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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

MACKENZIE HEYMAN, individually and on
behalf of those similarly situated,

Plaintiffs,

vs.

THE RESORT AT PELICAN HILL, LLC;
IRVINE MANAGEMENT COMPANY; THE
IRVINE COMPANY, LLC; and DOES 1-50,
inclusive;

Defendants.

Case No. 30-2020-01145518-CU-OE-CXC

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF:**

- (1) Unlawful Business Practices - Failure to Pay All Gratuities Owed (Cal. Lab. Code § 351);
- (2) Intentional Interference with Prospective Economic Advantage;
- (3) Conversion;
- (4) Unjust Enrichment;
- (5) Failure to Provide Timely and Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
- (6) Waiting Time Penalties (Cal. Lab. Code §§ 201-203);
- (7) Unlawful Business Practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*);

DEMAND FOR JURY TRIAL

Assigned for All Purposes
Judge Glenda Sanders

CX-101

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1 Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all
2 causes except those given by statute to other trial courts.” The statutes under which this action is
3 brought do not specify any other basis for jurisdiction.

4 7. The California Superior Court has jurisdiction over Defendants because, upon
5 information and belief, each Defendant is either a corporation and/or entity and/or person with
6 sufficient minimum contacts in California, a citizen of California, or otherwise intentionally availed
7 itself of the California market so as to render the exercise of jurisdiction over them by the California
8 courts consistent with traditional notions of fair play and substantial justice.

9 8. Venue is proper in the County of Orange because, on information and belief, each
10 Defendant resides, exists, transacts business, and/or has offices in this county; and/or venue is proper
11 in this Court pursuant to California Code of Civil Procedure Section 395 because certain acts and
12 omissions complained of arose in this County.

13 **PARTIES**

14 9. Plaintiff Mackenzie Heyman is an individual over the age of eighteen, and at all times
15 relevant to this Complaint was a resident of the State of California, County of Orange. Plaintiff was
16 employed as a coordinator by Defendants at The Resort at Pelican Hill in Newport Coast, California
17 from December 2013 to March 2020.

18 10. The Class members are all people who are or who have been employed by Defendants
19 as hourly non-exempt employees, including but not limited to, servers, coordinators, and other similar
20 hourly and non-exempt employees throughout the State of California within the four years preceding
21 the filing of this Complaint.

22 11. Plaintiff is informed, believes, and thereon alleges that Defendant The Resort at Pelican
23 Hill, LLC is a Delaware limited liability company with its principal place of business located in
24 Newport Beach, California. Defendant may be served with process by serving its registered agent,
25 CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento,
26 California 95833.

27 12. Plaintiff is informed, believes, and thereon alleges that Defendant Irvine Management
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1 Company is a Delaware corporation with its principal place of business located in Newport Beach,
2 California, and is registered to do business in California. Defendant may be served with process by
3 serving its registered agent, CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite
4 150N, Sacramento, California 95833.

5 13. Plaintiff is informed, believes, and thereon alleges that Defendant The Irvine Company,
6 LLC is a Delaware limited liability company with its principal place of business in Newport Beach,
7 California. Defendant may be served with process by serving its registered agent, CSC – Lawyers
8 Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California 95833.

9 14. Plaintiff is informed, believes, and thereon alleges that at all times mentioned in this
10 Complaint, Defendants were the agents and employees of their co-defendants and in doing the things
11 alleged in this Complaint were acting within the course and scope of such agency and employment.

12 15. Plaintiff is informed, believes, and thereon alleges that Defendants maintain a chain of
13 resorts and hotels throughout the state of California. Plaintiff is informed, believes, and thereon
14 alleges that Defendants employ Class members, among other hourly employees, throughout the state
15 of California.

16 16. Plaintiff is informed and believes that each and every one of the acts and omissions
17 alleged herein were performed by, and/or attributable to, Defendants, each acting as agents and/or
18 employees, and/or under the direction and control of each of the other, and that said acts and failures
19 to act were within the course and scope of said agency, employment and/or direction and control.

20 17. Plaintiff is informed, believes, and thereon alleges that Defendants Irvine Management
21 Company and/or The Irvine Company, LLC directly control the operations of its agents, Defendant
22 The Resort at Pelican Hill, LLC. Plaintiff is informed, believes, and thereon alleges that Defendants
23 jointly exercised control over Plaintiff and Class members with respect to their employment.

24 18. As employers of Plaintiff and Class members throughout the relevant time periods,
25 Defendants, and each of them, are solely, jointly, and severally liable for penalties for violating the
26 Labor Code with respect to the employment of Plaintiff and Class members.

27 19. Throughout this Complaint, any reference to “Defendant” or “Defendants” is intended
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1 to refer to Defendants The Resort at Pelican Hill, LLC, Irvine Management Company, and The Irvine
2 Company, LLC jointly and/or individually.

3 20. At all material times, Defendants have done business under the laws of California, have
4 had places of business in California, including in this County, and have employed Class members in
5 this County and elsewhere in California. Defendants are “person[s]” as defined in Labor Code § 18
6 and “employer[s]” as that term is used in the Labor Code and the IWC Wage Orders regulating wages,
7 hours, and working conditions.

8 21. Defendants each individually and/or jointly own, operate, and/or manage resorts and
9 hotels throughout California.

10 22. Defendants acted as joint employers of Plaintiff because they jointly, directly or
11 indirectly, controlled the employment terms, pay practices, timekeeping practices, and daily work of
12 Plaintiff and the Class members. Upon information and belief, Defendant Irvine Management
13 Company and/or The Irvine Company, LLC employed Class members jointly with the other
14 Defendants and/or with currently unknown entities, because Defendants jointly, directly or
15 indirectly, controlled the employment terms, pay practices, timekeeping practices, and daily work of
16 Plaintiff and similarly situated employees.

17 23. At all material times, Defendants have done business under the laws of California, have
18 places of business in the State of California, including in this judicial district, and have employed
19 Class members in this judicial district. Defendants are a “person” as defined in California Labor
20 Code § 18 and California Business and Professions Code § 17201. Defendants are also “employers”
21 as that term is used in the California Labor Code and the IWC Wage Orders.

22 24. Defendants Irvine Management Company and/or The Irvine Company, LLC, according
23 to its website, operates multiple hotels and resorts, golf courses, marinas, and other operations, and
24 employs Class members in California.

25 **FACTUAL ALLEGATIONS**

26 25. Defendants operate a chain of hotels and resorts throughout California, including The
27 Resort at Pelican Hill, which is located in Newport Coast, California. Defendants employ dozens of
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1 hourly non-exempt workers similarly situated to Plaintiff across these facilities.

2 26. Plaintiff worked at The Resort at Pelican Hill as a non-managerial dining room
3 coordinator from December 2013 to March 2020. Plaintiff is paid at an hourly rate of \$14.75 and
4 regularly worked approximately six to eight hours a day and thirty to thirty-five hours per week,
5 usually working approximately six to eight hours each shift and three shifts per week.

6 27. As a matter of course, Defendants routinely add a service charge of 20% to 21% to its
7 food and beverage bills. These service charges have been in the form of automatic charges which
8 customers are required to pay, and which reasonably appear to be gratuities for the service staff.

9 28. It is typically customary in the hospitality industry that establishments impose gratuity
10 charges in the range of 18% to 22% of the food and beverage bills. Thus, when customers have paid
11 these mandatory service charges, it is reasonable for the customers to believe those service charges
12 are gratuities to be paid to the service staff. Indeed, because of the way these service charges are
13 depicted to customers, and the custom in the food and beverage industry that gratuities range of 18%
14 to 22% are paid for food and beverage service, customers pay these charges reasonably believing
15 they were to be remitted to the service staff as gratuities.

16 29. However, Defendants does not remit the total proceeds of these service charges to the
17 non-managerial employees who serve the food and beverages. Instead, Defendants have a policy and
18 practice of retaining for themselves a portion of those service charges and/or using a portion of the
19 service charges to pay managers or other non-service employees. As a result, Plaintiff and Class
20 members do not receive the total proceeds of the service charges as gratuities, to which they are
21 entitled under California law.

22 30. Defendants' failure to record all gratuity payments and all hours worked results in a
23 failure to provide Class members, including Plaintiff, accurate itemized wage statements as required
24 by California law. The wage statements Defendant provides are not accurate because they do not
25 reflect the actual wages earned as gratuity payments. The wage statements do not contain all of the
26 service charges that should be paid as gratuity payments.

27 31. Further, Defendants do not provide Class members, including Plaintiff, with full
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1 payment of all wages owed at the end of employment. As these workers are owed gratuity payments,
2 and these amounts remain unpaid under Defendants' policies and practices, Defendants fail to pay
3 all wages due upon termination. As a consequence, Defendants are subject to waiting time penalties.

4 32. Class members were and are employed by Defendants and performed work materially
5 similar to Plaintiff.

6 33. Class members report to a facility owned, operated, or managed by Defendants to
7 perform their jobs.

8 34. Class members perform their jobs under Defendants' supervision and using materials
9 and technology approved and supplied by Defendants.

10 35. Class members are required to follow and abide by common work, time, pay, and
11 service fee policies and procedures in the performance of their jobs.

12 36. At the end of each pay period, Class members receive wages from Defendants that are
13 determined by common systems and methods that Defendants select and control.

14 37. Defendants pay Class members on an hourly rate basis.

15 38. On average, Plaintiff worked 6 to 8 hours or more each shift and three shifts or more
16 per week.

17 39. Upon information and belief, Class members worked 6 to 8 hours or more each shift
18 and three shifts or more per week .

19 40. Defendants have employed hundreds of people similarly situated to Plaintiff during the
20 four-year period prior to the filing of this Complaint.

21 41. Defendants' method of paying Plaintiff and Class members was willful, and was not
22 based on a good faith and reasonable belief that their conduct complied with California law.

23 42. Defendants' conduct was willful, carried out in bad faith, and caused significant
24 damages to non-exempt hourly employees in an amount to be determined at trial.

25 **CCP § 382 CLASS ACTION ALLEGATIONS**

26 43. Plaintiff brings causes of action as a class action on behalf of herself and all others
27 similarly situated pursuant to California Code of Civil Procedure § 382. The California Class that
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1 Plaintiff seeks to represent is defined as follows:

2 **All current and former hourly, non-exempt employees,**
3 **including but not limited to food servers, beverage servers,**
4 **coordinators, bussers, cooks, waitstaff, or other non-managerial**
5 **service employees employed by Defendants in California any**
6 **time starting four years prior to the filing of this Complaint until**
7 **resolution of this action.**

8 44. This action has been brought and may properly be maintained as a class action because
9 there is a well-defined community of interest in the litigation and the proposed class is easily
10 ascertainable.

11 45. Numerosity: The potential members of the class are so numerous that joinder of all the
12 members of the Class is impracticable. Plaintiff is informed and believes that the number of
13 California Class members exceeds 40. This volume makes bringing the claims of each individual
14 member of the class before this Court impracticable. Likewise, joining each individual member of
15 the California Class as a plaintiff in this action is impracticable. Furthermore, the identities of the
16 California Class will be determined from Defendants' records, as will the compensation paid to each
17 of them. As such, a class action is a reasonable and practical means of resolving these claims. To
18 require individual actions would prejudice the California Class and Defendants.

19 46. Commonality: There are questions of law and fact common to Plaintiff and the
20 California Class that predominate over any questions affecting only individual members of the Class.
21 These common questions of law and fact include, but are not limited to:

- 22 a. Whether Defendants have a policy and/or practice of charging a service fee to
23 customers and failing to remit the entirety of that service fee to Class members as
24 tip wages;
- 25 b. Whether Defendants fail to provide Class members with timely, accurate itemized
26 wage statements in violation of the Labor Code and Wage Orders;
- 27 c. Whether Defendants fail to timely pay Class members for all wages owed upon
28 termination of employment in violation of the Labor Code;
- d. Whether Defendants violate Business and Professions Code §§ 17200 et seq., by:

(a) failing to compensate Class members for all tip wages paid to Defendants as a service charge;

(b) failing to provide Class members with timely, accurate itemized wage statements; and

(c) failing to timely pay Class members for all wages owed upon termination of employment; and

e. The proper formula for calculating restitution, damages and penalties owed to Plaintiff and the Class as alleged herein.

47. Typicality: Plaintiff's claims are typical of the claims of the California Class. Defendants' common course of conduct in violation of law as alleged herein caused Plaintiff and Class members to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the Class.

48. Adequacy of Representation: Plaintiff seeks relief for state law violations perpetrated by Defendants. In that sense, Plaintiff does not have any conflicts of interest with other Class members and will prosecute the case vigorously on behalf of the Class. Counsel representing Plaintiff is competent and experienced in litigating complex cases and large class actions, including wage and hour cases. Plaintiff will fairly and adequately represent and protect the interests of the Class members.

49. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed Class members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each proposed Class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

50. In the alternative, the Class may be certified because the prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication

1 with respect to individual members of the Class which would establish incompatible standards of
2 conduct for Defendants.

3 51. If each individual Class member were required to file an individual lawsuit, Defendants
4 would necessarily gain an unconscionable advantage because Defendants would be able to exploit
5 and overwhelm the limited resources of each member of the Class with Defendants' vastly superior
6 financial legal resources.

7 52. Requiring each individual Class member to pursue an individual remedy would also
8 discourage the assertion of lawful claims by the Class members who would be disinclined to pursue
9 these claims against Defendants because of an appreciable and justifiable fear of retaliation and
10 permanent damage to their lives, careers and well-being.

11 **FIRST CAUSE OF ACTION**
12 **Violation of California Business and Professions Code §§ 17200 *et seq.***
13 **Gratuity Violation Pursuant to Labor Code § 351**
14 **(On Behalf of the Class)**

15 53. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
16 herein.

17 54. Defendants' conduct, as set forth above, in failing to remit to non-managerial service
18 employees the total proceeds of gratuities added to customers' bills constitutes a violation of
19 California Labor Code § 351.

20 55. This violation is enforceable pursuant to the California Unfair Competition Law, Cal.
21 Bus. & Prof. Code § 17200 *et seq.*

22 56. Defendants' conduct constitutes unlawful, unfair, or fraudulent business acts or
23 practices, in that Defendants have violated California Labor Code § 351 in not remitting to the non-
24 managerial service employees the total gratuities that are charged to customers.

25 57. As a result of Defendants' conduct, Plaintiff and Class members suffered injury in fact
26 and lost money and property, including the loss of gratuities to which they are entitled.

58. Pursuant to California Business & Professions Code § 17203, Plaintiff and Class members seek declaratory and injunctive relief for Defendants' unlawful, unfair, and fraudulent conduct and to recover restitution.

59. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff and Class members are also entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

60. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

SECOND CAUSE OF ACTION
Intentional Interference with Advantageous Relations
(On Behalf of the Class)

61. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

62. An economic relationship was created between Defendants' customers and Plaintiff and Class members at the time the customers were provided with food and beverage services, which Plaintiff or Class members provided. At that time, Plaintiff and Class Members served Defendants' customers under the established custom and practice in the hospitality industry that they would receive a gratuity at the end of the relationship that correlated to the level of service provided.

63. Defendants were aware of the relationship between its customers and Plaintiff and the Class Members. For example, if a customer asks if gratuity is included with the bill, the server is not allowed to say yes or no either way, but are instead instructed to inform the customer that a service fee is included. If a customer asks if servers get a portion of the service fee, the servers are instructed to say that a service fee is part of gratuity, but the servers are not allowed to give details about how much of the service fee is remitted to servers as gratuity.

64. Pursuant to the established custom and practice, Defendants' customers reasonably believed the "service" charge added to food and beverage services constitute payment of gratuities for Plaintiff and the Class Members. Defendants wrongfully and in violation of California Labor Code § 351 fail to remit the total proceeds of gratuities added to food and beverage services to non-managerial service employees.

65. Defendants intend to, and/or knew that, by doing so it would disrupt the economic relationship between Defendants' customers and Plaintiff and the Class Members in that adding such a "service fee" would reduce the gratuities received by Plaintiff and the Class Members for their work.

66. Defendants' violation of Labor Code §351 did disrupt the economic relationship between Defendants' customers and Plaintiff and the Class Members.

67. As a direct and proximate result of Defendants' interference, Plaintiff and Class Members suffered harm in that they did not receive the full value of the gratuities left to them by Defendants' customers.

68. Plaintiff and Class members seek restitution, compensatory relief, and equitable relief.

69. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff and Class members are also entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

70. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

THIRD CAUSE OF ACTION
Conversion
(On Behalf of the Class)

71. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

72. Defendants' conduct in failing to remit the total proceeds of gratuities added to customers' food and beverage services bills to non-managerial service employees constitutes conversion under California law.

73. Plaintiff and Class members had a right of possession to the service fees paid by customers, who intended upon reasonable belief that the service fees would be remitted in total to Plaintiff and Class members as gratuity payments pursuant to the known custom in the hospitality industry that “service fees” are meant as gratuity payments to the service workers.

74. Defendants intentionally and substantially interfered with Plaintiff and Class members' right of possession to the service fees paid by customers as gratuity payments, by taking possession of a portion of the service fees that were meant to be remitted to Plaintiff and Class members.

75. Plaintiff and Class members did not consent to such an interference, and are directly and proximately harmed as a result of Defendants' conduct in taking a portion of the service fees.

76. Plaintiff and Class members seek restitution, compensatory relief, and equitable relief.

77. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff and Class members are also entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

78. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

FOURTH CAUSE OF ACTION
Unjust Enrichment
(On Behalf of the Class)

79. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

80. Defendants' conduct as set forth above constitutes unjust enrichment under California state common law. Specifically, Defendants misappropriated funds that Defendants' customers reasonably believed and intended to be gratuity payments to Plaintiff and Class members. Defendants misappropriated these funds by deceitfully labelling a mandatory surcharge as a "service fee," which reasonably leads customers to believe such a "service fee" would be remitted in total to the service workers as a gratuity, i.e., the gratuity fee for the service rendered.

81. Defendants were unjustly enriched by receipt of the monetary benefit from the "service fees" charged to customers at the expense of Plaintiff and Class members, who were the original intended recipients of those "service fees" according to the known custom in the hospitality industry.

82. Defendants should therefore be required to disgorge all ill-gotten gains as a result of failing to remit the entirety of gratuity proceeds charged to Defendants' customers to service employees.

83. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

FIFTH CAUSE OF ACTION
Failure to Provide Accurate Itemized Wage Statements Pursuant to Labor Code § 226
(On Behalf of the Class)

84. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

85. Defendants do not provide Plaintiff and Class members with accurate itemized wage statements as required by California law.

86. Labor Code § 226(a) provides:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

87. IWC Wage Order 4-2001(7) establishes similar wage statement requirements.

88. Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover 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 employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

89. Plaintiff seeks to recover actual damages, costs and attorneys' fees under this section.

90. Defendants do not provide timely, accurate itemized wage statements to Plaintiff and Class members in accordance with Labor Code § 226(a) and the IWC Wage Orders. The wage statements Defendants provide their employees, including Plaintiff and Class members, do not accurately reflect the actual hours worked, tip wages earned, actual gross wages earned, or actual net wages earned.

91. Defendants are liable to Plaintiff and the Class alleged herein for the amounts described above in addition to the civil penalties set forth below, with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set forth below, pursuant to Labor Code § 226(e).

92. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

SIXTH CAUSE OF ACTION
Waiting Time Penalties Pursuant to Labor Code §§ 201-203
(On Behalf of the Class)

93. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

94. Defendants do not provide Class members with their wages when due under California law after their employment with Defendants ends.

95. Labor Code § 201 provides:

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

96. Labor Code § 202 provides:

If an employee not having 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.

97. Labor Code § 203 provides, in relevant part:

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

1 same rate until paid or until an action therefor is commenced; but
2 the wages shall not continue for more than 30 days.

3 98. Plaintiff and some of the Class members left their employment with Defendants during
4 the statutory period (including furloughed employees), at which time Defendants owed them unpaid
5 wages. These earned, but unpaid, wages derive from the tip wages retained by Defendants, which
6 went unrecorded and/or uncompensated.

7 99. Defendants willfully refused and continue to refuse to pay Plaintiff and Class members
8 all the wages that were due and owing to them, in the form of uncompensated tip wages upon the
9 end of their employment as a result of Defendants' willful failure to provide Class members with
10 payment for all hours worked. As a result of Defendants' actions, Plaintiff and Class members have
11 suffered and continue to suffer substantial losses, including lost earnings, and interest.

12 100. Defendants' willful failure to pay Plaintiff and Class members the wages due and owing
13 them constitutes a violation of Labor Code §§ 201-202. As a result, Defendants are liable to Plaintiff
14 and Class members for all penalties owing pursuant to Labor Code §§ 201-203.

15 101. In addition, Labor Code § 203 provides that an employee's wages will continue as a
16 penalty up to thirty days from the time the wages were due. Therefore, the Class members are entitled
17 to penalties pursuant to Labor Code § 203, plus interest.

18 102. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

19 **SEVENTH CAUSE OF ACTION**
20 **Violation of California Business and Professions Code §§ 17200 *et seq.***
21 **(On Behalf of the Class)**

22 103. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
23 herein.

24 104. California Business and Professions Code § 17200, *et seq.*, prohibits unfair competition
25 in the form of any unlawful, unfair, or fraudulent business acts or practices.

26 105. Business and Professions Code § 17204 allows a person injured by the unfair business
27 acts or practices to prosecute a civil action for violation of the UCL.

28 106. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce
minimum labor standards in order to ensure employees are not required to work under substandard

1 and unlawful conditions, and to protect employers who comply with the law from those who attempt
2 to gain competitive advantage at the expense of their workers by failing to comply with minimum
3 labor standards.

4 107. Beginning at an exact date unknown to Plaintiff, but at least since the date four years
5 prior to the filing of this suit, Defendants have committed acts of unfair competition as defined by
6 the UCL, by engaging in the unlawful, unfair, and fraudulent business acts and practices described
7 in this Complaint, including, but not limited to:

- 8 a. violations of Labor Code § 1194 and IWC Wage Order 4-2001 pertaining to
9 payment of wages;
- 10 b. violations of Labor Code § 226 regarding accurate, timely itemized wage
11 statements;
- 12 c. violations of Labor Code § 351 for failure to remit to non-managerial service
13 employees the total proceeds of gratuities added to Defendants' customers' bills;
14 and
- 15 d. violations of Labor Code §§ 201-203 pertaining to waiting time penalties.

16 108. The violations of these laws and regulations, as well as of the fundamental California
17 public policies protecting wages, serve as unlawful predicate acts and practices for purposes of
18 Business and Professions Code §§ 17200 et seq.

19 109. The acts and practices described above constitute unfair, unlawful and fraudulent
20 business practices, and unfair competition, within the meaning of Business and Professions Code §§
21 17200 et seq. Among other things, the acts and practices have taken from Plaintiff and the Class
22 wages rightfully earned by them, while enabling Defendants to gain an unfair competitive advantage
23 over law-abiding employers and competitors.

24 110. Business and Professions Code § 17203 provides that a court may make such orders or
25 judgments as may be necessary to prevent the use or employment by any person of any practice
26 which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent
27

1 Defendants from repeating the unlawful, unfair, and fraudulent business acts and practices alleged
2 above.

3 111. As a direct and proximate result of the aforementioned acts and practices, Plaintiff and
4 the Class members have suffered a loss of money and property, in the form of unpaid wages which
5 are due and payable to them.

6 112. Business and Professions Code § 17203 provides that the Court may restore to any
7 person in interest any money or property which may have been acquired by means of such unfair
8 competition. Plaintiff and the Class are entitled to restitution pursuant to Business and Professions
9 Code § 17203 for all wages and payments unlawfully withheld from employees during the four-year
10 period prior to the filing of this Complaint. Plaintiff's success in this action will enforce important
11 rights affecting the public interest and in that regard Plaintiff sues on behalf of himself as well as
12 others similarly situated. Plaintiff and Class members seek and are entitled to gratuity payments
13 retained by Defendants, unpaid wages, declaratory and injunctive relief, and all other equitable
14 remedies owing to them.

15 113. Plaintiff herein takes upon herself enforcement of these laws and lawful claims. There
16 is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right,
17 and it would be against the interests of justice to penalize Plaintiff by forcing him to pay attorneys'
18 fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil
19 Procedure §1021.5 and otherwise.

20 114. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

21 **PRAYER FOR RELIEF**

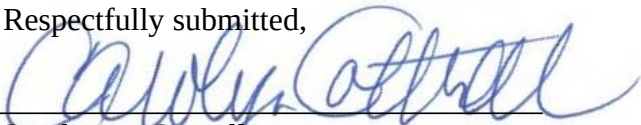
22 WHEREFORE, Plaintiff, on behalf of the Class members, requests the following relief:

- 23 1. For an order certifying the above Causes of Action as a class action pursuant to
24 California Code of Civil Procedure § 382;
- 25 2. Damages and restitution according to proof at trial for all unpaid gratuities and other
26 injuries, as provided by the California Labor Code, California Business and Professions
27 Code, and California law;

- 1 3. For a declaratory judgment that Defendants violated the California Labor Code and
- 2 California law, and public policy as alleged herein;
- 3 4. For a declaratory judgment that Defendants violated California Business and
- 4 Professions Code §§ 17200 *et seq.* as a result of the aforementioned violations of the
- 5 California Labor Code;
- 6 5. For preliminary, permanent, and mandatory injunctive relief prohibiting Defendants,
- 7 their officers, agents, and all those acting in concert with them from committing in the
- 8 future those violations of law herein alleged;
- 9 6. For an order requiring Defendants to disgorge all profits and other ill-gotten gains
- 10 resulting from their failure to remit the entirety of gratuities to non-managerial service
- 11 employees;
- 12 7. For an equitable accounting to identify, locate, and restore to all current and former
- 13 employees the gratuities and wages they are due, with interest thereon;
- 14 8. For an order awarding Plaintiff and the Class members compensatory damages,
- 15 including gratuities owed, lost wages, earnings, liquidated damages, and other
- 16 employee benefits, restitution, recovery of all money/property, actual damages, and all
- 17 other sums of money owed to Plaintiff and Class members, together with interest on
- 18 these amounts according to proof;
- 19 9. For an order awarding Plaintiff and Class members civil penalties pursuant to the
- 20 California Labor Code, and the laws of the State of California, with interest thereon;
- 21 10. For an order awarding reasonable attorneys' fees as provided by the California Labor
- 22 Code, California Code of Civil Procedure § 1021.5, the laws of the State of California,
- 23 and/or other applicable law;
- 24 11. For all costs of suit;
- 25 12. For interest on any penalties awarded, as provided by applicable law; and
- 26 13. For such other and further relief as this Court deems just and proper.
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Date: April 28, 2020

Respectfully submitted,


Carolyn H. Cottrell
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Attorneys for Plaintiff and Class members

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Date: April 28, 2020

Carolyn Attwell

Attorneys for Plaintiff and Class members