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Attorneys for Plaintiff LANCE PISMAN

IN THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

LANCE PISMAN, as an individual, in his representative capacity,	)	Case No. 37-2021-00040855-CU-OE-CTL
	)	
Plaintiff,	)	
v.	)	COMPLAINT FOR COMPENSATORY
	)	DAMAGES, RESTITUTION, INJUNCTIVE
	)	RELIEF & CIVIL PENALTIES:
MORTON'S OF CHICAGO/SAN DIEGO,	)	
INC., a Delaware Corp.; LANDRY'S	)	1. Labor Code Private Attorneys General
PAYROLL, INC., a Texas Corp.; LANDRY'S,	)	Act of 2004 (Labor Code § 2698 <i>et seq.</i>);
INC., a Texas Corp.; LANDRY'S, LLC, a	)	2. Unlawful and Unfair Business Practices
Texas Limited Liability Company; and DOES	)	(Cal. Bus. & Prof. Code § 17200 <i>et seq.</i>);
1 to 50, inclusive,	)	3. Conversion;
	)	4. Failure to Provide Meal Periods, Or
Defendants.	)	Compensation in Lieu Thereof
	)	(Cal. Labor Code §§ 226.7 and 512);
	)	5. Failure to Authorize and Permit Rest
	)	Periods, Or Compensation in Lieu
	)	Thereof (Cal. Labor Code § 226.7); and
	)	6. Failure to Provide Accurate Itemized
	)	Wage Statements (Cal. Labor Code §
	)	226).

JURY TRIAL REQUESTED
[Unlimited Civil Action]

INTRODUCTION

1. This is a representative action brought by Plaintiff Lance Pisman ("Plaintiff") on behalf of himself, the State of California, and all other current or former non-exempt employees throughout the State of California against whom one or more of the alleged Labor Code violations was committed and/or is being committed ("Aggrieved Employees," as defined by Cal. Labor Code Section 2699(c)).

2. At all relevant times, Plaintiff and other Aggrieved Employees have been employed by Defendants MORTON'S OF CHICAGO/SAN DIEGO, INC.; LANDRY'S PAYROLL, INC.; LANDRY'S, INC.; and LANDRY'S, LLC ("Defendants") at restaurant locations owned and operated by Defendants throughout the State of California, including, but not limited to, the following brands: Del Frisco's, Landry's Seafood House, Bubba Gump Shrimp Co., Rainforest Cafe, Morton's The Steakhouse, The Oceanaire Seafood Room, McCormick & Schick's Seafood, Chart House, Joe's Crab Shack, and Saltgrass Steak House .

3. Plaintiff asserts that, during the relevant time period, Defendants consistently violated California wage and hour laws by, among other things:

a. Plaintiff and other Servers who work in the "front of the house" at Defendants' restaurants have been subjected to unlawful gratuity, or tip, sharing policies and practices in violation of Cal. Labor Code Section 351. Specifically, Defendants' Servers, including Plaintiff, and other "front of the house" Aggrieved Employees have been forced to contribute 25.5% of their earned gratuities into a tip sharing pool with "back of the house" restaurant employees, including Cleaning, Kitchen Dish, Kitchen Line, Kitchen Pantry and Kitchen Prep employees. In turn, Defendants reduced these "back of the

1 house" restaurant employees' hourly wages, thus demonstrating that Servers'
2 25.5% tip pooling contribution has been clearly intended to subsidize
3 Defendants' fixed labor costs.

4 b. Furthermore, Defendants' tip pooling policies and practices violate Labor
5 Code Section 351 in that they are patently unfair and inequitable, and bear
6 no relation to the tip pooling participants' efforts in the chain of service for
7 Defendants' patrons.

8 c. In further violation of Labor Code Section 351, Defendants have also
9 unlawfully collected, taken, and received gratuities, including portions
10 thereof, that have been paid, given to, or left for Aggrieved Employees,
11 including Plaintiff, in connection with online, take out, or "to go," orders and
12 online orders.

13 d. Defendants have also violated Labor Code Section 353, which requires
14 California employers to keep accurate records of all gratuities received
15 either directly or indirectly by the employer. At all relevant times,
16 Defendants have failed to maintain accurate records of the gratuities earned
17 and received by Aggrieved Employees, including Plaintiff.

18 e. In violation of Cal. Labor Code Sections 226.7 and 512, Plaintiff and
19 Defendants other Aggrieved Employees have also been required by
20 Defendants to work during meal and rest periods.

21 f. In violation of Cal. Labor Code Sections 201-203, Defendants have willfully
22 failed to timely pay wages owed and/or the required waiting time penalties
23 to Aggrieved Employees who have separated from their employment with
24 Defendants;

25 g. In violation of Cal. Labor Code Sections 226 and 226.3, Defendants have
26 failed to maintain and provide timely, legally compliant wage statements to
27 Plaintiff and other Aggrieved Employees;

1 4. Each of the acts described herein violate the California Labor Code ("Labor Code").
2 Pursuant to the Private Attorneys General Act of 2004, codified in Labor Code §§ 2698 *et seq.*
3 ("PAGA"), Plaintiff brings this action in his representative capacity against Defendants to recover
4 civil penalties, as well as reasonable attorneys' fees and litigation costs, on behalf of himself and
5 other current or former hourly non-exempt employees of Defendants in the state of California
6 during the relevant time period.

7 5. All allegations in this Complaint are based upon information and belief, except as to
8 those allegations pertaining to the named Plaintiff and his counsel, which are based on personal
9 knowledge. Each allegation in this Complaint has evidentiary support or is likely to have
10 evidentiary support after a reasonable opportunity for further investigation and discovery.

11 **JURISDICTION AND VENUE**

12 6. This Court has jurisdiction over this representative action and the Defendants
13 named herein pursuant to California Code of Civil Procedure ("Code Civil Procedure") §§ 382,
14 410.10 and Labor Code §§ 2698 *et seq.* Defendants conduct business in the state of California and
15 have caused injuries in the county of San Diego, as well as throughout the state of California,
16 through their acts and omissions, and by and through their violations of the California Labor Code,
17 thus giving the Court personal jurisdiction over Defendants.

18 7. Venue as to Defendants is proper in this judicial district pursuant to Code Civil
19 Procedure §§ 395 and 395.5 because Defendants transact business at numerous restaurant locations
20 in the county of San Diego and are otherwise within this Court's jurisdiction for purposes of
21 service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and other
22 current and former hourly non-exempt employees within the state of California and San Diego
23 County.

24 **THE PARTIES**

25 8. Plaintiff LANCE PISMAN at all material times mentioned herein:

26 a. Was and is a resident of San Diego County;

- b. Has been employed by Defendants in San Diego, California since approximately January 2020 as an hourly non-exempt employee;
- c. Has worked as a Server at Morton's The Steakhouse San Diego, located at 285 J St., San Diego, CA 92101;
- d. Has been paid an hourly wage;
- e. Has been subjected to Defendants' unlawfully collection and retention of gratuities in violation of Labor Code Section 351, as described herein.
- f. Has not been provided with legally compliant meal periods or compensation in lieu thereof in violation of Labor Code Sections 226.7 and 512, as described herein;
- g. Has not been authorized or permitted to take legally compliant rest periods or compensation in lieu thereof in violation of Labor Code Sections 226.7 as described herein;
- h. Has not been provided with accurate itemized wage statements in violation of Labor Code Sections 226 and 226.3, as described herein;
- i. Believes his records of earned gratuities have not been accurately maintained by Defendants in violation of Labor Code Section 353, as described;
- j. Is an "aggrieved employee" as defined by Labor Code § 2699(c); and
- k. Complied with all requirements outlined in Labor Code §§ 2698 *et seq.*

9. Plaintiff is informed and believes, and thereon alleges, that Defendant MORTON'S OF CHICAGO/SAN DIEGO, INC. is a Delaware Corporation with its principal place of business located at 1510 West Loop S., Houston, TX 77027-9505.

10. Plaintiff is informed and believes, and thereon alleges, that Defendant LANDRY'S PAYROLL, INC. is a Texas Corporation with its principal place of business located at 1510 West Loop S., Houston, TX 77027-9505.

1 11. Plaintiff is informed and believes, and thereon alleges, that Defendant LANDRY'S,
2 INC. is a Texas Corporation with its principal place of business located at 1510 West Loop S.,
3 Houston, TX 77027-9505.

4 12. Plaintiff is informed and believes, and thereon alleges, that Defendant LANDRY'S,
5 LLC is a Texas Limited Liability Company with its principal place of business located at 1510
6 West Loop S., Houston, TX 77027-9505.

7 13. According to the website, www.landrysinc.com, the Landry's-related entities are the
8 owners and operators of a collection of casual and upscale restaurants, or "family of brands,"
9 including Del Frisco's, Landry's Seafood House, Bubba Gump Shrimp Co., Rainforest Cafe,
10 Morton's The Steakhouse, The Oceanaire Seafood Room, McCormick & Schick's Seafood, Chart
11 House, Joe's Crab Shack, and Saltgrass Steak House.

12 14. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate, or otherwise of Defendant Does 1 through 50, are unknown to Plaintiff, who
14 therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure
15 section 474. Plaintiff will amend his complaint to allege the true names and capacities of Does 1
16 through 50 when they are ascertained.

17 15. At all times mentioned herein, the acts alleged to have been done and/or caused by
18 Defendants are also alleged to have been done and/or caused by the unascertained defendants
19 mentioned above, and by each of their agents and employees who acted within the scope of their
20 agency and/or employment.

21 16. At all times mentioned herein, each defendant acted as an agent, servant, employee,
22 co-conspirator, alter-ego and/or joint venture of the other defendants, and in doing the things
23 alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in
24 furtherance of the joint venture.

25 17. At all times mentioned herein, the acts and omissions of each of the defendants
26 concurrently contributed to the various acts and omissions of each and every one of the other
27 defendants in proximately causing the wrongful conduct, harm, and damages alleged herein. Each
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1 of the defendants approved of, condoned, and/or otherwise ratified each and every one of the acts
2 or omissions complained herein. Each defendant and all Doe defendants were and are acting with
3 authority of each and every other defendant and are acting as agents of each and every other
4 defendant or Doe defendant.

5 **FACTUAL ALLEGATIONS REGARDING JOINT EMPLOYER STATUS**

6 18. Plaintiff realleges and incorporates by this reference, as though fully set forth
7 herein, all paragraphs of this Complaint.

8 19. Each of the named Defendants are closely related entities, all located at the
9 corporate office at 1510 W. Loop South, Houston, TX 77027, who own and operate the Landry's
10 family of restaurants at which Plaintiff and the Aggrieved Employees mentioned herein have
11 worked throughout the State of California, including Del Frisco's, Landry's Seafood House, Bubba
12 Gump Shrimp Co., Rainforest Cafe, Morton's The Steakhouse, The Oceanaire Seafood Room,
13 McCormick & Schick's Seafood, Chart House, Joe's Crab Shack, and Saltgrass Steak House.

14 20. At all relevant times, Defendants have employed Plaintiff and the Aggrieved
15 Employees mentioned herein, and have exercised control over Plaintiff's and the Aggrieved
16 Employees' wages, hours and working conditions by the following policies, procedures and
17 conduct, including, but not limited to: (a) management at Defendants have had the authority to hire
18 and terminate Plaintiff and the Aggrieved Employees; (b) officers, directors and managers at the
19 Defendants have exercised substantial authority over the terms and conditions of, and set work
20 rules governing, Plaintiff's and the Aggrieved Employees' wages, hours and working conditions,
21 including all rules and conditions set forth in the Landry's Employee Handbook, the Landry's
22 Agreement to Arbitrate Claims, the Landry's California Pay Laws and Meal Break Waiver
23 Agreement and related procedures, the Landry's Payroll Grievance Form and related procedures,
24 the Landry's Paycheck Acknowledgement Form,¹ the Landry's Memorandum dated March 30,
25 2021, directed to all Landry's Back of House, Hosts and Tipped Employees and entitled "Addition

26 _____
27 ¹ All identified Landry's written employment policies, rules, procedures and forms have at all
28 relevant times been accessible on the Landry's Employee Portal located at:
<http://employees.ldry.com/empForms.asp>.

1 of Back of House and Hosts to Tip Share," and a revised Landry's Memorandum dated June 1,
2 2021, directed to all Landry's Back of House, Hosts and Tipped Employees and also entitled
3 "Addition of Back of House and Hosts to Tip Share;" (c) Gary Bullers, Regional Director of
4 Operations for Defendants, has regularly exercised direct control over Plaintiff's and the Aggrieved
5 Employees' wages, hours and working conditions, and assumed a general right of control regarding
6 hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the
7 workplace behavior of Plaintiff and numerous Aggrieved Employees, including scheduling and
8 directing numerous training sessions, meetings and one-on-one discussions with Plaintiff and
9 numerous Aggrieved Employees regarding Landry's policies and procedures pertaining to payroll
10 procedures, payroll record keeping, tip pooling, meal periods, rest periods, the Landry's
11 Agreement to Arbitrate Claims, the Landry's California Employee Pay Laws and Meal Break
12 Waiver Agreement, and Landry's record keeping of Plaintiff's and numerous Aggrieved
13 Employees' gratuities. Specifically, on numerous occasions, Mr. Bullers met with Plaintiff and
14 other Aggrieved Employees and asserted his authority over Plaintiff's and the Aggrieved
15 Employees' wages, hours and working conditions, including making relevant statements such as, "I
16 am now providing you with [meal and rest] breaks!;" the Landry's Paycheck Acknowledgement
17 Form "is just there to ensure that your paycheck is accurate;" "we will pay for a meal break
18 violations but we will not pay for a rest break violation;" "to go order tips belong to the Company
19 [Landry's]!;" and in a two-hour meeting Mr. Bullers continuously yelled at Plaintiff regarding
20 Plaintiff's submission of several Payroll Grievance Forms to Landry's Human Resources
21 Department, including call him "greedy!;" (e) Julia Liebelt, Vice President of Human Resources for
22 Defendants for the past 26 years, is identified as the "Employer" signatory on the Landry's
23 Agreement to Arbitrate Claims, which has been regularly provided to Aggrieved Employees
24 throughout the State of California; (f) at all relevant times, Defendants have directly managed and
25 controlled all Human Resources, Payroll and Employee Benefits duties and responsibilities with
26 respect to Plaintiff and all Aggrieved Employees throughout California; (g) the Landry's Payroll
27 Grievance Form directs all Aggrieved Employees in California, including Plaintiff, to notify
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1 Defendants Human Resources Department "[i]f you feel that you have not been paid correctly,"
2 including if the employee "worked more hours than reflected" on the employee's paycheck, if the
3 employee "believe[s] my time records are inaccurate," if the employee "believe[s] my tips are
4 incorrect or have been improperly withheld or distributed," if the employee "did not receive missed
5 meal/rest break(s) pay on the date listed below...;" (h) the Landry's California Pay Laws and Meal
6 Break Waiver Agreement, created and implemented by Defendants and applicable to all Aggrieved
7 Employees in California, including Plaintiff, requires such employees to "acknowledge it is my
8 responsibility to contact Human Resources [for Defendants] if I am not allowed to take meal or rest
9 breaks or properly record my time as required by law;" (i) all Aggrieved Employees' work
10 schedules, including Plaintiff's work schedules, have at all relevant times been created and
11 distributed to such employees via the hotschedules.com website managed by Defendants; (j)
12 through the Defendants' "Work Number" service, if Aggrieved Employees, including Plaintiff,
13 need verification of their employment status in order to "apply for a loan, need a reference check,
14 lease an apartment or any other instance where proof of employment or income is need," such
15 employees are directed to access "The Work Number" form on the Defendants' employee portal
16 (<http://employees.ldry.com/empForms.asp>) and are instructed to enter "Landry's, Inc. employer
17 code: 12541" as their employer; (k) all Aggrieved Employees, including Plaintiff, are directed to
18 submit all employment related communications, including allegations regarding "harassment or
19 discrimination," via the Landry's Employee Communication Form, to Defendants' Human
20 Resources Department "by clicking the 'Send' button. Alternatively, you may email it to
21 EERelations@ldry.com, fax it to the Human Resources Department at 713-386-7555, or mail it to
22 the Corporate office at 1510 West Loop South, Houston, TX 77027, attn: Human Resources
23 Department. If you have not received a response within one week of submitting this form, please
24 contact the Human Resources Department at 1-800-394-3839, as the form may not have
25 transmitted properly;"(l) at all relevant times, officers, directors and managing agents at
26 Defendants, including, but not limited to, Gary Bullers, Regional Director of Operations and Julia
27 Liebelt, Vice President of Human Resources, otherwise employed and exercised control over
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1 Plaintiffs and all Aggrieved Employees' wages, hours and working conditions; (m) numerous
2 written employment terms and conditions have been created and implemented by the Defendants
3 and disseminated to the Aggrieved Employees, including Plaintiff, via the Landry's Employee
4 Portal (<http://employees.ldry.com/empForms.asp>), including the following:

- 5 • Arbitration Agreement - CA Locations Only - Spanish
- 6 • Arbitration Agreement - CA
- 7 • Arbitration Agreement - Except CA - TX - Spanish
- 8 • Arbitration Agreement - Except CA -TX
- 9 • Arbitration Agreement - Texas Locations Only
- 10 • Arbitration Agreement – Del Friscos before 10-30-19
- 11 • Arbitration Agreement – Texas Locations Only - Spanish
- 12 • Cigna Telehealth Connection without Behavioral Health Customer Flyer
- 13 • Discount Program Policy
- 14 • Employee Communication Form - Spanish
- 15 • Employee Communication Form
- 16 • ESS Instructions - General
- 17 • ESS Instructions - Managing Time Off Requests
- 18 • ESS Instructions - Time Off Requests
- 19 • ESS Instructions Benefits
- 20 • Landry's HIPAA Privacy Notice
- 21 • Payroll Grievance Form
- 22 • Referral Program - Hourly
- 23 • Referral Program - Management
- 24 • The Work Number Information Sheet – English
- 25 • The Work Number Information Sheet – Spanish
- 26 • The Work Number Poster – English
- 27 • The Work Number Poster – Spanish

1 **FACTUAL ALLEGATIONS REGARDING LABOR CODE VIOLATIONS**

2 21. Plaintiff realleges and incorporates by this reference, as though fully set forth
3 herein, all paragraphs of this Complaint.

4 22. Plaintiff and other Servers who work in the "front of the house" at Defendants'
5 restaurants have been subjected to unlawful gratuity, or tip, sharing policies and practices in
6 violation of Cal. Labor Code Section 351. Specifically, Defendants' Servers, including Plaintiff,
7 and other "front of the house" Aggrieved Employees have been forced to contribute 25.5% of their
8 earned gratuities into a tip sharing pool with "back of the house" restaurant employees, including
9 Cleaning, Kitchen Dish, Kitchen Line, Kitchen Pantry and Kitchen Prep employees. Prior to the
10 25.5% arrangement, Defendants' "front of the house" employees contributed only 15% of their
11 earned gratuities into a tip sharing pool with 10% of the tip pool being distributed to Bussers and
12 5% of the tip pool being distributed to Bartenders. According to the Defendants' written policies,
13 practices and memoranda, "[a]s a result of Cleaning, Host, Kitchen Dish, Kitchen Line, Kitchen
14 Pantry, and Kitchen Prep *starting to receive a portion of the tip share distribution, those employees*
15 *[had] their hourly rate reduced.*" [Emphasis added.] Thus, Defendants' admission that "back of the
16 house" employees' hourly wages were reduced *as a result of* Defendants' decision to force Servers
17 to contribute 10.5% more of their wages to Defendants' tip pooling arrangement constitutes a clear
18 violation of Labor Code Section 351, Defendants' 25.5% tip pooling contribution from its
19 California-based Servers is clearly intended to lessen Defendants' obligation to pay "back of the
20 house" employees by using "front of the house" employees' earned gratuities to subsidize
21 Defendants' fixed labor costs. Furthermore, Defendants' tip pooling policies and practices violate
22 Labor Code Section 351 in that they are patently unfair and inequitable, and bear no relation to the
23 tip pooling participants' efforts in the chain of service for Defendants' patrons.

24 23. In further violation of Labor Code Section 351, Defendants have also unlawfully
25 collected, taken, and received gratuities, including portions thereof, that have been paid, given to,
26 or left for Aggrieved Employees, including Plaintiff, in connection with take out, or "to go," orders
27 and online orders. The Aggrieved Employees' gratuities have been routinely collected, taken, and
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1 received by Defendants' managers and agents who were never in the chain of service for
2 Defendants' patrons and customers.

3 24. Defendants' tip-pooling schemes also operate as a fraud on the consumer pursuant
4 to Cal. Labor Code Section 356. This is precisely what Judge P.J. Klein warned of in his dissent in
5 *Etheridge v. Reins Int'l California, Inc.*: "Today, the gratuity is deemed a business asset and a part
6 of the employer's cash flow, which the employer may take and apply toward its payroll to augment
7 the wages of non-tipped employees, in lieu of a pay raise for those employees." (*Etheridge v. Reins*
8 *Int'l California, Inc* (2009 172 Cal.App.4th at 937 (P.J. Klein, dissenting).) "In addition to
9 denigrating the property rights of tipped employees, the practice of employer-mandated tip pooling
10 works a fraud on consumers. (Labor Code § 356.) Unbeknownst to the average patron, it is now the
11 employer, not the patron, who designates the recipients of gratuities. If a restaurant were to advise
12 its patrons of the existence and particulars of its employer-mandated tip pooling policy, that
13 disclosure may well affect the tipping practices of individual patrons." (*Id* at 937-938.)

14 25. Defendants have also violated Labor Code Section 353, which requires California
15 employers to keep accurate records of all gratuities received either directly or indirectly by the
16 employer. At all relevant times, Defendants have failed to maintain accurate records of the
17 gratuities earned and received by Aggrieved Employees, including Plaintiff. Despite numerous
18 requests from Plaintiff and other Aggrieved Employees to view records of the gratuities they have
19 received while working for Defendants, in order to determine whether they have actually received
20 all such earned gratuities, Defendants have been unable to produce any records of gratuities, thus
21 suggesting that such records have never existed. Additionally, Defendants' management created
22 and disseminated grossly inaccurate spreadsheets purporting to indicate Plaintiff and other
23 Aggrieved Employees' cash gratuities. On one such spreadsheet, Plaintiff was identified as earning
24 \$212.45 in cash gratuities on May 4, 2021 and May 6, 2021; and yet, in fact, Plaintiff never even
25 worked on those two dates. Nevertheless, Defendants wrongly withheld state and federal taxes
26 from Plaintiff and other Aggrieved Employees, based upon these grossly inaccurate spreadsheets.

1 In violation of Cal. Labor Code Section 512, Plaintiff and Defendants other Aggrieved Employees
2 have also been required by Defendants to work during meal periods. Specifically, at all relevant
3 times, Plaintiff and other Aggrieved Employees were routinely unable to take their uninterrupted
4 meal and rest breaks due to the Defendants' under-staffing and Defendants' requirement that their
5 chain of service employees not leave the restaurant dining room while patrons are present in their
6 assigned section. Defendants' state-wide policies and practices have required their non-exempt
7 chain of service employees, including Plaintiff, to remain on the job unless relieved. This
8 requirement, combined with Defendants' failure to ensure adequate staffing, has resulted in
9 Defendants' failure to provide Aggrieved Employees, including Plaintiff, with state-mandated meal
10 breaks. As a result, Plaintiff and Defendants' other Aggrieved Employees have not been provide
11 with state-mandated meal periods of an uninterrupted thirty minutes within the first five hours of
12 daily work periods lasting more than five hours, and have not been provided with compensation in
13 lieu thereof in violation of Cal. Labor Code Section 226.7.

14 26. Defendants have also promulgated and enforced policies under which its California-
15 based chain of service employees, including Plaintiff, have regularly worked more than four hours
16 per day without being authorized and permitted to take one or more paid rest periods of at least ten
17 minutes for each four hours of work time, or major fraction thereof, during which employees were
18 relieved of all of their respective work duties. Defendants have also failed to authorize and permit
19 its chain of service employees to take 10 minutes' rest during shifts lasting more than three and
20 one-half hours to six hours in length, 20 minutes' rest during shifts lasting more than six hours up
21 to 10 hours in length, and 30 minutes' rest during shifts lasting more than 10 hours up to 14 hours
22 in length. As a result of Defendants' aforementioned state-wide policies and practices and failure to
23 ensure adequate staffing, Plaintiff and Defendants other Aggrieved Employees have not been
24 authorized or permitted to take their state-mandated rest period of an uninterrupted ten minutes'
25 rest during every four hour work period, or major fraction thereof, and have not been provided with
26 compensation in lieu thereof in violation of Cal. Labor Code Section 226.7.

1 27. In violation of Cal. Labor Code Sections 201-203, Defendants have willfully failed
2 to timely pay wages owed and/or the required waiting time penalties to Aggrieved Employees who
3 have separated from their employment with Defendants.

4 28. In violation of Cal. Labor Code Sections 226 and 226.3, Defendants have failed to
5 maintain and provide timely, legally compliant wage statements to Plaintiff and other Aggrieved
6 Employees. Specifically, due to Defendants' culture, policies, practices, guidelines and/or
7 procedures, Defendants have failed to provide Plaintiff and other Aggrieved Employees with
8 accurate and itemized wage statements as required by California law. Plaintiff contends that the
9 wage statements furnished by Defendants have failed to, among other things, accurately reflect
10 gross and/or net wages earned. Also, because Plaintiff and other Aggrieved Employees were
11 unable to record non-compliant meal and/or rest periods; and did not receive accurate itemized
12 wage statements, among other things, SeaWorld failed to maintain accurate employee and payroll
13 records as required by California Law.

14 **FIRST CAUSE OF ACTION**
15 ***Labor Code Private Attorneys General Act of 2004***
16 **(Labor Code § 2698 et seq.)**

16 (On Behalf of Plaintiff, All Aggrieved Employees and the State of California)

17 29. Plaintiff realleges and incorporates by this reference, as though fully set forth
18 herein, all paragraphs of this Complaint.

19 30. Plaintiff has complied with the notice requirement outlined in Labor Code § 2699.3.
20 On July 21, 2021, Plaintiff submitted notice to the California Labor and Workforce Development
21 Agency ("LWDA") and Defendants informing them of Defendants' alleged Labor Code violations.
22 The LWDA had 65 days to provide notice to Plaintiff of whether it intended investigate the
23 violation alleged in the notice. To date, the LWDA has not provided notice of whether it intends to
24 investigate the alleged violations. Plaintiff has the right to pursue, and does so pursue, such claims
25 pursuant to PAGA in his representative capacity on behalf of the State and all Aggrieved
26 Employees as permitted by Labor Code § 2699.3 and California law.

1 31. Furthermore, Plaintiff believes that additional violations may be discovered and he
2 therefore reserves her right to allege additional violations of the law as investigation and discovery
3 warrants. In the event Plaintiff discovers additional violations of law, Plaintiff will seek to amend
4 the operative complaint as necessary.

5 32. Pursuant to the PAGA, any provision of the Labor Code which allows for a civil
6 penalty to be assessed and collected by the LWDA, or any of its departments, divisions,
7 commissions, boards, agencies, or employees, for a Labor Code violation, may be recovered
8 through a civil action brought by an aggrieved employee on behalf of himself or herself, and other
9 current or former employees. Labor Code §§ 2698 *et seq.* Such civil penalties are in addition to
10 any other relief provided for under the Labor Code and must be allocated seventy-five percent
11 (75%) to the LWDA and twenty-five percent (25%) to the Aggrieved Employees. *Id.*

12 33. Defendants employed Plaintiff and each of the current or former hourly non-exempt
13 employees he represents in the state of California during all, or a portion of, the one-year statute of
14 limitations period before Plaintiff filed his notice with the LWDA.

15 34. Plaintiff is an “aggrieved employee” under PAGA, as he has been employed by
16 Defendants within the past year and has suffered one or more violations of the Labor Code, as
17 described herein.

18 35. As set forth herein, Defendants have committed, and continue to commit, numerous
19 violations for which the Labor Code entitles Plaintiff, in his representative capacity, to recover, on
20 behalf of himself and all other current or former hourly non-exempt employees in the state of
21 California, the general public and the state of California, the statutory and civil penalties, as well as
22 attorneys’ fees and costs, for Defendants’ violations of the Labor Code, as alleged herein.

23 36. Plaintiff, in his representative capacity, is entitled to, and so seeks to, recover civil
24 penalties for violations of the following Labor Code provisions in this representative action:

- 25 a. Sections 201 – 203 (Failure to Pay All Compensation Owed at Separation);
26 b. Section 204 (Failure to Timely Pay All Wages Earned);
27 c. Section 221 (Unlawful Collection of Employee Wages);

- d. Section 226 (Failure to Provide Accurate Itemized Wage Statements);
- e. Section 226.3 (Penalties for Failure to Provide Accurate Wage Statements);
- f. Section 226.7 (Failure to Compensate for Missed, Late or On Duty Meal and Rest Periods);
- g. Section 351 (Unlawful, Unfair and Inequitable Tip/Gratuity Pooling);
- h. Section 353 (Failure to Keep Accurate Records of All Collected Gratuities);
- i. Section 512 (Failure to Provide Timely, Uninterrupted 30-Minute Meal Periods);
- j. Section 558 (Penalties for Violations in IWC Wage Orders); and
- k. Section 1174 (Failure to Maintain Accurate Time Records).

37. For violations of Labor Code § 512, in addition to any other recovery provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for the initial violation and \$100 per pay period for each underpaid employee for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC. Labor Code § 558 also requires that any recovery of wages be paid to the affected employee. Therefore, Plaintiff and other current or former hourly non-exempt in the state of California are thus entitled to and seek the described civil penalty are entitled to and do seek such civil penalties.

38. Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation for violations of Labor Code § 226(a). Plaintiff and other hourly non-exempt employees in the state of California are thus entitled to and seek the described civil penalties.

39. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided. Plaintiff and current

1 and former hourly non-exempt employees in the state of California are entitled to, and therefore
2 seek, the above described civil penalties.

3 40. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
4 brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As
5 such, Plaintiff, in his representative capacity on behalf of himself, the State of California and other
6 Aggrieved Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

7 41. Plaintiff, in his representative capacity on behalf of himself, the State of California
8 and other Aggrieved Employees is entitled to and seeks recovery of reasonable attorneys' fees and
9 costs as provided by Labor Code §§ 218.5, 1193.6, 1194, and Code of Civil Procedure § 1021.5.

10 **SECOND CAUSE OF ACTION**
11 ***Unlawful and Unfair Business Practices***
(Business & Professions Code §§ 17200 *et seq.*)

12 (On behalf of Plaintiff Individually)

13 42. Plaintiff realleges by reference, as if fully set forth herein, all of the above
14 Paragraphs.

15 43. Within each of the four years prior to the commencement of this action, Defendants'
16 conduct, as set forth above, in collecting, taking, and receiving gratuities, including portions
17 thereof, that have been paid, given to, or left for Plaintiff, including online, take, or "to go" orders,
18 and being forced to contribute 25.5% of Plaintiff's earned gratuities into a tip sharing pool with
19 "back of the house" restaurant employees, constitutes a violation of California Labor Code § 351.

20 44. This violation is enforceable pursuant to the California Unfair Competition Law,
21 Cal. Bus. & Prof. Code § 17200 *et seq.*

22 45. The violations of California Labor Code § 351, as well as the fundamental
23 California public policies protecting wages, serve as unlawful predicate acts and practices for
24 purposes of Business and Professions Code §§ 17200 *et seq.*

25 46. By committing the alleged acts and/or omissions as described in this Complaint,
26 Defendants have engaged, and continue to engage, in unlawful and/or unfair business practices
27 within the meaning of California Business & Professions Code § 17200 *et seq.*

47. By the conduct alleged herein, Defendants have engaged and continue to engage in business practices which violate California and federal law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor Code including Sections 351 and 353, for which this Court should issue declaratory and other equitable relief pursuant to California Business & Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

48. Business & Professions Code § 17203 provides that a court may take such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent Defendants from repeating the unlawful, unfair, and fraudulent business acts and practices alleged above.

49. As a direct and proximate result of the aforementioned acts and practices, Plaintiff has suffered a loss of money and property, in the form of unpaid gratuities and wages which are due and payable to him.

50. Business and Professions Code § 17203 provides that the Court may restore to any person in interest any money or property which may have been acquired by means of such unfair competition. Plaintiff and the Class members are entitled to restitution pursuant to Business and Professions Code § 17203 for all wages and payments unlawfully withheld from Plaintiff during the four-year period prior to the filing of this Complaint.

51. Pursuant to California Business & Professions Code § 17203, Plaintiff seeks declaratory and injunctive relief for Defendants' unlawful, unfair, and fraudulent conduct and to recover restitution.

52. Plaintiff is informed and believes, and thereon alleges, that unless restrained and ordered to pay restitution and disgorge profits derived from these unlawful and unfair employment practices, Defendants will continue to engage in the unlawful and unfair acts and/or omissions described in this Complaint.

1 **THIRD CAUSE OF ACTION**

2 ***Conversion***

3 (On behalf of Plaintiff Individually)

4 53. Plaintiff realleges by reference, as if fully set forth herein, all of the above
5 Paragraphs.

6 54. Defendants' conduct, as alleged herein, constitutes conversion under California
7 law.

8 55. At all times mentioned herein, Plaintiff had an ownership interest in, and the lawful
9 right to possess immediately, his gratuities, which constituted his property.

10 56. At all times mentioned herein, Defendants intentionally and substantially interfered
11 with Plaintiff's right of possession of his earned gratuities. Instead, Defendants assumed actual
12 control and ownership of Plaintiff's gratuities.

13 57. Plaintiff did not consent to such an interference, and is directly and proximately
14 harmed as a result of Defendants' conduct in taking all or a portion of Plaintiff's gratuities.

15 58. As a direct, proximate and foreseeable result of the Defendants' conduct, as set forth
16 herein, Plaintiff has been damaged and is entitled to recover an amount equal to the value of
17 gratuities at the time of the conversion, with interest.

18 59. On information and belief, the amount of gratuities recoverable by Plaintiff is
19 presumptively within the knowledge and exclusive control of the Defendants, as required by Cal.
20 Labor Code Section 353, and will be ascertainable through discovery procedures. Plaintiff is also
21 entitled to compensation for the time and money expended in recovering the unlawfully converted
22 gratuities.

23 **FOURTH CAUSE OF ACTION**

24 ***Failure to Provide Meal Periods, Or Provide Compensation in Lieu Thereof***
25 **(California Labor Code §§ 226.7 and 512)**

26 (On Behalf of Plaintiff Individually)

27 60. Plaintiff realleges by reference, as if fully set forth herein, all of the above
28 Paragraphs.

1 61. Plaintiff alleges, on the basis of information and belief, that during all relevant
2 times, Defendants have promulgated and enforced policies under which Plaintiff regularly worked
3 more than five hours in a daily work period lasting longer than five hours without being provided
4 with an uninterrupted, thirty-minute meal period during which Plaintiff was relieved of all of his
5 respective work duties, or under which Plaintiff was not provided with a thirty-minute meal period
6 during the first five hours of his work shift. Defendants have also promulgated and enforced
7 policies under which Plaintiff regularly worked more than ten hours in a daily work period lasting
8 longer than ten hours without being provided with a second uninterrupted, thirty-minute meal
9 period during which Plaintiff was relieved of all of his respective work duties, or under which
10 members Plaintiff was not provided with a second thirty-minute meal period during the first ten
11 hours of his work shift. Defendants have also otherwise failed to provide Plaintiff with state-
12 mandated meal periods, including requiring Plaintiff take unlawful "on duty" meal periods.

13 62. Plaintiff is entitled to additional wages pursuant to California Labor Code Section
14 226.7 for each daily work period lasting more than five hours during which Plaintiff was not
15 provided with an uninterrupted, thirty minute meal period, or during which Plaintiff was not
16 provided with an uninterrupted thirty-minute meal period during the first five hours of his work
17 shift. Plaintiff is also entitled to additional wages pursuant to California Labor Code Section 226.7
18 for each daily work period lasting more than ten hours during which Plaintiff was not provided
19 with a second uninterrupted, thirty minute meal period, or during which Plaintiff was not provided
20 with a second uninterrupted thirty-minute meal period during the first ten hours of his work shift.

21 63. As a result of Defendants' conduct as alleged herein, Plaintiff has suffered harm and
22 monetary damages, in an amount to be ascertained at trial.

23 **FIFTH CAUSE OF ACTION**

24 ***Failure to Authorize and Permit 10-Minute Employee Rest Periods,***
25 ***Or Provide Compensation in Lieu Thereof***
26 **(California Labor Code §§ 226.7)**

27 (On Behalf of Plaintiff Individually)

64. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

65. Plaintiff alleges, on the basis of information and belief, that during all relevant times, Defendants have promulgated and enforced policies under which Plaintiff has regularly worked more than four hours per day without being authorized and permitted to take one or more paid rest periods of at least ten minutes for each four hours of work time, or major fraction thereof, during Plaintiff was relieved of all of his respective work duties.

66. Defendants have failed to authorize and permit members Plaintiff to take ten-minute rest periods every four hours or major fraction thereof. Defendants have failed to authorize and permit Plaintiff to take 10 minutes' rest during shifts lasting more than three and one-half hours to six hours in length, 20 minutes' rest during shifts lasting more than six hours up to 10 hours in length, and 30 minutes' rest during shifts lasting more than 10 hours up to 14 hours in length.

67. Plaintiff has suffered harm and monetary damages, in an amount to be ascertained at trial. Plaintiff is entitled to additional wages pursuant to California Labor Code Section 226.7 for each four hour work period, or major fraction thereof, during which Plaintiff was not permitted and authorized to take one or more ten minute rest periods.

SIXTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements
(Labor Code §§ 226 and 226.3; Cal. Code Regs., Title 8 § 11040 section 7)

(On Behalf of Plaintiff Individually)

68. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

69. Labor Code Section 226 requires an employer to keep accurate, itemized pay statements. Under California law, gross wages earned, the precise, actual number of hours and minutes worked by a non-exempt employee, all deductions, net wages earned, inclusive dates of the pay period, the name of the employee, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period must be accurately itemized on each pay statement.

1 70. During the applicable statutory period, Defendants have routinely failed to provide
2 Plaintiff, at the time of each payment of wages, an accurate itemized statement in writing showing
3 the requirements of Labor Code § 226 and section 7 of Title 8 CCR § 11040. Defendants' failure to
4 provide accurate itemized wage statements to Plaintiff has been the intentional result of
5 Defendants' unlawful policies and practices, as alleged herein.

6 71. Defendants' failure to provide accurate itemized wage statements to Plaintiff has
7 been knowing and intentional, and has been in clear violation of Labor Code § 226(a).

8 72. Plaintiff has suffered injuries as a result of the knowing and intentional failure of
9 Defendants to comply with Labor Code § 226(a) and Title 8 CCR § 11040(7), in that Defendants'
10 failure to provide Plaintiff with accurate itemized wage statements made it impossible for Plaintiff
11 to know whether he had been paid properly for all earned wages in a timely manner.

12 73. Defendants' knowing and intentional failure to furnish Plaintiff with accurate
13 itemized wage statements, as alleged above, has violated Labor Code § 226(a), as well as Title 8
14 CCR § 11040(7). Labor Code § 226(e) entitles Plaintiff to recover the greater of his actual
15 damages caused by Defendants' violations, or \$50 for the initial pay period in which the violation
16 occurred, and \$100 for each violation in subsequent pay periods, not exceeding an aggregate
17 penalty of \$4,000.

18 **PRAYER FOR RELIEF**

19 Plaintiff, individually, in his representative capacity on behalf of himself, the State of
20 California and all other Aggrieved Employees, prays for judgment against Defendants as follows:

- 21 a. For all wages and/or benefits due to Plaintiff;
- 22 b. For any and all statutory and civil penalties available for the aforementioned
23 violations under the Labor Code, including without limitation, Labor Code §§ 2698
24 *et seq.*;
- 25 c. For reasonable attorneys' fees and costs of suit pursuant to Labor Code §§ 218.5,
26 1194, 1193.6 and 2699(g), Code of Civil Procedure § 1021.5, the "common fund"
27 theory, the "substantial benefit" theory and/or other applicable law, theory or
28

1 doctrine;

- 2 d. For pre- and post- judgment interest as provided by California law;
3 e. For appropriate equitable relief pursuant to California law; and
4 f. For any other relief, the Court may deem as just and proper.

5
6 DATED: September 23, 2021

BLANCHARD, KRASNER & FRENCH

7
8 
9 DAVID C. HAWKES

10 Attorneys for Plaintiff LANCE PRISMAN,
11 Individually, on behalf of all others aggrieved
employees, on behalf of the State of California

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19
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff, in his individual capacity, hereby demands a jury trial on issues triable to a jury.

22
23 DATED: September 23, 2021

BLANCHARD, KRASNER & FRENCH

24
25 
26 DAVID C. HAWKES

27 Attorneys for Plaintiff LANCE PRISMAN