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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.

FILED

DEC -1 2022

JAMES H. KIM
COURT EXECUTIVE OFFICER
MARIN CO. SUPERIOR COURT

BY: N. JOHNSON

Case No.: CIV-2001374

THIRD 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 AT CORRECT RATE
4. FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS AT CORRECT RATE
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
10. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

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

4 **PARTIES**

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

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

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

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

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

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

1 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
2 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
3 the remaining Defendants.

4 **JURISDICTION AND VENUE**

5 7. This Court is the proper Court, and this action is properly filed in the Superior Court of
6 California for the County of Marin because Defendants conduct business in this County and Caamal
7 has performed work for Defendants in this County. Caamal hereby demands a jury trial.

8 **GENERAL ALLEGATIONS**

9 8. Caamal was hired by TRG CA Employment, Inc. in or around 2010 to work at the
10 Lodge at Tiburon (in Tiburon, California) as a Banquet Server. On information and belief, on or
11 around January 1, 2020 TRG CA Employment, Inc. ceased to be Caamal's employer, and Tiburon
12 Lodge CA Hotel Manager, LLC became his employer.

13 9. Throughout the relevant time period, Defendants regularly hosted weddings, banquets,
14 and other catered events at the hotel known as the Lodge at Tiburon, where Caamal and other
15 nonexempt employees, including but not limited to Banquet Servers, worked.

16 10. Defendants employed a uniform policy and practice of charging a mandatory 21 percent
17 "Banquet Service Charge" to customers for food, beverage, and rental items on top of the base charges
18 incurred for each such event. (See, e.g., **Exhibit 1.**) A portion, but not all of this charge is
19 subsequently distributed to Banquet Servers and other nonexempt employees of Defendants.

20 11. Caamal was told by General Manager of the Lodge at Tiburon, Sietse Nabben
21 ("Nabben") that Defendants retained 20 percent of the Banquet Service Charges and distributed the
22 remainder among the Banquet Servers, including Caamal.

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

1 13. Caamal and the other Banquet Servers did not receive any cash or charged tips or
2 gratuities from customers.

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

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

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

14 17. While the aforementioned charges to customers were described in the Banquet Event
15 Orders as “Banquet Service Charges,” they were referenced in Caamal’s wage statements as gratuities
16 or tips. (See, e.g., **Exhibit 2.**) If these Banquet Service Charges were not truly service charges, but
17 were mandated tips or gratuities, then Defendants violated Labor Code section 351 because they kept a
18 portion of these payments and did not distribute 100 percent of them to Caamal and the other
19 nonexempt employees. (See *O’Grady v. Merchant Exchange Products, Inc.* (2019) 41 Cal.App.5th
20 771.)

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

26 19. Specifically, and if the Banquet Service Charges were not gratuities or tips, Defendants
27 failed to properly calculate their nonexempt California employees’ regular rate of pay for purposes of
28 overtime pay by failing to include the value of the portion of the Banquet Service Charges distributed

1 to Caamal and other nonexempt employees when calculating the regular rate of pay for purposes of
2 overtime pay. Instead, Defendants paid Caamal and its other nonexempt employees at a lesser rate.

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

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

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

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

22 24. If the service charges, a portion of which were paid to Caamal and other nonexempt
23 employees of Defendants in California, were not gratuities but constituted nondiscretionary bonuses or
24 other items of compensation, and as such was not incorporated into the employees' regular rate of pay
25 for overtime purposes, then, as evidenced in the sample of Caamal's wage statement attached hereto as
26 **Exhibit 1**, the wage statements furnished by Defendants to its nonexempt California employees violate
27 California Labor Code section 226(a) insofar as they fail to accurately show:

- 28 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

1 c. All applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate in violation of section 226(a)(9).

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

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

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

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

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

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

22 31. Additionally, Caamal and other nonexempt employees were not provided with all of
23 the rest and meal breaks to which they were entitled, and were not properly compensated with
24 premium pay at their regular rate of compensation for every rest and meal break not provided.
25 Despite frequently working shifts of eight hours or more, and due to the high volume and intense
26 nature of his work, Caamal was frequently denied the opportunity to take a thirty-minute meal
27 period for every five hours worked. Similarly, Caamal was *never* provided with the opportunity to
28 take a ten-minute rest period for every four hours worked. Caamal was not paid an hour's worth of

1 pay at his regular rate of compensation for every rest and meal period that was not provided in
2 accordance with California law. Furthermore, and to the extent that Caamal and other employees
3 were paid premiums for missed rest or meal breaks, Defendants did not pay those premiums at the
4 employees' "regular rate of compensation", accounting for the value of earned nondiscretionary
5 bonuses and other items of compensation, *supra*. (See *Ferra v. Loews Hollywood Hotel, LLC*
6 (2021) 11 Cal.5th 858.) Rather, Defendants paid rest and meal premiums only at the employee's
7 base hourly rate. Accordingly, Defendants violated Labor Code sections 226.7 and 512.

8 32. Furthermore, during the applicable statutory period, Defendants failed and continue to
9 fail to pay sick time at employees' regular rate of pay as required by law. When Caamal and other
10 nonexempt employees took paid sick leave, Defendants paid this sick leave at exactly that employee's
11 base rate of pay, without accounting for the value of earned nondiscretionary bonuses and other items
12 of compensation.

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

16 34. From at least four years prior to the filing of this action, Defendants has adopted and
17 employed unfair business practices. These unfair business practices include, but are not limited to,
18 failing to properly calculate and pay overtime wages due, failing to properly calculate and pay accrued
19 sick leave, failure to provide compliant rest and meal periods or pay premiums at the correct regular
20 rate of compensation, and unlawful retention of employees' tips or gratuities.

21 35. Also, and during the statutory period, Tiburon Lodge failed to reimburse Caamal for all
22 work-related expenditures, including but not limited to the costs incurred in using his personal cell
23 phone for work-related purposes.

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

1 37. On June 9, 2020, Caamal provided written notice to the Labor and Workforce
2 Development Agency (“LWDA”), TRG CA Employment, Inc., and Tiburon Lodge CA Hotel
3 Manager, LLC regarding the specific provisions of the Labor Code alleged to have been violated,
4 including the facts and theories to support those alleged violations. (**Exhibit 3.**)

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

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

11 **CLASS ACTION ALLEGATIONS**

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

- 16
- 17 a. All current and former California employees of Defendants who worked at
18 any time from four years prior to the initial filing of this action through the
19 entry of final judgment in this action, and who were paid tips or gratuities in
20 the form of mandatory “service charges” (the “351 Class”);
 - 21 b. All current and former nonexempt California employees of Defendants who
22 worked some amount of overtime at any time from four years prior to the
23 initial filing of this action through the entry of final judgment in this action,
24 and who were also paid nondiscretionary bonuses or other items of
25 compensation in addition to their base hourly pay (the “Regular Rate Class”);
 - 26 c. All current and former nonexempt California employees of Defendants who
27 worked at least one workday of four hours or more at any time from four
28 years prior to the initial filing of this action 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 initial filing of this action through the entry of final judgment in
 this action (the “Sick Pay Class”);
 - e. All current and former California employees of Tiburon Lodge who were not
 reimbursed for all work-related expenditures, at any time from August 20,
 2019 through the entry of final judgment in this action (the “Tiburon Lodge
 2802 Class”).

- 1 f. All members of the Regular Rate Class, the Rest and Meal Break Class, and
2 the Sick Pay Class who received one or more wage statements at any time
3 from one year prior to the initial filing of this action through the entry of final
4 judgment in this action (the “Wage Statement Class”); and
5 g. All members of the Regular Rate and Rest and Meal Break Classes whose
6 employment with Defendants ended at any point from three years prior to the
7 initial filing of this action through the entry of final judgment in this action
8 (the “Waiting Time Penalty Class”).

9 The 351 Class, the Regular Rate Class, the Rest and Meal Break Class, the Sick Pay Class, the Tiburon
10 Lodge 2802 Class, the Wage Statement Class, and the Waiting Time Penalty Class are collectively
11 referred to as “the Class.”

12 41. The Class is so numerous that joinder of all members is impracticable, and the
13 disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is
14 informed and believes, and based thereon alleges, that Defendants employ more than 100 employees
15 who satisfy the class definition. Although the exact number and identity of class members is not
16 presently known, they can be identified in Defendants’ records through coordinated discovery pursuant
17 to this class action.

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

21 43. There are numerous common questions of law and fact arising out of Defendants’
22 conduct. This class action focuses on (1) Defendants’: (a) systematic failure to properly pay employees
23 for overtime hours; (b) systematic failure to properly pay employees with paid sick leave, (c)
24 systematic failure to provide their employees with rest and meal breaks or properly pay premiums at the
25 appropriate regular rate of compensation, (d) systematic failure to pay all wages due and owing at the
26 end of employment; (e) systematic failure to comply with Labor Code section 226(a); and (f)
27 systematic and improper taking of tips; as well as (2) Tiburon Lodge’s systematic failure to reimburse
28 its employees for all work-related expenditures.

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

- a. Whether Defendants failed to properly calculate and pay their nonexempt California employees' overtime pay;
- b. Whether Defendants impermissibly took a portion of the gratuities belonging to their California nonexempt employees;
- c. Whether Defendants provided their nonexempt California employees with compliant rest and meal periods, or paid premiums at the appropriate regular rate of compensation, accounting for the value of any earned nondiscretionary bonuses and/or other items of compensation;
- d. Whether Defendants failed to properly calculate and pay their nonexempt California employees with paid sick leave;
- e. Whether Tiburon Lodge failed to adequately reimburse its California employees for all work-related expenditures;
- f. Whether Defendants failed to pay all wages due and owing at end of their nonexempt California employees' employment;
- g. Whether the wage statements Defendants furnished to their California employees comply with Labor Code section 226;
- h. Whether the alleged violations of the Labor Code constitute unfair business practices;
- i. Whether the Class is entitled to injunctive relief; and
- j. Whether the Class is entitled to unpaid wages, statutory penalties, and/or restitutionary relief, and the amount of the same.

45. 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.

46. 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.

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

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

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

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

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

51. 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.

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

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

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

55. 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.

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

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

1 58. Wherefore, Caamal and the other members of the Regular Rate Class have been injured
2 as set forth above and request relief as hereafter provided.

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

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

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

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

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

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

21 64. Labor Code section 233 provides that "any employer who provides sick leave for
22 employees shall permit an employee to use in any calendar year the employee's accrued and
23 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
24 during six months at the employee's then current rate of entitlement, for the reasons specified in
25 subdivision (a) of Section 246.5."

26 65. During the relevant time period, Defendants intentionally and willfully failed to pay
27 Plaintiff and the other members of the Sick Pay Class their sick pay at the rate of pay required by
28 law. Accordingly, Plaintiff did not receive the full amount of paid sick time that they were entitled

1 to receive by law, and were therefore denied the right to use sick leave within the meaning of
2 Labor Code sections 233(a) and (c).

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

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

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

10 **THIRD CAUSE OF ACTION**
11 **FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS AT CORRECT RATE**
12 **(Lab. Code, §§ 226.7, 512)**
13 **By the Rest and Meal Break Class Against Defendants**

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

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

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

26 71. The "regular rate of compensation", for purposes of rest and meal break premiums,
27 must account for not only hourly wages but also other nondiscretionary payments for work performed
28 by the employee. (*Ferra v. Loews Hollywood Hotel, LLC* (July 15, 2021, S259172), __Cal.5th__.)

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

10 73. During the relevant time period, Plaintiff and other members of the Rest and Meal
11 Break Class were not provided with meal breaks as required by law and did not receive an additional
12 hour of premium pay at their regular rate of compensation for each missed meal period.

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

15 **FOURTH CAUSE OF ACTION**
16 **FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS AT CORRECT RATE**
17 **(Lab. Code, § 226.7)**
 By the Rest and Meal Break Class Against Defendants

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

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

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

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

77. Section 11 of the applicable IWC Wage Order provides:

“(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision 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.”

78. The “regular rate of compensation”, for purposes of rest and meal break premiums, must account for not only hourly wages but also other nondiscretionary payments for work performed by the employee. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.)

79. 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 at their regular rate of compensation for each missed rest break.

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

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

81. 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.

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

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

84. An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee

1 during the pay period or any of the other information required to be provided pursuant to Labor Code
2 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
3 and address of the employer and iv) the name of the employee and the last four digits of his or her
4 social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv).
5 “Promptly and easily determine” means a reasonable person would be able to readily ascertain the
6 information without reference to other documents or information. Labor Code § 226(e)(2)(C).

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

9 86. Wherefore, Caamal and the other members of the Wage Statement Class have been
10 injured as set forth above and request relief as hereafter provided.

11 **SIXTH CAUSE OF ACTION**
12 **FAILURE TO PAY ALL WAGES DUE AND OWING UPON CESSATION OF**
13 **EMPLOYMENT**
14 **(Lab. Code, § 201, *et seq.*)**
15 **By the Waiting Time Penalty Class Against Defendants**

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

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

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

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

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

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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 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.

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

3 **TENTH CAUSE OF ACTION**
4 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
5 **(Lab. Code, § 2802.)**

6 **By the Tiburon Lodge 2802 Class Against Tiburon Lodge**

7 121. Plaintiff hereby realleges and incorporates by reference each and every paragraph
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.

10 122. Labor Code section 202, subdivision (a) provides that “[a]n employer shall
11 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
12 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
13 of the employer, even though unlawful, unless the employee, at the time of obeying the directions,
14 believed them to be unlawful.

15 123. Nonetheless, as set forth above, Tiburon Lodge failed to reimburse Plaintiff and
16 other members of the Tiburon Lodge 2802 Class for all incurred business expenses.

17 124. Labor Code section 2802 further provides that, in an action for reimbursement of
18 business expenses, a prevailing plaintiff is entitled to an award of attorney’s fees.

19 125. Wherefore, Plaintiff and the other members of the Tiburon Lodge 2802 Class have
20 been injured as set forth above and request relief as hereafter provided.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

23 **As to the First Through Eighth Causes of Action:**

- 24 1. That this Court certify the Class;
- 25 2. That this Court appoint Caamal as the representative of the Class;
- 26 3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
- 27 4. That this Court award actual, compensatory, special, and general damages as well as
28 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, 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);
4. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code sections 3287(a) and 3289(b); and
5. For such other and further relief as the court deems just and proper.

As to the Tenth Cause of Action (and with respect to Tiburon Lodge only):

1. For restitution of unpaid business expenses;
2. For attorney's fees and costs, including but not limited to those available under Labor Code section 2802;
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code sections 3287(a) and 3289(b), as well as Labor Code section 2802; and

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

2 ///

3
4 **DATED:** November 8, 2022

MAYALL HURLEY P.C.

5 By _____



ROBERT J. WASSERMAN

JOHN P. BRISCOE

Attorneys for Plaintiff

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 45 ppl

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 45 ppl

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 45 ppl
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

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
	Social Security Tax	-167.06
	Medicare Tax	-39.07
	CA State Income Tax	-127.15
	CA SUI/SDI Tax	-26.94
	Other	
	Tips	-1,722.77
	Adjustment	
	Banqt Chg Tips	+1,722.77
	Net Pay	\$2,039.58
	Checking	-2,039.58
	Net Check	\$0.00

© 2002 ADP, LLC

TRG CA EMPLOYMENT INC
801 BRIDGEWAY
SAUSALITO, CA 94965

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

Deposited to the account of
JUAN CAAMAL

account number	transit ABA	amount
[REDACTED]	XXXX XXXX	\$2,039.58

THIS IS NOT A CHECK

NON-NEGOTIABLE

EXHIBIT 3

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
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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

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TRG CA Employment, Inc.
Tiburon Lodge CA Hotel Manager, LLC
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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

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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

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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.

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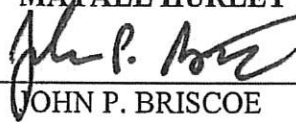
If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

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:	Booked By: [REDACTED]
Payment:	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

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 2453 Grand Canal Boulevard, Stockton, California 95207 that is located in the county where the mailing and/or delivery below took place.

On November 8, 2022, I served the following document:

THIRD AMENDED COMPLAINT

addressed to:

Hillary J. Baca
Andrea Chavez
Alex Pinto
Nixon Peabody
One Embarcadero Center, 32nd Floor
San Francisco, CA 94111
hbaca@nixonpeabody.com
andrea.chavez@nixonpeabody.com
apinto@nixonpeabody.com
*Attorneys for Defendant Tiburon Lodge CA Hotel
Manager, LLC*

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Jamie Olvera: jolvera@grsm.com
*Attorneys for Defendant TRG CA
Employment, Inc.*

☐ **BUSINESS PRACTICE TO ENTRUST DEPOSIT TO OTHERS:** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On the date specified below, at my place of business at Stockton, California a copy of the document described above was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid addressed to the individuals and/or entities mentioned above; and that envelope was placed for collection and mailing on that date following ordinary business practice.

☒ **BY EMAIL:** In accordance with Code of Civil Procedure, Section 1010.6, on the date specified below, I caused a copy of the document(s) described above to be sent to the person(s) at the e-mail address(es) listed above. My business e-mail address is lriley@mayallaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 8, 2022, at Lodi, California.


LINDSAY RILEY SHIELDS