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Employees*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

MACKENZIE HEYMAN, individually and on
behalf the State of California and Aggrieved
Employees,

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

**SECOND AMENDED PRIVATE
ATTORNEYS GENERAL ACT 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.*) ;**
- (8) **Failure to Provide Employee Records (Cal. Lab. Code §§ 1198.5, 432, and 226) ;**
- (9) **Private Attorneys General Act (Cal. Lab. Code § 2699(a) ; and**
- (10) **Private Attorneys General Act (Cal. Lab. Code § 2699(f)).**

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DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff Mackenzie Heyman, individually and on behalf of all others similarly situated (“Plaintiff”), brings this enforcement action pursuant to the California Private Attorneys General Act (“PAGA”) against Defendants The Resort at Pelican Hill, LLC, Irvine Management Company, and The Irvine Company, LLC (collectively “Defendants”) on behalf of the State of California against Defendants for their systematic violations of California labor law with respect to Defendants’ non-exempt hourly employees in California (the “Aggrieved Employees”). Throughout the relevant time period, Plaintiff and similarly situated workers have been denied payment for all hours worked, including gratuity payments in violation of California law. This case implicates Defendants’ longstanding policies and practices, which fail to properly compensate non-exempt service workers for gratuities paid to them as tip wages.

2. Defendants impose mandatory gratuities on the sale of food and beverages but fail to distribute the total proceeds of those gratuities to non-managerial service employees as required by California law. This conduct violates Cal. Lab. Code § 351.

3. Plaintiff brings this complaint to challenge Defendants’ policies and practices of: (1) failing to pay Plaintiff and Aggrieved Employees all tip wages owed from gratuity payments; (2) failing to provide Plaintiff and Aggrieved Employees accurate, itemized wage statements; (3) failing to timely pay Plaintiff and Aggrieved Employees full wages upon termination or resignation; and (4) failing to provide Aggrieved Employees with compliant meal and rest periods; (5) failing to pay all wages for their hours worked (6) failure to pay minimum and overtime wages; and (7) failure to reimburse for necessary business expenditures.

4. Plaintiff files this action under PAGA, Cal. Lab. Code § 2699, to recover civil penalties on behalf of the State of California and Aggrieved Employees. Plaintiff seeks to remedy the sweeping practices Defendants integrated into their gratuity systems and payroll policies that have deprived Plaintiff and Aggrieved Employees of their lawfully-earned wages.

JURISDICTION AND VENUE

5. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court of California and will be established according to proof at

1 trial.

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

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

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

15 **PARTIES**

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

20 10. The Aggrieved Employees are all people who are or who have been employed by
21 Defendants as hourly non-exempt employees, including but not limited to, servers, coordinators, and
22 other similar hourly and non-exempt employees throughout the State of California within the one year
23 preceding the mailing of the letter to the LWDA.

24 11. Plaintiff is informed, believes, and thereon alleges that Defendant The Resort at Pelican
25 Hill, LLC is a Delaware limited liability company with its principal place of business located in
26 Newport Beach, California. Defendant may be served with process by serving its registered agent,
27 CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California
28 95833.

1 12. Plaintiff is informed, believes, and thereon alleges that Defendant Irvine Management
2 Company is a Delaware corporation with its principal place of business located in Newport Beach,
3 California, and is registered to do business in California. Defendant may be served with process by
4 serving its registered agent, CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite
5 150N, Sacramento, California 95833.

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

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

13 15. Plaintiff is informed, believes, and thereon alleges that Defendants maintain a chain of
14 resorts and hotels throughout the state of California. Plaintiff is informed, believes, and thereon alleges
15 that Defendants employ Aggrieved Employees throughout the state 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 Defendant The Irvine Company,
21 LLC directly controls the operations of its agents, Defendant The Resort at Pelican Hill, LLC. Plaintiff
22 is informed, believes, and thereon alleges that Defendants jointly exercised control over Plaintiff and
23 Aggrieved Employees with respect to their employment.

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

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

1 Company, LLC jointly and/or individually.

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

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

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

15 23. At all material times, Defendants have done business under the laws of California, have
16 places of business in the State of California, including in this judicial district, and have employed
17 Aggrieved Employees in this judicial district. Defendants are a “person” as defined in Cal. Lab. Code
18 § 18 and Cal. Bus. & Prof. Code § 17201. Defendants are also “employers” as that term is used in the
19 California Labor Code and the IWC Wage Orders.

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

23 **FACTUAL ALLEGATIONS**

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

27 26. Plaintiff worked at The Resort at Pelican Hill as a non-managerial dining room
28 coordinator from December 2013 to March 2020. Plaintiff is paid at an hourly rate of \$14.75 and

1 regularly worked approximately six to eight hours a day and thirty to thirty-five hours per week,
2 usually working approximately six to eight or more hours each shift and three shifts per week.

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

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

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

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

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

28 32. Aggrieved Employees were and are employed by Defendants and performed work

1 materially similar to Plaintiff.

2 33. Aggrieved Employees report to a facility owned, operated, or managed by Defendants
3 to perform their jobs.

4 34. Aggrieved Employees perform their jobs under Defendants' supervision and using
5 materials and technology approved and supplied by Defendants.

6 35. Aggrieved Employees are required to follow and abide by common work, time, pay,
7 and service fee policies and procedures in the performance of their jobs.

8 36. At the end of each pay period, Aggrieved Employees receive wages from Defendants
9 that are determined by common systems and methods that Defendants select and control.

10 37. Defendants pay Aggrieved Employees on an hourly rate basis.

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

13 39. Upon information and belief, Aggrieved Employees work 6 to 8 hours or more each
14 shift and three shifts or more per week.

15 40. Upon information and belief, Aggrieved Employees are occasionally required to work
16 over 8 hours per day, but were not paid for all hours worked.

17 41. Upon information and belief, Aggrieved Employees are denied proper compensation
18 and proper meal and rest periods. In particular, Defendants often fail to provide timely, legally
19 compliant meal and rest periods to Aggrieved Employees, as they are subject to interruption for work-
20 related matters and are required to be available to communicate during such breaks with other
21 employees. When Aggrieved Employees experience untimely or interrupted meal and rest periods, or
22 do not receive such breaks at all, Defendants often fail to pay them break premium pay.

23 42. Defendants' method of paying Plaintiff and Aggrieved Employees is willful, and is not
24 based on a good faith and reasonable belief that their conduct complied with California law.

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

27 44. On April 28, 2020, pursuant to Cal. Lab. Code §§ 1198.5, 432, and 226, Plaintiff sent
28 written correspondence to Defendants requesting copies of her personnel records, payroll records, and

1 copies of any written agreements between Plaintiff and Defendants. Defendant did not produce any
2 records within the applicable 30- and 21-day time limits, nor did Defendant request an extension of
3 time.

4 45. On April 7, 2020, pursuant to Cal. Lab. Code § 2699.3, Plaintiff served the California
5 Labor and Workforce Development Agency with notice of her intention to file a PAGA action for
6 violations of Cal. Lab. Code § 351 (gratuity violation); §§ 226 and 226.3 (failure to provide timely
7 and compliant itemized wage statements); §§ 201-203, 225.5, and 256 (failure to timely pay all wages
8 owed during employment and following separation from employment); and Cal. Bus. & Prof. Code
9 §§ 17200, *et seq.* (engaging in unfair business practices). Plaintiff served Defendants' registered agents
10 with a courtesy copy of the notice via certified mail.

11 **FIRST CAUSE OF ACTION**

12 **Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.***

13 **Gratuity Violation Pursuant to Cal. Lab. Code § 351**

14 **(On Behalf of Plaintiff Individually)**

15 46. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
16 herein.

17 47. 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 Cal. Lab.
19 Code § 351.

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

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

25 50. As a result of Defendants' conduct, Plaintiff suffered injury in fact and lost money and
26 property, including the loss of gratuities to which she is entitled.

27 51. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff seeks declaratory and injunctive
28 relief for Defendants' unlawful, unfair, and fraudulent conduct and to recover restitution.

1 52. Pursuant to Cal. Code Civ. Proc. § 1021.5, Plaintiff is also entitled to recover reasonable
2 attorneys' fees, costs, and expenses incurred in bringing this action.

3 53. Wherefore, Plaintiff requests relief as hereinafter provided.

4 **SECOND CAUSE OF ACTION**

5 **Intentional Interference with Advantageous Relations**

6 **(On Behalf of Plaintiff Individually)**

7 54. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
8 herein.

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

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

20 57. Pursuant to the established custom and practice, Defendants' customers reasonably
21 believed the "service" charge added to food and beverage services constitute payment of gratuities for
22 Plaintiff. Defendants wrongfully and in violation of Cal. Lab. Code § 351 fail to remit the total
23 proceeds of gratuities added to food and beverage services to non-managerial service employees.

24 58. Defendants intend to, and/or knew that, by doing so it would disrupt the economic
25 relationship between Defendants' customers and Plaintiff in that adding such a "service fee" would
26 reduce the gratuities received by Plaintiff for her work.

27 59. Defendants' violation of Cal. Lab. Code §351 did disrupt the economic relationship
28 between Defendants' customers and Plaintiff.

60. As a direct and proximate result of Defendants' interference, Plaintiff suffered harm in that she did not receive the full value of the gratuities left to her by Defendants' customers.

61. Plaintiff seeks restitution, compensatory relief, and equitable relief.

62. Pursuant to Cal. Code Civ. Proc. § 1021.5, Plaintiff is also entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

63. Wherefore, Plaintiff requests relief as hereinafter provided.

THIRD CAUSE OF ACTION

Conversion

(On Behalf of Plaintiff Individually)

64. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

65. 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.

66. Plaintiff 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 as gratuity payments pursuant to the known custom in the hospitality industry that “service fees” are meant as gratuity payments to the service workers.

67. Defendants intentionally and substantially interfered with Plaintiff's 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.

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

69. Plaintiff seeks restitution, compensatory relief, and equitable relief.

70. Pursuant to Cal. Code Civ. Proc. § 1021.5, Plaintiff is also entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

71. Wherefore, Plaintiff requests relief as hereinafter provided.

1 **FOURTH CAUSE OF ACTION**

2 **Unjust Enrichment**

3 **(On Behalf of Plaintiff Individually)**

4 72. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
5 herein.

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

12 74. Defendants were unjustly enriched by receipt of the monetary benefit from the "service
13 fees" charged to customers at the expense of Plaintiff, who was the original intended recipients of
14 those "service fees" according to the known custom in the hospitality industry.

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

18 76. Wherefore, Plaintiff requests relief as hereinafter provided.

19 **FIFTH CAUSE OF ACTION**

20 **Failure to Provide Accurate Itemized Wage Statements**

21 **Pursuant to Cal. Lab. Code § 226**

22 **(On Behalf of Plaintiff Individually)**

23 77. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
24 herein.

25 78. Defendants do not provide Plaintiff with accurate itemized wage statements as required
26 by California law.

27 79. Cal. Lab. Code § 226(a) provides:

28 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.

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

81. Cal. Lab. Code § 226I 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.

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

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

84. Defendants are liable to Plaintiff 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 Cal. Lab. Code § 226I.

85. Wherefore, Plaintiff requests relief as hereinafter provided.

SIXTH CAUSE OF ACTION

Waiting Time Penalties Pursuant to Cal. Lab. Code §§ 201-203

(On Behalf of Plaintiff Individually)

86. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth

1 herein.

2 87. Defendants did not provide Plaintiff with her wages when due under California law
3 after her employment with Defendants ended.

4 88. Cal. Lab. Code § 201 provides:

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

7 89. Cal. Lab. Code § 202 provides:

8 If an employee not having a written contract for a definite period quits his or her
9 employment, his or her wages shall become due and payable not later than 72 hours
10 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.

11 90. Cal. Lab. Code § 203 provides, in relevant part:

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

15 91. Plaintiff left her employment with Defendants during the statutory period (including
16 furloughed employees), at which time Defendants owed her unpaid wages. These earned, but unpaid,
17 wages derive from the tip wages retained by Defendants, which went unrecorded and/or
18 uncompensated.

19 92. Defendants willfully refused and continue to refuse to pay Plaintiff all the wages that
20 were due and owing to her, in the form of uncompensated tip wages upon the end of their employment
21 as a result of Defendants' willful failure to provide Plaintiff with payment for all hours worked. As a
22 result of Defendants' actions, Plaintiff has suffered and continue to suffer substantial losses, including
23 lost earnings, and interest.

24 93. Defendants' willful failure to pay Plaintiff the wages due and owing her constitutes a
25 violation of Cal. Lab. Code §§ 201-202. As a result, Defendants are liable to Plaintiff for all penalties
26 owing pursuant to Cal. Lab. Code §§ 201-203.

27 94. In addition, Cal. Lab. Code § 203 provides that an employee's wages will continue as
28 a penalty up to thirty days from the time the wages were due. Therefore, the Plaintiff is entitled to

1 penalties pursuant to Cal. Lab. Code § 203, plus interest.

2 95. Wherefore, Plaintiff requests relief as hereinafter provided.

3 **SEVENTH CAUSE OF ACTION**

4 **Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.***

5 **(On Behalf of Plaintiff Individually)**

6 96. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
7 herein.

8 97. Cal. Bus. & Prof. Code §§ 17200, *et seq.*, prohibits unfair competition in the form of
9 any unlawful, unfair, or fraudulent business acts or practices.

10 98. Cal. Bus. & Prof. Code § 17204 allows a person injured by the unfair business acts or
11 practices to prosecute a civil action for violation of the UCL.

12 99. Cal. Lab. Code § 90.5(a) states it is the public policy of California to vigorously enforce
13 minimum labor standards in order to ensure employees are not required to work under substandard
14 and unlawful conditions, and to protect employers who comply with the law from those who attempt
15 to gain competitive advantage at the expense of their workers by failing to comply with minimum
16 labor standards.

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

- 21 a. violations of Cal. Lab. Code § 1194 and IWC Wage Order 4-2001 pertaining to
22 payment of wages;
- 23 b. violations of Cal. Lab. Code § 226 regarding accurate, timely itemized wage
24 statements;
- 25 c. violations of Cal. Lab. Code § 351 for failure to remit to non-managerial service
26 employees the total proceeds of gratuities added to Defendants' customers' bills;
27 and
- 28 d. violations of Cal. Lab. Code §§ 201-203 pertaining to waiting time penalties.

1 101. The violations of these laws and regulations, as well as of the fundamental California
2 public policies protecting wages, serve as unlawful predicate acts and practices for purposes of Cal.
3 Bus. & Prof. Code §§ 17200 et seq.

4 102. The acts and practices described above constitute unfair, unlawful and fraudulent
5 business practices, and unfair competition, within the meaning of Cal. Bus. & Prof. Code §§ 17200 et
6 seq. Among other things, the acts and practices have taken from Plaintiff wages rightfully earned by
7 her, while enabling Defendants to gain an unfair competitive advantage over law-abiding employers
8 and competitors.

9 103. Cal. Bus. & Prof. Code § 17203 provides that a court may make such orders or
10 judgments as may be necessary to prevent the use or employment by any person of any practice which
11 constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent Defendants
12 from repeating the unlawful, unfair, and fraudulent business acts and practices alleged above.

13 104. As a direct and proximate result of the aforementioned acts and practices, Plaintiff have
14 suffered a loss of money and property, in the form of unpaid wages which are due and payable to her.

15 105. Cal. Bus. & Prof. Code § 17203 provides that the Court may restore to any person in
16 interest any money or property which may have been acquired by means of such unfair competition.
17 Plaintiff is entitled to restitution pursuant to Cal. Bus. & Prof. Code § 17203 for all wages and
18 payments unlawfully withheld from employees during the four-year period prior to the filing of this
19 Complaint. Plaintiff's success in this action will enforce important rights affecting the public interest
20 and in that regard Plaintiff sues on behalf of himself as well as others similarly situated. Plaintiff seeks
21 and is entitled to gratuity payments retained by Defendants, unpaid wages, declaratory and injunctive
22 relief, and all other equitable remedies owing to her.

23 106. Plaintiff herein takes upon herself enforcement of these laws and lawful claims. There
24 is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right,
25 and it would be against the interests of justice to penalize Plaintiff by forcing her to pay attorneys' fees
26 from the recovery in this action. Attorneys' fees are appropriate pursuant to Cal. Code Civ. Proc.
27 §1021.5 and otherwise.

28 107. Wherefore, Plaintiff requests relief as hereinafter provided.

EIGHTH CAUSE OF ACTION

Penalties for Failure to Furnish Records

Pursuant to Cal. Lab. Code §§ 119.5, 432, and 226

(On Behalf of Plaintiff Individually)

108. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

109. Cal. Lab. Code § 1198.5(a) states that “[e]very current and former employee, or their representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” “The employer shall make the contents of those personnel records available for inspection . . . not later than 30 calendar days from the date the employer receives a written request” unless the parties agree in writing to a date beyond 30 calendar days.” *Id.* § 1198.5(b)(1). If an employer fails to permit an employee or their representative to inspect or copy personnel records within the time specified by § 1198.5, the employee may recover a penalty of \$750 from the employer. *Id.* § 1198.5(k).

110. Cal. Lab. Code § 432 states: “If an employee or applicant signs any instrument relating to the obtaining or holding of employment, he [or she] shall be given a copy of the instrument upon request.” Documents covered by § 432, including potential employment agreements, are also covered by § 1198.5.

111. Cal. Lab. Code §226I states, in part: “An employer who receives a written or oral request to inspect or receive a copy of records [pertaining to a current or former employee’s pay records] shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.” If the employer fails to comply with this written request for pay records within that 21-day time period, such failure “entitles the current or former employee . . . to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.” *Id.* § 226(f).

112. On April 28, 2020, Plaintiff, through her representative counsel, made a written request for her personnel files, signed instruments, and payroll records pursuant to Cal. Lab. Code §§ 1198.5, 432, and 226. Defendant failed to respond or otherwise comply with the statutory requirements to make this information available to Plaintiff within the prescribed time periods under the Labor Code.

113. Accordingly, Plaintiff is entitled to recover \$750 for Defendant's failure to make her personnel records and any written instruments available to Plaintiff within 30 days of receiving the written request, and an additional \$750 for Defendant's failure to make her payroll records available within 21 days of receiving the written request. Plaintiff is also entitled to recover her reasonable attorneys' fees and costs pursuant to Cal. Lab. Code § 1198.5(l).

114. Wherefore, Plaintiff requests relief as hereinafter provided.

NINTH CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(a)

(On Behalf of the State of California and the Aggrieved Employees)

115. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

116. Cal. Lab. Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

117. Cal. Lab. 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 same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

118. Cal. Lab. Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when 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 for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours

1 worked at each hourly rate by the employee.

2 119. Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by
3 Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in
4 compliance with Cal. Lab. Code §§ 201-202 in the amounts established by Cal. Lab. Code § 203.
5 Plaintiff seeks such penalties as an alternative to the penalties available under Cal. Lab. Code § 203,
6 as prayed for herein.

7 120. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure
8 by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized
9 wage statement in compliance with Cal. Lab. Code § 226(a) in the amounts established by Cal. Lab.
10 Code § 226I. Plaintiff seeks such penalties as an alternative to the penalties available under Cal. Lab.
11 Code § 226I, as prayed for herein.

12 121. Plaintiff also seeks civil penalties pursuant to Sections 226.3, and 256 of the Cal. Lab.
13 Code.

14 122. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), Plaintiff provided the Labor and
15 Workforce Development Agency (“LWDA”) with notice of her intention to file this claim. Sixty-five
16 calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative
17 prerequisites to commence this civil action in compliance with § 2699.3(a).

18 123. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
19 Employees, and herself as set forth in Cal. Lab. Code § 2699(g)(i).

20 124. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
21 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award
22 of attorneys’ fees and costs as set forth below.

23 125. Wherefore, Plaintiff and the Aggrieved Employees request relief as hereinafter
24 provided.

25 **TENTH CAUSE OF ACTION**

26 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**

27 **(On Behalf of the State of California and Aggrieved Employees)**

28 126. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth

1 herein.

2 127. Cal. Lab. Code § 2699(f) provides:

3 For all provisions of this code except those for which a civil penalty is specifically
4 provided, there is established a civil penalty for a violation of these provisions, as
5 follows: . . . (2) If, at the time of the alleged violation, the person employs one or more
6 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
7 per pay period for the initial violation and two hundred dollars (\$200) for each
8 aggrieved employee per pay period for each subsequent violation.

9 128. To the extent than any violation alleged herein does not carry penalties under Cal. Lab.
10 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for Plaintiff and
11 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
12 by Cal. Lab. Code § 2699(f). Plaintiff seeks civil penalties under Cal. Lab. Code § 2699(f) for
13 Defendant's violation of Cal. Lab. Code §§ 201-203, 225.5, 204, 226.7, 226, 351, 432, 510, 512, 1194,
14 1197, 1198.5, 2802, the applicable Industrial Welfare Commission Wage Orders, and Cal. Bus. & Prof.
15 Code §§ 17200, *et seq.*

16 129. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), Plaintiff has provided the LWDA
17 with notice of her intention to file this claim. Sixty-five calendar days have passed without notice from
18 the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in
19 compliance with § 2699.3(a).

20 130. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
21 Employees, and themselves as set forth in Cal. Lab. Code § 2699(g)(i).

22 131. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
23 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award
24 of attorneys' fees and costs as set forth below.

25 132. Wherefore, Plaintiff and Aggrieved Employees request relief as hereinafter provided.

26 **PRAYER FOR RELIEF**

27 **WHEREFORE**, Plaintiff requests the following relief:

- 28 1. Damages and restitution according to proof at trial for all unpaid gratuities and other
injuries, as provided by the Cal. Lab. Code, Cal. Bus. & Prof. Code, and California
law;

2. For a declaratory judgment that Defendants violated the Cal. Lab. Code and California law, and public policy as alleged herein;
3. For a declaratory judgment that Defendants violated Cal. Bus. & Prof. Code §§ 17200, *et seq.* as a result of the aforementioned violations of the Cal. Lab. Code;
4. For preliminary, permanent, and mandatory injunctive relief prohibiting Defendants, their officers, agents, and all those acting in concert with them from committing in the future those violations of law herein alleged;
5. For an order requiring Defendants to disgorge all profits and other ill-gotten gains resulting from their failure to remit the entirety of gratuities to Plaintiff;
6. For an equitable accounting to identify, locate, and restore to all current and former employees the gratuities and wages they are due, with interest thereon;
7. For an order awarding Plaintiff compensatory damages, including gratuities owed, lost wages, earnings, liquidated damages, and other employee benefits, restitution, recovery of all money/property, actual damages, and all other sums of money owed to Plaintiff, together with interest on these amounts according to proof;
8. For an order awarding Plaintiff civil penalties pursuant to the Cal. Lab. Code, and the laws of the State of California, with interest thereon;
9. For an order awarding reasonable attorneys' fees as provided by the Cal. Lab. Code, Cal. Code Civ. Proc. § 1021.5, the laws of the State of California, and/or other applicable law;
10. For all costs of suit;
11. For interest on any penalties awarded, as provided by applicable law; and
12. For such other and further relief as this Court deems just and proper.

Respectfully Submitted,

Dated: July 30, 2024



Carolyn H. Cottrell
Ori Edelstein
Laurel N. Holmes
**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**

*Attorneys for Plaintiff, the State of California, and
Aggrieved Employees*

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Respectfully Submitted,

Dated: July 30, 2024



Carolyn H. Cottrell
Ori Edelstein
Laurel N. Holmes
**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**

*Attorneys for Plaintiff, the State of California, and
Aggrieved Employees*

1 **PROOF OF SERVICE**

2
3 I, the undersigned, declare that I am, and was at the time of service of the papers herein
4 referred to, over the age of 18 years and not a party to the within action or proceeding. I am
employed at Schneider Wallace Cottrell Konecky LLP located at 300 S Grand Avenue, Suite
2700, Los Angeles, California 90071.

5 On July 30, 2024 I served the following document(s):

6 **SECOND AMENDED COMPLAINT**

7 on the following person(s) listed below, as follows:

8
9 Julie R. Trotter (SBN 209675)
10 Jacqueline Beaumont (SBN 253776)
11 L. Lisa Sandoval (SBN 253776)
CALL & JENSEN
12 610 Newport Center Drive, Suite 700
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13 Tel: (949) 717-3000
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der@calljensen.com

14
15
16 ☒ **BY ELECTRONIC SERVICE:** Eugene Huffman, Paralegal, has submitted an
17 electronic version of the above-referenced document to the person(s) whose email
address(es) are known to me as listed above.

18
19 I declare under penalty of perjury under the laws of the State of California and the
United States of America that the foregoing is true and correct.

20 Executed on July 30, 2024, in Los Angeles, California.

21
22 
23 Eugene Huffman