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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 JUAN CAAMAL,

14 Plaintiff,

15 v.

16 TRG CA EMPLOYMENT, INC., a
17 corporation; TIBURON LODGE CA HOTEL
18 MANAGER, LLC, a limited liability company;
19 and DOES 1-100, inclusive,

20 Defendants.

Case No.: CIV-2001374

FIRST AMENDED CLASS ACTION
COMPLAINT

1. FAILURE TO PROPERLY CALCULATE AND PAY OVERTIME
2. FAILURE TO PROPERLY CALCULATE AND PAY SICK PAY
3. FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS
4. FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS
5. FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
6. FAILURE TO PAY ALL WAGES DUE AND OWING AT END OF EMPLOYMENT
7. UNLAWFUL BUSINESS PRACTICES
8. UNLAWFUL BUSINESS PRACTICES (TIPS)
9. PRIVATE ATTORNEYS GENERAL ACT

21 Plaintiff Juan Caamal brings this class action against TRG CA Employment, Inc., Tiburon
22 Lodge CA Hotel Manager, LLC, and Does 1 through 100, for violations of the California Labor Code
23 and the Business and Professions Code.
24

PARTIES

1. Plaintiff Juan Caamal ("Plaintiff" or "Caamal") is and at all times relevant herein was employed in Marin County, California, and was an "employee" as defined by the California Labor Code ("Labor Code") and the applicable California Industrial Wage Commission ("IWC") Order(s).

2. TRG CA Employment, Inc. is a Louisiana corporation, formed under the laws of California. At all times relevant herein, TRG CA Employment, Inc. has been an "employer" as defined by the Labor Code and the applicable IWC Order(s).

3. Tiburon Lodge CA Hotel Manager, LLC is a California limited liability company, formed under the laws of California. At all times relevant herein, Tiburon Lodge CA Hotel Manager, LLC has been an "employer" as defined by the Labor Code and the applicable IWC Order(s).

4. TRG CA Employment, Inc., Tiburon Lodge CA Hotel Manager, LLC, and Does 1-100 are collectively referred to as Defendants.

5. Caamal are not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sue such Defendants by these fictitious names. Caamal will amend this Complaint to allege their true names and capacities when ascertained. Caamal are informed and believe, and on that basis allege, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Caamal's injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

6. Caamal are informed and believe and thereupon allege that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

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GENERAL ALLEGATIONS

TRG CA Employment, Inc. in c

9. Throughout the relevant time period, Defendants regularly hosted weddings, banquets,

10. Defendants employed a uniform policy and practice of charging a mandatory 21 percent

11. Caamal was told by General Manager of the Lodge at Tiburon, Sietse Nabben

12. At some point in his employment but believed to be in 2011, Caamal was called to the

13. Caamal and the other Banquet Servers did not receive any cash or charged tips or

1 14. Furthermore, customers at the Lodge at Tiburon were told by Defendants not to pay any
2 additional gratuities to Caamal and the other Banquet Servers. The Food and Beverage Director at the
3 Lodge at Tiburon, Sauline Gulbinene (“Gulbinene”), so instructed the customers, telling them that
4 these employees were already receiving the Banquet Service Charges and that “they get enough”.

5 15. Similarly, Caamal and other Banquet Servers were instructed that the Banquet Service
6 Charges were their only “gratuities” and that they were not to accept any additional payments from
7 customers. They were told this by Jim Gerney (Hotel Regional General Manager), Gulbinene, and
8 other managers.

9 16. Caamal is informed and believes and thereon alleges that the customers at the Lodge at
10 Tiburon intended that the Banquet Service Charges go in full to Caamal and the other nonexempt
11 employees as tips or gratuities.

12 17. While the aforementioned charges to customers were described in the Banquet Event
13 Orders as “Banquet Service Charges,” they were referenced in Caamal’s wage statements as gratuities
14 or tips. (See, e.g., **Exhibit B**.) If these Banquet Service Charges were not truly service charges, but
15 were mandated tips or gratuities, then Defendants violated Labor Code section 351 because they kept a
16 portion of these payments and did not distribute 100 percent of them to Caamal and the other
17 nonexempt employees. (See *O’Grady v. Merchant Exchange Products, Inc.* (2019) 41 Cal.App.5th
18 771.)

19 18. Alternatively, if the portion of the Banquet Service Charges that were paid to the other
20 nonexempt employees were not gratuities or tips, then they constituted nondiscretionary bonuses or
21 “other items of compensation” and, accordingly, during the applicable statutory period, Defendants
22 failed to properly calculate and pay the overtime wages owed to Caamal and other nonexempt
23 employees.

24 19. Specifically, and if the Banquet Service Charges were not gratuities or tips, Defendants
25 failed to properly calculate their nonexempt California employees’ regular rate of pay for purposes of
26 overtime pay by failing to include the value of the portion of the Banquet Service Charges distributed
27 to Caamal and other nonexempt employees when calculating the regular rate of pay for purposes of
28 overtime pay. Instead, Defendants paid Caamal and its other nonexempt employees at a lesser rate.

1 20. Consequently, and if the Banquet Service Charges were not tips or gratuities, then
2 Caamal and all of Defendants' other nonexempt employees who worked overtime and received some of
3 the Banquet Service Charges were not adequately paid for all of the overtime they worked.

4 21. Caamal is informed and believes and thereon alleges that other nonexempt employees of
5 Defendants in California, including but not limited to waiters and bartenders, similarly received
6 nondiscretionary bonuses and other items of compensation, including but not limited to portions of
7 service charges. Caamal is informed and believes, and thereon alleges, that these employees did not
8 receive any cash or charged tips, they were instructed by Defendants not to accept any such gratuities
9 or tips, and that customers were advised that they did not need to pay additional tips or gratuities to
10 these other nonexempt employees because they received adequate gratuities through mandated service
11 charges.

12 22. However, Caamal is informed and believes and thereon alleges that these other
13 nonexempt employees were also not paid earned overtime wages at their "regular rate of pay" since
14 Defendants did not factor into that rate the value of earned nondiscretionary bonuses and other items of
15 compensation, including but not limited to portions of service charges.

16 23. Alternatively, if service charges paid to other nonexempt employees of Defendants in
17 California did not constitute nondiscretionary bonuses or other items of compensation, but were in fact
18 tips or gratuities, then Defendants similarly and impermissibly retained portions of those tips or
19 gratuities in violation of Labor Code section 351.

20 24. If the service charges, a portion of which were paid to Caamal and other nonexempt
21 employees of Defendants in California, were not gratuities but constituted nondiscretionary bonuses or
22 other items of compensation, and as such was not incorporated into the employees' regular rate of pay
23 for overtime purposes, then, as evidenced in the sample of Caamal's wage statement attached hereto as
24 **Exhibit A**, the wage statements furnished by Defendants to its nonexempt California employees violate
25 California Labor Code section 226(a) insofar as they fail to accurately show:

- 26 a. The gross wages earned, in violation of section 226(a)(1);
27 b. The net wages earned, in violation of section 226(a)(5); and
28 c. All applicable hourly rates in effect during the pay period and the corresponding
 number of hours worked at each hourly rate in violation of section 226(a)(9).

1 25. Irrespective as to whether the service charges were tips or gratuities, the itemized wage
2 statements issued to Caamal and other nonexempt California employees failed to accurately show the
3 information required by Labor Code section 226, subdivisions (a)(1) and (5) because such persons were
4 not paid premium pay (i.e., wages) for each rest and meal period that was not provided in accordance
5 with Labor Code section 512 and applicable Wage Order(s) of the Industrial Welfare Commission.

6 26. Defendants were, at all times relevant herein, aware of the requirements of California
7 Labor Code section 226.

8 27. Defendants have, at all times relevant herein, furnished wage statements to each of its
9 California employees pursuant to an established set of policies, procedures and practices.

10 28. Caamal and Defendants' other California employees, both current and former, have
11 suffered injury as a result of Defendants' knowing and intentional failure to comply with California
12 Labor Code section 226(a).

13 29. Caamal and Defendants' other nonexempt California employees, both current and
14 former, were unable to promptly and easily determine their gross wages earned, net wages earned, and
15 all applicable hourly rates in effect during the pay period and the corresponding number of hours
16 worked from the wage statements furnished by Defendants.

17 30. Caamal and Defendants' other nonexempt California employees, both current and
18 former, have suffered injury as a result of Defendants' knowing and intentional failure to furnish wage
19 statements accurately showing all information required by Labor Code section 226(a).

20 31. Additionally, Caamal was not provided with all of the rest and meal breaks to which he
21 was entitled. Despite frequently working shifts of eight hours or more, and due to the high volume and
22 intense nature of his work, Caamal was frequently denied the opportunity to take a thirty-minute meal
23 period for every five hours worked. Similarly, Caamal was *never* provided with the opportunity to take
24 a ten-minute rest period for every four hours worked. Caamal was not paid an hour's worth of pay at
25 his regular rate of compensation for every rest and meal period that was not provided in accordance
26 with California law.

27 32. Furthermore, during the applicable statutory period, Defendants failed and continue
28 to fail to pay sick time at employees' regular rate of pay as required by law. When Caamal and

1 other nonexempt employees took paid sick leave, Defendants paid this sick leave at exactly that
2 employee's base rate of pay, without accounting for the value of earned nondiscretionary bonuses
3 and other items of compensation.

4 33. Similarly, Plaintiff and all of Defendants' other nonexempt employees who took
5 paid sick leave and/or received non-discretionary bonuses, commissions, and/or other items of
6 compensation aside from their base hourly rate, were not adequately paid for their sick leave.

7 34. From at least four years prior to the filing of this action, Defendants has adopted and
8 employed unfair business practices. These unfair business practices include, but are not limited to,
9 failing to properly calculate and pay overtime wages due, failing to properly calculate and pay accrued
10 sick leave, failure to provide compliant rest and meal periods or pay premiums, and unlawful retention
11 of employees' tips or gratuities.

12 35. Caamal's employment with Defendants ended on March 20, 2020. To date, he has not
13 been paid all wages due and owing, including but not limited to the full value of rest and meal break
14 premiums and the full value of unpaid overtime. During the relevant time period, other nonexempt
15 California employees left their employ with Defendants but were not adequately paid all wages due and
16 owing upon cessation of employment.

17 36. On June 9, 2020, Caamal provided written notice to the Labor and Workforce
18 Development Agency ("LWDA"), TRG CA Employment, Inc., and Tiburon Lodge CA Hotel
19 Manager, LLC regarding the specific provisions of the Labor Code alleged to have been violated,
20 including the facts and theories to support those alleged violations. (**Exhibit C.**)

21 37. As of the filing of this Complaint, more than 65 calendar days after Caamal's initial
22 written notice, the LWDA has not provided written notice that it intends to investigate any of
23 Caamal's allegations as set forth above. Accordingly, Cueva has satisfied the administrative
24 prerequisites under Labor Code section 2699.3 to bring a civil action to recover civil penalties
25 against Defendants, in addition to other remedies, for violations of the California Labor Code.

26 38. The foregoing list of misconduct is a partial list only and is set forth by way of example.

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CLASS ACTION ALLEGATIONS

39. Caamal seek to maintain this action as a class action as to the First through Eighth Causes of Action. Caamal bring this action, on behalf of himself and all others similarly situated, as a class action pursuant to Code of Civil Procedure 382. The classes which Caamal seek to represent consist of the following:

- a. All current and former California employees of Defendants who worked at any time from four years prior to the filing of this complaint through the entry of final judgment in this action, and who were paid tips or gratuities in the form of mandatory "service charges" (the "351 Class");
- b. All current and former nonexempt California employees of Defendants who worked some amount of overtime at any time from four years prior to the filing of this complaint through the entry of final judgment in this action, and who were also paid nondiscretionary bonuses or other items of compensation in addition to their base hourly pay (the "Regular Rate Class");
- c. All current and former nonexempt California employees of Defendants who worked at least one workday of four hours or more at any time from four years prior to the filing of this complaint through the entry of final judgment in this action (the "Rest and Meal Break Class");
- d. All current and former nonexempt California employees of Defendants who received nondiscretionary bonuses and/or other items of compensation and received sick pay during one or more pay periods at any time from four years prior to the filing of this complaint through the entry of final judgment in this action (the "Sick Pay Class");
- e. All members of the Regular Rate Class, the Rest and Meal Break Class, and the Sick Pay Class who received one or more wage statements at any time from one year prior to the filing of this complaint through the entry of final judgment in this action (the "Wage Statement Class"); and
- f. All members of the Regular Rate and Rest and Meal Break Classes whose employment with Defendants ended at any point from three years prior to the filing of this complaint through the entry of final judgment in this action (the "Waiting Time Penalty Class").

The 351 Class, the Regular Rate Class, the Rest and Meal Break Class, the Sick Pay Class, the Wage Statement Class, and the Waiting Time Penalty Class are collectively referred to as "the Class."

40. The Class is so numerous that joinder of all members is impracticable, and the disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is informed and believes, and based thereon alleges, that Defendants employ more than 100 employees who satisfy the class definition. Although the exact number and identity of class members is not

1 presently known, they can be identified in Defendants' records through coordinated discovery pursuant
2 to this class action.

3 41. This action may be maintained as a class because the questions of law and fact which are
4 common to class members clearly predominate over any questions affecting only individual members
5 and because a class action is superior to other available methods for adjudicating the controversy.

6 42. There are numerous common questions of law and fact arising out of Defendants'
7 conduct. This class action focuses on Defendants': (a) systematic failure to properly pay employees for
8 overtime hours; (b) systematic failure to properly pay employees with paid sick leave, (c) systematic
9 failure to provide their employees with rest and meal breaks, (d) systematic failure to pay all wages due
10 and owing at the end of employment; (e) systematic failure to comply with Labor Code section 226(a);
11 and (f) systematic and improper taking of tips.

12 43. Furthermore, common questions of fact and law predominate over any questions
13 affecting only individual members of the class. The predominating common or class-wide questions of
14 law and fact include the following:

- 15 a. Whether Defendants failed to properly calculate and pay their nonexempt
16 California employees' overtime pay;
- 17 b. Whether Defendants impermissibly took a portion of the gratuities belonging to
18 their California nonexempt employees;
- 19 c. Whether Defendants provided their nonexempt California employees with
20 compliant rest and meal periods or paid premiums;
- 21 d. Whether Defendants failed to properly calculate and pay their nonexempt
22 California employees with paid sick leave;
- 23 e. Whether Defendants failed to pay all wages due and owing at end of their
24 nonexempt California employees' employment;
- 25 f. Whether the wage statements Defendants furnished to their California employees
26 comply with Labor Code section 226;
- 27 g. Whether the alleged violations of the Labor Code constitute unfair business
28 practices;

- h. Whether the Class is entitled to injunctive relief; and
- i. Whether the Class is entitled to unpaid wages, statutory penalties, and/or restitutionary relief, and the amount of the same.

44. Caamal's claims are typical of the claims of the members of the Class as a whole, all of whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the alleged violations of Defendants. Caamal's claims are typical of those of the Class because Defendants subjected Plaintiff and each member of the Class to the same violations alleged herein.

45. The defenses of Defendants, to the extent that such defenses apply, are applicable generally to the whole Class and are not distinguishable as to the proposed class members.

46. Caamal will fairly and adequately protect the interests of all members of the Class, and has retained attorneys with extensive experience in litigation, including class and representative actions. Plaintiff has no interests that conflict with those of the Class. Caamal are able to fairly and adequately protect the interests of all members of the class because it is in their best interest to prosecute the claims alleged herein in order to obtain the full compensation due themselves and the other class members.

47. A class action is superior to any other method available for fairly and efficiently adjudicating the controversy because 1) joinder of individual class members is not practicable, 2) litigating the claims of individual class members would be unnecessarily costly and burdensome and would deter individual claims, 3) litigating the claims of individual class members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to bring individual claims, 5) class members would be discouraged from pursuing individual claims because the damages available to them are relatively small, and 6) public policy encourages the use of the class actions to enforce employment laws and protect individuals who, by virtue of their subordinate position, are particularly vulnerable.

48. Judicial economy will be served by maintenance of this lawsuit as a class action. To process numerous virtually identical individual cases will significantly increase the expense on the Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this matter. There are no obstacles to effective and efficient management of this lawsuit as a class action by

1 this Court and doing so will provide multiple benefits to the litigating parties including, but not limited
2 to, efficiency, economy, and uniform adjudication with consistent results.

3 49. Notice of a certified class action and any result or resolution of the litigation can be
4 provided to class members by mail, email, publication, or such other methods of notice as deemed
5 appropriate by the Court.

6 **FIRST CAUSE OF ACTION**
7 **FAILURE TO PROPERLY CALCULATE AND PAY OVERTIME**
8 **(Fair Labor Standards Act and Labor Code §§ 510 and 1198)**
9 **By the Regular Rate Class Against Defendants**

10 50. Caamal hereby reallege and incorporate by reference each and every allegation set forth
11 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of
12 this cause of action.

13 51. The Fair Labor Standards Act, 29 USC §§ 201 et seq. and 29 CFR §§ 778 et seq.,
14 requires time-and-a-half pay for the time an employee works over forty hours a week.

15 52. Pursuant to California Labor Code section 510, any work in excess of eight hours in
16 one workday and any work in excess of 40 hours in any one workweek and the first eight hours
17 worked on the seventh day of work in any one workweek shall be compensated at the rate of no
18 less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12
19 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
20 employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall
21 be compensated at the rate of no less than twice the regular rate of pay of an employee.

22 53. Pursuant to California Labor Code section 1198, the maximum hours of work and
23 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
24 standard conditions of labor for employees and the employment of any employee for longer hours
25 than those fixed by the commission or under conditions of labor prohibited by the order is
26 unlawful.

27 54. The “regular rate of pay” includes all remuneration for employment paid to the
28 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,

1 commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. §
2 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

3 55. During the relevant time period, Caamal and the other members of the Regular Rate
4 Class regularly worked overtime.

5 56. During the relevant time period, Defendants intentionally and willfully failed to pay the
6 proper overtime wages due to Caamal and the other members of the Regular Rate Class.

7 57. Wherefore, Caamal and the other members of the Regular Rate Class have been injured
8 as set forth above and request relief as hereafter provided.

9 **SECOND CAUSE OF ACTION**
10 **FAILURE TO PROPERLY CALCULATE AND PAY SICK PAY**
11 **(Labor Code, §§ 218, 233, 246 *et seq.*)**
12 **By the Sick Pay Class Against Defendants**

13 58. Plaintiff hereby reallege and incorporate by reference each and every allegation set
14 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
15 allegations of this cause of action.

16 59. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
17 employees at that employee's "regular rate of pay."

18 60. The "regular rate of pay" includes all remuneration for employment paid to the
19 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,
20 commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. §
21 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

22 61. During the relevant time period, Defendants failed to include commissions, non-
23 discretionary bonuses and/or other items of compensation when determining the "regular rate of
24 pay" for Plaintiff and their other non-exempt employees for purposes of sick time pay.

25 62. According to the California Supreme Court, sick pay is a form of wages. *Murphy v.*
26 *Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.

27 63. Labor Code section 233 provides that "any employer who provides sick leave for
28 employees shall permit an employee to use in any calendar year the employee's accrued and
available sick leave entitlement, in an amount not less than the sick leave that would be accrued

1 during six months at the employee's then current rate of entitlement, for the reasons specified in
2 subdivision (a) of Section 246.5.”

3 64. During the relevant time period, Defendants intentionally and willfully failed to pay
4 Plaintiff and the other members of the Sick Pay Class their sick pay at the rate of pay required by
5 law. Accordingly, Plaintiff did not receive the full amount of paid sick time that they were entitled
6 to receive by law, and were therefore denied the right to use sick leave within the meaning of
7 Labor Code sections 233(a) and (c).

8 65. Any employer who violates Labor Code section 233 is liable to employees for the
9 greater of one days’ pay or actual damages, reasonable equitable relief, and reasonable attorneys’
10 fees and costs. Labor Code §233(d), (e).

11 66. Further, Labor Code section 218 authorizes a private right of action to recover
12 unpaid wages.

13 67. Wherefore, Plaintiff and the other members of the Sick Pay Class have been injured
14 as set forth above and request relief as hereafter provided.

15 **THIRD CAUSE OF ACTION**
16 **FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS**
17 **(Lab. Code, §§ 226.7, 512)**
18 **By the Rest and Meal Break Class Against Defendants**

19 68. Plaintiff hereby realleges and incorporates by reference each and every allegation set
20 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
21 allegations of this cause of action.

22 69. Labor Code section 226.7 requires employers to provide employees meal periods as
23 mandated by Order of the Industrial Welfare Commission. It states:

- 24 a. No employer shall require any employee to work during any meal or rest period
25 mandated by an applicable order of the Industrial Welfare Commission.
26 b. If an employer fails to provide an employee a meal period or rest period in
27 accordance with an applicable order of the Industrial Welfare Commission, the
28 employer shall pay the employee one additional hour of pay at the employee’s

1 regular rate of compensation for each work day that the meal or rest period is
2 not provided.

3 70. Labor Code section 512(a) and applicable Wage Order(s) of the Industrial Welfare
4 Commission provide that an employer may not employ a person for a work period of more than five
5 hours per day without providing that employee a meal period of not less than thirty minutes, except
6 that if the total work period per day is no more than six hours, the meal period may be waived by
7 mutual consent of both the employer and employee. An employer may not employ a person for a
8 work period of more than ten hours per day without providing an employee with a second meal period
9 of not less than thirty minutes, except that if the total work period per day of the employee is no more
10 than twelve hours, the meal period may be waived by mutual consent of both the employer and the
11 employee, and if the first meal period was not waived.

12 71. During the relevant time period, Plaintiff and other members of the Rest and Meal
13 Break Class were not provided with meal breaks as required by law and did not receive an additional
14 hour of premium pay for each missed meal period.

15 72. Wherefore, Plaintiff and the other members of the Rest and Meal Break Class have
16 been injured and request relief as hereinafter provided.

17 **FOURTH CAUSE OF ACTION**
18 **FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS**
19 **(Lab. Code, § 226.7)**
20 **By the Rest and Meal Break Class Against Defendants**

21 73. Plaintiff hereby realleges and incorporates by reference each and every allegation set
22 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
23 allegations of this cause of action.

24 74. Labor Code section 226.7 requires employers to provide employees meal periods as
25 mandated by Order of the Industrial Welfare Commission. It states:

- 26 a. No employer shall require any employee to work during any meal or rest period
27 mandated by an applicable order of the Industrial Welfare Commission.
28 b. If an employer fails to provide an employee a meal period or rest period in
accordance with an applicable order of the Industrial Welfare Commission, the

1 employer shall pay the employee one additional hour of pay at the employee's
2 regular rate of compensation for each work day that the meal or rest period is
3 not provided.

4 75. Section 11 of the applicable IWC Wage Order provides:

5 “(A) Every employer shall authorize and permit all employees to take rest periods, which
6 insofar as practicable shall be in the middle of each work period. Nothing in this provision
7 shall prevent an employer from staggering rest periods to avoid interruption in the flow
8 of work and to maintain continuous operations, or from scheduling rest periods to
9 coincide with breaks in the flow of work that occur in the course of the workday. The
10 authorized rest period time shall be based on the total hours worked daily at the rate of
11 ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof.
12 Rest periods shall take place at employer designated areas, which may include or be
13 limited to the employees’ immediate work area.

14 (B) Rest periods need not be authorized in limited circumstances when the disruption of
15 continuous operations would jeopardize the product or process of the work. However,
16 the employer shall make up the missed rest period within the same workday or
17 compensate the employee for the missed ten (10) minutes of rest time at his/her regular
18 rate of pay within the same pay period.

19 (C) A rest period need not be authorized for employees whose total daily work time is
20 less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as
21 hours worked for which there shall be no deduction from wages.

22 (D) If an employer fails to provide an employee a rest period in accordance with the
23 applicable provisions of this order, the employer shall pay the employee one (1) hour of
24 pay at the employee’s regular rate of compensation for each workday that the rest period
25 is not provided.”

26 76. During the relevant time period, Plaintiff and other members of the Rest and Meal
27 Break Class were not provided with rest breaks as required by law and did not receive an additional
28 hour of premium pay for each missed rest break.

77. Wherefore, Plaintiff and the other members of the Rest and Meal Break Class have
been injured and request relief as hereinafter provided.

FIFTH CAUSE OF ACTION
FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
(Lab. Code, § 226(a))
By the Wage Statement Class Against Defendants

1 78. Caamal hereby reallege and incorporate by reference each and every allegation set forth
2 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of
3 this cause of action.

4 79. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly
5 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
6 part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are
7 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
8 earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any
9 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages
10 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
11 employee and only the last four digits of his or her social security number or an employee identification
12 number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly
13 rates in effect during the pay period and corresponding number of hours worked at each hourly rate by
14 the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total
15 hours worked for each temporary services assignment.”

16 80. An employee suffering injury as a result of the knowing and intentional failure by an
17 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
18 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
19 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate
20 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s
21 fees. Labor Code § 226(e)(1).

22 81. An employee is deemed to suffer injury if the employer fails to provide a wage
23 statement or if the employer fails to provide accurate and complete information as required by any one
24 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
25 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
26 during the pay period or any of the other information required to be provided pursuant to Labor Code
27 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
28 and address of the employer and iv) the name of the employee and the last four digits of his or her

1 social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv).
2 “Promptly and easily determine” means a reasonable person would be able to readily ascertain the
3 information without reference to other documents or information. Labor Code § 226(e)(2)(C).

4 82. As set forth above, Defendants intentionally and willfully failed to furnish accurate
5 itemized wage statements which complied with Labor Code section 226.

6 83. Wherefore, Caamal and the other members of the Wage Statement Class have been
7 injured as set forth above and request relief as hereafter provided.

8 **SIXTH CAUSE OF ACTION**
9 **FAILURE TO PAY ALL WAGES DUE AND OWING UPON CESSATION OF**
10 **EMPLOYMENT**

11 **(Lab. Code, § 201, *et seq.*)**
12 **By the Waiting Time Penalty Class Against Defendants**

13 84. Caamal hereby reallege and incorporate by reference each and every allegation set forth
14 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of
15 this cause of action.

16 85. California Labor Code section 201 provides that if an employer discharges an employee,
17 the wages earned and unpaid at the time of discharge are due and payable immediately.

18 86. California Labor Code section 202 requires an employer to pay an employee all earned
19 wages within 72 hours of the employee quitting his or her employment, or immediately at the time of
20 quitting if the employee has given 72 hours previous notice of his or her intention to quit.

21 87. As set forth above, Caamal and the other members of the Waiting Time Penalty Class
22 were not timely paid all of their earned but unpaid wages when their employment with Defendants
23 ended.

24 88. Wherefore, Caamal and the other members of the Waiting Time Penalty Class have been
25 injured as set forth above and request relief as hereafter provided.

26 ///

27 ///

28 ///

///

///

SEVENTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(Bus. & Prof. Code, § 17200, *et seq.*)

By the Regular Rate Class, the Sick Pay Class, and the Rest and Meal Break Class Against Defendants

108. Caamal hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

109. The statutory violations, as alleged above, are unfair business practices within the meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq.*), and include, but are not limited to, failing to properly pay overtime wages, impermissible taking of gratuities or tips, and failure to provide compliant rest and meal periods.

110. Wherefore, Caamal and the other members of the Regular Rate Class, the Sick Pay Class, and the Rest and Meal Break Class have been injured as set forth above and request relief as hereafter provided.

EIGHTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES (TIPS)
(Bus. & Prof. Code, § 17200, *et seq.*)
By the 351 Class Against All Defendants

111. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

112. Labor Code section 356 sets forth the Legislature's declaration of intent that preventing fraud upon the public regarding the practice of tipping is the purpose of Labor Code sections 351-356.

113. Defendants' misrepresentations to customers regarding the tips provided to its servers, as alleged above, are unfair business practices within the meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq.*), and include, but are not limited to depressing the compensation earned by servers by intentionally misleading the general public with respect to the amount of the service charge distributed to servers, thus promoting a fraud upon the public regarding the practice of tipping.

1 114. Wherefore, Plaintiff and the other members of the 351 Class have been injured as
2 set forth above and request relief as hereafter provided.

3 **NINTH CAUSE OF ACTION**
4 **PRIVATE ATTORNEYS GENERAL ACT**
5 **(Lab. Code, § 2698 *et seq.*)**
6 **Against Defendants**

7 115. Plaintiff hereby realleges and incorporates by reference each and every allegation
8 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 116. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
11 Code which provides for a civil penalty to be assessed and collected by the LWDA for violations
12 of the Labor Code may, as an alternative, be recovered through a civil action brought by an
13 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
14 to the procedures outlined in Labor Code section 2699.3.

15 117. Plaintiff was employed by Defendants and the alleged violations were committed
16 against him during his time of employment. Plaintiff is therefore an aggrieved employee as
17 defined by Labor Code section 2699, subdivision (c). Other current and former employees are also
18 aggrieved employees in that one or more of the alleged violations were also committed against
19 them during their time of employment with Defendants.

20 118. Pursuant to Labor Code section 2699, subdivision (f), the civil penalty recoverable
21 in a PAGA action is that which is provided for by the Labor Code or, where no civil penalty is
22 specifically provided, one hundred dollars (\$100) for each aggrieved employee per pay period for
23 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
24 each subsequent violation.

25 119. Pursuant to California Labor Code section 2699, subdivision (g), an aggrieved
26 employee may recover the civil penalty on behalf of himself or herself and other current or former
27 employees against whom one or more of the alleged violations was committed. Furthermore, any
28 employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees
and costs.

120. Wherefore, Plaintiff and other employees (current and former) have been aggrieved as set forth above and request relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

As to the First Through Eighth Causes of Action:

1. That this Court certify the Class;
2. That this Court appoint Caamal as the representative of the Class;
3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
4. That this Court award actual, compensatory, special, and general damages as well as restitutionary relief to Caamal and the members of the Class, including but not limited to the remedies provided for under Labor Code section 233, subdivision (d);
5. That this Court award injunctive relief, including that available under Labor Code section 226(h) and Business and Professions Code Section 17203;
6. That this Court award penalties and liquidated damages including, but not limited to, those available under 29 U.S.C. § 216(b), Labor Code §§ 203, 226(e), and 226.7 to Plaintiff and the members of the Class;
7. That this Court award statutory attorneys' fees and costs, including those available under 29 U.S.C. § 216(b), Labor Code §§ 218.5, 226(e)(1), 233(e), 1194, and 2699(g), as well as Code of Civil Procedure § 1021.5;
8. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
9. That this Court award such other and further relief as the court deems just and proper.

As to the Ninth Cause of Action:

1. For civil penalties, including but not limited to those available under Labor Code sections 226.3, 558, 1197.1, and 2699(f);
2. For injunctive relief;
3. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code section 2699(g);

1 4. For prejudgment and post-judgment interest according to any applicable provision
2 of law or as otherwise permitted by law, including those available under Civil Code
3 sections 3287(a) and 3289(b); and

4 5. For such other and further relief as the court deems just and proper.

5 ///

6 **DATED:** September 16, 2020

MAYALL HURLEY P.C.

7 By _____


8 ROBERT J. WASSERMAN
9 JOHN P. BRISCOE
Attorneys for Plaintiff

Exhibit A

The Lodge at Tiburon

1651 Tiburon Boulevard Tiburon, CA USA 94920
Phone: 415-435-3133 - Fax: 415-435-2451

BEO #: 8395
Page: 1 of 2
Printed: 2/1/2017

Banquet Event Order

Account: [REDACTED]	Event Date: Wednesday, February 1, 2017
Post As: [REDACTED]	Contact: [REDACTED]
Address: [REDACTED]	Phone: [REDACTED]
	Fax: [REDACTED]
	OnSite Contact: [REDACTED]
Deposit: [REDACTED]	Booked By: [REDACTED]
Payment: [REDACTED]	Service Mgr: [REDACTED]

Please confirm your final guaranteed number of attendees at least three (3) business days prior to event. If the final guarantees are not received within the specified time, your expected attendance will serve as the final guarantee.

Time	Room	Function	Setup	AGR	GTD	SET	Rental
7:30 AM - 8:30 AM	Main Sail Ballroom	Breakfast	Classroom	45	45	45	
8:30 AM - 5:00 PM	Main Sail Ballroom	Meeting	Classroom	45	45	45	\$500.00
12:00 PM - 1:00 PM	Main Sail Ballroom	Lunch	Classroom	45	45	45	
3:00 PM - 3:30 PM	Main Sail Ballroom	MuleSoft	Classroom	45	45	45	

FOOD

Serve: 7:30 AM to 8:30 AM

Continental Breakfast for 45ppl

Sliced Seasonal Fresh Fruit
Fresh Bagels & Cream Cheese
Seasonal Muffins
Orange and Grapefruit Juice

Fresh Brewed Gourmet Coffee, Decaffeinated Coffee & Assorted Teas

\$25.00 Per Person

Serve: 12:00 PM to 1:00 PM

Boxed Lunch for 45ppl

18 BLT - Nitrate-Free Applewood Smoked Bacon, Tomato, Lettuce, Avocado Aioli on Sourdough
18 Tri-Tip - Tomato, Onion, Watercress, Blue Cheese, Horseradish Aioli on Focaccia
Potato Chips
One Piece of Whole Fresh Fruit
Cookie
One Bottle of Water

BEVERAGE

SET UP

Event: 7:30 AM to 8:30 AM Room: Main Sail Ballroom

Set Breakfast in the back of the room

Event: 8:30 AM to 5:00 PM Room: Main Sail Ballroom

Classroom style for 45ppl
Notepads, Pens & Glasses
Infused Water Pitchers

Event: 12:00 PM to 1:00 PM Room: Main Sail Ballroom

Set Lunch in the back of the room

Event: 3:00 PM to 3:30 PM Room: Main Sail Ballroom

Set Break in the back of the room

All charges are subject to a 21% Banquet Service Charge and 8.5% CA tax. If these arrangements meet with your approval, kindly sign and fax to (415) 435-2451 to confirm them.

Any changes requested after the meeting room has been set, in accordance with the Banquet Event Orders, will be subject to a labor fee of \$150.00.

Organization Authorized Signature

Date

Hotel Representative Signature

Date

Exhibit B

CO. FILE DEPT. CLOCK VCHR. NO. 030
 NOC 020013 202054 0000060028 1

Earnings Statement



TRG CA EMPLOYMENT INC
 801 BRIDGEWAY
 SAUSALITO, CA 94965

Period Beginning: 01/21/2019
 Period Ending: 02/03/2019
 Pay Date: 02/08/2019

Taxable Marital Status: Single
 Exemptions/Allowances:
 Federal: 3
 CA: 3

JUAN CAAMAL

Social Security Number: [REDACTED]

Earnings	rate	hours	this period	year to date
Regular	12.0000	60.72	728.64	1,497.26
Overtime	18.0000	8.20	147.60	213.20
Overtime	19.1200	.50	9.56	
Banqt Chg Tip			1,722.77	3,405.81
Gratuity			50.00	50.00
Paid Lunch	12.0000	3.00	36.00	60.00
Ee Referral				500.00
Retro Pay				3.22
Gross Pay			\$2,694.57	5,729.49

Your federal taxable wages this period are
 \$2,694.57

Other Benefits and Information	this period	total to date
Pto Bal	97.29	
Sick Bal	48.00	

Deductions	Statutory	
Federal Income Tax	-294.77	648.13
Social Security Tax	-167.06	355.23
Medicare Tax	-39.07	83.08
CA State Income Tax	-127.15	281.54
CA SUI/SDI Tax	-26.94	57.29
Other		
Tips	-1,722.77	3,405.81
Adjustment		
Banqt Chg Tips	+1,722.77	
Net Pay	\$2,039.58	
Checking	-2,039.58	
Net Check	\$0.00	

© 2000 ADP LLC

TRG CA EMPLOYMENT INC
 801 BRIDGEWAY
 SAUSALITO, CA 94965

Advice number: 00000060028
 Pay date: 02/08/2019

Deposited to the account of
 JUAN CAAMAL
 account number [REDACTED] transit ABA
 amount \$2,039.58

THIS IS NOT A CHECK

NON-NEGOTIABLE

Exhibit C

LAW OFFICES
MAYALL HURLEY

A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91203
(818) 646-6440
MAILING ADDRESS:
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207-8253
FAX (209) 473-4818
TELEPHONE (209) 477-3833
WWW.MAYALLLAW.COM

VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
RACHAEL ALLGAIER
OF COUNSEL
J. ANTHONY ABBOTT

June 9, 2020

SUBMITTED ELECTRONICALLY

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

TRG CA Employment, Inc.
812 Gravier # 200
New Orleans, LA 70112

Tiburon Lodge CA Hotel Manager, LLC
1140 Reservoir Ave.
Cranston, RI 02920

Re: Juan Caamal

To whom it may concern:

This firm represents Juan Caamal ("Caamal") in relation to his former, joint employment with TRG CA Employment, Inc. and Tiburon Lodge CA Hotel Manager, LLC ("Employers"). In accordance with California Labor Code section 2699.3, this letter shall serve as Mr. Caamal's written notice to the Labor and Workforce Development Agency ("LWDA") and Employers regarding the following violations, and facts and theories supporting those violations, on Mr. Caamal's behalf and, as a proxy for the LWDA, on behalf of current and other former California employees of Employers.

Caamal was hired by TRG CA Employment, Inc. in or around 2010 to work at the Lodge at Tiburon (in Tiburon, California) as a Banquet Server. On information and belief, on or around January 1, 2020 TRG CA Employment, Inc. ceased to be Caamal's employer, and Tiburon Lodge CA Hotel Manager, LLC became his employer. Throughout the relevant time period, Employers regularly hosted weddings, banquets, and other catered events at the hotel known as the Lodge at Tiburon, where Caamal and other nonexempt employees, including but not limited to Banquet Servers, worked.

Employers employed a uniform policy and practice of charging a mandatory 21 percent "Banquet Service Charge" to customers for food, beverage, and rental items on top of the base charges incurred for each such event. (See, e.g., Exhibit A.) A portion, but not all of this charge is

Labor and Workforce Development Agency
TRG CA Employment, Inc.
Tiburon Lodge CA Hotel Manager, LLC
Re: Juan Caamal
June 9, 2020
Page 2 of 5

subsequently distributed to Banquet Servers and other nonexempt employees of Employers. Caamal was told by General Manager of the Lodge at Tiburon, Sietse Nabben ("Nabben") that Employers retained 20 percent of the Banquet Service Charges and distributed the remainder among the Banquet Servers, including Caamal.

At some point in his employment but believed to be in 2011, Caamal was called to the General Manager's office. Present was Nabben, and also Henry Cornejo and Gerson Pineda (both Banquet Servers). Nabben told the men that a new Banquet Manager had been hired, and that the distribution of the Banquet Service Charges was going to change: Going forward, 11 percent would go to the Banquet Manager, 69 percent would go to the Banquet Servers, and Employers would continue to receive 20 percent.

Caamal and the other Banquet Servers did not receive any cash or charged tips or gratuities from customers. Furthermore, customers at the Lodge at Tiburon were told by Employers not to pay any additional gratuities to Caamal and the other Banquet Servers. The Food and Beverage Director at the Lodge at Tiburon, Sauline Gulbinene ("Gulbinene"), so instructed the customers, telling them that these employees were already receiving the Banquet Service Charges and that "they get enough". Similarly, Caamal and other Banquet Servers were instructed that the Banquet Service Charges were their only "gratuities" and that they were not to accept any additional payments from customers. They were told this by Jim Gerney (Hotel Regional General Manager), Gulbinene, and other managers. Caamal is informed and believes and thereon alleges that the customers at the Lodge at Tiburon intended that the Banquet Service Charges go in full to Caamal and the other nonexempt employees as tips or gratuities.

While the aforementioned charges to customers were described in the Banquet Event Orders as "Banquet Service Charges," they were referenced in Caamal's wage statements as gratuities or tips. (See, e.g., **Exhibit B**.) If these Banquet Service Charges were not truly service charges, but were mandated tips or gratuities, then Employers violated Labor Code section 351 because they kept a portion of these payments and did not distribute 100 percent of them to Caamal and the other nonexempt employees. (See *O'Grady v. Merchant Exchange Products, Inc.* (2019) 41 Cal.App.5th 771.)

Alternatively, if the portion of the Banquet Service Charges that were paid to the other nonexempt employees were not gratuities or tips, then they constituted nondiscretionary bonuses or "other items of compensation" and, accordingly, during the applicable statutory period, Employers failed to properly calculate and pay the overtime wages owed to Caamal and other nonexempt employees. Specifically, and if the Banquet Service Charges were not gratuities or tips, Employers failed to properly calculate their nonexempt California employees' regular rate of pay for purposes of overtime pay by failing to include the value of the portion of the Banquet Service Charges distributed to Caamal and other nonexempt employees when calculating the regular rate of pay for purposes of overtime pay. Instead, Employers paid Caamal and its other nonexempt employees at a lesser rate. Consequently, and if the Banquet Service Charges were not tips or gratuities, then Caamal and all of

Labor and Workforce Development Agency
TRG CA Employment, Inc.
Tiburon Lodge CA Hotel Manager, LLC
Re: Juan Caamal
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Page 3 of 5

Employers' other nonexempt employees who worked overtime and received some of the Banquet Service Charges were not adequately paid for all of the overtime they worked.

Caamal is informed and believes and thereon alleges that other nonexempt employees of Employers in California, including but not limited to waiters and bartenders, similarly received nondiscretionary bonuses and other items of compensation, including but not limited to portions of service charges. Caamal is informed and believes, and thereon alleges, that these employees did not receive any cash or charged tips, they were instructed by Employers not to accept any such gratuities or tips, and that customers were advised that they did not need to pay additional tips or gratuities to these other nonexempt employees because they received adequate gratuities through mandated service charges. However, Caamal is informed and believes and thereon alleges that these other nonexempt employees were also not paid earned overtime wages at their "regular rate of pay" since Employers did not factor into that rate the value of earned nondiscretionary bonuses and other items of compensation, including but not limited to portions of service charges.

Alternatively, if service charges paid to other nonexempt employees of Employers in California did not constitute nondiscretionary bonuses or other items of compensation, but were in fact tips or gratuities, then Employers similarly and impermissibly retained portions of those tips or gratuities in violation of Labor Code section 351.

If the service charges, a portion of which were paid to Caamal and other nonexempt employees of Employers in California, were not gratuities but constituted nondiscretionary bonuses or other items of compensation, and as such was not incorporated into the employees' regular rate of pay for overtime purposes, then, as evidenced in the sample of Caamal's wage statement attached hereto as **Exhibit A**, the wage statements furnished by Employers to its nonexempt California employees violate California Labor Code section 226(a) insofar as they fail to accurately show:

- a. The gross wages earned, in violation of section 226(a)(1);
- b. The net wages earned, in violation of section 226(a)(5); and
- c. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

Irrespective as to whether the service charges were tips or gratuities, the itemized wage statements issued to Caamal and other nonexempt California employees failed to accurately show the information required by Labor Code section 226, subdivisions (a)(1) and (5) because, as set forth below, such persons were not paid premium pay (i.e., wages) for each rest and meal period that was not provided in accordance with Labor Code section 512 and applicable Wage Order(s) of the Industrial Welfare Commission.

Caamal was not provided with all of the rest and meal breaks to which he was entitled. Despite frequently working shifts of eight hours or more, and due to the high volume and intense nature of his work, Caamal was frequently denied the opportunity to take a thirty-minute meal period

Labor and Workforce Development Agency
TRG CA Employment, Inc.
Tiburon Lodge CA Hotel Manager, LLC
Re: Juan Caamal
June 9, 2020
Page 4 of 5

for every five hours worked. Similarly, Caamal was *never* provided with the opportunity to take a ten-minute rest period for every four hours worked. Caamal was not paid an hour's worth of pay at his regular rate of compensation for every rest and meal period that was not provided in accordance with California law.

Furthermore, during the applicable statutory period, Employers failed and continue to fail to pay sick time at employees' regular rate of pay as required by law. When Caamal and other nonexempt employees took paid sick leave, Employers paid this sick leave at exactly that employee's base rate of pay, without accounting for the value of earned nondiscretionary bonuses and other items of compensation. Similarly, Plaintiff and all of Employers' other nonexempt employees who took paid sick leave and/or received non-discretionary bonuses, commissions, and/or other items of compensation aside from their base hourly rate, were not adequately paid for their sick leave.

Because Caamal and other employees were not properly paid their overtime, sick leave, and rest and meal period premiums, *supra*, they were not timely paid all wages due following the close of each pay period.

Caamal's employment with Employers ended on March 20, 2020. To date, he has not been paid all wages due and owing, including but not limited to the full value of rest and meal break premiums and the full value of unpaid overtime. During the relevant time period, other nonexempt California employees left their employ with Employers but were not adequately paid all wages due and owing upon cessation of employment.

As set forth above, Employers committed the following violations of the Labor Code as against their employees in California, and within the last year:

1. Impermissible taking of tips, in violation of Labor Code section 351;
2. Failure to properly calculate and pay overtime wages, in violation of Labor Code section 510;
3. Failure to provide compliant rest and meal periods or pay premiums, in violation of Labor Code sections 226.7 and 512;
4. Failure to issue accurate itemized wage statements, in violation of Labor Code section 226, subdivision (a);
5. Failure to properly calculate and pay sick leave, in violation of Labor Code sections 233 and 246, *et al.*;
6. Failure to pay all wages due and owing upon separation of employment, in violation of Labor Code sections 201 and 202; and
7. Failure to timely pay all wages due and owing per pay period, in violation of Labor Code section 204.

Labor and Workforce Development Agency
TRG CA Employment, Inc.
Tiburon Lodge CA Hotel Manager, LLC
Re: Juan Caamal
June 9, 2020
Page 5 of 5

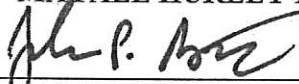
If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Mr. Caamal intends to file a civil complaint against Employers pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code, § 2698 *et seq.*), on his behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By


JOHN P. BRISCOE

Enclosures (2)

Exhibit 1

The Lodge at Tiburon

1651 Tiburon Boulevard Tiburon, CA USA 94920
Phone: 415-435-3133 - Fax: 415-435-2451

BEO #: 8395
Page: 1 of 2
Printed: 2/1/2017

Banquet Event Order

Account: [REDACTED]	Event Date: Wednesday, February 1, 2017
Post As: [REDACTED]	Contact: [REDACTED]
Address: [REDACTED]	Phone: [REDACTED]
	Fax: [REDACTED]
	OnSite Contact: [REDACTED]
Deposit: [REDACTED]	Booked By: [REDACTED]
Payment: [REDACTED]	Service Mgr: [REDACTED]

Please confirm your final guaranteed number of attendees at least three (3) business days prior to event. If the final guarantees are not received within the specified time, your expected attendance will serve as the final guarantee.

Time	Room	Function	Setup	AGR	GTD	SET	Rental
7:30 AM - 8:30 AM	Main Sail Ballroom	Breakfast	Classroom	45	45	45	
8:30 AM - 5:00 PM	Main Sail Ballroom	Meeting	Classroom	45	45	45	\$500.00
12:00 PM - 1:00 PM	Main Sail Ballroom	Lunch	Classroom	45	45	45	
3:00 PM - 3:30 PM	Main Sail Ballroom	MuleSoft	Classroom	45	45	45	

FOOD

Serve: 7:30 AM to 8:30 AM

Continental Breakfast for 45ppl

Sliced Seasonal Fresh Fruit
Fresh Bagels & Cream Cheese
Seasonal Muffins
Orange and Grapefruit Juice
Fresh Brewed Gourmet Coffee, Decaffeinated Coffee & Assorted Teas
\$25.00 Per Person

Serve: 12:00 PM to 1:00 PM

Boxed Lunch for 45ppl

18 BLT - Nitrate-Free Applewood Smoked Bacon, Tomato, Lettuce, Avocado Aioli on Sourdough
18 Tri-Tip - Tomato, Onion, Watercress, Blue Cheese, Horseradish Aioli on Focaccia
Potato Chips
One Piece of Whole Fresh Fruit
Cookie
One Bottle of Water

BEVERAGE

SET UP

Event: 7:30 AM to 8:30 AM Room: Main Sail Ballroom
Set Breakfast in the back of the room
Event: 8:30 AM to 5:00 PM Room: Main Sail Ballroom
Classroom style for 45ppl
Notepads, Pens & Glasses
Infused Water Pitchers
Event: 12:00 PM to 1:00 PM Room: Main Sail Ballroom
Set Lunch in the back of the room
Event: 3:00 PM to 3:30 PM Room: Main Sail Ballroom
Set Break in the back of the room

All charges are subject to a 21% Banquet Service Charge and 8.5% CA tax. If these arrangements meet with your approval, kindly sign and fax to (415) 435-2451 to confirm them.

Any changes requested after the meeting room has been set, in accordance with the Banquet Event Orders, will be subject to a labor fee of \$150.00.

Organization Authorized Signature

Date

Hotel Representative Signature

Date

Exhibit 2

CO. FILE DEPT. CLOCK VCHR. NO. 030
NOC 020013 202054 0000060028 1

Earnings Statement



TRG CA EMPLOYMENT INC
801 BRIDGEWAY
SAUSALITO, CA 94965

Period Beginning: 01/21/2019
Period Ending: 02/03/2019
Pay Date: 02/08/2019

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 3
CA: 3

JUAN CAAMAL

Social Security Number: [REDACTED]

Earnings	rate	hours	this period	year to date
Regular	12.0000	60.72	728.64	1,497.26
Overtime	18.0000	8.20	147.60	213.20
Overtime	19.1200	.50	9.56	
Banqt Chg Tip			1,722.77	3,405.81
Gratuity			50.00	50.00
Paid Lunch	12.0000	3.00	36.00	60.00
Ee Referral				500.00
Retro Pay				3.22
Gross Pay			\$2,694.57	5,729.49

Your federal taxable wages this period are
\$2,694.57

Other Benefits and Information

	this period	total to date
Pto Bal	97.29	
Sick Bal	48.00	

Deductions	Statutory	
Federal Income Tax	-294.77	648.13
Social Security Tax	-167.06	355.23
Medicare Tax	-39.07	83.08
CA State Income Tax	-127.15	281.54
CA SUI/SDI Tax	-26.94	57.29
Other		
Tips	-1,722.77	3,405.81
Adjustment		
Banqt Chg Tips	+1,722.77	
Net Pay	\$2,039.58	
Checking	-2,039.58	
Net Check	\$0.00	

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TRG CA EMPLOYMENT INC
801 BRIDGEWAY
SAUSALITO, CA 94965

Advice number: 0000060028
Pay date: 02/08/2019

Deposited to the account of	account number	transit ABA	amount
JUAN CAAMAL	[REDACTED]	XXXX XXXX	\$2,039.58

THIS IS NOT A CHECK

NON-NEGOTIABLE