours worked at each rate of
17 pay each pay period for Plaintiff and the other aggrieved employees. The wage statements
18 issued to Plaintiff and the aggrieved employees were inaccurate because Defendant did not pay
19 overtime at the regular rate of pay, rendering the overtime rate stated on the wage statement
20 incorrect along with the gross and net wages. As discussed above, Defendant also
21 mischaracterized tips, gratuities and service charges by failing to lawfully distinguish between
22 "Banquet Tips," "Charge Tips," "Service Charges," "Gratuities" and other forms of
23 remuneration on the wage statements for Plaintiff and other aggrieved employees – at some
24 point Defendant simply characterized all additional forms of remuneration together on a
25 common line item, despite some of the forms of pay being discretionary and some being non-
26 discretionary and required to be included in the regular rate of pay/compensation. Plaintiff and
27 other aggrieved employees were injured as a result of these wage statements because they failed
28 to provide the information necessary for Plaintiff and other aggrieved employees to discern

1 what amounts they were paid and whether the payments were correct. Coupled with
2 Defendant's failure to maintain and provide adequate records of tips, gratuities and service
3 charges earned by each employee, Plaintiff and other aggrieved employees were effectively
4 deprived of the ability to discern their wages earned and paid from the wage statements alone.
5 As a result, Defendant provided wage statements that contain an inaccurate hourly rate for
6 overtime (i.e., not based on the regular rate), mischaracterizes wages (i.e., gratuities, service
7 charges, tips) such that they are included in the incorrect line item (affecting the regular rate).
8 Due to the underpayments, the gross and net wages earned each pay period are inaccurate. The
9 wage statements provided to Plaintiff and other aggrieved employees do not accurately itemize
10 all applicable hourly rates in effect during the pay period and the corresponding number of
11 hours worked at each hourly rate. As a result, Plaintiff and other aggrieved employees cannot
12 promptly and easily determine from the wage statement alone the wages paid or earned without
13 reference to other documents or information. These wage statement violations are significant
14 because they sowed confusion among Plaintiff and other aggrieved employees with respect to
15 what amounts were owed and paid, at what regular and overtime rates, and how those amounts
16 were calculated. Additionally, the wage statements do not list all meal and rest period
17 premiums owed or paid. These violations affect all aggrieved employees.

18 40. ***Failure to Maintain Accurate Payroll Records.*** Because of the violations set
19 forth in this Representative Action Complaint, including Defendant's failure to accurately
20 maintain records and record and pay for all hours worked at the appropriate rates, Defendant
21 violated Labor Code § 1174 and the IWC Wage Orders, including section 7 of Wage Order No.
22 5, by failing to maintain accurate payroll records showing daily hours worked and the wages
23 paid to each employee. As a result, Defendant is liable for a civil penalty of \$500 per employee
24 to Plaintiff and each aggrieved employee under Labor Code § 1174.5. As discussed above,
25 Defendant further failed to maintain accurate records and make those records available for
26 inspection, as required by Labor Code §§ 350 to 356 (dealing with gratuities).

1 41. ***Incorporation.*** The Labor Code provisions allegedly violated as alleged in the
2 two LWDA notices filed with the LWDA, along with the facts and theories set forth in the
3 therein, are hereby incorporated by reference as though fully set forth herein.

4 42. ***Attorneys Fees and Costs.*** Plaintiff was compelled to retain the services of
5 counsel to file this court action to protect Plaintiff's interests and those of the other aggrieved
6 employees and to assess and collect civil penalties owed by Defendant. Plaintiff has thereby
7 incurred attorneys' fees and costs, which Plaintiff is entitled to receive on all cause of action
8 under Labor Code § 2699(g) and Code of Civil Procedure § 1021.5.

9 **FIRST CAUSE OF ACTION**
10 **PRIVATE ATTORNEYS GENERAL ACT**
11 **(AGAINST ALL DEFENDANTS)**

12 43. Plaintiff incorporates in this cause of action all paragraphs outside this section
13 with the same force and effect as if fully set forth herein.

14 44. Defendant committed Labor Code violations against Plaintiff and the other
15 aggrieved employees. Plaintiff brings this representative action as an individual and on behalf
16 of the State of California and all other aggrieved employees of Defendant to recover civil
17 penalties under Labor Code § 2699(a) and (f) for the following Labor Code violations
18 committed against Plaintiff and other aggrieved employees during the PAGA Period:

- 19 a. Failing to pay all earned overtime compensation for all overtime hours worked at
20 the lawful regular rate of pay in violation of Labor Code §§ 510, 1182.12, 1194,
21 1194.2, 1197, 1197.5, 1198, and 1198.5;
- 22 b. Failure to maintain lawful gratuity practices and maintain accurate records of
23 such gratuities in violation of Labor Code § 350, 351, 352, 353 and 354, as well
24 as violations of Labor Code section 221, 222, 223, and 225.5;
- 25 c. Failing to provide all statutorily-compliant meal periods or payment of meal
26 period premiums in violation of Labor Code §§ 226.7 and 512;
- 27 d. Failing to authorize and permit all statutorily-compliant rest periods or payment
28 of rest period premiums in violation of Labor Code §§ 226.7 and 516;

- e. Failing to timely pay all earned wages at least twice during each calendar month in violation of Labor Code § 204 and 204b;
 - f. Failing to timely pay all final wages due to upon separation of employment or waiting time penalties in violation of Labor Code §§ 201, 202 and 203 and 227.3;
 - g. Failing to furnish complete, accurate itemized wage statements each pay period in violation of Labor Code §§ 226, 246;
 - h. Failure to maintain accurate records in violation of Labor Code §§ 432 and 1174 and 2810.5;
 - i. Corresponding violations of Labor Code sections 232, 232.5, 2800 and 2802.
45. For these violations, Plaintiff seeks to recover the following civil penalties:
- a. Civil penalties recoverable under Labor Code § 2699(a);
 - b. Civil penalties under Labor Code § 2699(f)(2), for all provisions of the Labor Code for which a civil penalty is not specifically provided (including those sections identified in Labor Code § 2699.5), in the amount of \$100 for each aggrieved employee per pay period for all initial violations plus \$200 for each aggrieved employee per pay period for all subsequent violations, as well as civil penalties under Labor Code section 210;
 - c. Civil penalties under Labor Code § 226.3 in the amount of \$250 per employee per violation for an initial citation and \$1,000 per employee for each subsequent violation;
 - d. Civil penalties under Labor Code § 558(a)(1), (2) for all violations in the amount of \$50 for each underpaid employee per pay period for all initial violations plus \$100 for each underpaid employee per pay period for all subsequent violations;
 - e. Civil penalties under Labor Code § 1197.1 for each wage violation in the amount of \$100 for each underpaid employee per pay period for all initial violations and \$250 for each underpaid employee per pay period for all subsequent violations;

1 f. Civil penalties under Labor Code § 1174.5 for each recordkeeping violation in
2 the amount of \$500 per employee;

3 46. Plaintiff exclusively seeks to recover civil penalties as a private attorney general
4 under the PAGA and does not seek to recover underpaid wages or other damages in this action.

5 47. Plaintiff further seeks to recover attorneys' fees and costs under Labor Code
6 § 2699(g) and Code of Civil Procedure § 1021.5.

7 **PRAYER FOR RELIEF**

8 Plaintiff, on behalf of the State of California and all aggrieved employees as a private
9 attorney general, seeks the following relief against Defendants:

- 10 a. An award of all recoverable civil penalties;
11 b. Attorneys' fees and costs of suit; and
12 c. Such other relief as the Court may deem just and proper.

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14 Dated: June 23, 2021

Ferraro Vega Employment Lawyers, Inc.

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17 NICHOLAS J. FERRARO, ESQ.
18 Attorney for Plaintiff DANTE ANGOTTI
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1 **PROOF OF SERVICE**

2 I, the undersigned, am employed in San Diego, California. I am over the age of 18 and
3 not a party to this action. My business address is 2305 Historic Decatur Road, Suite 100, San
4 Diego, California 92106. My email address is nick@ferrarovega.com

5 On **June 23, 2021** I served true copies of the following document(s) on the interested
6 parties listed in the attached Service List as follows:

7 **First Amended Representative Action Complaint**

8 ☒ **BY ELECTRONIC SERVICE**

9 I attached a true and correct copy of each of the above-entitled document(s) and served
10 them via electronic transmission pursuant to the electronic service rules applicable to
11 this action.

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

14 Executed **June 23, 2021** at San Diego, California.

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16 
17 NICHOLAS J. FERRARO, ESQ.
18 Attorney for Plaintiff DANTE ANGOTTI
19
20

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