

Carolyn Hunt Cottrell (SBN 166977)
David C. Leimbach (SBN 265409)
Kristabel Sandoval (SBN 323714)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100; Fax: (415) 421-7105
ccottrell@schneiderwallace.com
dleimbach@schneiderwallace.com
ksandoval@schneiderallace.com

*Attorneys for Plaintiff, Class members,
and the State of California*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE**

FILED
Superior Court of California
County of Riverside
8/31/2020
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ALVARO VASQUEZ MADRIGAL, on behalf of
himself and the Class members and Aggrieved
Employees,

Plaintiffs,

vs.

MISSION LAKES COUNTRY CLUB, INC.,

Defendant.

Case No. **RIC2003428**

**CLASS ACTION AND PRIVATE
ATTORNEYS GENERAL ACT
COMPLAINT FOR VIOLATIONS OF:**

- (1) Failure to Pay for All Hours Worked (Cal. Lab. Code § 204);
- (2) Failure to Pay Overtime Wages (Cal. Lab. Code § 510);
- (3) Failure to Pay All Gratuities Owed (Cal. Lab. Code § 351);
- (4) Intentional Interference with Advantageous Relations;
- (5) Conversion
- (6) Unjust Enrichment
- (7) Failure to Authorize and Permit and/or Make Available Meal and Rest Periods (Cal. Lab. Code §§ 226.7 and 512);
- (8) Failure to Provide Timely and Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
- (9) Unlawful Business Practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*);
- (10) Private Attorneys General Act (Cal. Lab. Code § 2699(s)); and
- (11) Private Attorneys General Act (Cal. Lab. Code § 2699(f)).

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Plaintiff Alvaro Vasquez Madrigal, individually and on behalf of all others similarly
3 situated, brings this class action against Defendant Mission Lakes Country Club, Inc. (“Defendant”)
4 on behalf of individuals who have worked for Defendant as servers, waiters, bussers, bartenders, and
5 other non-managerial service workers paid on an hourly basis, and have been subject to Defendant’s
6 service fee policies and practices (hereinafter “Class Members”). Plaintiff also brings this Private
7 Attorneys General Act (“PAGA”) action on behalf of the State of California and all of Defendant’s
8 non-exempt employees (“Aggrieved Employees”) for civil penalties resulting from Defendant’s
9 violations of the California Labor Code as described herein. Throughout the relevant time period,
10 Plaintiff and similarly situated workers have been denied payment for all hours worked, including
11 gratuity payments and overtime, and have been denied meal and rest periods that comply with
12 California law. This case implicates Defendant’s longstanding policies and practices, which fail to
13 properly compensate non-exempt service workers for gratuities paid to them as tip wages, for work
14 performed during meal periods, for work performed while “off-the-clock,” and for missed rest and
15 meal periods.

16 2. Defendant imposes mandatory gratuities on the sale of food and beverages, but fails to
17 distribute the total proceeds of those gratuities to non-managerial service employees as required by
18 California law. This conduct violates California Labor Code § 351.

19 3. Defendant maintains a longstanding policy and practice of failing to properly
20 compensate non-exempt employees for work performed during meal periods, for work performed
21 while “off-the-clock,” and for missed rest and meal periods. These policies deny Plaintiff, Class
22 members, and Aggrieved Employees payment for all hours worked, including overtime, and deny
23 Plaintiff, Class members, and Aggrieved Employees meal and rest periods that comply with
24 California law.

25 4. Defendant violates California law by knowingly and willfully requiring Plaintiff, Class
26 members, and Aggrieved Employees to perform work and/or remain on duty during meal and rest
27 breaks, subjecting them to interruptions during those times. Oftentimes, Defendant denies Plaintiff,
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1 Class members, and Aggrieved Employees meal and rest breaks altogether. Nevertheless, Defendant
2 automatically deducts a 30-minute meal period from Class members' and Aggrieved Employees'
3 time.

4 5. Plaintiff, Class members, and Aggrieved Employees bring this claim to challenge
5 Defendant's policies and practices of: (1) failing to pay Plaintiff, Class members, and Aggrieved
6 Employees overtime wages; (2) failing to pay Plaintiff, Class members, and Aggrieved Employees
7 all tip wages owed from gratuity payments; (3) failing to authorize and permit Plaintiff, Class
8 members, and Aggrieved Employees to take meal and rest breaks to which they are entitled by law;
9 (4) failing to compensate Plaintiff, Class members, and Aggrieved Employees for all hours worked;
10 and (5) failing to provide Plaintiff, Class members, and Aggrieved Employees accurate, itemized
11 wage statements.

12 6. Plaintiff files this action to recover all unpaid wages, compensation, penalties, and other
13 damages on behalf of himself and Class under state law as a class action under Code of Civil
14 Procedure § 382. Plaintiff also files this action to recover civil penalties on behalf of the State of
15 California and Aggrieved Employees under Labor Code § 2699. Plaintiff seeks to remedy the
16 sweeping practices Defendant integrated into its gratuity systems, time tracking policies, and payroll
17 policies, that have deprived Plaintiff, Class members, and Aggrieved Employees of their lawfully
18 earned wages.

19 **SUBJECT MATTER JURISDICTION AND VENUE**

20 7. This Court has jurisdiction over Plaintiff's claims pursuant to the California Labor
21 Code and California Business and Professions Code. The Court has jurisdiction over Defendant
22 because it is a California corporation and because it is registered to do business in California.

23 8. Venue is proper in this judicial district pursuant to Code of Civil Procedure § 393 and/or
24 395.5. Defendant conducts business, employs Class members and Aggrieved Employees, and has
25 jobsites in this County. Plaintiff is informed, believes, and thereon alleges that events giving rise to
26 these causes of action occurred in this County and/or arose in this County.
27
28

1 **PARTIES**

2 9. Plaintiff Alvaro Vasquez Madrigal is an individual over the age of eighteen, and at all
3 times relevant to this Complaint was a resident of the State of California, County of Riverside.
4 Plaintiff is employed as a server by Defendant at its Mission Lakes Country Club location in Desert
5 Hot Springs, California from approximately May 2015 through the present.

6 10. The Class members and Aggrieved Employees are all people who are or who have been
7 employed by Defendant as hourly non-exempt employees, including but not limited to, servers,
8 waiters, bussers, bartenders, and other similar hourly and non-exempt employees throughout the State
9 of California within the four years preceding the filing of this Complaint.

10 11. Plaintiff is informed, believes, and thereon alleges that Defendant Mission Lakes
11 Country Club, Inc. is a California corporation that is registered to do business in California.
12 Defendant may be served with process by serving its registered agent, Dan Spance, 8484 Clubhouse
13 Blvd, Desert Hot Springs, CA 92240-1100.

14 12. Plaintiff is informed, believes, and thereon alleges that Defendant maintains a country
15 club and resort in California. Plaintiff is informed, believes, and thereon alleges that Defendant
16 employs Class members and Aggrieved Employees, among other hourly employees in California.

17 13. At all material times, Defendant has done business under the laws of California, has a
18 place of business in the State of California, including in this judicial district, and has employed Class
19 members and Aggrieved Employees in this judicial district. Defendant is a “person” as defined in
20 California Labor Code § 18 and California Business and Professions Code § 17201. Defendant is
21 also an “employer” as that term is used in the California Labor Code and the IWC Wage Orders.

22 **FACTUAL ALLEGATIONS**

23 14. Defendant operates Mission Lakes Country Club, located in Desert Hot Springs,
24 California. Defendant employs dozens of hourly non-exempt workers similarly situated to Plaintiff
25 at this facility.

26 15. Plaintiff has worked at Mission Lakes Country Club as a server since May 2015
27 through the present. Plaintiff is paid at an hourly rate of \$17, plus tips. On average, Plaintiff is

1 scheduled to work 5 hours each shift, or 6 to 8 hours for event shifts, 3 to 4 days per week, for an
2 average of 18 to 20 hours per week. Plaintiff occasionally works over 40 hours in a week.

3 16. As a matter of course, Defendant routinely adds a service charge of 18%-20% to its
4 food and beverage bills for theme nights, banquets, and events. These service charges have been in
5 the form of automatic charges which customers are required to pay, and which reasonably appear to
6 be gratuities for the service staff.

7 17. It is typically customary in the hospitality industry that establishments impose gratuity
8 charges in the range of 15% to 20% of the food and beverage bills. Thus, when customers have paid
9 these mandatory service charges, it is reasonable for the customers to believe those service charges
10 are gratuities to be paid to the service staff. Indeed, because of the way these service charges are
11 depicted to customers, and the custom in the food and beverage industry that gratuities range of 15%
12 to 20% are paid for food and beverage service, customers pay these charges reasonably believing
13 they were to be remitted to the service staff as gratuities.

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

20 19. As a matter of policy and/or practice, Defendant also requires Plaintiff, Class members,
21 and Aggrieved Employees to remain on duty during their scheduled shifts, including during rest
22 breaks and unpaid meal periods, and often does not even permit and/or authorize Class members to
23 take these breaks at all. Defendant does not compensate Class members and Aggrieved Employees
24 for work performed while clocked out for meal periods. Even when meal breaks are not taken,
25 Defendant automatically deducts 30 minutes from the Class members' and Aggrieved Employees'
26 time. Despite these recurring violations, Defendant does not provide Plaintiff, Class members, and
27 Aggrieved Employees premium pay for missed breaks and meal periods. Plaintiff is informed,
28

believes, and thereon alleges that this policy and practice applies to all Class members and Aggrieved Employees throughout California.

20. In addition to working through their meal periods, Class members and Aggrieved Employees also perform work while “off-the-clock” with Defendant’s knowledge and are denied compensation for the time spent engaged in this off-the-clock work. Class members’ and Aggrieved Employees’ off-the-clock work includes cleaning, stocking supplies, preparing tables for the following day, and performing various other tasks performed before clocking in and after clocking out for their shifts. Even though Class members and Aggrieved Employees routinely work past the end of their shifts, Class members and Aggrieved Employees are not compensated for this work performed outside of their recorded hours.

21. As a result of these policies, Defendants deny Plaintiff, Class members, and Aggrieved Employees gratuities to which they are lawfully owed, meal and rest periods to which they are statutorily entitled, as well as the overtime premiums resulting from the additional off-the-clock work performed during meal breaks as well as post-shift work performed for Defendant’s benefit.

22. Defendant’s common course of wage-and-hour abuse includes routinely failing to maintain true and accurate records of the hours worked by Class members and Aggrieved Employees. In particular, Defendant has failed to record hours that Plaintiff, Class members, and Aggrieved Employees worked during missed meal breaks, as well as hours worked off-the-clock.

23. Defendant’s failure to record all gratuity payments and all hours worked also results in a failure to provide Class members and Aggrieved Employees, including Plaintiff, accurate itemized wage statements as required by California law. The wage statements Defendant provides are not accurate because they do not reflect the actual wages earned as gratuity payments, nor the actual hours worked by Plaintiff, Class members, and Aggrieved Employees. The wage statements do not contain all of the service charges that should be paid as gratuity payments, and do not contain all of the off-the-clock work or time that should be compensable during interruptible meal breaks. Further, the wage statements are inaccurate because they do not include premium pay for missed breaks and overtime.

24. Defendant has employed hundreds of people similarly situated to Plaintiff during the four-year period prior to the filing of this Complaint.

25. Defendant's method of paying Plaintiff, Class members, and Aggrieved Employees was willful, and was not based on a good faith and reasonable belief that their conduct complied with California law.

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

CCP § 382 CLASS ACTION ALLEGATIONS

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

All current and former hourly, non-exempt employees, including but not limited to servers, waiters, bussers, bartenders, or other employees with similar job duties employed by Defendant in California any time starting four years prior to the filing of this Complaint until resolution of this action.

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

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

1 30. Commonality: There are questions of law and fact common to Plaintiff and the Class
2 that predominate over any questions affecting only individual members of the Class. These common
3 questions of law and fact include, but are not limited to:

- 4 a. Whether Defendant fails to compensate Class members for all hours worked,
5 including as overtime compensation, in violation of the Labor Code and Wage
6 Orders;
- 7 b. Whether Defendant has a policy and/or practice of charging a service fee to
8 customers and failing to remit the entirety of that service fee to Class members as
9 tip wages;
- 10 c. Whether Defendant has a policy and/or practice of requiring Class members to be
11 in the control of, spend time primarily for the benefit of, and work for Defendant
12 off-the-clock and without compensation;
- 13 d. Whether Defendant fails to properly pay overtime compensation one and one-half
14 times to Class members in violation of the Labor Code and Wage Orders;
- 15 e. Whether Defendant fails to authorize and permit, make available, and/or provide
16 Class members with timely meal and rest periods to which they are entitled in
17 violation of the Labor Code and Wage Orders;
- 18 f. Whether Defendant fails to provide Class members with timely, accurate itemized
19 wage statements in violation of the Labor Code and Wage Orders;
- 20 g. Whether Defendant violates Business and Professions Code §§ 17200 et seq., by:
- 21 (a) failing to compensate Class members for all hours worked, including at
22 minimum wage and as overtime compensation;
- 23 (b) failing to compensate Class members for all tip wages paid to Defendant as
24 a service charge;
- 25 (c) failing to pay Class members minimum wage for all hours worked;
- 26 (d) failing to properly pay overtime compensation, at either one and one-half
27 times, to Class members;
- 28

(e) failing to authorize and permit, make available, and/or provide Class members with timely meal and rest periods to which they are entitled; and
(f) failing to provide putative Class members with timely, accurate itemized wage statements.

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

31. Typicality: Plaintiff's claims are typical of the claims of the California Class. Defendant's 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.

32. Adequacy of Representation: Plaintiff seeks relief for state law violations perpetrated by Defendant. 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.

33. 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 Defendant's 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.

34. 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 with respect to individual members of the Class which would establish incompatible standards of conduct for Defendant.

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

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

9
10 **FIRST CAUSE OF ACTION**
11 **Failure to Pay for All Hours Worked Pursuant to the California Labor Code § 204**
12 **(On Behalf of the Class)**

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

15 38. Defendant willfully engaged in and continues to engage in a policy and practice of not
16 compensating Plaintiff and putative Class members for all hours worked or spent in its control.

17 39. Defendant regularly schedules Plaintiff and the putative Class members to work shifts
18 of 5 hours, or 6 to 8 hours if the employee is working an event. However, Defendant intentionally
19 and willfully requires Plaintiff and the Class members to complete additional work off-the-clock, in
20 excess of their scheduled shifts. For example, Class members routinely perform work functions after
21 clocking out such as cleaning, stocking, and preparing tables for the following day. Moreover,
22 Plaintiff and Class members routinely work through or are otherwise subject to interruption during
23 their meal period. They are not compensated for that work. As a result, Defendant fails to pay
24 Plaintiff and the Class members for all hours worked and fails to track their actual hours worked.

25 40. Labor Code § 1194(a) provides as follows:

26 Notwithstanding any agreement to work for a lesser wage, any
27 employee receiving less than the legal minimum wage or the legal
28 overtime compensation applicable to the employee is entitled to
 recover in a civil action the unpaid balance of the full amount of this
 minimum wage or overtime compensation, including interest
 thereon, reasonable attorneys' fees, and costs of suit.

41. Labor Code § 200(a) defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”

42. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Orders.

43. IWC Wage Order 4-2001(2)(K) defines hours worked as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

44. Defendant requires Plaintiff and the Class to work off-the-clock without compensation. In other words, Plaintiff and the Class are forced to perform work for the benefit of Defendant without compensation.

45. In violation of California law, Defendant knowingly and willfully refuses to perform its obligations to provide Plaintiff and the Class with compensation for all time worked. Defendant regularly fails to track the time Plaintiff and the Class actually work or to compensate them for hours worked. Therefore, Defendant committed, and continue to commit, the acts alleged herein knowingly and willfully, and in conscious disregard of the Plaintiff and the Class members' rights. Plaintiff and the Class are thus entitled to recover nominal, actual, and compensatory damages, plus interest, attorneys' fees, expenses, and costs of suit.

46. As a proximate result of the aforementioned violations, Plaintiff and the Class have been damaged in an amount according to proof at time of trial.

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

SECOND CAUSE OF ACTION
Failure to Pay Overtime Wages Pursuant to Labor Code § 510
(On Behalf of the Class)

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

49. Defendant does not compensate Plaintiff and Class members with appropriate overtime, including time and a half, as required by California law.

1 50. Labor Code § 510 provides as follows:

2 Eight hours of labor constitutes a day's work. Any work in excess
3 of eight hours in one workday and any work in excess of 40 hours
4 in any one workweek and the first eight hours worked on the seventh
5 day of work in any one workweek shall be compensated at the rate
6 of no less than one and one-half times the regular rate of pay for an
7 employee. Any work in excess of 12 hours in one day shall be
8 compensated at the rate of no less than twice the regular rate of pay
9 for an employee. In addition, any work in excess of eight hours on
10 any seventh day of a workweek shall be compensated at the rate of
11 no less than twice the regular rate of pay of an employee.

12 51. The IWC Wage Order 4-2001(3)(A)(1) states:

13 The following overtime provisions are applicable to employees 18
14 years of age or over and to employees 16 or 17 years of age who are
15 not required by law to attend school and are not otherwise prohibited
16 by law from engaging in the subject work. Such employees shall not
17 be employed more than eight (8) hours in any workday or more than
18 40 hours in any workweek unless the employee receives one and
19 one-half (1 ½) times such employee's regular rate of pay for all
20 hours worked over 40 hours in the workweek. Eight (8) hours of
21 labor constitutes a day's work. Employment beyond eight (8) hours
22 in any workday or more than six (6) days in any workweek is
23 permissible provided the employee is compensated for such
24 overtime at not less than: . . . One and one-half (1 ½) times the
25 employee's regular rate of pay for all hours worked in excess of
26 eight (8) hours up to and including 12 hours in any workday, and for
27 the first eight (8) hours worked on the seventh (7th) consecutive day
28 of work in a workweek; and ... [d]ouble the employee's regular rate
 of pay for all hours worked in excess of 12 hours in any workday
 and for all hours worked in excess of eight (8) hours on the seventh
 (7th) consecutive day of work in a workweek.

 52. Labor Code § 1194(a) provides as follows:

 Notwithstanding any agreement to work for a lesser wage, any
 employee receiving less than the legal minimum wage or the legal
 overtime compensation applicable to the employee is entitled to
 recover in a civil action the unpaid balance of the full amount of this
 minimum wage or overtime compensation, including interest
 thereon, reasonable attorneys' fees, and costs of suit.

 53. Labor Code § 200 defines wages as "all amounts for labor performed by employees of
every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
commission basis or other method of calculation." All such wages are subject to California's
overtime requirements, including those set forth above.

1 54. Defendant at times requires Plaintiff and Class members to work in excess of eight
2 hours per day and forty hours per week, but does not compensate them at an overtime rate for all of
3 this work.

4 55. Plaintiff and Class members have worked overtime hours for Defendant without being
5 paid overtime premiums in violation of the Labor Code, applicable IWC Wage Orders, and other
6 applicable law.

7 56. Defendant has knowingly and willfully refused to perform its obligations to
8 compensate Plaintiff and the Class members for all premium wages for overtime work. As a
9 proximate result of the aforementioned violations, Defendant has damaged Plaintiff and the Class
10 members in amounts to be determined according to proof at time of trial.

11 57. Defendant is liable to Plaintiff and the Class alleged herein for the unpaid overtime and
12 civil penalties, with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees
13 and costs as set forth below.

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

15
16 **THIRD CAUSE OF ACTION**
17 **Violation of California Business and Professions Code §§ 17200 *et seq.***
 Gratuity Violation Pursuant to Labor Code § 351
 (On Behalf of the Class)

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

20 60. Defendant's conduct, as set forth above, in failing to remit to non-managerial service
21 employees the total proceeds of gratuities added to customers' bills constitutes a violation of
22 California Labor Code § 351.

23 61. This violation is enforceable pursuant to the California Unfair Competition Law, Cal.
24 Bus. & Prof. Code § 17200 *et seq.*

25 62. The violations of California Labor Code § 351, as well as of the fundamental California
26 public policies protecting wages, serve as unlawful predicate acts and practices for purposes of
27 Business and Professions Code §§ 17200 *et seq.*

1 63. The acts and practices described above constitute unfair, unlawful and fraudulent
2 business practices, and unfair competition, within the meaning of Business and Professions Code §§
3 17200 et seq. Among other things, the acts and practices have taken from Plaintiff and the Class
4 wages rightfully earned by them, while enabling Defendants to gain an unfair competitive advantage
5 over law-abiding employers and competitors.

6 64. Business and Professions Code § 17203 provides that a court may make such orders or
7 judgments as may be necessary to prevent the use or employment by any person of any practice
8 which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent
9 Defendants from repeating the unlawful, unfair, and fraudulent business acts and practices alleged
10 above.

11 65. As a direct and proximate result of the aforementioned acts and practices, Plaintiff and
12 the Class members have suffered a loss of money and property, in the form of unpaid wages which
13 are due and payable to them.

14 66. Business and Professions Code § 17203 provides that the Court may restore to any
15 person in interest any money or property which may have been acquired by means of such unfair
16 competition. Plaintiff and the Class are entitled to restitution pursuant to Business and Professions
17 Code § 17203 for all wages and payments unlawfully withheld from employees during the four-year
18 period prior to the filing of this Complaint.

19 67. Plaintiff's success in this action will enforce important rights affecting the public
20 interest and in that regard Plaintiff sues on behalf of himself as well as others similarly situated.
21 Plaintiff and putative Class members seek and are entitled to restitution of gratuity payments retained
22 by Defendant, declaratory and injunctive relief, and all other equitable remedies owing to them.

23 68. Plaintiff herein takes upon himself 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 him to pay attorneys'
26 fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil
27 Procedure §1021.5 and otherwise.

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

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

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

71. An economic relationship was created between Defendant's customers and Plaintiff and Class members at the time the customers were seated at a table that Plaintiff or Class members serviced. At that time, Plaintiff and Class Members served Defendant's 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.

72. Defendant was and is aware of the relationship between its customers and Plaintiff and the Class Members.

73. Pursuant to the established custom and practice, Defendant's customers left gratuities for Plaintiff and the Class Members, including the mandatory service fee imposed by Defendant. Defendant wrongfully and in violation of California Labor Code § 351 failed to remit the total proceeds of gratuities added to customers' food and beverage bills to non-managerial service employees.

74. Defendant intended to, and/or knew that, by doing so Defendant would disrupt the economic relationship between Defendant's customers and Plaintiff and the Class Members in that their conduct would reduce the gratuities received by Plaintiff and the Class Members for their work.

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

76. As a direct and proximate result of Defendant's 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.

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

78. 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.

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

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

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

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

82. 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.

83. Defendant 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.

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

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

86. 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.

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

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

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

89. Defendant's conduct as set forth above constitutes unjust enrichment under California state common law. Specifically, Defendant misappropriated funds that Defendant's customers reasonably believed and intended to be gratuity payments to Plaintiff and Class members. Defendant 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.

90. Defendant was 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.

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

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

SEVENTH CAUSE OF ACTION
Failure to Authorize and Permit and/or Make Available Meal and Rest Periods
Pursuant to Labor Code §§ 226.7 and 512
(On Behalf of the Class)

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

94. Defendant routinely does not make meal periods available to Plaintiff and Class members. Despite days regularly lasting 5 hours, or 6 to 8 hours when Plaintiff and Class members work events, Plaintiff and putative Class members are often unable to take a meal break, are often prevented from timely taking a meal break, are subject to interruption during their meal breaks, and are frequently interrupted during their meal breaks.

1 95. Plaintiff and Class members are not paid one hour of premium pay for the missed
2 breaks. Rather, Defendant requires Plaintiff and Class members to clock out for their meal breaks
3 while still requiring them to remain on duty and as a result Plaintiff and Class members are routinely
4 denied compliant meal periods.

5 96. Similar to meal periods, Defendant regularly fails to make rest periods available to
6 Plaintiff and Class members. Plaintiff's and Class members' schedules regularly prevent them from
7 taking rest periods throughout the day. When available, if ever, they are often not compliant. Instead,
8 they are generally untimely or short. Plaintiff and Class members do not receive premium pay for
9 their missed breaks as required by California law.

10 97. Labor Code §§ 226.7 and 512 and the applicable Wage Orders require Defendant to
11 authorize and permit meal and rest periods to their employees. Labor Code §§ 226.7 and 512 and the
12 Wage Orders prohibit employers from employing an employee for more than five hours without a
13 meal period of not less than thirty minutes, and from employing an employee more than ten hours
14 per day without providing the employee with a second meal period of not less than thirty minutes.
15 Labor Code § 226.7 and the applicable Wage Orders also require employers to authorize and permit
16 employees to take ten minutes of net rest time per four hours or major fraction thereof of work, and
17 to pay employees their full wages during those rest periods. Unless the employee is relieved of all
18 duty during the thirty-minute meal period and ten-minute rest period, the employee is considered "on
19 duty" and the meal or rest period is counted as time worked under the applicable Wage Orders.

20 98. Under Labor Code § 226.7(b) and the applicable Wage Orders, an employer who fails
21 to authorize, permit, and/or make available a required meal period must, as compensation, pay the
22 employee one hour of pay at the employee's regular rate of compensation for each workday that the
23 meal period was not authorized and permitted. Similarly, an employer must pay an employee denied
24 a required rest period one hour of pay at the employee's regular rate of compensation for each
25 workday that the rest period was not authorized and permitted and/or not made available.

26 99. Despite these requirements, Defendant has knowingly and willfully refused to perform
27 its obligations to authorize and permit and/or make available to Plaintiff and the Class the ability to
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1 take the off-duty meal and rest periods to which they are entitled. Defendant has also failed to pay
2 Plaintiff and the Class one hour of pay for each off-duty meal and/or rest periods that they are denied.
3 Defendant's conduct described herein violates Labor Code §§ 226.7 and 512. Therefore, pursuant
4 to Labor Code § 226.7(b), Plaintiff and the Class are entitled to compensation for the failure to
5 authorize and permit and/or make available meal and rest periods, plus interest, attorneys' fees,
6 expenses and costs of suit.

7 100. As a proximate result of the aforementioned violations, Plaintiff and the Class have
8 been damaged in an amount according to proof at time of trial.

9 101. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

10 **EIGHTH CAUSE OF ACTION**
11 **Failure to Provide Accurate Itemized Wage Statements Pursuant to Labor Code § 226**
12 **(On Behalf of the Class)**

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

15 103. Defendant does not provide Plaintiff and Class members with accurate itemized wage
16 statements as required by California law.

17 104. Labor Code § 226(a) provides:

18 An employer, semimonthly or at the time of each payment of wages,
19 shall furnish to his or her employees, either as a detachable part of
20 the check, draft, or voucher paying the employee's wages, or
21 separately if wages are paid by personal check or cash, an accurate
22 itemized statement in writing showing: (1) gross wages earned, (2)
23 total hours worked by the employee, except as provided in
24 subdivision (j), (3) the number of piece-rate units earned and any
25 applicable piece rate if the employee is paid on a piece-rate basis,
26 (4) all deductions, provided that all deductions made on written
27 orders of the employee may be aggregated and shown as one item,
28 (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.

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

106. 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.

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

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

109. Defendant is liable to Plaintiff and the putative 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).

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

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

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

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

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

1 114. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce
2 minimum labor standards in order to ensure employees are not required to work under substandard
3 and unlawful conditions, and to protect employers who comply with the law from those who attempt
4 to gain competitive advantage at the expense of their workers by failing to comply with minimum
5 labor standards.

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

- 10 a. violations of Labor Code § 1194 and IWC Wage Order 4-2001 pertaining to
11 payment of wages;
- 12 b. violations of Labor Code § 510 and Wage Order 4-2001 pertaining to overtime;
- 13 c. violations of Labor Code §§ 226.7 and 512 and Wage Order 4-2001 pertaining to
14 meal and rest breaks;
- 15 d. violations of Labor Code § 226 regarding accurate, timely itemized wage
16 statements; and
- 17 e. violations of Labor Code § 351 for failure to remit to non-managerial service
18 employees the total proceeds of gratuities added to Defendant's customers' bills.

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

22 117. The acts and practices described above constitute unfair, unlawful and fraudulent
23 business practices, and unfair competition, within the meaning of Business and Professions Code §§
24 17200 et seq. Among other things, the acts and practices have taken from Plaintiff and the Class
25 wages rightfully earned by them, while enabling Defendant to gain an unfair competitive advantage
26 over law-abiding employers and competitors.

1 118. Business and Professions Code § 17203 provides that a court may make such orders or
2 judgments as may be necessary to prevent the use or employment by any person of any practice
3 which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent
4 Defendant from repeating the unlawful, unfair, and fraudulent business acts and practices alleged
5 above.

6 119. As a direct and proximate result of the aforementioned acts and practices, Plaintiff and
7 the Class members have suffered a loss of money and property, in the form of unpaid wages which
8 are due and payable to them.

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

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

23 122. Wherefore, Plaintiff and the Class request relief as hereinafter provided.
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TENTH CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(a)
(On behalf of the State of California and Aggrieved Employees)

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

124. Labor 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.

125. Labor 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 worked at each hourly rate by the employee.

126. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law. In enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.

1 127. Labor Code § 226.7(b) provides:

2 An employer shall not require an employee to work during a meal or rest or
3 recovery period mandated pursuant to an applicable statute, or applicable
4 regulation, standard, or order of the Industrial Welfare Commission, the
 Occupational Safety and Health Standards Board, or the Division of
 occupational Safety and Health.

5 128. Labor Code § 200(a) defines wages as “all amounts for labor performed by employees
6 of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
7 commission basis, or other method of calculation.”

8 129. IWC Wage Order 4-2001(2)(K) defines hours worked as “the time during which an
9 employee is subject to the control of an employer, and includes all the time the employee is suffered
10 or permitted to work, whether or not required to do so.”

11 130. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure
12 by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized
13 wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code
14 § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code
15 § 226(e), as prayed for herein.

16 131. Plaintiff also seeks civil penalties pursuant to Sections 225.5 and 226.3 of the
17 California Labor Code.

18 132. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
19 Workforce Development Agency (“LWDA”) with notice of his intention to file this claim on June
20 9, 2020. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied
21 the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

22 133. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
23 Employees, and himself as set forth in Labor Code § 2699(g)(i).

24 134. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
25 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys’ fees
26 and costs as set forth below.

135. Wherefore, Plaintiff and the Aggrieved Employees request relief as hereinafter provided.

ELEVENTH CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f)
(On behalf of the State of California and Aggrieved Employees)

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

137. Labor Code § 2699(f) provides:

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

138. To the extent than any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees for each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f) and other underlying Labor Code violations, including but not limited to violations of Labor Code §§ 204, 351, 510, 512, and 1194.

139. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with notice of her intention to file this claim on June 6, 2020. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

140. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and themselves as set forth in Labor Code § 2699(g)(i).

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

142. Wherefore, Plaintiff and the Aggrieved Employees request relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of the Class members, the State of California, and the Aggrieved Employees, requests the following relief:

1. For an order certifying the Causes of Action in this Complaint as a class action pursuant to Code of Civil Procedure § 382;
2. Damages and restitution according to proof at trial for all unpaid gratuities, wages and other injuries, as provided by the California Labor Code, and California Business and Professions Code;
3. For a declaratory judgment that Defendant violated and continues to violate California Labor Code, California law, and public policy as alleged herein;
4. For a declaratory judgment that Defendant violated California Business and Professions Code §§ 17200 *et seq.* as a result of the aforementioned violations of the California Labor Code;
5. For preliminary, permanent, and mandatory injunctive relief prohibiting Defendant, its officers, agents, and all those acting in concert with it from committing in the future those violations of law herein alleged;
6. For an order requiring Defendant to disgorge all profits and other ill-gotten gains resulting from their failure to remit the entirety of gratuities to non-managerial service employees;
7. 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;
8. For an order awarding Plaintiff and the Class members compensatory damages, including gratuities owed, lost wages, earnings, liquidated damages, and other employee benefits, restitution, recovery of all money/property, actual damages, and all

1 other sums of money owed to Plaintiff and Class members, together with interest on
2 these amounts according to proof;

3 9. For an order awarding Plaintiff and Class members civil penalties pursuant to the
4 California Labor Code, and the laws of the State of California, with interest thereon;

5 10. For an order awarding civil penalties to the fullest extent provided for by the PAGA;

6 11. For an order awarding reasonable attorneys' fees as provided by the California Labor
7 Code, California Code of Civil Procedure § 1021.5, Labor Code § 2699(g)(1), , and/or
8 other applicable law;

9 12. For all costs of suit;

10 13. For interest on any penalties awarded, as provided by applicable law; and

11 14. For such other and further relief as this Court deems just and proper.
12

13 Respectfully submitted,

14 Date: August 28, 2020



15
16 Carolyn H. Cottrell
David C. Leimbach
17 Kristabel Sandoval
18 SCHNEIDER WALLACE
COTTRELL KONECKY LLP

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20 *Attorneys for Plaintiff, Class Members, and on behalf*
21 *of the State of California and Aggrieved Employees*
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