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**JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy**

Attorneys for Plaintiff Juan Caamal

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

JUAN CAAMAL,

Plaintiff,

v.

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

Defendants.

Case No.:

Cv 2001374

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)**

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

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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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 Gulbinienė (“Gulbinienė”), 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), Gulbinienė, 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 2.**) 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 1**, 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. The foregoing list of misconduct is a partial list only and is set forth by way of example.

18 **CLASS ACTION ALLEGATIONS**

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

- 23
- 24 a. All current and former California employees of Defendants who worked at
25 any time from four years prior to the filing of this complaint through the entry
26 of final judgment in this action, and who were paid tips or gratuities in the
27 form of mandatory "service charges" (the "351 Class");
- 28 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."

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

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

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

1 41. Furthermore, common questions of fact and law predominate over any questions
2 affecting only individual members of the class. The predominating common or class-wide questions of
3 law and fact include the following:

- 4 a. Whether Defendants failed to properly calculate and pay their nonexempt
5 California employees' overtime pay;
- 6 b. Whether Defendants impermissibly took a portion of the gratuities belonging to
7 their California nonexempt employees;
- 8 c. Whether Defendants provided their nonexempt California employees with
9 compliant rest and meal periods or paid premiums;
- 10 d. Whether Defendants failed to properly calculate and pay their nonexempt
11 California employees with paid sick leave;
- 12 e. Whether Defendants failed to pay all wages due and owing at end of their
13 nonexempt California employees' employment;
- 14 f. Whether the wage statements Defendants furnished to their California employees
15 comply with Labor Code section 226;
- 16 g. Whether the alleged violations of the Labor Code constitute unfair business
17 practices;
- 18 h. Whether the Class is entitled to injunctive relief; and
- 19 i. Whether the Class is entitled to unpaid wages, statutory penalties, and/or
20 restitutionary relief, and the amount of the same.

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

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

27 44. Caamal will fairly and adequately protect the interests of all members of the Class, and
28 has retained attorneys with extensive experience in litigation, including class and representative actions.

1 Plaintiff has no interests that conflict with those of the Class. Caamal are able to fairly and adequately
2 protect the interests of all members of the class because it is in their best interest to prosecute the claims
3 alleged herein in order to obtain the full compensation due themselves and the other class members.

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

14 46. Judicial economy will be served by maintenance of this lawsuit as a class action. To
15 process numerous virtually identical individual cases will significantly increase the expense on the
16 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
17 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action by
18 this Court and doing so will provide multiple benefits to the litigating parties including, but not limited
19 to, efficiency, economy, and uniform adjudication with consistent results.

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

23 **FIRST CAUSE OF ACTION**
24 **FAILURE TO PROPERLY CALCULATE AND PAY OVERTIME**
25 **(Fair Labor Standards Act and Labor Code §§ 510 and 1198)**
26 **By the Regular Rate Class Against Defendants**

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

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

3 50. Pursuant to California Labor Code section 510, any work in excess of eight hours in
4 one workday and any work in excess of 40 hours in any one workweek and the first eight hours
5 worked on the seventh day of work in any one workweek shall be compensated at the rate of no
6 less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12
7 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
8 employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall
9 be compensated at the rate of no less than twice the regular rate of pay of an employee.

10 51. Pursuant to California Labor Code section 1198, the maximum hours of work and
11 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
12 standard conditions of labor for employees and the employment of any employee for longer hours
13 than those fixed by the commission or under conditions of labor prohibited by the order is
14 unlawful.

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

19 53. During the relevant time period, Caamal and the other members of the Regular Rate
20 Class regularly worked overtime.

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

23 55. Wherefore, Caamal and the other members of the Regular Rate Class have been injured
24 as set forth above and request relief as hereafter provided.

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

56. Plaintiff 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.

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

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

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

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

61. Labor Code section 233 provides that "any employer who provides sick leave for 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 during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5."

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

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

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

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

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

66. 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.

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

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- 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 employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

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

1 of not less than thirty minutes, except that if the total work period per day of the employee is no more
2 than twelve hours, the meal period may be waived by mutual consent of both the employer and the
3 employee, and if the first meal period was not waived.

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

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

9 **FOURTH CAUSE OF ACTION**
10 **FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS**
11 **(Lab. Code, § 226.7)**
12 **By the Rest and Meal Break Class Against Defendants**

13 71. Plaintiff hereby realleges and incorporates 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 72. Labor Code section 226.7 requires employers to provide employees meal periods as
17 mandated by Order of the Industrial Welfare Commission. It states:

- 18 a. No employer shall require any employee to work during any meal or rest period
19 mandated by an applicable order of the Industrial Welfare Commission.
20 b. If an employer fails to provide an employee a meal period or rest period in
21 accordance with an applicable order of the Industrial Welfare Commission, the
22 employer shall pay the employee one additional hour of pay at the employee's
23 regular rate of compensation for each work day that the meal or rest period is
24 not provided.

25 73. Section 11 of the applicable IWC Wage Order provides:

26 "(A) Every employer shall authorize and permit all employees to take rest periods, which
27 insofar as practicable shall be in the middle of each work period. Nothing in this provision
28 shall prevent an employer from staggering rest periods to avoid interruption in the flow
of work and to maintain continuous operations, or from scheduling rest periods to
coincide with breaks in the flow of work that occur in the course of the workday. The
authorized rest period time shall be based on the total hours worked daily at the rate of
ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof.

Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area.

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

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

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

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

75. 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

76. 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.

77. Pursuant to California Labor Code section 226(a) "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 the 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 [. . .], (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, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the

1 employee and only the last four digits of his or her social security number or an employee identification
2 number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly
3 rates in effect during the pay period and corresponding number of hours worked at each hourly rate by
4 the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total
5 hours worked for each temporary services assignment.”

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

12 79. An employee is deemed to suffer injury if the employer fails to provide a wage
13 statement or if the employer fails to provide accurate and complete information as required by any one
14 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
15 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
16 during the pay period or any of the other information required to be provided pursuant to Labor Code
17 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
18 and address of the employer and iv) the name of the employee and the last four digits of his or her
19 social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv).
20 “Promptly and easily determine” means a reasonable person would be able to readily ascertain the
21 information without reference to other documents or information. Labor Code § 226(e)(2)(C).

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

24 81. Wherefore, Caamal and the other members of the Wage Statement Class have been
25 injured as set forth above and request relief as hereafter provided.

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28 ///

(Lab. Code, § 201, *et seq.*)

By the Waiting Time Penalty Class Against Defendants

82. 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.

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

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

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

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

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.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

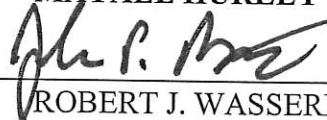
1. That this Court certify the Class;
2. That this Court appoint Caamal as the representative of the Class;
3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
4. That this Court award actual, compensatory, special, and general damages as well as restitutionary relief to Caamal and the members of the Class, including but not limited to the remedies provided for under Labor Code section 233, subdivision (d);

- 1 5. That this Court award injunctive relief, including that available under Labor Code
- 2 section 226(h) and Business and Professions Code Section 17203;
- 3 6. That this Court award penalties and liquidated damages including, but not limited
- 4 to, those available under 29 U.S.C. § 216(b), Labor Code §§ 203, 226(e), and 226.7
- 5 to Plaintiff and the members of the Class;
- 6 7. That this Court award statutory attorneys' fees and costs, including those available
- 7 under 29 U.S.C. § 216(b), Labor Code §§ 218.5, 226(e)(1), 233(e), 1194, and
- 8 2699(g), as well as Code of Civil Procedure § 1021.5;
- 9 8. That this Court award prejudgment and post-judgment interest according to any
- 10 applicable provision of law or as otherwise permitted by law; and
- 11 9. That this Court award such other and further relief as the court deems just and proper.
- 12

13 **DATED:** June 9, 2020

MAYALL HURLEY P.C.

14 By _____



15 ROBERT J. WASSERMAN
16 JOHN P. BRISCOE
17 Attorneys for Plaintiff
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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 Foccacia
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
N0C	020013	202054		0000060028	1

TRG CA EMPLOYMENT INC
801 BRIDGEWAY
SAUSALITO, CA 94965

Earnings Statement



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