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6 Attorneys for Plaintiff

7 SILVIA BALDASSINI, DEREK CENTENO, DANIELA ZALDIVAR, JESSE ALVA,
8 CARLO CARVALHO, MARCELO SUL, ITACIARA NERY, and

Aggrieved Employees

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 SILVIA BALDASSINI, an individual,
13 DEREK CENTENO, an individual,
14 DANIELA ZALDIVAR, an individual,
15 JESSE ALVA, an individual, CARLO
16 CARVALHO, an individual, MARCELO
17 SUL, an individual, ITACIARA NERY, an
18 individual, on behalf of themselves and all
19 other aggrieved employees of Defendants in
20 the State of California,

Plaintiffs,

21 vs.

22 SOUTH BAY RESTAURANT GROUP,
23 INCORPORATED dba SAMBA
24 BRAZILIAN STEAKHOUSE and/or
25 SAMBA BRAZILIAN STEAKHOUSE &
26 GRILL and/or SAMBA BRAZILIAN
27 STEAKHOUSE AND LOUNGE and/or
28 SAMBA BY THE SEA, a California
corporation; ELIAS BARRAGAN, an
individual; GEORGE MOUSALLI, an
individual; and DOES 1-100, Inclusive,

Defendants.

Case No. 21STCV09354

UNLIMITED CIVIL CASE

FIRST AMENDED COMPLAINT FOR:

1. **Failure to Pay Earned Wages (Cal. Lab. Code § 204);**
2. **Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1182.12, 1194, 1197, 1198; IWC Wage Order No. 5-2001);**
3. **Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001);**
4. **Failure to Pay Meal Period Compensation (Cal. Lab. Code §§ 226.7, 512, 1198; IWC Wage Order No. 5-2001);**
5. **Failure to Pay Rest Period Compensation (Cal. Lab. Code §§ 226.7, 1198; IWC Wage Order No. 5-2001);**
6. **Failure to Furnish Wage and Hour Statements (Cal. Lab. Code § 226);**
7. **Waiting Time Penalties (Cal. Lab. Code §§ 201, 203);**

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8. Conversion (Cal. Civ. Code § 3336);
9. Hostile Work Environment Harassment Based on Sex in Violation of the FEHA;
10. Failure to Take Reasonable Steps to Prevent Harassment, Discrimination, or Retaliation from Occurring (Cal. Gov. Code § 12940(k));
11. Unfair Competition (Cal. Bus. & Prof. Code §17200, *et seq.*);
12. Civil Penalties for Violations of the Labor Code (Cal. Lab. Code, § 2698, *et seq.*).
- Demand for Jury Trial

Plaintiffs SILVIA BALDASSINI, DEREK CENTENO, DANIELA ZALDIVAR, JESSE ALVA, CARLO CARVALHO, MARCELO SUL, and ITACIARA NERY (collectively “Plaintiffs”), employees of Defendant SOUTH BAY RESTAURANT GROUP, INCORPORATED dba SAMBA BRAZILIAN STEAKHOUSE and/or SAMBA BRAZILIAN STEAKHOUSE & GRILL and/or SAMBA BRAZILIAN STEAKHOUSE AND LOUNGE and/or SAMBA BY THE SEA, a California Corporation (“SAMBA” or the “COMPANY”), allege as follows:

Nature of the Action

1. This is a wage and hour action for violations of California’s wage and hour laws involving theft of tips, failure to pay minimum and overtime wages, failure to provide compliant meal and rest periods, and failure to provide compliant wage statements. This is also a representative action brought by Plaintiffs in accordance with California’s Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (the “PAGA”), on behalf of themselves and other current and former aggrieved California employees of Defendants whom Defendants employed as hourly and/or non-salary-basis employees. Plaintiffs further make a claim for hostile work environment based upon inappropriate physical touching of a sexual nature and a culture of sexual harassment.

1 2. The class of aggrieved workers under the PAGA is composed of all
2 individuals who work for or have worked for Defendants as hourly and/or non-salary-basis
3 employees (the “PAGA Aggrieved Employees”) in the State of California from September
4 13, 2019 to the final judgment (the “PAGA Period”).

5 3. Plaintiffs, by this action, seek damages, injunctive relief, penalties, unpaid
6 wages, and any other remedies the Court deems just due to the illegal conduct of Defendants,
7 as alleged herein.

8 **Jurisdiction and Venue**

9 4. Pursuant to Article VI, § 10 of the California Constitution, subject matter
10 jurisdiction is proper in the Superior Court of California, County of Los Angeles, State of
11 California.

12 5. Venue is proper in this Court because Defendant did substantial business in Los
13 Angeles County, California, and employed Plaintiffs in Los Angeles County, California at all
14 relevant times.

15 **The Parties**

16 6. Plaintiff SILVIA BALDASSINI is, and at all relevant times was, a competent
17 adult residing in Los Angeles County, California.

18 7. Plaintiff DEREK CENTENO is, and at all relevant times was, a competent adult
19 residing in Los Angeles County, California.

20 8. Plaintiff DANIELIA ZALDIVAR is, and at all relevant times was, a competent
21 adult residing in Los Angeles County, California.

22 9. Plaintiff JESSE ALVA is, and at all relevant times was, a competent adult
23 residing in Los Angeles County, California.

24 10. Plaintiff CARLO CARVALHO is, and at all relevant times was, a competent
25 adult residing in Los Angeles County, California.

26 11. Plaintiff MARCELO SUL is, and at all relevant times was, a competent adult
27 residing in Los Angeles County, California.

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1 12. Plaintiff ITACIARA NERY is, and at all relevant times was, a competent adult
2 residing in Los Angeles County, California.

3 13. Defendant SAMBA is, and at all relevant times was, a California corporation
4 doing business and operating in Los Angeles County, California.

5 14. Defendant ELIAS BARRAGAN is, and at all relevant times was, a competent
6 adult residing in Los Angeles County, California.

7 15. On information and belief, Defendant GEORGE MOUSALLI, at all relevant
8 times, was a competent adult residing in Los Angeles County, California. On information and
9 belief, MOUSALLI currently resides in Boise, Idaho.

10 16. On information and belief, BARRAGAN, at all relevant times, was a director,
11 officer, and/or managing agent of Defendant SAMBA within the meaning of California Labor
12 Code section 558.1 and California Civil Code section 3294. On information and belief,
13 BARRAGAN, at all relevant times, exercised substantial discretion in his decision-making
14 such that his decisions ultimately determined corporate policy of SAMBA. In addition,
15 BARRAGAN is sued individually pursuant to Labor Code sections 558, 1197.1, and 2698, *et*
16 *seq.* (the PAGA) as an employer or person acting on behalf of an employer, who violated or
17 causes to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any
18 provision regulating hours and days of work in any order of the Industrial Welfare
19 Commission, and as an employer or other person acting either individually or as an officer,
20 agent, or employee of another person, who pays or causes to be paid to any employee a wage
21 less than the minimum fixed by an applicable state or local law, or by an order of the Industrial
22 Welfare Commission.

23 17. On information and belief, MOUSALLI, at all relevant times, was a director,
24 officer, and/or managing agent of Defendant SAMBA within the meaning of California Labor
25 Code section 558.1 and California Civil Code section 3294. On information and belief,
26 MOUSALLI, at all relevant times, exercised substantial discretion in his decision-making such
27 that his decisions ultimately determined corporate policy of SAMBA. In addition,
28 MOUSALLI is sued individually pursuant to Labor Code sections 558, 1197.1, and 2698, *et*

1 *seq.* (the PAGA) as an employer or person acting on behalf of an employer, who violated or
2 causes to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any
3 provision regulating hours and days of work in any order of the Industrial Welfare
4 Commission, and as an employer or other person acting either individually or as an officer,
5 agent, or employee of another person, who pays or causes to be paid to any employee a wage
6 less than the minimum fixed by an applicable state or local law, or by an order of the Industrial
7 Welfare Commission.

8 18. Plaintiffs are ignorant of the true names and capacities of defendants sued herein
9 as DOES 1 through 100, inclusive, and therefore sue said defendants by such fictitious names.
10 Plaintiffs will amend this Complaint to allege the true names and capacities of such fictitiously
11 named defendants when they are ascertained.

12 19. At all relevant times, every defendant was the agent, representative, employee,
13 servant or affiliated entity of every other defendant and, in doing the acts herein alleged, each
14 defendant is liable and responsible to Plaintiff for the acts of every other defendant.

15 **General Allegations**

16 20. Defendants: (1) failed to pay Plaintiffs and the PAGA Aggrieved Employees
17 their earned wages; (2) failed to pay Plaintiffs and the PAGA Aggrieved Employees the
18 required minimum wage; (3) failed to pay Plaintiffs and the PAGA Aggrieved Employees the
19 required overtime compensation; (4) employed Plaintiffs and the PAGA Aggrieved Employees
20 for more than five hours without timely, uninterrupted meal periods of not less than 30 minutes
21 and failed to compensate Plaintiffs for the missed meal periods; (5) employed Plaintiffs and the
22 PAGA Aggrieved Employees for work periods of four hours or major fraction thereof without
23 rest periods of ten minutes net rest time and failed to compensate Plaintiffs and the PAGA
24 Aggrieved Employees rest period compensation for the missed rest periods; (6) failed to provide
25 Plaintiffs with timely and accurate wage and hour statements; (7) failed to pay Plaintiffs and
26 the PAGA Aggrieved Employees their earned wages in a timely manner upon separation.
27 Defendants created and fostered a hostile work environment for their employees. The
28 foregoing acts and other acts by the defendants violated provisions of the Government Code

1 and the Labor Code, including §§ 201, 202, 203, 204, 208, 226, 226.7, 351, 510, 512, 1182.12,
2 1174, 1194, 1197, and 1198; violated the applicable Wage Orders issued by the IWC of the
3 State of California (the “Wage Order(s)”), and violated the rights of Plaintiff and the PAGA
4 Aggrieved Employees. Defendants further created, fostered, and tolerated hostile working
5 conditions for their employees.

6 21. Plaintiffs have duly complied with the requirements of the California Fair
7 Employment and Housing Act (the “FEHA”) by timely filing charges of discrimination and
8 harassment with the California Department of Fair Employment and Housing (the “DFEH”)
9 and obtaining the requisite “Right to Sue” notices.

10 **Specific Allegations**

11 22. Plaintiffs were employed by Defendants within the past four years and relevant
12 liability periods, at Defendants’ restaurant Samba Brazilian Steakhouse in Redondo Beach,
13 California. They were employed as servers and worked in the bar and restaurant.

14 23. During the relevant liability periods, Plaintiffs clocked in via an electronic
15 system, but Defendants had the ability to alter Plaintiffs’ time records and did so on multiple
16 occasions. Plaintiffs, knowing that they were not being paid for all hours clocked in, checked
17 their wage statements and questioned Defendants about the shorted hours. Sometimes
18 Defendants would make excuses like they “forgot to check the back page” printed out, or
19 sometimes they would say that they would provide the missing hours on the next check or two.
20 As a result of Defendants altering Plaintiffs’ time sheets, and conveniently “forgetting” to check
21 all printed out time records, Defendants failed to pay Plaintiffs for all hours worked, for all
22 wages earned, and for minimum wages.

23 24. During the relevant liability periods, Defendants sometimes failed to process
24 paperwork for new hires, such that they would work without being registered as an employee
25 in California, thereby saving payroll taxes, workers’ compensation obligations, and other
26 necessary items inherent in keeping accurate employee payroll and time records. When
27 questioned on these issues, Defendants would typically say that they were too busy and would
28 get to it later.

1 25. During the relevant liability periods, Defendants neglected to maintain workers'
2 compensation insurance on its employees.

3 26. During the relevant liability periods, Defendants, to avoid paying the correct
4 amount of payroll taxes, required Plaintiffs to clock out if they were approaching 8 hours on
5 shift, and then would sometimes pay them in cash for continuing to work, but not at the correct
6 overtime rate, or sometimes not at all.

7 27. Throughout the relevant liability periods, Defendants also withheld tips from
8 Plaintiffs. Sometimes Defendants would misappropriate cash tips left for the Plaintiffs by
9 simply picking up the money; sometimes Defendants would delay providing the credit card tips
10 which had been designated for Plaintiffs' benefit.

11 28. Defendants had no established rest break policy and therefore Plaintiffs were not
12 authorized or permitted to take 10 minutes timely rest periods during their shifts.

13 29. Defendants had no established meal break policy during the relevant time
14 periods. Plaintiffs were not provided with timely, off-duty meal periods during their
15 employment. Although Defendants forced Plaintiffs to begin signing meal break waivers at
16 some point during their employment, these meal break waivers were not signed voluntarily,
17 and Plaintiffs were still not provided with compliant meal periods. The meal break waivers, if
18 valid, were not in effect during the entire relevant time periods. If Defendants forced Plaintiffs
19 to clock out for a meal period, Plaintiffs were not authorized or permitted to have a 30-minute
20 off-duty break; there was no policy to relieve the servers of all duty.

21 30. Due to the editing of time sheets and the failure to pay all hours clocked in,
22 Defendants consistently failed to issue accurate wage statements to Plaintiffs.

23 31. All Plaintiffs were terminated in or about mid-March, 2020. Because they were
24 not paid for all hours worked, and did not receive all compensation due them because of stolen
25 tips, Plaintiffs were not paid in full at time of separation.

26 32. Defendants created, fostered, and tolerated a hostile work environment through
27 inappropriate sexual touching, comments, and culture. Some examples of the foregoing
28 behavior include, but are not limited to, the following:

- BARRAGAN making inappropriate physical contact of a sexual nature with female employees by forcibly grabbing them, pushing them, and caressing them on their lower backs.
- BARRAGAN sexually leering at female employees, staring at their breasts and buttocks, among other inappropriate gestures.
- BARRAGAN forcibly grabbing or hugging female employees.
- BARRAGAN making misogynistic comments about female employees, wanting them to look and dress a certain way to make them look more feminine and sexually appealing to customers (e.g., BARRAGAN would frequently proclaim words to the effect of, “I want a pretty girl behind the bar,” insinuating that female employees who did not meet his “sexualized look” would not be employed as bartenders).

33. Plaintiffs complained to MOUSALLI about the hostile work environment permeated by unwanted and inappropriate sexual comments and conduct toward the female employees at the hands of BARRAGAN, but the conduct continued, and BARRAGAN was never separated from employment or, on information and belief, given any corrective action for his inappropriate sexual conduct or comments.

Court Closure and Tolling Period

34. The Judicial Council Emergency Rule 9, as amended May 29, 2020, suspended from April 6, 2020 to October 1, 2020 the statutes of limitations and repose for civil causes of action that exceed 180 days. The statute of limitations for each of Plaintiffs’ causes of action exceeds 180 days.

35. As such, for purposes of Plaintiffs’ individual claims, the statutory periods relate back from on or about September 13, 2020.

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First Cause of Action

For Failure to Pay Earned Wages

(California Labor Code § 204)

By Plaintiffs Against All Defendants

36. Plaintiffs incorporate the preceding paragraphs.

37. Defendants failed to pay Plaintiffs the wages that they earned, as required by the Code and Wage Order 5-2001.

38. Plaintiffs have been deprived of their rightfully earned wages as a direct and proximate result of Defendants' failure to pay said compensation. Plaintiffs are entitled to recover such amounts, plus interest thereon, attorney's fees and costs.

Second Cause of Action

For Failure to Pay Minimum Wages

(California Labor Code §§ 1182.12, 1194, 1197, 1198; IWC Wage Order No. 5-2001)

By Plaintiffs Against All Defendants

39. Plaintiffs incorporate the preceding paragraphs.

40. Plaintiffs are entitled to minimum wage as provided under the Code and Wage Order 5-2001. Defendants employed more than 25 employees.

41. The Labor Code and the Wage Orders provide that an employer must pay a minimum wage to an employee, which is ten dollars and fifty cents (\$10.50) per hour for all hours worked effective January 1, 2017 through December 31, 2017; eleven dollars (\$11.00) per hour for all hours worked effective January 1, 2018 through December 31, 2018; twelve dollars (\$12.00) per hour for all hours worked effective January 1, 2019 through December 31, 2019; thirteen dollars (\$13.00) per hour for all hours worked effective January 1, 2020 through December 31, 2020; and fourteen dollars (\$14.00) per hour for all hours worked effective January 1, 2021 through the present.

42. Defendants regularly directed Plaintiffs to work off-the-clock without additional compensation, regularly edited clocked hours, and regularly neglected to report all hours

1 clocked in, as described in this Complaint, all in violation of California's minimum wage laws,
2 among other provisions of the Labor Code.

3 43. As a result, Defendants failed to pay Plaintiffs minimum wage for their work, as
4 required by the Code and Wage Order 5-2001.

5 44. Defendants thus required Plaintiffs to work under conditions prohibited by order
6 of the IWC, in violation of those orders.

7 45. Defendants deprived Plaintiffs of their rightfully earned minimum wage
8 compensation, as a direct and proximate result of Defendants' failure to pay said
9 compensation. Under Labor Code § 1194, Plaintiffs are entitled to recover such amounts, plus
10 interest thereon, reasonable attorney's fees, and costs.

11 46. In addition, under Labor Code § 1194.2, Plaintiffs are entitled to recover
12 liquidated damages in an amount equal to the minimum wages unlawfully unpaid, and interest
13 thereon.

14 **Third Cause of Action**

15 **For Failure to Pay Overtime Compensation**

16 **(California Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001)**

17 **By Plaintiffs Against All Defendants**

18 47. Plaintiffs incorporate the preceding paragraphs.

19 48. The Code and the Wage Order provide that a workday consists of eight hours, a
20 workweek consists of 40 hours, and an employer must compensate an employee who works
21 overtime hours with either one-and-one-half times or double the employee's regular rate of
22 compensation. Defendants employed Plaintiffs for more than eight hours per day and more
23 than 40 hours per workweek, but Defendants failed to pay Plaintiffs the overtime
24 compensation required by the California Labor Code and the Wage Order.

25 49. Defendants thus required Plaintiffs to work for longer hours than those fixed, or
26 under conditions prohibited, by order of the IWC, in violation of those orders.

27 50. Defendants deprived Plaintiffs of their rightfully earned overtime compensation
28 as a direct and proximate result of Defendants' failure to pay said compensation. Under Labor

1 Code § 1194, Plaintiffs are entitled to recover such amounts, plus interest thereon, attorney's
2 fees, and costs.

3 **Fourth Cause of Action**

4 **For Failure to Pay Meal Period Compensation**

5 **(California Labor Code §§ 226.7, 1198; IWC Wage Order No. 5-2001)**

6 **By Plaintiffs Against All Defendants**

7 51. Plaintiffs incorporate the preceding paragraphs.

8 52. The Code and the Wage Order provide that an employee is entitled to an
9 uninterrupted, off-the-clock meal period of not less than 30 minutes for every five hours
10 worked. The Code and the Wage Order also require the employer to pay the employee one
11 hour at the employee's regular rate of compensation for each day that the employer does not
12 provide at least one required meal period.

13 53. Defendants employed Plaintiffs for work periods of more than five (5) hours
14 without a timely meal period of not less than 30 minutes and failed to compensate Plaintiffs for
15 such meal periods, as required by Labor Code § 226.7 and the Wage Order.

16 54. Defendants deprived Plaintiffs of their rightfully earned compensation for meal
17 periods as a direct and proximate result of Defendants' failure to pay said compensation.

18 55. The remedy provided for in Code § 226.7 constitutes a wage, and Plaintiffs are
19 entitled to interest thereon. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094,
20 1099-1100.

21 **Fifth Cause of Action**

22 **For Failure to Pay Rest Period Compensation**

23 **(California Labor Code §§ 226.7, 1198; IWC Wage Order No. 5-2001)**

24 **By Plaintiffs Against All Defendants**

25 56. Plaintiffs incorporate the preceding paragraphs.

26 57. The Code and the Wage Order provide that an employee is entitled to an
27 uninterrupted rest period of not less than 10 net minutes for every four hours worked or major
28 fraction thereof. The Code and the Wage Order require the employer to pay the employee one

1 hour at the employee's regular rate of compensation for each day that the employer does not
2 provide at least one required rest period.

3 58. Defendants employed Plaintiffs for work periods of four hours or major fraction
4 thereof without rest periods of ten minutes' net rest time and failed to compensate Plaintiffs for
5 such rest periods, as required by Code § 226.7 and the Wage Order.

6 59. Defendants deprived Plaintiffs of their rightfully earned compensation for rest
7 periods as a direct and proximate result of Defendants' failure to pay said compensation.

8 60. The remedy provided for in Code § 226.7 constitutes a wage, and Plaintiffs are
9 entitled to interest thereon. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094,
10 1099-1100.

11 **Sixth Cause of Action**

12 **For Failure to Furnish Wage and Hour Statements**

13 **(California Labor Code § 226)**

14 **By Plaintiffs Against All Defendants**

15 61. Plaintiffs incorporate the preceding paragraphs.

16 62. Labor Code § 226(a) required Defendants, "semimonthly or at the time of each
17 payment of wages," to furnish Plaintiff "an accurate itemized statement in writing" showing
18 gross and net wages earned, total hours worked by the employee/employees, rates of pay, and
19 other information. Defendants knowingly and intentionally failed to provide Plaintiffs with
20 such wage and hour statements, because the wage statements did not accurately reflect the actual
21 hours worked or compensation earned. This occurred due to Defendants intentionally
22 altering, editing, or omitting hours logged, Defendants intentionally appropriating Plaintiffs'
23 tips, and Defendants' intentionally failing to pay meal and rest period premiums.

24 63. Defendants also failed to provide Plaintiffs with wage statements containing all
25 elements required under Labor Code section 226(a).

26 64. Plaintiffs suffered injury as a result of Defendants' knowing and intentional
27 failure to provide them with accurate wage and hour statements required by law.

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1 65. Under Labor Code § 226, subsections (e) and (f), and based on Defendants'
2 conduct as alleged herein, Plaintiffs are entitled to: (a) fifty dollars (\$50) for the initial pay
3 period in which a wage and hour statement violation occurred, and one hundred dollars (\$100)
4 per employee for each violation in a subsequent pay period, not exceeding an aggregate
5 penalty of four thousand dollars (\$4,000); (b) injunctive relief to ensure Defendants'
6 compliance with Labor Code § 226; and (c) an award of costs and reasonable attorney's fees.

7 66. Defendants' conduct also entitles Plaintiffs to seek preliminary and permanent
8 injunctive relief, including but not limited to an order that Defendants issue wage and hour
9 statements to Plaintiffs that comply with Labor Code § 226.

10 **Seventh Cause of Action**

11 **For Waiting Time Penalties**

12 **(California Labor Code §§ 201 and 203)**

13 **By Plaintiffs Against All Defendants**

14 67. Plaintiffs incorporate the preceding paragraphs.

15 68. Defendants willfully failed to pay Plaintiffs accrued wages due to them promptly
16 upon separation, as required by California Labor Code § 201.

17 69. Based on Defendants' conduct as alleged herein, Defendants are liable for
18 statutory penalties pursuant to Labor Code § 203.

19 **Eighth Cause of Action**

20 **For Conversion**

21 **(California Civil Code § 3336)**

22 **By Plaintiffs Against All Defendants**

23 70. Plaintiffs incorporate the preceding paragraphs.

24 71. Code § 351 provides in relevant part:

25 No employer or agent shall collect, take, or receive any gratuity or a
26 part thereof that is paid, given to, or left for an employee by a patron....
27 Every gratuity is hereby declared to be the sole property of the
28 employee or employees to whom it was paid, given, or left for. An
 employer that permits patrons to pay gratuities by credit card shall pay
 the employees the full amount of the gratuity that the patron indicated
 on the credit card slip, without any deductions for any credit card

1 payment processing fees or costs that may be charged to the employer
2 by the credit card company. Payment of gratuities made by patrons
3 using credit cards shall be made to the employees not later than the
next regular payday following the date the patron authorized the credit
card payment.

4 72. At all relevant times herein, Defendants had and continue to have a legal
5 obligation imposed by statute to pay all earned gratuities due to Plaintiffs and other eligible
6 employees. Such gratuities belonged to Plaintiffs and other eligible employees at the time the
7 patrons authorized payment of gratuities for labor and services the employees provided to the
8 patrons, and accordingly such gratuities are the property of Plaintiffs and other eligible
9 employees, not Defendants.

10 73. Defendants knowingly and intentionally failed to pay Plaintiffs and other eligible
11 employees gratuities left for them by patrons. Instead, Defendants converted Plaintiffs' and the
12 other aggrieved employees' rightfully earned gratuities to Defendants' own use and benefit.
13 Defendants converted such gratuities as part of an intentional and deliberate scheme to
14 maximize their profits at their employees' expense.

15 74. At all relevant times herein, Plaintiffs and the other eligible employees never
16 consented to Defendants taking and appropriating the credit card and cash tips for themselves;
17 and, in any event, Plaintiffs' and the other eligible employees' rights vis-a-viz the tips were
18 inalienable.

19 75. Plaintiff and other eligible employees were and continue to be injured by
20 Defendants' intentional conversion of such gratuities. Plaintiffs are entitled to immediate
21 possession of all amounts converted by Defendants, with interest.

22 76. In committing the foregoing acts, Defendants were guilty of oppression, fraud,
23 or malice, and, in addition to the actual damages caused thereby, Plaintiffs are entitled to
24 recover damages for the sake of example and by way of punishing Defendants.

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Ninth Cause of Action
For Hostile Work Environment Harassment Based on Sex in Violation of the FEHA
(California Government Code §12940, *et seq.*)
By Plaintiffs Against SAMBA and BARRAGAN

77. Plaintiffs incorporate the preceding paragraphs.

78. At all times mentioned herein, California Government Code Section 12940 *et seq.* was in full force and effect and was binding on the Defendants. This section requires all Defendants from creating a hostile work environment for employees such as Plaintiffs.

79. As described herein, Defendants, including defendant Barragan, repeatedly unwantedly touched Plaintiffs to the point where it offended, humiliated, distressed, and disrupted emotional tranquility in the workplace, affected Plaintiffs’ ability to perform the job as usual and/or otherwise interfered with and undermined Plaintiffs’ personal sense of well-being.

80. Plaintiffs personally witnessed harassing conduct that took place in their immediate work environment, as described in this Complaint.

81. The harassing conduct was so severe or pervasive as to alter fundamentally the nature of Plaintiffs’ work environment.

82. A reasonable woman in Plaintiffs’ circumstances would have considered the work environment at the Company to be hostile or abusive.

83. Plaintiffs considered the work environment to be hostile or abusive toward women.

84. As a proximate result of Defendants’ willful, knowing and intentional acts and harassment against Plaintiffs, they have suffered and continue to suffer humiliation, annoyance, embarrassment, shame, all to their damage in a sum to be established according to proof.

85. As a legal result of Defendants’ deliberate, outrageous, despicable conduct, Plaintiffs are entitled to recover punitive and exemplary damages in an amount commensurate

1 with Defendants' wrongful acts and sufficient to punish and deter future similar reprehensible
2 conduct.

3 86. In addition to such other damages as may properly be recovered herein, Plaintiffs
4 are entitled to recover prevailing attorney fees.

5 **Tenth Cause of Action**

6 **For Failure to Take Reasonable Steps to Prevent Harassment,**

7 **Discrimination, or Retaliation from Occurring**

8 **(Cal. Gov. Code § 12940(k))**

9 **By Plaintiffs Against SAMBA and MOUSALLI**

10 87. Plaintiffs incorporate the preceding paragraphs.

11 88. Plaintiffs personally witnessed harassing conduct that took place in their
12 immediate work environment, as aforepleaded.

13 89. The Company failed to take all reasonable steps to prevent the harassment,
14 discrimination, and/or retaliation.

15 90. As a proximate result of the Company's failure to take all reasonable steps to
16 prevent the harassment, discrimination, and/or retaliation, Plaintiffs were harmed.

17 91. The Company's failure to take all reasonable steps to prevent harassment,
18 discrimination, and/or retaliation was a substantial factor in causing Plaintiffs' harm.

19 92. As a proximate result of the said failure to take all reasonable steps to prevent
20 the harassment, discrimination, and/or retaliation as aforepleaded, Plaintiffs suffered emotional
21 distress damages in an amount in excess of the minimum jurisdiction of this court and
22 according to proof.

23 93. As a further proximate result of this failure to take all reasonable steps to prevent
24 the harassment, discrimination, and/or retaliation as aforepleaded, Plaintiffs lost employment
25 benefits, including lost wages and fringe benefits, in an amount in excess of the minimum
26 jurisdiction of the court and according to proof.

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94. As a further proximate result of this failure to take all reasonable steps to prevent the harassment, discrimination, and/or retaliation as aforepleaded, Plaintiffs were required to and did retain attorneys and are therefore entitled to an award of attorney's fees according to proof.

95. The aforepleed conduct, including the harassment, discrimination, and/or retaliation, perpetrated by BARRAGAN, a managing agent of SAMBA, constitutes oppression, fraud, and malice thereby entitling Plaintiffs to an award of punitive damages.

Eleventh Cause of Action

Unfair Competition

(Cal. Bus. & Prof. Code §17200 *et seq.*)

By Plaintiffs Against SAMBA

96. Plaintiffs incorporate the preceding paragraphs.

97. Defendants have engaged, and continue to engage, in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, including, i.e., failing to (a) pay all earned, minimum and overtime wages; (b) provide mandatory meal periods; (c) provide proper and accurate itemized wage statements; and (d) pay all earned compensation at time of separation, as described hereinabove.

98. Defendants' use of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

99. Plaintiffs seek full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants by means of the unfair practices complained of herein.

100. During the limitations period, Defendants have engaged in unlawful, deceptive and unfair business practices, proscribed by Business & Professions Code § 17200 *et seq.*, including those described herein, thereby depriving Plaintiffs of the minimum working conditions and standards due him under California law and Industrial Commission wage orders as described herein.

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1 **Twelfth Cause of Action**

2 **For Civil Penalties for Violations of the Labor Code**

3 **(California Labor Code Section 2698, *et seq.*)**

4 **By Plaintiffs Individually, On Behalf of All Aggrieved Employees, and**

5 **On Behalf of the Public Against All Defendants**

6 101. Plaintiffs incorporate the preceding paragraphs.

7 102. Throughout the PAGA Period, Defendants have violated and, on information
8 and belief, continue to violate provisions of the Labor Code, including §§ 201, 202, 203, 204,
9 208, 226, 226.7, 351, 510, 512, 1182.12, 1174, 1194, 1197, and 1198. Labor Code sections
10 2699(a) and (g) authorize an aggrieved employee, on behalf of himself or herself and other
11 current or former employees, to bring a civil action to recover civil penalties pursuant to the
12 procedures specified in Labor Code § 2699.3.

13 103. Plaintiffs have complied with the procedures for bringing suit specified in Labor
14 Code § 2699.3. By letter dated March 10, 2021, Plaintiffs gave written notice by online filing
15 with the LWDA and by certified mail to defendants BARRAGAN, MOUSALLI, and SAMBA
16 of Plaintiffs' allegations of Defendants' violations of the Labor Code. The LWDA failed to
17 notify this representative Plaintiff by certified mail that it does not intend to investigate the
18 alleged violations within 60 calendar days of the postmark date of the notice filing and failed
19 to send any notice within 65 days of Plaintiff's filing of the notice of its intention to investigate
20 Plaintiff's claimed violations.

21 104. Pursuant to Labor Code § 2699.3, subdivision (a)(2), Plaintiffs may seek civil
22 penalties under the PAGA, codified at Labor Code §§ 2698, *et seq.*

23 105. Pursuant to Labor Code § 2699, subdivisions (a) and (f), Plaintiffs are entitled to
24 recover civil penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 208, 226,
25 226.7, 351, 510, 512, 1182.12, 1174, 1194, 1197, and 1198, in the following amounts:

- 26 a. For violation of Labor Code § 201, one hundred dollars (\$100) for each
27 underpaid employee for each pay period the employee was underpaid,
28 and two hundred dollars (\$200) for each subsequent violation for each

underpaid employee for each pay period (penalty amounts established by Labor Code Section 2699(f)(2));

- b. For violation of Labor Code § 204, one hundred dollars (\$100) for each underpaid employee for each pay period the employee was underpaid, and two hundred dollars (\$200) for each subsequent violation or any willful or intentional violation, for each underpaid employee for each pay period, plus 25 percent of the amount unlawfully withheld (penalty amounts established by Labor Code Section 210);
- c. For violation of Labor Code § 208, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by Labor Code Section 2699(f)(2));
- d. For violation of Labor Code § 226(a), two hundred fifty dollars (\$250) for each employee per pay period for the initial violation and one thousand dollars (\$1,000) per employee in a subsequent violation (penalty amounts established by Labor Code Section 226.3) *or* one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- e. For violation of Labor Code § 226.7, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by Labor Code Section 2699(f)(2));
- f. For violation of Labor Code § 351, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for

1 each subsequent violation (penalty amounts established by Labor Code
2 Section 2699(f)(2));

3 g. For violation of Labor Code § 510, fifty dollars (\$50) for each underpaid
4 employee for each pay period the employee was underpaid in addition to
5 an amount sufficient to recover underpaid wages, and one hundred
6 dollars (\$100) for each subsequent violation for each underpaid employee
7 for each pay period in addition to an amount sufficient to recover
8 underpaid wages (penalty amounts established by Labor Code Section
9 558);

10 h. For violation of Labor Code § 512, fifty dollars (\$50) for each underpaid
11 employee for each pay period the employee was underpaid in addition to
12 an amount sufficient to recover underpaid wages, and one hundred
13 dollars (\$100) for each subsequent violation for each underpaid employee
14 for each pay period in addition to an amount sufficient to recover
15 underpaid wages (penalty amounts established by Labor Code Section
16 558);

17 i. For violation of Labor Code § 1174, five hundred dollars (\$500) for any
18 person employing labor who willfully fails to maintain the records
19 required by subdivision (c) of Section 1174 or accurate and complete
20 records required by subdivision (d) of Section 1174 (penalty amounts
21 established by Labor Code Section 1174.5);

22 j. For violation of Labor Code § 1194(a), one hundred dollars (\$100) for
23 each aggrieved employee per pay period for the initial violation and two
24 hundred dollars (\$200) for each aggrieved employee per pay period for
25 each subsequent violation (penalty amounts established by Labor Code
26 Section 2699(f)(2));

27 k. For violation of Labor Code § 1197, one hundred dollars (\$100) for each
28 underpaid employee for each pay period the employee was underpaid,

1 and two hundred dollars (\$250) for each subsequent violation for each
2 underpaid employee for each pay period (penalty amounts established by
3 Labor Code Section 1197.1); and

- 4 1. For violation of Labor Code § 1198, one hundred dollars (\$100) for each
5 underpaid employee for each pay period the employee was underpaid,
6 and two hundred dollars (\$200) for each subsequent violation for each
7 underpaid employee for each pay period (penalty amounts established by
8 Labor Code Section 2699(f)(2)).

9 106. Plaintiffs further demands reasonable attorney's fees, costs of suit, and interest
10 pursuant to California Labor Code §§ 2699(g)(1).

11 **Prayer for Relief**

12 WHEREFORE, Plaintiffs hereby pray that the Court enter judgment in their favor and
13 against Defendants and Does 1 through 100, Inclusive, and each of them, as follows:

- 14 1. For unpaid wages in an amount according to proof;
15 2. For minimum wage compensation in an amount according to proof;
16 3. For liquidated damages for unpaid minimum wages in an amount according to
17 proof;
18 4. For overtime compensation in an amount according to proof;
19 5. For meal period compensation in an amount according to proof;
20 6. For rest period compensation in an amount according to proof;
21 7. For injunctive relief to ensure Defendants' compliance with Labor Code § 226;
22 8. For Labor Code § 226(e) statutory penalties in an amount according to proof;
23 9. For Labor Code § 203 penalties in an amount according to proof;
24 10. For restitution and/or disgorgement as permitted by Business & Prof. Code §§
25 17200, *et seq.*;
26 11. For unlawfully converted gratuities plus interest;
27 12. For civil penalties in accordance with Labor Code § 2698, *et seq.*;
28

- 1 13. For general, special, and punitive damages in an amount according to proof;
2 14. For prejudgment interest on the foregoing at the legal rate;
3 15. For reasonable attorney fees as allowable;
4 16. For costs of suit incurred herein;
5 17. For such further relief as the Court may deem appropriate.

6 **Plaintiffs hereby demands jury trial of this matter.**

7 Dated: May 12, 2021

KASED LAW GROUP APC

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