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County of Los Angeles

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on behalf of himself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

ERNEST R. BENNICK, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

PUMP, LLC, a California limited liability
company; LISA VANDERPUMP, an
individual; KEN TODD, an individual; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: **20STCV29819**

CLASS ACTION COMPLAINT FOR:

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS
OR COMPENSATION IN LIEU THEREOF;
4. FAILURE TO PROVIDE REST PERIODS
OR COMPENSATION IN LIEU THEREOF;
5. FAILURE TO PAY DUE WAGES AT
TERMINATION;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO PAY TIMELY WAGES;
8. VIOLATION OF LABOR CODE § 226(c);
9. VIOLATION OF LABOR CODE § 1198.5;
10. VIOLATION OF LABOR CODE § 2802;
11. CONVERSION; and
12. UNFAIR COMPETITION.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

COMES NOW plaintiff ERNEST R. BENNICK (“Plaintiff”), on behalf of himself and all
others similarly situated, and alleges as follows:

1 **GENERAL ALLEGATIONS**

2 **INTRODUCTION**

3 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, on behalf
4 of Plaintiff and all other current and former similarly situated employees employed by or formerly
5 employed by PUMP, LLC, a California limited liability company, and any of its respective
6 subsidiaries or affiliated companies within the State of California ("PUMP"), LISA
7 VANDERPUMP, an individual ("VANDERPUMP") and KEN TODD, an individual ("TODD"
8 and collectively with PUMP, VANDERPUMP, and DOES 1 through 100, as further defined
9 below, "Defendants").

10 2. For at least four (4) years prior to the filing of this action and continuing to the
11 present, Defendants have had a policy or practice of failing to pay overtime wages to Plaintiff and
12 other non-exempt employees in the State of California in violation of California state wage and
13 hour laws as a result of, without limitation, Plaintiff and similarly situated employees routinely
14 working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days
15 in a work week without being properly compensated for hours worked in excess of (8) hours per
16 day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh
17 consecutive work day in a work week by, among other things, failing to accurately track and/or
18 pay for all hours actually worked; engaging, suffering, or permitting employees to work off the
19 clock (including by requiring employees to be on-call and failing to pay for all hours worked
20 during training); failing to pay overtime hours at the proper overtime rate of pay, including,
21 without limitation, by paying overtime hours at the improper rate(s) of pay and/or recharacterizing
22 overtime hours worked to appear that they worked at a different time or pay period; by failing to
23 pay for reporting time pay; and/or by manipulating or editing time records to show lesser hours
24 than actually worked during the pay period, to the detriment of Plaintiff and other similarly
25 situated employees.

26 3. For at least four (4) years prior to the filing of this Action and continuing to the
27 present, Defendants have had a policy or practice of failing to pay minimum wages to Plaintiff and
28 other non-exempt employees in the State of California in violation of California state wage and

1 hour laws as a result of, among other things, Defendants failing to accurately track and/or pay for
2 all hours actually worked; engaging, suffering, or permitting employees to work off the clock
3 (including by requiring employees to be on-call and failing to pay for all hours worked during
4 training); failing to pay for reporting time pay; and/or by manipulating or editing time records to
5 show lesser hours than actually worked during the pay period, to the detriment of Plaintiff and
6 other similarly situated employees.

7 4. For at least four (4) years prior to the filing of this Action and continuing to the
8 present, Defendants have had a policy or practice of failing to provide Plaintiff and other similarly
9 situated employees or former employees within the State of California a thirty (30) minute
10 uninterrupted meal period for days on which the employees worked more than five (5) hours in a
11 work day and a second thirty (30) minute uninterrupted meal period for days on which employees
12 worked in excess of ten (10) hours in a work day, and failing to provide compensation for such
13 unprovided meal periods as required by California wage and hour laws.

14 5. For at least four (4) years prior to the filing of this action and continuing to the
15 present, Defendants have had a policy or practice of failing to provide Plaintiff and similarly
16 situated employees or former employees within the State of California rest periods of at least ten
17 (10) minutes per four (4) hours worked or major fraction thereof and failing to provide
18 compensation for such unprovided rest periods as required by California wage and hour laws.

19 6. For at least three (3) years prior to the filing of this action and continuing to the
20 present, Defendants have failed to pay Plaintiff and other similarly situated employees the full
21 amount of their wages owed to them upon termination and/or resignation as required by Labor
22 Code sections 201 and 202 as a result of their failure to pay overtime wages as herein mentioned.

23 7. For at least one (1) year prior to the filing of this Action and continuing to the
24 present, Defendants have had a policy or practice of failing to furnish Plaintiff and similarly
25 situated employees within the State of California with itemized wage statements that accurately
26 reflect gross wages earned; total hours worked; net wages earned; all applicable hourly rates in
27 effect during the pay period and the corresponding number of hours worked at each hourly rate;
28 the name and address of the legal entity that is the employer; and other such information as

1 required by Labor Code section 226, subdivision (a). As a result thereof, Defendants have further
2 failed to furnish employees with an accurate calculation of gross wages earned, as well as gross
3 and net wages paid.

4 8. For at least one (1) year prior to the filing of this action and continuing to the
5 present, Defendants had and have a policy or practice of failing to pay Plaintiff and Class
6 Members, or some of them, the full amount of their wages for labor performed in a timely fashion
7 as required under Labor Code section 204.

8 9. For at least three (3) years prior to the filing of this Action and continuing to the
9 present, Defendants had and have a policy or practice of, upon written request to inspect or receive
10 copies of records pursuant to Labor Code section 226, subdivision (b), pertaining to a current or
11 former employee, complying with the request within 21 days from the date thereof.

12 10. For at least three (3) years prior to the filing of this Action and continuing to the
13 present, Defendants had and have a policy or practice of making the contents of personnel records
14 that the employer maintains relating to the employee's performance or to any grievance
15 concerning the employee available for inspection within 30 calendar days from the date of a
16 written request, as required by Labor Code section 1198.5.

17 11. For at least three (3) years prior to the filing of this Action and continuing to the
18 present, Defendants have had a consistent policy of failing to indemnify Plaintiff and other
19 similarly situated employees or former employees within the State of California for expenses
20 incurred by, including without limitation, purchase and maintenance work uniforms, as well as
21 costs incurred separately laundering mandatory work uniforms separately from their other clothes,
22 in furtherance of their work duties, in violation of, among other authorities, Labor Code section
23 2802.

24 12. For at least four (4) years prior to the filing of this Action and continuing to the
25 present, Defendants had and have a policy or practice of permitting managers and/or supervisors
26 to receive gratuities left for Plaintiff and similarly situated employees.

27 / / /

28 / / /

13. Plaintiff, on behalf of himself and all other similarly situated employees, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.7, 350, 351, 510, 512, 558.1, 1194, 1194.2, 1197, 1198.5, 2802, and California Code of Regulations, Title 8, section 11050, seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, penalties, reimbursement for expenses incurred in furtherance of job duties, other such provisions of California law, and reasonable attorneys' fees and costs.

14. Plaintiff, on behalf of himself and all other similarly situated employees, pursuant to California Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as all monies owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as restitution of amounts owed.

PARTIES

A. Plaintiff

15. Plaintiff, ERNEST R. BENNICK, is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, waiting tables, serving food, and cleaning. Plaintiff worked for Defendants from approximately July of 2018 through in or about December of 2019.

B. Defendants

16. Plaintiff is informed and believes and based thereon alleges that defendant PUMP is, and at all times relevant hereto was, a limited liability company organized and existing under and by virtue of the laws of the State of California and doing business in the County of Los Angeles, State of California.

17. Plaintiff is informed and believes, and based thereon alleges, that defendant VANDERPUMP is, and at all times relevant hereto was, an individual residing in California, as well as an owner or managing agent of PUMP, and DOES 1 through 50, as further defined below.

1 18. Plaintiff is informed and believes, and based thereon alleges, that defendant TODD
2 is, and at all times relevant hereto was, an individual residing in California, as well as an owner or
3 managing agent of PUMP, and DOES 1 through 50, as further defined below

4 **JOINT LIABILITY ALLEGATIONS**

5 19. Plaintiff is informed and believes and based thereon alleges that VANDERPUMP
6 and TODD employed Plaintiff and similarly situated employees of SUR and DOES 1 through 50
7 within the relevant statutory period, by, among other things, exercising control over their wages,
8 hours and/or working conditions. Plaintiff is further informed and believes and based thereon
9 alleges that VANDERPUMP and TODD violated, or caused to be violated, the above-referenced
10 and below-referenced Labor Code provisions in violation of Labor Code section 558.1.

11 20. Plaintiff is informed and believes and based thereon alleges that all the times
12 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
13 representative, joint venture or co-conspirator of each of the other defendants, either actually or
14 ostensibly, and in doing the things alleged herein acted within the course and scope of such
15 agency, employment, joint venture, and conspiracy.

16 21. All of the acts and conduct described herein of each and every corporate defendant
17 was duly authorized, ordered, and directed by the respective and collective defendant corporate
18 employers, and the officers and management-level employees of said corporate employers. In
19 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
20 their said employees, agents, and representatives, and each of them; and upon completion of the
21 said employees, agents, and representatives, and each of them; and upon completion of the
22 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
23 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
24 acquiesced, authorized, and approved of each and all of the said acts and conduct of the
25 aforementioned corporate employees, agents and representatives.

26 22. The true names and capacities, whether individual, corporate, associate, or
27 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
28 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure

1 section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
2 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts
3 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
4 names and capacities of the defendants designated hereinafter as DOES when such identities
5 become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant
6 acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a
7 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each joint
8 defendant are legally attributable to the other defendants.

9 23. Plaintiff is informed and believes, and based thereon alleges, that there exists such
10 a unity of interest and ownership between Defendants, and each of them, that their individuality
11 and separateness have ceased to exist.

12 24. Plaintiff is informed and believes, and based thereon alleges that despite the
13 formation of the purported corporate existence of PUMP, and DOES 1 through 50, inclusive (the
14 "Alter Ego Defendants"), they, and each of them, are one and the same with VANDERPUMP,
15 TODD and DOES 51 through 100 ("Individual Defendants"), and each of them, due to, but not
16 limited to, the following reasons:

17 a. The Alter Ego Defendants are completely dominated and controlled by the
18 Individual Defendants, or some of them, who personally committed the wrongful and illegal acts
19 and violated the laws as set forth in this Complaint, and who has hidden and currently hide behind
20 the Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some other
21 wrongful or inequitable purpose;

22 b. The Individual Defendants derive actual and significant monetary benefits by and
23 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego Defendants as
24 the funding source for the Individual Defendants' own personal expenditures;

25 c. Plaintiff is informed and believes and thereon alleges that the Individual
26 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to
27 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a
28 statute, or accomplishing some other wrongful or inequitable purpose;

1 d. Plaintiff is informed and believes and thereon alleges that the business affairs of the
2 Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned
3 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the
4 same are inextricable confusion. The Alter Ego Defendants are, and at all relevant times
5 mentioned herein were, used by the Individual Defendants as mere shells and conduits for the
6 conduct of certain of their, and each of their affairs. The Alter Ego Defendants are, and at all
7 relevant times mentioned herein were, the alter egos of the Individual Defendants;

8 e. The recognition of the separate existence of the Individual Defendants and the Alter
9 Ego Defendants would promote injustice insofar that it would permit defendants to insulate
10 themselves from liability to Plaintiff for violations of the California Government Code, Civil
11 Code, Labor Code, and other statutory violations. The corporate existence of these defendants
12 should thus be disregarded in equity and for the ends of justice because such disregard is necessary
13 to avoid fraud and injustice to Plaintiff, and all other similarly situated employees, herein;

14 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
15 Defendants (and vice versa), and the fiction of their separate corporate existence must be
16 disregarded;

17 g. As a result of the aforementioned facts, among others, Plaintiff is informed and
18 believes, and based thereon alleges that the Individual Defendants, the Alter Ego Defendants, and
19 each of them, are joint employers by virtue of a joint enterprise, and that Plaintiff was an
20 employee of the Alter Ego Defendants and the Individual Defendants. Plaintiff performed
21 services for each and every defendant, and to the mutual benefit of all defendants, and all
22 defendants shared control of Plaintiff and all other similarly situated employees, either directly or
23 indirectly, and in the manner in which defendants' business was and is conducted.

24 25. As such, Defendants, and each of them, are either solely, and/or jointly and
25 severally, liable for the damages alleged in Plaintiff's operative complaint.

26 **JURISDICTION**

27 26. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
28 of Civil Procedure section 410.10.

27. Venue is proper in Los Angeles County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the causes of action complained of herein arose, where defendants, or some of them, have their principal place of business. It is also the county in which the employment relationship began, the county in which performance of the employment contract, or part of it, between Plaintiff and Defendants was due to be performed, was actually performed, and was breached by Defendants. Finally, venue is proper in Los Angeles County as the unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within Los Angeles County and the State of California, and because Defendants employ numerous Class Members in Los Angeles County and the State of California.

FACTUAL BACKGROUND

28. Plaintiff and other similarly situated employees have not been paid, during the relevant liability periods, wages for all time worked, including overtime wages, as a result of, including but not limited to, failing to pay overtime wages to Plaintiff and other non-exempt employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and similarly situated employees working over eight (8) hours per day, forty (40) hours per week or seven (7) consecutive work days in a work week without being properly compensated for the hours worked in excess of (8) hours per day, forty (40) hours per week, or seven (7) consecutive work days in a workweek at the proper overtime rate of pay. Specifically, among other things, Defendants had a policy or practice of failing to accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting employees to work off the clock (including by requiring employees to be on-call and failing to pay for all hours worked during training); failing to pay overtime hours at the proper overtime rate of pay, including, without limitation, by paying overtime hours at the improper rate(s) of pay and/or recharacterizing overtime hours worked to appear that they worked at a different time or pay period; by failing to pay for reporting time pay; and/or by manipulating or editing time records to show lesser hours than actually worked during the pay period.

/ / /

1 29. Plaintiff and other similarly situated employees have not been paid during the
2 relevant liability periods, minimum wages for all regular hours worked, as a result of, among other
3 things, Defendants failing to accurately track and/or pay for all hours actually worked; engaging,
4 suffering, or permitting employees to work off the clock (including by requiring employees to be
5 on-call and failing to pay for all hours worked during training); failing to pay for reporting time
6 pay; and/or by manipulating or editing time records to show lesser hours than actually worked
7 during the pay period.

8 30. Defendants have had a consistent policy or practice of failing during the relevant
9 liability periods, Plaintiff and similarly situated employees or former employees within the State
10 of California a thirty (30) minute, uninterrupted, and timely meal period for days on which the
11 employees worked more than five (5) hours in a workday; a second thirty (30) minute,
12 uninterrupted, and timely meal period for days on which employees worked in excess of ten (10)
13 hours in a workday; and/or compensation for such unprovided meal periods as required by
14 California wage and hour laws.

15 31. Defendants have had a consistent policy or practice of failing to provide Plaintiff
16 and similarly situated employees or former employees within the State of California rest periods
17 of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failing to
18 provide compensation for such unprovided rest periods as required by California wage and hour
19 laws.

20 32. At the time Plaintiff's employment and the employment of other former employees
21 of Defendants ended, Defendants willfully failed to pay overtime and minimum wages at the
22 proper rate and failed to pay one hour of wages in lieu of each non-compliant meal and/or rest
23 period, among other things.

24 33. Defendants have failed to comply with Labor Code section 226, subdivision (a) by
25 not providing itemized wage statements accurately showing, including but not limited to, gross
26 wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during
27 the pay period and the corresponding number of hours worked at each hourly rate; the legal name
28 and address of the employer; and other such information as required by Labor Code section 226,

1 subdivision (a).

2 34. Defendants have failed, at times, to pay Plaintiff and similarly situated employees
3 their wages in accordance with Labor Code section 204, which requires that “[l]abor performed
4 between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th
5 and 26th day of the month during which the labor was performed, and labor performed between
6 the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and
7 10th day of the following month.”

8 35. Defendants have failed, during the relevant liability periods, to comply with Labor
9 Code section 226, subdivision (c) by failing to, upon written request to inspect or receive copies of
10 records pursuant to Labor Code section 226, subdivision (b), pertaining to a current or former
11 employee, complying with the request within 21 days from the date thereof, in connection with
12 Plaintiff and all others similarly situated.

13 36. Defendants have failed to comply, during the relevant liability periods, with Labor
14 Code section 1198.5 by failing to make the contents of personnel records that the employer
15 maintains relating to the employee’s performance or to any grievance concerning the employee
16 available for inspection within 30 calendar days from the date of a written request, as required by
17 Labor Code section 1198.5.

18 37. Defendants have failed to reimburse Plaintiff and similarly situated employees,
19 during the relevant liability periods, as required under Labor Code section 2802 for the cost of
20 their mandatory work uniforms, as well as costs incurred laundering mandatory work uniforms
21 separately from their other clothes in furtherance of their work duties, in violation of, among other
22 authorities, Labor Code section 2802.

23 38. Defendants have failed to comply, during the relevant liability periods, with Labor
24 Code sections 350 and 351 by collecting, taking or receiving gratuities, or part therefor, that which
25 was paid, given to, or left for Plaintiff and all others similarly situated.

26 39. Plaintiff and other similarly situated employees or former employees at all times
27 pertinent hereto were not exempt from the payment of overtime wages, minimum wages, payment
28 of premium wages for missed rest periods, waiting time penalties, wage statement penalties, being

permitted to inspect documents requested by employees under Labor Code sections 226 and 1198.5, reimbursement for expenses incurred in furtherance of job duties, being paid all gratuities left to them without sharing them with Defendants or their agents, and other such provisions of California law, and the implementing rules and regulations of the IWC California Wage Orders.

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action on behalf of himself and all others similarly situated, as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current and former non-exempt employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class (collectively referred to as "Class Members").

41. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b) to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

42. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity

43. The potential Class Members as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined yet, Plaintiff is informed and believes that there are over fifty (50) Class Members employed by Defendants within the State of California.

44. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants' employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

B. Commonality

45. There are questions of law and fact common to Class Members. These common questions include, but are not limited to:

1 / / /

- 2 (a) Did Defendants violate Labor Code sections 510, 1194, and 1197 by failing
3 to adequately track, and therefore adequately pay, wages for time worked
4 by Class Members?
- 5 (b) Did Defendants violate Labor Code sections 510, 1194, and 1197 by editing
6 and/or manipulating Class Members' time entries to show lesser hours than
7 actually worked during a pay period?
- 8 (c) Did Defendants violate Labor Code sections 510, 1194 and 1197 by
9 recharacterizing overtime hours worked to appear that they worked at a
10 different time or pay period to avoid payment of overtime wages?
- 11 (d) Did Defendants violate Labor Code sections 510, 1194, and 1197 by
12 requiring that employees remain on call without adequate pay for all time
13 worked?
- 14 (e) Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing
15 to provide reporting time pay?
- 16 (f) Did Defendants violate Labor Code sections 510, 1194, and 1197 by failing
17 to pay employees for all hours worked during training?
- 18 (g) Are Class Members entitled to liquidated damages under Labor Code
19 section 1194.2 for Defendants' failure to pay minimum wages for all hours
20 worked?
- 21 (h) Did Defendants violate Labor Code section 512 by not providing Class
22 Members with compliant meal periods?
- 23 (i) Did Defendants violate Labor Code section 226.7 by not providing Class
24 Members with additional wages for missed or interrupted meal periods?
- 25 (j) Did Defendants violate Labor Code section 512 by not providing Class
26 Members with rest periods?
- 27 (k) Did Defendants violate Labor Code section 226.7 by not providing Class
28 Members with additional wages for missed or interrupted rest periods?

- (l) Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class Members upon termination or resignation all wages earned?
- (m) Are Defendants liable to Class Members for penalty wages under Labor Code section 203?
- (n) Did Defendants violate Labor Code section 204 by failing, at times, to pay Class Members timely compensation of wages in accordance with the labor performed?
- (o) Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing Class Members with accurate wage statements?
- (p) Did Defendants violate Labor Code section 226, subdivision (c) by not timely providing Class Members with (or permitting them to inspect) a complete set of the documents described in Labor Code section 226, subdivision (b) upon request?
- (q) Are Defendants liable to Class Members for penalties under Labor Code section 226, subdivision (f)?
- (r) Did Defendants violate Labor Code section 1198.5 by not providing Class Members with timely and complete personnel records described under Labor Code section 1198.5, subdivision (a) upon request?
- (s) Are Defendants liable to Class Members for penalties under Labor Code section 1198.5, subdivision (k)?
- (t) Did Defendants violate Labor Code section 2802 by requiring employees to purchase work uniforms without reimbursement?
- (u) Did the nature of Class Members' work duties require separate laundry of their work uniforms?
- (v) Did Defendants violate Labor Code section 2802 by failing to reimburse Class Members with the cost of separately laundering their work uniforms?
- (w) Did Defendants violate Labor Code sections 350 and 351 by misappropriating gratuities left for Class Members?

1 (x) Did Defendants violate the Unfair Competition Law, Business and
2 Professions Code section 17200, *et seq.*, by their unlawful practices as
3 alleged herein?

4 (y) Are Class Members entitled to restitution of wages under Business and
5 Professions Code section 17203?

6 (z) Are Class Members entitled to costs and attorneys' fees?

7 (aa) Are Class Members entitled to interest?

8 **C. Typicality**

9 46. The claims of Plaintiff herein alleged are typical of those claims which could be
10 alleged by any Class members, and the relief sought is typical of the relief which would be sought
11 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
12 damages arising out of and caused by Defendants' common course of conduct in violation of laws
13 and regulations that have the force and effect of law and statutes as alleged herein.

14 **D. Adequacy of Representation**

15 47. Plaintiff will fairly and adequately represent and protect the interest of Class
16 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
17 hour class actions.

18 **E. Superiority of Class Action**

19 48. A class action is superior to other available means for the fair and efficient
20 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
21 questions of law and fact common to Class Members predominate over any questions affecting
22 only individual Class Members. Class Members, as further described therein, have been damaged
23 and are entitled to recovery by reason of Defendants' illegal policy and/or practices, including,
24 without limitation, failing to pay overtime wages, minimum wages; failing to provide meal and
25 rest breaks or compensation in lieu thereof; failing to provide accurate wage statements; failing to
26 pay all wages due upon termination and/or resignation; failing to timely permit inspection of
27 complete records under Labor Code sections 226 and 1198.5; failing to reimburse employees for
28 expenses incurred in furtherance of job duties; and failing to pay over all gratuities left for Class

1 Members to those Class Members.

2 49. Class action treatment will allow those similarly situated to litigate their claims in a
3 manner that is most efficient and economical for the parties and the judicial system. Plaintiff is
4 unaware of any difficulties that are likely to be encountered in the management of this action that
5 would preclude its maintenance as a class action.

6 **FIRST CAUSE OF ACTION**

7 **(Failure to Pay Overtime Wages – Against All Defendants)**

8 50. Plaintiff realleges and incorporates by reference all of the allegations contained in
9 the preceding paragraphs of this Complaint as though fully set forth hereat.

10 51. At all times relevant to this Complaint, Labor Code section 510 was in effect and
11 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in
12 one workday and any work in excess of forty hours in any one workweek . . . shall be
13 compensated at the rate of no less than one and one-half times the regular rate of pay for an
14 employee.”

15 52. At all times relevant to this Complaint, Labor Code section 510 further provided
16 that “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than
17 twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on
18 any seventh day of a workweek shall be compensated at the rate of no less than twice the regular
19 rate of pay.”

20 53. At all times mentioned, Plaintiff and Class Members, worked for Defendants
21 during shifts that consisted of more than eight (8) hours in a workday and/or more than forty hours
22 in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid
23 overtime wages for all hours worked as a result of, including but not limited to, failing to
24 accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting
25 employees to work off the clock (including by requiring employees to be on-call and failing to pay
26 for all hours worked during training); failing to pay overtime hours at the proper overtime rate of
27 pay, including, without limitation, by paying overtime hours at the improper rate(s) of pay and/or
28 recharacterizing overtime hours worked to appear that they worked at a different time or pay

1 period; by failing to pay for reporting time pay; and/or by manipulating or editing time records to
2 show lesser hours than actually worked during the pay period, by Plaintiff and other similarly
3 situated employees in the State of California.

4 54. Accordingly, by requiring Plaintiff and Class Members to work greater than eight
5 (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays without
6 properly compensating overtime wages at the proper overtime rate of pay, Defendants willfully
7 violated the provisions of the Labor Code, among others, sections 510, 1194, and applicable IWC
8 Wage Orders, and California law.

9 55. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
10 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery
11 of such amounts, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor
12 Code section 1194 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code
13 section 3287.

14 **SECOND CAUSE OF ACTION**

15 **(Failure to Pay Minimum Wages – Against All Defendants)**

16 56. Plaintiff realleges and incorporates by reference all of the allegations contained in
17 the preceding paragraphs of this Complaint as though fully set forth hereat.

18 57. At all relevant times, Plaintiff and Class Members were employees of Defendants
19 covered by Labor Code section 1197 and applicable Wage Orders.

20 58. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
21 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
22 Defendants' control.

23 59. Defendants failed to pay Plaintiff and Class Members minimum wages for all hours
24 worked as a result of, including but not limited to, Defendants failing to accurately track and/or
25 pay for all hours actually worked; engaging, suffering, or permitting employees to work off the
26 clock (including by requiring employees to be on-call and failing to pay for all hours worked
27 during training); failing to pay for reporting time pay; and/or by manipulating or editing time
28 records to show lesser hours than actually worked during the pay period by Plaintiff and other

1 similarly situated employees in the State of California.

2 60. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
3 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
4 for all minutes worked or otherwise due.

5 61. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
6 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled
7 to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
8 damages, reasonable attorneys' fees and costs of suit.

9 **THIRD CAUSE OF ACTION**

10 **(Failure to Provide Meal Periods – Against All Defendants)**

11 62. Plaintiff realleges and incorporates by reference all of the allegations contained in
12 the preceding paragraphs of this Complaint as though fully set forth hereat.

13 63. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer
14 shall employ an employee for a work period of more than five (5) hours without a timely meal
15 break of not less than thirty (30) minutes in which the employee is relieved of all of his or her
16 duties. Furthermore, no employer shall employ an employee for a work period of more than ten
17 (10) hours per day without providing the employee with a second timely meal period of not less
18 than thirty (30) minutes in which the employee is relieved of all of his or her duties.

19 64. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
20 with a meal period as provided in the applicable Wage Order of the Industrial Welfare
21 Commission, the employer shall pay the employee one (1) additional hour of pay at the
22 employee's regular rate of compensation for each workday that the meal period is not provided.

23 65. Plaintiff and Class Members were during the relevant time period, not provided
24 with requisite uninterrupted meal periods as contemplated under the law.

25 66. By their failure to provide Plaintiff and Class Members with the meal periods
26 contemplated by Labor Code section 512, among other California authorities, and failing to
27 provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
28 violated the provisions of Labor Code section 512 and applicable Wage Orders.

67. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for missed, untimely, interrupted and/or incomplete meal periods.

68. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for missed meal periods, in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

69. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

70. California law and applicable Wage Orders require that employers “authorize and permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be provided thirty (30) minutes of paid rest period.

71. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

72. By their failure to provide Plaintiff and Class Members with the rest periods contemplated by California law, and failure to provide compensation for such unprovided rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

/ / /

73. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for missed rest periods.

74. Pursuant to Labor Code section 226.7, Code of Civil Procedure section 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover the full amount of their premium pay for unprovided rest periods, interest and penalties thereon, and costs of suit.

FIFTH CAUSE OF ACTION

(Failure to Pay All Wages Due Upon Termination – Against All Defendants)

75. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

76. At all relevant times, Plaintiff and Class Members were employees of Defendants covered by Labor Code sections 201 and 202.

77. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours' previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation.

78. Plaintiff is informed and believes, and based thereon alleges, that Defendants, due to the failure to provide overtime and minimum wages mentioned above, failed to pay Plaintiff and Class Members all wages earned and unpaid, including overtime wages and minimum wages, prior to resignation or termination in accordance with Labor Code sections 201 or 202.

79. Defendants' failure to pay Plaintiff and Class Members all wages earned prior to termination in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff and Class Members at the time of termination in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code sections 201 and 202.

1 80. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members are
2 entitled to all wages earned prior to termination that Defendants failed to pay them.

3 81. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
4 penalty wages from the date their earned and unpaid wages were due, upon termination, until paid,
5 up to a maximum of thirty (30) days.

6 82. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
7 suffered damages in an amount subject to proof, to the extent they were not paid for all wages
8 earned prior to termination.

9 83. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
10 suffered damages in an amount subject to proof, to the extent they were not paid all penalty wages
11 owed under Labor Code section 203.

12 84. Pursuant to Labor Code sections 203, 218 and 218.5, Code of Civil Procedure
13 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled
14 to recover the full amount of their unpaid wages, and penalty wages under Labor Code section
15 203, reasonable attorneys' fees on their unpaid wages, and costs of suit.

16 85. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
17 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
18 waiting time penalties, interest, and other costs of suit on the waiting time penalties, as well.

19 **SIXTH CAUSE OF ACTION**

20 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

21 86. Plaintiff realleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs of this Complaint as though fully set forth hereat.

23 87. At all relevant times, Plaintiff and Class Members were employees of Defendants
24 covered by Labor Code section 226.

25 88. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
26 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate
27 itemized statement that accurately reflects, among other things, gross wages earned; total hours
28 worked; net wages earned; all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate; and the name and address of the legal
2 entity that is the employer.

3 89. Plaintiff is informed and believe, and based thereon alleges, that at all relevant
4 times, Defendants, due to the failure to pay due wages for the reasons described herein, also
5 failed to issue wage statements that accurately set out amounts due to, among other things, gross
6 wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect
7 during the pay period and the corresponding number of hours worked at each hourly rate; and the
8 name and address of the legal entity that is the employer.

9 90. Thus, Defendants failed to provide Plaintiff and Class Members accurate itemized
10 wage statements in accordance with Labor Code section 226, subdivision (a).

11 91. Defendants' failure to provide Plaintiff and Class Members with accurate wage
12 statements was knowing, intentional, and willful. Defendants had the ability to provide Plaintiff
13 and Class Members with accurate wage statements, but willfully provided wage statements that
14 Defendants knew were not accurate.

15 92. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
16 suffered injury. The absence of accurate information on their wage statements has delayed timely
17 challenge to Defendants' unlawful pay practices; requires discovery and mathematical
18 computations to determine the amount of wages owed; causes difficulty and expense in
19 attempting to reconstruct time and pay records; and led to submission of inaccurate information
20 about wages and amounts deducted from wages to state and federal governmental agencies.

21 93. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
22 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
23 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a
24 subsequent pay period, not to exceed an aggregate \$4,000.00 per employee.

25 94. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
26 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
27 recover the full amount of penalties due under Labor Code section 226, subdivision (e),
28 reasonable attorneys' fees, and costs of suit.

SEVENTH CAUSE OF ACTION

(Failure to Timely Pay Wages During Employment – Against All Defendants)

95. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

96. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

97. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

98. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

99. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year before the filing of the Complaint in this Action through the present, Defendants employed policies and practices that resulted in, at times, not paying Plaintiff and Class Members in accordance with Labor Code section 204.

100. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled to recover penalties for Defendants’ violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200) for each subsequent violation in connection with each payment that was made in violation of Labor Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

1 101. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
2 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of
3 penalties, interest, and their costs of suit, as well.

4 **EIGHTH CAUSE OF ACTION**

5 **(Violation of Labor Code Section 226(c) – Against All Defendants)**

6 102. Plaintiff realleges and incorporates by reference all of the allegations contained in
7 the preceding paragraphs of this Complaint as though fully set forth herein.

8 103. At all relevant times, Plaintiff and Class Members were employees or former
9 employees of Defendants covered by Labor Code section 226.

10 104. At all relevant times, under Labor Code section 226, subdivision (a), all deductions
11 made from payment of wages shall be recorded in ink or other indelible form, properly dated,
12 showing the month, day, and year, and a copy of the statement and the record of the deductions
13 shall be kept on file by the employer for at least three years at the place of employment or at a
14 central location within the State of California.

15 105. At all relevant times, under Labor Code section 226, subdivision (b), an employer
16 required to keep information required by Labor Code section 226, subdivision (a) must afford
17 current and former employees the right to inspect or receive a copy of records pertaining to their
18 employment, upon reasonable request to the employer.

19 106. At all relevant times, under Labor Code section 226, subdivision (c), an employer
20 who receives a written or oral request to inspect or receive a copy of records pursuant to
21 subdivision (b) pertaining to a current or former employees must comply with the request as soon
22 as practicable, but no later than 21 calendar days from the date of the request.

23 107. At all relevant times, under Labor Code section 226, subdivision (f), an employer
24 who fails to permit a current or former employee to inspect or receive a copy of records within
25 the time set forth in subdivision (c) entitles the current or former employee to recover a seven-
26 hundred-fifty-dollar (\$750) penalty from the employer.

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1 108. Defendants violated Labor Code section 226 by failing to timely permit Plaintiff
2 and Class Members to inspect or records described in Labor Code section 226, subdivision (b)
3 that Defendants were required to maintain under subsection (a) upon reasonable request.
4 Moreover, Plaintiff is informed and believes, and thereon alleges, that at all relevant times within
5 the applicable limitations period, Defendants maintained a policy or practice of failing to timely
6 permit current or former employees inspect or copy their complete personnel records.

7 109. As a result of Defendants' conduct, Plaintiff and Class Members did not receive
8 documents to which they were entitled under Labor Code section 226, subdivision (b) and thus
9 were not able to fully assess potential Labor Code and/or common law violations pertaining to
10 unpaid wages by Defendants against Plaintiff and Class Members while applicable statutes of
11 limitations continue to run, resulting in irreparable injuries without adequate remedies at law.
12 Additionally, Plaintiff and Class Members bear the risk of being irreparably injured should the
13 documents and records responsive to Labor Code section 226, subdivision (b) be lost and/or
14 destroyed.

15 110. Pursuant to Labor Code sections 226, subdivisions (f) and (g), Code of Civil
16 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
17 recover the full amount of penalties due under Labor Code section 226, subdivision (e),
18 reasonable attorneys' fees and costs of suit.

19 NINTH CAUSE OF ACTION

20 **(Violation of Labor Code section 1198.5 – Against All Defendants)**

21 111. Plaintiff realleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs of this Complaint as though fully set forth herein.

23 112. At all relevant times, Plaintiff and Class Members were employees or former
24 employees of Defendants covered by Labor Code section 1198.5.

25 113. Pursuant to Labor Code section 1198.5, "every current and former employee...has
26 the right to inspect and receive a copy of the personnel records that the employer maintains
27 relating to the employee's performance or to any grievance concerning the employee."

28 / / /

114. Defendants were required to maintain a copy of each employee's personnel records for a period of not less than three (3) years after termination of employment and make the contents of those personnel records available for inspection no later than thirty (30) calendar days from the date the employer received a written request.

115. Defendants violated Labor Code section 1198.5 by failing to timely permit Plaintiff and Class Members to inspect and/or receive copies of such documents. Moreover, Plaintiff is informed and believes, and thereon alleges, that at all relevant times within the applicable limitations period, Defendants maintained a policy or practice of failing to timely permit current or former employees inspect or copy their complete personnel records.

116. As a result of Defendants' conduct, Plaintiff and Class Members did not receive their complete personnel records as contemplated by Labor Code section 1198.5 and were not able to fully assess potential Labor Code and/or common law workplace-based violations by Defendants against Plaintiff and Class Members while applicable statutes of limitations continue to run, resulting in irreparable injuries without adequate remedies at law. Additionally, Plaintiff and Class Members bear the risk of being irreparably injured should the documents and records responsive to Labor Code section 1198.5 be lost and/or destroyed.

117. Pursuant to Labor Code section 1198.5, Plaintiff and Class Members are entitled to a statutory \$750 penalty each from Defendants and injunctive relief to obtain compliance with this section, as well as costs of suit and reasonable attorney's fees.

TENTH CAUSE OF ACTION

(Violation of Labor Code § 2802 – Against All Defendants)

118. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though full set forth hereat.

119. At all relevant times, Plaintiff and Class Members were employees of Defendants covered by Labor Code section 2802.

120. California Labor Code section 2802, subdivision (a) provides that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . ."

1 121. At all relevant times, Defendants failed and refused, and still fail and refuse, to
2 reimburse Plaintiff and Class Members for the costs incurred, including but not limited to,
3 uniforms that they were required to purchase and wear on duty, and for separate laundry of those
4 uniforms from their other clothes.

5 122. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
6 suffered damages in an amount subject to proof, to the extent they were not reimbursed for costs
7 incurred in purchase of work uniforms and separate laundering of said uniforms, in furtherance of
8 their work duties for Defendants.

9 123. Pursuant to Labor Code section 2802, Code of Civil Procedure section 1032, and
10 Civil Code section 3287, Plaintiff and Class Members are entitled to recover actual costs incurred
11 for their work uniforms and separate laundering, reasonable attorney's fees and costs of suit.

12 **ELEVENTH CAUSE OF ACTION**

13 **(Conversion – Against All Defendants)**

14 124. Plaintiff realleges and incorporates by reference all of the allegations contained in
15 the preceding paragraphs of this Complaint as though fully set forth hereat.

16 125. At all relevant times herein, Plaintiff and Class Members were non-exempt
17 employees of Defendants covered by Labor Code section 351 and protected from conversion of
18 their wages by Defendants, among others.

19 126. Labor Code section 351 provides, in pertinent part, that “[n]o employer or agent
20 shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an
21 employee by a patron, or deduct any amount from wages due an employee on account of a
22 gratuity...”

23 127. A cause of action for conversion consists of: (1) the ownership or right to
24 possession of the property by Plaintiff and Class Members; (2) wrongful exercise of dominion
25 over that property by Defendants; and (3) damages. (*See, e.g., Lee v. Hanley* (2015) 61 Cal.4th
26 1225, 1240.)

27 / / /

28 / / /

1 128. Plaintiff is informed and believes, and based thereon alleges that Defendants and/or
2 their agents (including managerial and supervisory employees) collected, took, or received
3 gratuities left for Plaintiff and Class Members in violation of Labor Code section 351, and that this
4 wrongful exercise of dominion over the gratuities earned by Plaintiff and Class Members
5 constituted conversion.

6 129. Defendants' deliberate acts denying Plaintiff and Class Members tips earned in
7 violation of Labor Code section 351 constitutes conversion.

8 130. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
9 suffered damages in an amount subject to proof, to the extent they were not paid said gratuities in
10 violation of Labor Code section 351.

11 131. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
12 been deprived of gratuities in amounts to be determined at trial, and are entitled to recovery of
13 such amounts, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor
14 Code section 1194 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code
15 section 3287.

16 **TWELFTH CAUSE OF ACTION**

17 **(Unfair Competition – Against All Defendants)**

18 132. Plaintiff realleges and incorporates by reference all of the allegations contained in
19 the preceding paragraphs of this Complaint as though fully set forth hereat.

20 133. The unlawful conduct of Defendants alleged herein constitutes unfair competition
21 within the meaning of Business and Professions Code section 17200. Due to their unlawful
22 business practices in violation of the Labor Code, Defendants have gained a competitive
23 advantage over other comparable companies doing business in the State of California that comply
24 with their obligations to compensate employees in accordance with the Labor Code.

25 134. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class
26 Members have suffered injury in fact and lost money or property. Plaintiff and Class Members
27 have been deprived of overtime compensation; minimum wage compensation; provision of meal
28 breaks or compensation in lieu thereof; provision of rest breaks or compensation in lieu thereof;

1 provision of all wages upon termination or resignation; from being paid timely wages; from being
2 provided with accurate wage statements; inspection of complete sets of documents to which they
3 are entitled under Labor Code sections 226 and 1198.5; reimbursement for costs incurred in
4 furtherance of job duties; and from receipt of gratuities left to them, among other things.

5 135. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
6 Members are entitled to restitution of all wages and other monies owed to them under the Labor
7 Code, including interest thereon, in which they had a property interest and which Defendants
8 nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of
9 the money owed to Plaintiff and Class Members is necessary to prevent Defendants from
10 becoming unjustly enriched by their failure to comply with the Labor Code.

11 136. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
12 Procedure section 1032 and interest under Civil Code section 3287.

13 **DEMAND FOR JURY TRIAL**

14 137. Plaintiff demands a trial by jury on all causes of action contained herein.

15 **PRAYER**

16 WHEREFORE, on behalf of himself and all others similarly situated, Plaintiff prays for
17 judgment against Defendants as follows:

- 18 A. An order certifying this case as a Class Action;
- 19 B. An Order appointing Plaintiff as Class Representative and appointing Plaintiff's
20 counsel as class counsel;
- 21 C. Damages for all wages earned and owed, including minimum and overtime wages
22 under Labor Code sections 510, 558.1, 1194, 1197 and 1199;
- 23 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 24 E. Damages for unpaid premium wages from missed meal and rest periods under,
25 among other Labor Code sections, 512, 558.1, and 226.7;
- 26 F. Penalties for inaccurate wage statements under Labor Code sections 226,
27 subdivision (e) and 558.1;
- 28 G. Waiting time penalties under Labor Code sections 203 and 558.1;

- 1 H. Penalties for payment of timely wages under Labor Code sections 210 and 558.1;
2 H. Penalties for failure to timely permit inspection of documents under Labor Code
3 sections 226, 1198.5 and 558.1;
4 I. Reimbursement for costs incurred in furtherance of work duties under Labor Code
5 sections 558.1 and 2802;
6 J. Damages for gratuities earned but not received under Labor Code sections 350, 351
7 and 558.1;
8 K. Preliminary and permanent injunctions prohibiting Defendants from further
9 violating the California Labor Code and requiring the establishment of appropriate
10 and effective means to prevent future violations;
11 L. Restitution of wages and benefits due which were acquired by means of any unfair
12 business practice, according to proof;
13 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
14 N. For attorneys' fees in prosecuting this action;
15 O. For costs of suit incurred herein; and
16 P. For such other and further relief as the Court deems just and proper.

17 Dated: August 6, 2020

BIBIYAN LAW GROUP, P.C.

18
19 BY: 

20 SARA EHSANI-NIA

21 Attorneys for Plaintiff ERNEST R. BENNICK, on
22 behalf of himself and all others similarly situated.
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