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20CV371039  
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**DIVERSITY LAW GROUP, P.C.**  
Larry W. Lee (State Bar No. 228175)  
[lwlee@diversitylaw.com](mailto:lwlee@diversitylaw.com)  
Simon L. Yang (State Bar No. 260286)  
[sly@diversitylaw.com](mailto:sly@diversitylaw.com)  
515 South Figueroa Street, Suite 1250  
Los Angeles, California 90071  
Telephone: (213) 488-6555  
Facsimile (213) 488-6554

**POLARIS LAW GROUP LLP**  
William L. Marder (State Bar No. 170131)  
501 San Benito Street, Suite 200  
Hollister, California 95023  
Telephone: (831) 531-4214  
Facsimile (831) 634-0333

Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

EDWARD SCOTT GAU, as an individual and on  
behalf of all others similarly situated, and as a  
private attorney general, and BRANDY FOSTER-  
GAU, as a private attorney general,

Plaintiffs,

vs.

HILLSTONE RESTAURANT GROUP, INC., a  
Delaware corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No.: **20CV371039**

**CLASS AND REPRESENTATIVE ACTION  
COMPLAINT FOR:**

- (1) VIOLATION OF LAB. CODE § 226.7;**
- (2) VIOLATION OF LAB. CODE §§ 226.7,  
512;**
- (3) VIOLATION OF LAB. CODE § 226(a);**
- (4) VIOLATION OF BUS. & PROF. CODE  
§§ 17200 *ET SEQ.*; AND**
- (5) VIOLATION OF LAB. CODE §§ 2698 *ET  
SEQ.***

**DEMAND OVER \$25,000.00**

Edward Scott Gau, as an individual and on behalf of other similarly situated current and former employees (“Plaintiff”), and together with Brandy Foster-Gau as proxies for the State of California (collectively with Plaintiff, “Plaintiffs”), submit this Class and Representative Action Complaint against Hillstone Restaurant Group, Inc. and Does 1 through 50 (collectively, “Defendants”).

## INTRODUCTION

1. This class and representative action challenges systemic illegal employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants. The Complaint seeks penalties, damages, and other relief for Defendants’ violations of Labor Code sections 201-204, 226(a), 226.7, and 512.<sup>1</sup>

2. Plaintiffs are informed and believe that Defendants have jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of employees by failing to authorize and permit duty-free rest periods, provide duty-free meal periods, pay all premium wages for such missed rest periods and meal periods, and provide accurate itemized wage statements.

3. Defendants routinely failed to authorize and permit Plaintiffs and other non-exempt restaurant employees to take duty-free 10-minute rest periods for every four hours worked, or major fraction thereof. Specifically, Plaintiffs and other non-exempt restaurant employees were required to remain on duty and to respond to any work-related issues during rest periods. Defendants also routinely failed to pay Plaintiffs and other non-exempt restaurant employees the requisite rest period premium pay of an additional hour of wages. Defendants thus violate Section 226.7 and the applicable IWC Wage Order.

4. On shifts exceeding five hours of work, Defendants also routinely failed to provide Plaintiffs and other non-exempt restaurant employees with a duty-free 30-minute meal period within the first five hours of work. As for rest periods, Plaintiffs and other non-exempt restaurant employees were required to remain on work premises, on duty, and available to respond to work-related issues during meal periods. Although Plaintiffs and other non-exempt restaurant employees were required to take on-duty meal periods, Defendants also routinely failed to pay Plaintiffs and other non-exempt restaurant employees the requisite meal period premium pay of an additional hour of wages. Defendants thus violate Sections 226.7 and 512 and the applicable IWC Wage Order.

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<sup>1</sup> Except as otherwise noted, all “Section” references are to the Labor Code.

5. As a result of the above practices, Defendants also routinely failed to provide accurate itemized wage statements to Plaintiffs and other non-exempt restaurant employees. Specifically, Defendants failed to furnish Plaintiffs and other non-exempt restaurant employees with wage statements that accurately showed the hours worked, premium pay earned for missed rest periods and meal periods, gross wages earned, and net wages earned. Defendants thus violate Sections 226(a).

6. Plaintiffs are informed and believe that Defendants have engaged in, among other things, a system of willful violations of the Labor Code by creating and maintaining policies, practices, and customs that knowingly deny its employees the above stated rights and benefits.

7. The policies, practices, and customs of Defendants resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the Labor Code.

## JURISDICTION AND VENUE

8. The Complaint seeks more than \$25,000.00 in relief. The Court has jurisdiction of Defendants' violations of Sections 201-204, 226(a), 226.7, and 512 and the Unfair Competition Law, codified at Business and Professions Code sections 17200 *et seq.* (the "UCL").

9. Venue is proper. Plaintiffs worked for Defendants at the Los Altos Grill located at 233 3rd St., Los Altos, California 94022, which is within the County of Santa Clara.

## PARTIES

10. Plaintiff worked for Defendants for more than 15 years. In or about June of 2020, Defendants terminated his employment as a lead server. For nearly 10 years, Brandy Foster-Gau, Plaintiff's wife, also worked for Defendants as a trainer, headwaiter, and bartender. In or about June of 2020, Defendants also terminated her employment.

11. Throughout their employments, Defendants did not authorize and permit Plaintiffs to take duty-free 10-minute rest periods for every four hours worked, or major fraction thereof, and did not provide duty-free 30-minute meal periods within the first five hours of work. Instead, Plaintiffs were required to remain on duty and to respond to any work-related issues during their rest periods, and on shifts exceeding five hours of work, they were required to remain on work premises, on duty, and available to respond to work-related issues during their meal periods. Although Plaintiffs were required to take on-duty rest periods

1 and meal periods, they often were not paid an additional hour of wages for rest period and meal period  
2 premium pay and also not provided itemized wage statements that accurately showed the hours worked,  
3 premium pay earned for missed rest periods and meal periods, gross wages earned, and net wages earned.  
4 Plaintiffs thus are victims of the policies, practices, and customs of Defendants complained of in this  
5 action in ways that have deprived them of the rights guaranteed by the Labor Code and the UCL.

6 12. Plaintiffs are informed and believe that Hillstone Restaurant Group, Inc. was and is a  
7 Delaware corporation with headquarters at 147 South Beverly Drive, Beverly Hills, California 90212.  
8 Plaintiffs are informed and believe that at all times herein mentioned Defendant and Does 1 through 50,  
9 are and were corporations, business entities, individuals, or partnerships that are and were licensed to  
10 do business and actually doing business in the State of California. Based upon all the facts and  
11 circumstances incident to Defendants' business, Defendants are subject to Sections 201-204, 226(a),  
12 226.7, and 512 and the UCL.

13 13. Plaintiffs do not know the true names or capacities of the defendants sued herein as  
14 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are  
15 sued under such fictitious names. Plaintiffs pray for leave to amend this Complaint when the true  
16 names and capacities are known. Plaintiffs are informed and believe that each of said fictitious  
17 defendants was responsible in some way for the matters alleged herein and proximately caused the  
18 illegal employment practices, wrongs, and injuries complained of herein.

19 14. At all times herein mentioned, each of said Defendants participated in the doing of the  
20 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of  
21 the other Defendants, as well as the agents of all Defendants, and were acting within the course and  
22 scope of said agency and employment.

23 15. Plaintiffs are informed and believe that at all times material hereto, each of said  
24 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,  
25 each of the other Defendants and was acting within the course and scope of such agency, employment,  
26 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by  
27 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or  
28 omissions of the acting Defendants.

16. Plaintiffs are informed and believe that at all times material hereto each of the Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

## CLASS ACTION ALLEGATIONS

17. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of the following classes: (i) all current and former non-exempt restaurant employees of Defendants in the State of California who worked at least 3.5 hours in any work shift since April 6, 2016 (the “Rest Period Class”), and (ii) all current and former non-exempt restaurant employees of Defendants in the State of California who worked more than 5.0 hours in any work shift since April 6, 2016 (the “Meal Period Class”). The Rest Period Class and the Meal Period Class are collectively referred to as the “Class.”

18. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants' records, including payroll records. Plaintiff is informed and believe that Defendants violated Section 201-204, 226(a), 226.7, and 512 by failing to authorize and permit rest periods, failing to provide meal periods, failing to pay all premium pay for missed rest periods and meal periods, failing to timely pay all due wages both during employment and upon the separation of employment, and failing to provide accurate itemized wage statements.

19. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready, willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-and-hour class actions currently pending in California state and federal courts.

20. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is informed and believe that Defendants uniformly administer a corporate policy and practice of routinely failing to (i) authorize and permit rest periods to employees who worked at least 3.5 hours, (ii) provide

1 meal periods who worked more than 5.0 hours, (iii) pay all premium pay for missed rest periods and  
2 meal periods, (iv) timely pay all due wages both during employment and upon the separation of  
3 employment, and (v) provide accurate itemized wage statements.

4       21.     **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class  
5 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the  
6 Class suffered. As with other members of the Class, when Plaintiff worked at least 3.5 hours, Plaintiff  
7 was not authorized and permitted to take duty-free 10-minute rest periods, and when he worked more than  
8 5.0 hours, he was not provided duty-free 30-minute meal periods. Instead, Plaintiff was required to remain  
9 on duty and to respond to any work-related issues during his rest periods and meal periods. Plaintiff often  
10 was not paid an additional hour of wages for rest period and meal period premium pay and also not  
11 provided itemized wage statements that accurately showed the hours worked, premium pay earned for  
12 missed rest periods and meal periods, gross wages earned, and net wages earned. Plaintiff thus is a member  
13 of the Class and has suffered the alleged violations of the Labor Code.

14       22.     The Labor Code is broadly remedial in nature. Its laws serve an important public interest  
15 in establishing minimum working conditions and requirements in California. These labor standards  
16 protect employees from onerous terms and conditions of employment or exploitation by employers who  
17 have superior economic and bargaining power.

18       23.     The nature of this action and the format of laws available to Plaintiff and members of the  
19 Class make the class action format a particularly efficient and appropriate procedure to redress the  
20 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate  
21 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit  
22 and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and  
23 legal resources. Requiring each member of the Class to pursue an individual remedy would also  
24 discourage the assertion of lawful claims by employees who would be disinclined to file an action  
25 against their former or current employer for real and justifiable fear of retaliation and permanent  
26 damage to their careers at their current or subsequent employment.

27       24.     The prosecution of separate actions by individual members of the Class, even if  
28 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to

individual members of the Class that would establish potentially incompatible standards of conduct for Defendants, or (b) adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests of other members of the Class not parties to the adjudications. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering the concomitant costs and expenses.

25. Defendants' pattern, practice, and uniform administration of corporate policy in violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the rights of Plaintiff and the Class under Sections 201-204, 226(a), 226.7, and 512 and applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover unpaid wages and unpaid premium pay, including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit.

26. This action is brought for the benefit of the Class, which is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendant.

### **FIRST CAUSE OF ACTION**

#### **Violation of Labor Code § 226.7**

##### **(By Plaintiff and the Class Against All Defendants)**

27. The preceding paragraphs are re-alleged and incorporated by this reference.

28. Because Plaintiff and the Class were non-exempt employees, Defendants were required to comply with Section 226.7 and the applicable IWC Wage Order. The applicable laws generally require an employer to provide a duty-free, 10-minute rest period for every four hours worked, or major fraction thereof. Section 226.7(b) provides that an employer shall not require an employee to work during a rest period. Section 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

29. As a matter of policy and practice, Defendants fail to permit off-duty rest periods to Plaintiff and the Class. As a matter of policy and practice, Defendants also fail to pay an additional

hour of pay at the regular rate of compensation for each rest period missed by Plaintiff and the Class. Specifically, Plaintiff and the Class were required to remain on duty and to respond to any work-related issues during rest periods. Plaintiff and the Class, however, were not paid the requisite rest period premium pay. Defendants thus violate Section 226.7 and the applicable IWC Wage Order. As such, Plaintiff and the Class are owed rest period premium pay.

30. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Class to recover unpaid rest period premium pay, including interest thereon, attorneys' fees, and costs of suit.

31. Moreover, Section 204 provides that wages are generally due and payable no later than seven days after the end of a pay period or at least twice during each calendar month, on days designated in advance as the regular paydays. Section 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Section 203 provides that if an employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.

32. Based on Defendants' failure to pay rest period premium pay to Plaintiff and the Class and as a matter of policy and practice, Defendants failed to timely pay Plaintiff and the Class all due wages or timely pay all due wages upon separation of employment. On information and belief, Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations. Defendants thus violated Sections 201-204 by not timely paying all due wages and not timely paying all due wages upon the separation of employment.

33. Such a pattern, practice, and uniform administration of corporate policy is unlawful under Sections 201-204 and the applicable IWC Wage Order, and entitles Plaintiff and the Class to recover applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.

1 **SECOND CAUSE OF ACTION**

2 **Violation of Labor Code §§ 226.7, 512**

3 **(By Plaintiff and the Meal Period Class Against All Defendants)**

4 34. The preceding paragraphs are re-alleged and incorporated by this reference.

5 35. Because Plaintiff and the Class were non-exempt employees, Defendants were required  
6 to comply with Sections 226.7 and 512 and the applicable IWC Wage Order. Section 512(a) generally  
7 prohibits employment of an individual for a work period of more than five hours per day without  
8 providing the employee with an uninterrupted, duty-free meal period of at least 30 minutes. Section  
9 226.7(b) provides that an employer shall not require an employee to work during a rest period. Section  
10 226.7(c) states that “the employer shall pay the employee one additional hour of pay at the employee’s  
11 regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

12 36. As a matter of policy and practice on shifts exceeding five hours of work, Defendants fail  
13 to provide Plaintiffs and the Meal Period Class with a duty-free 30-minute meal period within the first five  
14 hours of work. As a matter of policy and practice, Defendants also do not pay an additional hour of pay  
15 at the regular rate of compensation for each meal period missed by Plaintiff and the Meal Period Class.  
16 As for rest periods, Plaintiff and the Meal Period Class were required to remain on work premises, on duty,  
17 and available to respond to work-related issues during meal periods. Plaintiff and the Meal Period Class,  
18 however, were not paid all requisite meal period premium pay. Defendants thus violate Section 226.7 and  
19 the applicable IWC Wage Order. As such, Plaintiff and the Meal Period Class are owed meal period  
20 premium pay for meal periods Defendants failed to provide and are owed unpaid wages for unpaid  
21 meal periods during which Plaintiff and the Meal Period Class remained on duty.

22 37. Such a pattern, practice, and uniform administration of corporate policy is unlawful and  
23 entitles Plaintiff and the Meal Period Class to recover unpaid meal period premium pay and unpaid  
24 wages for on-duty hours worked, including interest thereon, attorneys’ fees, and costs of suit.

25 38. Based on Defendants’ failures to pay meal period premium pay and to pay wages for all  
26 on-duty hours worked, and as a matter of policy and practice, Defendants failed to timely pay Plaintiff  
27 and the Meal Period Class all due wages or timely pay all due wages upon separation of employment.  
28 On information and belief, Defendants were advised by skilled lawyers and knew, or should have

1 known, of the mandates of the Labor Code as it relates to Plaintiff's allegations. Defendants thus  
2 violated Sections 201-204 by not timely paying all due wages and not timely paying all due wages  
3 upon the separation of employment.

4 39. Such a pattern, practice, and uniform administration of corporate policy is unlawful  
5 under Sections 201-204 and the applicable IWC Wage Order, and entitles Plaintiff and the Meal Period  
6 Class to recover applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.

### 7 **THIRD CAUSE OF ACTION**

#### 8 **Violation of Labor Code § 226(a)**

##### 9 **(By Plaintiff and the Class Against All Defendants)**

10 40. The preceding paragraphs are re-alleged and incorporated by this reference.

11 41. Section 226(a) requires employers to provide itemized wage statements to employees  
12 that show accurate information, including without limitation, gross wages earned, net wages earned,  
13 and all applicable hourly rates in effect during the pay period and the corresponding number of hours  
14 worked at each hourly rate. Defendants fail to provide accurate itemized wage statements to Plaintiff  
15 and the Class in violation of Section 226(a).

16 42. As a result of the practices alleged herein and as a matter of policy and practice,  
17 Defendants fail to provide accurate itemized wage statements to Plaintiff and the Class. Specifically,  
18 Defendants failed to furnish Plaintiff and the Class with wage statements that accurately showed the hours  
19 worked, premium pay earned for missed rest periods and meal periods, gross wages earned, and net wages  
20 earned. Defendants thus violate Sections 226(a).

21 43. Such a pattern, practice, and uniform administration of corporate policy is unlawful  
22 under Section 226 and entitles Plaintiff and the Class to recover applicable penalties, attorneys' fees,  
23 and costs of suit.

### 24 **FOURTH CAUSE OF ACTION**

#### 25 **Violation of Business and Professions Code §§ 17200 *Et Seq.***

##### 26 **(By Plaintiff and the Class Against All Defendants)**

27 44. The preceding paragraphs are re-alleged and incorporated by this reference.  
28

45. Plaintiffs are informed and believe that at Defendants have engaged and continue to engage in unfair and unlawful business practices in California by utilizing the employment policies and practices alleged herein in violation of Sections 226.7 and 512 and the applicable IWC Wage Order.

46. As alleged herein, Defendants uniformly administer a corporate policy and practice of failing to authorize and permit off-duty rest periods, failing to pay premium pay for missed rest periods, failing to provide off-duty meal periods, and failing to pay all premium pay for missed meal periods and all wages for on-duty hours worked to Plaintiff and the Class. Defendants' utilization of such unfair and unlawful business practices constitutes unfair and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed by the UCL. Defendants have deprived Plaintiff and the Class the minimum working condition standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

47. Such a pattern, practice, and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class to full restitution of all monies withheld, acquired, or converted by Defendants by means of the unfair practices complained of herein, including interest thereon, attorneys' fees, and costs of suit.

## FIFTH CAUSE OF ACTION

### **Violation of Labor Code §§ 2698 *Et Seq.***

**(By Plaintiffs and Aggrieved Employees Against All Defendants)**

48. The preceding paragraphs are re-alleged and incorporated by this reference.

49. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.* (“PAGA”), Plaintiffs bring this cause of action as proxies for the State of California. In this capacity, Plaintiffs seek penalties for Defendants’ violations of Sections 201-204, 226(a), 226.7, and 512 committed since April 6, 2019, against all aggrieved employees. Under Section 2699(c), Plaintiffs are “aggrieved employees,” as one or more of the alleged violations was committed against Plaintiffs as employees of Defendants.

50. As stated herein, Defendants violate Sections 201-204, 226(a), 226.7, and 512 by routinely failing to (i) authorize and permit off-duty rest periods and pay premium pay for missed rest

periods, (ii) provide off-duty meal periods and pay all premium pay for missed meal periods and all wages for on-duty hours worked, (iii) timely pay all due wages or timely pay all due wages upon separation of employment; and (iv) provide accurate itemized wage statements.

51. On or about August 19, 2020, Plaintiffs sent written notices to the Labor & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’ violations of Sections 201-204, 226(a), 226.7, and 512. Plaintiffs simultaneously sent written notices to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notices.

52. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable civil penalties for Defendants’ violations of Sections 201-204, 226(a), 226.7, and 512 against all aggrieved employees for the time period described above.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs prays for judgment for themselves and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for unpaid rest period premium pay, including interest thereon, and applicable penalties pursuant to Sections 201-204, 210, 218.5, and 226.7, and for costs and attorneys’ fees;
5. Upon the Second Cause of Action for unpaid meal period premium pay and unpaid wages, including interest thereon, and applicable penalties pursuant to Sections 201-204, 210, 218.5, 226.7, and 512, and for costs and attorneys’ fees;
6. Upon the Third Cause of Action for penalties pursuant to Section 226, and for costs and attorneys’ fees;
7. Upon the Fourth Cause of Action for restitution of all funds unlawfully acquired by Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon, and for costs and attorneys’ fees;

1           8.       Upon the Fifth Cause of Action for penalties according to proof pursuant to Sections  
2 210, 226.3, 558, and 2699, and for costs and attorneys' fees;

3           9.       Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5,  
4 226, 1194, 1197.1, and 2699, and Code of Civil Procedure section 1021.5; and

5           10.      For such other and further relief that the Court may deem just and proper.

6 DATED: September 30, 2020

DIVERSITY LAW GROUP, P.C.

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By: \_\_\_\_\_

8           Larry W. Lee  
9           Simon L. Yang  
10          Attorneys for Plaintiffs