

DENNIS F. MOSS (SBN 77512)
JEREMY F. BOLLINGER (SBN 240132)
ARI E. MOSS (SBN 238579)
MOSS BOLLINGER LLP
15300 Ventura Blvd., Ste. 207
Sherman Oaks, California 91403
Telephone: (310) 982-2984
Facsimile: (818) 963-5954
dennis@mossbollinger.com
jeremy@mossbollinger.com
ari@mossbollinger.com

Attorneys for Scott Shuster

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

DOMINGO MURCHISON, individually and
on behalf of all current and former similarly
situated employees in the State of California

Plaintiff,

vs.

MVP EVENT PRODUCTIONS, LLC, a
California Limited Liability Company dba
MVP EVENT STAFFING; GREGORY
FIELDING, an individual; LEGENDS
HOSPITALITY, LLC, a Delaware Limited
Liability Company (previously designated by
the fictitious name of "DOE 1"; and DOES 2 to
50,

Defendants.

Case No. 30-2021-01234789-CU-OE-CXC

[Assigned for All Purposes to William D.
Claster, Dept. CX101]

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF SCOTT SHUSTER'S
"ARGUMENTS & EVIDENCE" IN
OPPOSITION TO PROPOSED
SETTLEMENT UNDER PRIVATE
ATTORNEYS GENERAL ACT**

Location: Dept. CX101

Date: August 1, 2025

Time: 9:00 a.m.

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“Records of any court of this state and any court of the United States or of any state of the United States are judicially noticeable. (Evid. Code § 452(d).) Moreover, under Evidence Code section 452(h), the Court may take judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Evid. Code § 452(h). Evidence Code § 453 requires that “the trial court take judicial notice of any matter specified in section 452 if a party requests it and (a) [gives] each adverse party sufficient notice of the request... to enable such adverse party to prepare to meet the request; and (b) [f]urnishes the court sufficient information to enable it to take judicial notice of the matter.” *See O’Keefe v. Atascadero Cty. Sanitation District*, 21 Cal. App. 3d 719, 728 (1971) (court required to take judicial notice “because respondents requested it, gave appellant sufficient notice of the request and furnished the court with sufficient information to enable it to take judicial notice”).

1. First Amended Complaint filed in *Crook v. Legends Hospitality, LLC et al.*; Los Angeles Superior Court Case No. 23STCV24567 on December 19, 2023, a true and correct copy of which is attached hereto as **Exhibit 1**.

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1 3. Third Amended filed in *Shuster v. Legends Hospitality, LLC*; Los Angeles Superior
2 Court Case No. 22STCV32193 on August 26, 2024, a true and correct copy of which is attached
3 hereto as **Exhibit 3**.

4
5 Dated: July 29, 2025

MOSS BOLLINGER LLP

6 By: /s/Dennis F. Moss

7 Dennis F. Moss

8 Attorneys for Scott Shuster
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EXHIBIT 1

to Request for Judicial Notice

1 Shaun Setareh (SBN 204514)
 shaun@setarehlaw.com
 2 Thomas Segal (SBN 222791)
 thomas@setarehlaw.com
 3 Farrah Grant (SBN 293898)
 farrah@setarehlaw.com
 4 SETAREH LAW GROUP
 9665 Wilshire Boulevard, Suite 430
 5 Beverly Hills, California 90212
 Telephone (310) 888-7771
 6 Facsimile (310) 888-0109

7 Attorneys for Plaintiff Demetrius Crook

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

10 UNLIMITED JURISDICTION

11 Demetrius Crook, on behalf of herself and all
 12 others similarly situated, and the general
 public,

13 *Plaintiff,*

14 v.

15 LEGENDS HOSPITALITY, LLC, a Delaware
 limited liability company; LEGENDS
 16 HOSPITALITY PARENT HOLDINGS LLC,
 a Delaware limited liability company;
 17 LEGENDS HOSPITALITY MANAGEMENT
 LLC, a Delaware limited liability company,
 18 and DOES 1 through 50, inclusive,

19 *Defendants.*

Case No. 23STCV24567

Amended As a Matter of Right Pursuant to
 Labor Code Section 2699.3(a)(2)(C)

CLASS AND REPRESENTATIVE ACTION

FIRST AMENDED COMPLAINT

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly and Overtime Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Indemnify (Lab. Code § 2802);
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202, 203 and 204);
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
8. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff Demetrius Crook ("Plaintiff"), on behalf of herself and all others similarly
2 situated, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action against defendants LEGENDS
5 HOSPITALITY, LLC, a Delaware limited liability company; LEGENDS HOSPITALITY
6 PARENT HOLDINGS, LLC, LEGENDS HOSPITALITY MANAGEMENT, LLC, a Delaware
7 limited liability company and DOES 1 through 50, inclusive, (collectively referred to as
8 "Defendants") for alleged violations of the Labor Code. As set forth below, Plaintiff alleges that
9 Defendants have.

- 10 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
11 periods;
12 (2) failed to provide them with rest periods;
13 (3) failed to pay them premium wages for missed meal and/or rest periods;
14 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
15 rate of pay;
16 (5) failed to pay them at least minimum wage for all hours worked;
17 (6) failed to pay them overtime wages at the correct rate;
18 (7) failed to pay them double time wages at the correct rate;
19 (8) failed to reimburse them for all necessary business expenses;
20 (9) failed to provide them with accurate written wage statements; and failed to pay them
21 all of their final wages following separation of employment.

22 Based on these alleged violations, Plaintiff now brings this representative action to recover unpaid
23 wages, restitution, civil and statutory penalties, and related relief on behalf of herself and all others
24 similarly situated.

25 **JURISDICTION AND VENUE**

26 2. This Court has subject matter jurisdiction to hear this case because the unpaid wages,
27 actual damages, liquidated damages, restitution, and penalties sought by Plaintiff from Defendants
28 exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

3. Venue is proper in LOS ANGELES because Defendants' principal place of business is in DELAWARE, is incorporated under the laws of DELAWARE, does business in LOS ANGELES, and has not registered a California place of business with the California Secretary of State. Plaintiff worked for Defendants in LOS ANGELES. As such, venue is proper in any county in California.

PARTIES

4. Plaintiff is and was, and at all relevant times mentioned herein, an individual residing in the State of California.

5. Plaintiff is informed and believes, and thereupon alleges, that Defendant LEGENDS HOSPITALITY, LLC is, and at all relevant times mentioned herein, a Delaware limited liability company doing business in the State of California. Plaintiff is informed and believes, and thereupon alleges, that Defendant LEGENDS HOSPITALITY, LLC is, and at all relevant times mentioned herein, a Delaware limited liability company doing business in the State of California. Plaintiff is informed and believes, and thereupon alleges, that Defendant LEGENDS HOSPITALITY, LLC is, and at all relevant times mentioned herein, a Delaware limited liability company doing business in the State of California.

6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE defendants when ascertained.

7. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some or all of the defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some or all of the other defendants, and, in doing the things alleged herein, were acting within the course

1 and scope of such relationship and with the full knowledge, consent, and ratification by such other
2 defendants.

3 **CLASS ALLEGATIONS**

4 8. This action has been brought and may be maintained as a class action pursuant to
5 Code of Civil Procedure § 382 because there is a well-defined community of interest among the
6 persons who comprise the readily ascertainable classes defined below and because Plaintiff is
7 unaware of any difficulties likely to be encountered in managing this case as a class action.

8 9. **Relevant Time Period:** The relevant time period is defined as the time period
9 beginning four years prior to the filing of this action until judgment is entered.

10 **Hourly Employee Class:** All persons employed by Defendants whether directly or
11 indirectly through any staffing agencies and/or third parties in hourly or non-exempt
positions in California during the **Relevant Time Period**.

12 **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked
13 in a shift in excess of five hours during the **Relevant Time Period**.

14 **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked
15 a shift of at least three and one-half (3.5) hours during the **Relevant Time**
16 **Period**.

17 **Wage Statement Penalties Sub-Class:** All **Hourly Employee Class**
18 members employed by Defendants in California during the period beginning
19 one year before the filing of this action and ending when final judgment is
20 entered.

21 **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members
22 who separated from their employment with Defendants during the period
23 beginning three years before the filing of this action and ending when final
24 judgment is entered.

25 **UCL Class:** All **Hourly Employee Class** members employed by Defendants in
26 California during the **Relevant Time Period**.

27 **Expense Reimbursement Class:** All persons employed by Defendants in California
28 who incurred business expenses during the **Relevant Time Period**.

29 10. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
30 right to amend or modify the class definitions with greater specificity by further division into sub-
31 classes and/or by limitation to particular issues.

32 11. **Numerosity:** The class members are so numerous that the individual joinder of each
33 individual class member is impractical. While Plaintiff does not currently know the exact number of

1 class members, Plaintiff is informed and believes, and thereupon alleges, that the actual number
2 exceeds the minimum required for numerosity under California law.

3 12. **Commonality and Predominance:** Common questions of law and fact exist as to all
4 class members and predominate over any questions that affect only individual class members. These
5 common questions include, but are not limited to:

- 6 i. Whether Defendants maintained a policy or practice of failing to provide employees
7 with their meal periods;
- 8 ii. Whether Defendants maintained a policy or practice of failing to provide employees
9 with their rest periods;
- 10 iii. Whether Defendants failed to pay premium wages to class members when they have
11 not been provided with required meal and/or rest periods;
- 12 iv. Whether Defendants failed to pay minimum and/or overtime wages to class members
13 as a result of policies that fail to provide meal periods in accordance with California
14 law;
- 15 v. Whether Defendants failed to pay minimum and/or overtime wages to class members
16 for all time worked;
- 17 vi. Whether Defendants failed to reimburse class members for all necessary business
18 expenses incurred during the discharge of their duties;
- 19 vii. Whether Defendants failed to provide class members with accurate written wage
20 statements as a result of providing them with written wage statements with
21 inaccurate entries for, among other things, amounts of gross and net wages, and total
22 hours worked;
- 23 viii. Whether Defendants are liable to class members for waiting time penalties under
24 Labor Code section 203;
- 25 ix. Whether class members are entitled to restitution of money or property that
26 Defendants may have acquired from them through unfair competition;

27 13. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff
28 is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing

1 to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.

2 14. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in
3 that she has no interests that are adverse to or otherwise conflict with the interests of absent class
4 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
5 and adequately represent and protect the interests of the other class members.

6 15. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
7 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
8 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on
9 behalf of Plaintiff and absent class members.

10 16. **Superiority:** A class action is vastly superior to other available means for fair and
11 efficient adjudication of the class members' claims and would be beneficial to the parties and the
12 Court. Class action treatment will allow a number of similarly situated persons to prosecute their
13 common claims simultaneously and efficiently in a single forum without the unnecessary
14 duplication of effort and expense that numerous individual actions would entail. In addition, the
15 monetary amounts due to many individual class members are likely to be relatively small and would
16 thus make it difficult, if not impossible, for individual class members to both seek and obtain relief.
17 Moreover, a class action will serve an important public interest by permitting class members to
18 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the
19 potential for inconsistent or contradictory judgments inherent in individual litigation.

20 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

21 17. Plaintiff has worked for Defendants as an hourly, non-exempt employee since
22 approximately August 13, 2013. Defendants provide hospitality services for various sports
23 entertainment venues including but not limited to the Los Angeles Coliseum, So-Fi Stadium, etc.

24 **Off The Clock Work: Security Check and Clocking In**

25 18. Plaintiff and the putative class are responsible for finding their parking prior to
26 clocking in. On non-event days, days when there is no football game or other event at venue,
27 Plaintiff and the putative class have no designated parking and must either find street parking or
28 park in an offsite parking lot. It takes employees additional time after parking in the offsite location

1 to clock in. Plaintiff and the putative class are not paid by the Defendants for the time spent
2 waiting for the shuttle or riding the shuttle.

3 19. On event days, Plaintiff and the putative class park at a designated offsite parking
4 lot located, more than a mile from the venue, that requires them to then wait in line and be shuttled
5 into the venue before clocking in. This procedure can take anywhere from 5-30 minutes depending
6 on the number of employees waiting to board the shuttle and the number of shuttles available. This
7 delay in clocking in is not reflected in their timecards.

8 20. Plaintiff and the putative class were required to utilize the general entrances to the
9 venues and required to go through a security check at the time of entering and leaving the premises
10 on which they work. The security check required Plaintiff and the putative class to first wait in a
11 general-purpose line where anyone who wanted to enter the venues were required to go through a
12 security screening.

13 21. Plaintiff and the putative class were allowed to pass through the security check upon
14 displaying their employee badges. Security staff would then perform a bag check to search for
15 weapons or contraband.

16 22. Plaintiff and the putative class were required to spend at least five to fifteen minutes
17 each time they went through the security check—time that was not paid by Defendants.

18 23. Plaintiff and the putative class were not paid for the time it takes to pass the security
19 check to arrive at the check in location.

20 24. Plaintiff and the putative class were trained to clock in for each work shift by
21 scanning their assigned badge. Plaintiff and the putative class were required to go through a
22 security clearance before being able to clock in. After the security check in line, Plaintiff and the
23 putative class would need to wait in line to clock in. It generally took approximately five to ten
24 minutes for employees to enter the venue after the security clearance to clock in.

25 25. Occasionally, Plaintiff and the putative class would encounter login errors or
26 computer crashes that would require them to clock in by manually typing in their social security
27 numbers instead. The entire time spent waiting in line to clock in would not be accurately recorded
28 and therefore resulted in Plaintiff and the putative class not being paid for all hours worked

because of the equipment malfunction.

26. Substantial amounts of wages not paid to Plaintiff and the putative class.

Defendants practices have resulted in substantial amounts of wages not being paid to Plaintiff and the putative class.

27. Plaintiff alleges that, at relevant times during the applicable limitations period, due to Defendants' above-mentioned policies or practices, Plaintiff and the putative class did not receive their full thirty (30) minute uninterrupted meal periods that they were entitled to under California law.

Missed Rest Periods

28. Plaintiff and the putative class members were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to Defendants' policy of not scheduling each rest period as part of each work shift and understaffing.

29. Plaintiff and the putative class did not have scheduled breaks. The Plaintiff and the putative class would have to find time when the concession stands were not busy or ensure another employee was present to attend to the concession stands for them to take their break. Often, the concession stands were understaffed meaning there were no employees to manage the concession stand thus allowing Plaintiff and the putative class to take their rest break. Plaintiff and the putative class would risk reprimands and/or termination if the concession stands were not attended to. As a result, plaintiff and putative class often missed their meal breaks entirely and worked through their entitled rest breaks.

30. Additionally, Defendant's practiced a policy requiring a security bag check upon reentry of the premises during event days if Plaintiff and the putative class left venue to take their rest period. This policy of requiring a security check further impeded and discouraged Plaintiff and the putative class from taking their breaks.

31. Plaintiff alleges that, at relevant times during the applicable limitations period, Defendants maintained a policy or practice of disciplining Plaintiff and members of the putative class, up to and including termination, if they did not perform their job which required working through their rest breaks and lunches.

1 **Shortened Rest Periods**

2 32. Plaintiff and the putative class members were not provided with rest periods of at
3 least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to
4 Defendants' policy of not scheduling each rest period as part of each work shift and understaffing.

5 33. Accordingly, there was not an adequate breakroom where employees could take
6 their rest periods. The only break room in the venue is in the basement and contains only two
7 tables and a kitchenette which can accommodate 3-8 employees at a time. Depending on where in
8 the venue Plaintiff and the putative are working, it can take 5 to 10 minutes to get the breakroom.
9 On event days, hundreds of employees are working and need access to a break room. As a result,
10 Plaintiff and the putative class would take their rest periods in the public food court or elsewhere
11 on the premises.

12 **Missed Meal Periods**

13 34. Plaintiff and the putative class were not provided with meal periods of at least thirty
14 (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling
15 each meal period as part of each work shift; (2) chronically understaffing each work shift with not
16 enough workers; (3) imposing so much work on each employee such that it made it unlikely that an
17 employee would be able to take their breaks if they wanted to finish their work on time; and (4) no
18 formal written meal and rest period policy that encouraged employees to take their meal and rest
19 periods.

20 35. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
21 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours
22 worked due to complying with Defendants' productivity requirements that required Plaintiff and
23 the putative class to work through their meal periods in order to complete their assignments on
24 time.

25 36. On event days, days when the venue hosts a football game or other event,
26 employees were required to take a meal break immediately upon starting their shift. Plaintiff and
27 the putative class would clock in near the entrance of the venue, then walk to the public food court
28 and clock out for lunch. After returning from lunch, Plaintiff and the putative class began to work

1 their shifts lasting up to twelve hours. Plaintiff and the putative class would not take another meal
2 break throughout the duration of their shift. As a result, Plaintiff and the putative class did not
3 properly receive their meal break within five hours after returning from their mandatory meal
4 period upon clocking in.

5 37. Plaintiff and the putative class were discouraged from taking their meal periods
6 because of understaffing. Plaintiff and the putative class worked in several concession locations
7 which would always have a long line during their work shift. Since the Defendants understaffed the
8 service locations, Plaintiff and the putative class were discouraged from taking their meal periods.

9 38. During their employment with Defendants, Plaintiff and the putative class regularly
10 worked shifts up to twelve hours per day, without having a second meal break after ten hours, as
11 required by California law. Defendants had a policy of automatically adding thirty minutes from
12 Plaintiff's and the putative class's timecard and manually adding a lunch period, regardless of
13 whether Plaintiff and the putative class received a meal period or not. When Plaintiff and the
14 putative class worked more than 10 hours, they were not granted their second meal breaks. Second
15 meal breaks were not planned or scheduled when Plaintiff and the putative class worked more than
16 10 hours.

17 39. Further, there was not an adequate breakroom where employees could take their rest
18 periods. The only break room in the venue is in the basement and contains only two tables and a
19 kitchenette which can accommodate 3-8 employees at a time. Depending on where in the venue
20 Plaintiff and the putative are working, it can take 5 to 10 minutes to get the breakroom. On event
21 days, hundreds of employees are working and need access to a break room. As a result, Plaintiff
22 and the putative class could only take their only provided meal period upon clocking in, in the
23 public food court.

24 40. Additionally, Defendant's practiced a policy requiring a security bag check upon
25 reentry of the premises during event days if Plaintiff and the putative class left the venue to take
26 their meal period. This policy of requiring a security check further impeded and discouraged
27 Plaintiff and the putative class from taking meal breaks.

28 **Regular Rate of Pay**

41. The regular rate of pay under California law includes all remuneration for employment paid, on behalf of the employer, to the employee. This requirement includes but is not limited to, commissions, mandatory service charges, non-discretionary bonuses and shift differential pay.

42. During the applicable limitations period, Defendants violated the rights of Plaintiff and the putative class under the above-referenced Labor Code sections by failing to pay them overtime wage premiums, meal period premiums, rest period premiums, and sick pay for all overtime hours worked in violation of Labor Code §§ 226.7, 246, 510, 1194, and 1198 as a result of not correctly calculating their regular rate of pay to include all applicable remuneration, including, but not limited to, commissions, mandatory service charges, non-discretionary bonuses and shift differential pay.

Clock-Out Process

43. Similarly, after clocking out for each work shift, Plaintiff and the putative class expended time to reach their cars so they can leave work. During non-event days, Plaintiff and the punitive class spend 2-5 minutes traveling to the off-site parking structure or street parking to leave work.

44. During event days, Plaintiff and the putative class would wait for a shuttle after clocking out to reach their designated parking lot. On event days, traffic is often heavy and congested which can cause the wait times to board a shuttle and arrive at the parking lot to reach anywhere between 10 minutes and an hour after clocking out. Plaintiff and the putative class were not paid for time spent waiting for the shuttles and riding the shuttles.

45. As a result of Defendants' policies and practices, Plaintiff and the putative class were not paid for all hours worked.

Expense Reimbursement

46. Plaintiff and the putative class members were required to utilize their own personal cellphones to perform their job duties. Plaintiff and the putative class members were not reimbursed for business expenses incurred for using their cellphones. Plaintiff and the putative class members used their cellphones to communicate with other staff as well as supervisors while on

1 duty.

2 47. Plaintiff and the putative class members were required to wash and maintain their
3 uniforms. Plaintiff and the putative class received two shirts with the Legends logo stamped on
4 them. Plaintiff and the putative class were required to wear the uniform every day that they worked
5 including Monday-Friday. Plaintiff and the putative class members were not reimbursed for costs
6 associated with maintaining their uniform which was required for work.

7 48. Defendants failed to reimburse Plaintiff and the putative class for such necessary
8 business expenses incurred by them.

9 **Wage Statements**

10 49. Plaintiff and the putative class were not provided with accurate wage statements as
11 mandated by law pursuant to Labor Code § 226.

12 50. Defendants failed to comply with Labor Code § 226(a)(1) as “gross wages earned”
13 were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work
14 were not included.

15 51. Defendants failed to comply with Labor Code § 226(a)(2) as “total hours worked by
16 the employee” were not accurately reflected in that all hours worked, including overtime and “off-
17 the-clock” work were not included.

18 52. Defendants failed to comply with Labor Code section 226(a)(4) as “all deductions”
19 were not accurately reflected in that deductions, even “aggregated and shown as one item,” were not
20 included.

21 53. Defendants failed to comply with Labor Code section 226(a)(6) as “the inclusive
22 dates of the period for which the employee is paid” were not included.

23 54. Plaintiff and the putative class earned tips while working in concession stands during
24 event days at the venue. These tips were not always paid on time and were not reflected accurately
25 in their wage statements.

26 **FIRST CAUSE OF ACTION**

27 **FAILURE TO PROVIDE MEAL PERIODS**

28 **(Lab. Code §§ 204, 223, 226.7, 512 and 1198)**

(Plaintiff and Meal Period Sub-Class)

55. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged herein.

56. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been non-exempt employees of Defendants entitled to the full meal period protections of both the Labor Code and the applicable Industrial Welfare Commission Wage Order (“Wage Order”).

57. Labor Code § 512 and § 11 of the applicable Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

58. Labor Code § 226.7 and § 11 of the applicable Wage Order both prohibit employers from requiring employees to work during required meal periods and require employers to pay non-exempt employees an hour of premium wages on each workday that the employee is not provided with the required meal period.

59. Compensation for missed meal periods constitutes wages within the meaning of Labor Code § 200.

60. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate the applicable Wage Order.

61. Section 11 of the applicable Wage Order states:

“No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

62. At all relevant times, Plaintiff was not subject to a valid on-duty meal period agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class** members were not subject to valid on-duty meal period agreements with Defendants.

63. Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5) hour work period, as required by Labor Code § 512 and the applicable Wage Order.

64. Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-Class** members when they worked five (5) hours without clocking out for any meal period.

65. Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period Sub-Class** with a second meal period when they worked shifts of ten or more hours and failed to pay them premium wages as required by Labor Code § 512 and the applicable Wage Order.

66. Moreover, Defendants' written policies do not provide that employees must take their first meal period before the end of the fifth hour of work, that employees are entitled to a second meal period if they work a shift of over ten hours, or that the second meal period must commence before the end of the tenth hour of work, unless waived.

67. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-Class** members additional premium wages, and/or were not paid premium wages at the employees' regular rates of pay when required meal periods were not provided.

68. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of herself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and costs of suit.

69. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the **Meal Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Lab. Code §§ 204, 223, 226.7 and 1198)

(Plaintiff and Rest Period Sub-Class)

70. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

71. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been non-exempt employees of Defendants entitled to the full rest period protections of both the Labor Code and the applicable Wage Order.

72. Section 12 of the applicable Wage Order imposes an affirmative obligation on employers to permit and authorize employees to take required rest periods at a rate of no less than ten minutes of net rest time for each four-hour work period, or major fraction thereof, that must be in the middle of each work period insofar as practicable.

73. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers from requiring employees to work during required rest periods and require employers to pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each workday that the employee is not provided with the required rest period(s).

74. Compensation for missed rest periods constitutes wages within the meaning of Labor Code § 200.

75. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate the Wage Order.

76. Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class** with net rest period of at least ten minutes for each four-hour work period, or major fraction thereof, as required by the applicable Wage Order.

77. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class** members additional premium wages when required rest periods were not provided.

78. Specifically, Defendants written policies do not provide that employees may take a rest period for each four hours worked, or major fraction thereof, nor that rest periods should be taken in the middle of each work period insofar as practicable.

79. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of herself and **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and

1 costs of suit.

2 80. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
3 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Rest Period**
4 **Sub-Class** members, seeks to recover reasonable attorneys' fees.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

7 **(Lab. Code §§ 204, 223, 510, 1194, 1197 and 1198)**

8 **(Plaintiff and Hourly Employee Class)**

9 81. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

10 82. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have
11 been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
12 applicable Wage Order.

13 83. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
14 which an employee is subject to the control of the employer, and includes all the time the employee
15 is suffered or permitted to work, whether or not required to do so."

16 84. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
17 employees at least the minimum wage set forth therein for all hours worked, which consists of all
18 hours that an employer has actual or constructive knowledge that employees are working.

19 85. Labor Code § 1194 invalidates any agreement between an employer and an
20 employee to work for less than the minimum or overtime wage required under the applicable Wage
21 Order.

22 86. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages
23 in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
24 underlying unpaid minimum wages and interest thereon.

25 87. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than
26 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
27 period.

28 88. Labor Code § 1197.1 provides that it is unlawful for any employer or any other

1 person acting either individually or as an officer, agent, or employee of another person to pay an
2 employee, or cause an employee to be paid, less than the applicable minimum wage.

3 89. Labor Code § 1198 makes it unlawful for employers to employ employees under
4 conditions that violate the applicable Wage Order.

5 90. Labor Code § 204 requires employers to pay non-exempt employees their earned
6 wages for the normal work period at least twice during each calendar month on days the employer
7 designates in advance and to pay non-exempt employees their earned wages for labor performed in
8 excess of the normal work period by no later than the next regular payday.

9 91. At all relevant times, pursuant to Labor Code §204, all wages earned by any person
10 in any employment are due and payable twice during each calendar month on designated days.
11 Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
12 between the 16th and the 26th day of the month during which the labor was performed, and labor
13 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
14 between the 1st and 10th day of the following month.

15 92. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
16 timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been
17 willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§
18 204 but have intentionally adopted policies or practices that are incompatible with those
19 requirements.

20 93. Pursuant to Labor Code §§ 204 and 218.6, Plaintiff, on behalf
21 of herself and **Waiting Time Penalties Sub-Class** members, seeks waiting time penalties from
22 the respective dates that their final wages had first become due until paid, up to a maximum of thirty
23 days, and interest thereon.

24 94. Labor Code § 223 makes it unlawful for employers to pay their employees lower
25 wages than required by contract or statute while purporting to pay them legal wages.

26 95. Labor Code § 510 and § 3 of the applicable Wage Order require employers to pay
27 non-exempt employees overtime wages of no less than one and one-half times the employees'
28 respective regular rates of pay for all hours worked in excess of eight hours in one workday, all

1 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on the
2 seventh consecutive day of one workweek.

3 96. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to
4 pay non-exempt employees overtime wages of no less than two times the employees' respective
5 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
6 worked in excess of eight hours on a seventh consecutive workday during the workweek.

7 97. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
8 centrally devised policies and practices to her and **Hourly Employee Class** members with respect
9 to working conditions and compensation arrangements.

10 98. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
11 **Employee Class** members for all time worked, including but not limited to, overtime hours at
12 statutory and/or agreed rates.

13 99. Section 9 of the applicable Wage Order states:

14 "When uniforms are required by the employer to be worn by the employee as
15 a condition of employment, such uniforms shall be provided and maintained
16 by the employer. The term 'uniform' includes wearing apparel and
accessories of distinctive design or color."

17 100. If the employer does not choose to maintain employees' uniforms itself where it is
18 required to do so, the Division of Labor Standards Enforcement ("DLSE") takes the position that
19 the employer may pay each affected employee a weekly maintenance allowance of an hour's pay at
20 the state minimum wage rate in lieu of maintaining the uniforms, assuming that an hour is a realistic
21 estimate of the time involved in maintaining the uniform.

22 101. At all relevant times during the applicable limitations period, and in violation of the
23 above-referenced sections of the Labor Code and the applicable Wage Order, Defendants failed to
24 compensate Plaintiff with minimum and/or overtime wages for all hours she worked as a result of
25 its failure to maintain employee uniforms or pay her a weekly maintenance allowance.

26 102. Plaintiff is informed and believes that, at all relevant times and in violation of the
27 above-referenced sections of the Labor Code and the applicable Wage Order, Defendants failed to
28 compensate **Hourly Employee Class** members with minimum and/or overtime wages for all hours

1 they worked as a result of its failures to maintain employee uniforms or pay them a weekly
2 maintenance allowance.

3 103. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**
4 **Employee Class** members all earned wages every pay period at the correct rates, including
5 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and
6 **Hourly Employee Class** members to perform off-the-clock work.

7 104. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
8 members have suffered damages in an amount subject to proof, to the extent they were not paid the
9 full amount of wages earned during each pay period during the applicable limitations period,
10 including overtime wages.

11 105. Pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
12 behalf of herself and **Hourly Employee Class** members, seeks to recover unpaid straight time and
13 overtime wages, interest thereon, and costs of suit.

14 106. The regular rate of pay under California law includes all remuneration for
15 employment paid, on behalf of the employer, to the employee. This requirement includes but is not
16 limited to, commissions, mandatory service charges, non-discretionary bonuses and shift differential
17 pay.

18 107. During the applicable limitations period, Defendants violated the rights of Plaintiff
19 and the putative class under the above-referenced Labor Code sections by failing to pay them
20 overtime wage premiums, meal period premiums, rest period premiums, and sick pay for all
21 overtime hours worked in violation of Labor Code §§ 226.7, 246, 510, 1194, and 1198 as a result
22 of not correctly calculating their regular rate of pay to include all applicable remuneration,
23 including, but not limited to, commissions, mandatory service charges, non-discretionary bonuses
24 and shift differential pay.

25 108. California law uses the terms "compensation" and "pay" interchangeably and
26 requires that all applicable remuneration, including but not limited to, commissions, non-
27 discretionary bonuses, tips, shift differential pay, tips, etc., be included when calculating an
28 employee's regular rate of pay.

109. At all relevant times, Defendants paid Plaintiff premium wages based on a rate of compensation that did not reflect, among other things, commissions, non-discretionary bonuses, shift differential pay, tips, etc. as required by Labor Code § 226.7(b) and §§ 11 and 12 of the applicable Wage Order on the occasions when Defendants paid her premium wages in lieu of meal and/or rest periods.

110. Plaintiff is informed and believes, and thereupon alleges, that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of paying **Hourly Employee Class** members premium wages based on rates of compensation that have not reflected commissions, non-discretionary bonuses, shift differential pay, tips, etc. as required by Labor Code § 226.7(b) and §§ 11 and 12 of the applicable Wage Order on the occasions when Defendants paid them premium wages in lieu of meal and/or rest periods.

111. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Hourly Employee Class** members, seeks to recover reasonable attorneys' fees.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code § 2802)

(Plaintiff and Expense Reimbursement Class)

112. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

113. Labor Code section 2802(a) states:

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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

114. At all relevant times during the applicable limitations period, Plaintiff and the **Expense Reimbursement Class** members incurred necessary business-related expenses and costs, including but not limited to, cellphone plans and caring for their uniform.

115. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid by Defendants was insufficient to indemnify Plaintiff for all necessary expenses incurred in the

1 discharge of their duties.

2 116. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid
3 by Defendants was insufficient to indemnify **Expense Reimbursement Class** members for all
4 necessary business expenses incurred in the discharge of their duties.

5 117. Pursuant to Labor Code § 452, an employer is authorized to prescribe the weight,
6 color, quality, texture, style, form, and make of uniforms required to be worn by their employees.

7 118. Section 9 of the applicable Wage Order states:

8 When uniforms are required by the employer to be worn by the employee as a
9 condition of employment, such uniforms shall be provided and maintained by the
10 employer. The term ‘uniform’ includes wearing apparel and accessories of distinctive
11 design or color.

12 119. At all relevant times during the applicable limitations period, Defendants required
13 Plaintiff and the **Expense Reimbursement Class** members to pay for expenses and/or losses caused
14 by Defendants’ want of ordinary care. Defendants failed to indemnify Plaintiff and **Expense**
15 **Reimbursement Class** members for all such expenditures.

16 120. At all relevant times during the applicable limitations period, Defendants required
17 Plaintiff and **Expense Reimbursement Class** members to purchase and maintain uniforms and
18 apparel unique to Defendants at Plaintiff’s and **Expense Reimbursement Class** members’ expense.
19 Defendants failed to indemnify Plaintiff and **Expense Reimbursement Class** members for all such
20 expenditures.

21 121. Plaintiff is informed and believes that, during the applicable limitations period,
22 Defendants maintained a policy or practice of not reimbursing Plaintiff and **Expense**
23 **Reimbursement Class** members for all necessary business expenses.

24 122. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to
25 restitution for all unpaid amounts due and owing within four years of the date of the filing of the
26 original Complaint and until the date of entry of judgment.

27 123. Plaintiff, on behalf of herself , and **Expense Reimbursement Class** members, seeks
28 interest thereon and costs pursuant to Labor Code § 218.6 and reasonable attorneys’ fees pursuant to
Code of Civil Procedure § 1021.5.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

3 **(Lab. Code § 226)**

4 **(Plaintiff and Wage Statement Penalties Sub-Class)**

5 124. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

6 125. Labor Code § 226(a) states:

7 An employer, semimonthly or at the time of each payment of wages, shall furnish to
8 his or her employee, either as a detachable part of the check, draft, or voucher paying
9 the employee's wages, or separately if wages are paid by personal check or cash, an
10 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
11 worked by the employee, except as provided in subdivision (j), (3) the number of
12 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
13 rate basis, (4) all deductions, provided that all deductions made on written orders of
14 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
15 inclusive dates of the period for which the employee is paid, (7) the name of the
16 employee and only the last four digits of his or her social security number or an
17 employee identification number other than a social security number, (8) the name and
18 address of the legal entity that is the employer and, if the employer is a farm labor
19 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
20 legal entity that secured the services of the employer, and (9) all applicable hourly
21 rates in effect during the pay period and the corresponding number of hours worked
22 at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
23 temporary services employer as defined in Section 201.3, the rate of pay and the total
24 hours worked for each temporary services assignment. The deductions made from
25 payment of wages shall be recorded in ink or other indelible form, properly dated,
26 showing the month, day, and year, and a copy of the statement and the record of the
27 deductions shall be kept on file by the employer for at least three years at the place of
28 employment or at a central location within the State of California. For purposes of
this subdivision, 'copy' includes a duplicate of the itemized statement provided to an
employee or a computer-generated record that accurately shows all of the information
required by this subdivision.

20 126. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize
21 the "detachable part of the check" provision and the "accurate itemized statement in writing"
22 provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each
23 employee retains the right to elect to receive a written paper stub or record and that those who are
24 provided with electronic wage statements retain the ability to easily access the information and
25 convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion
26 Letter July 6, 2006.)

27 127. Plaintiff is informed and believes that, at all relevant times during the applicable
28 limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**

1 members with written wage statements as described above.

2 128. Plaintiff is informed and believes that Defendants' failure to provide her and **Wage**
3 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
4 that Defendants had the ability to provide them with accurate wage statements but had intentionally
5 provided them with written wage statements that Defendants knew do not comply with Labor Code
6 § 226(a).

7 129. Plaintiff and **Wage Statement Penalties Sub-Class** members have suffered injuries,
8 in that Defendants have violated Plaintiff's and **Wage Statement Penalties Sub-Class** members'
9 legal rights to receive accurate wage statements and have misled them about their actual rates of pay
10 and wages earned. In addition, inaccurate information on their wage statements have prevented
11 immediate challenges to Defendants' unlawful pay practices, has required discovery and
12 mathematical computations to determine the amount of wages owed, has caused difficulty and
13 expense in attempting to reconstruct time and pay records, and/or has led to the submission of
14 inaccurate information about wages and deductions to federal and state government agencies.

15 130. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of herself and **Wage Statement**
16 **Penalties Sub-Class** members, seeks the greater of actual damages or fifty dollars (\$50.00) for the
17 initial pay period in which a violation of Labor Code section 226(a) occurred and one hundred
18 dollars (\$100.00) for each subsequent pay period in which a violation of Labor Code § 226(a)
19 occurred, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per class member.

20 131. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
21 the common fund doctrine, Plaintiff, on behalf of herself and **Wage Statement Penalties Sub-**
22 **Class** members, seek awards of reasonable attorneys' fees and costs.

23 SIXTH CAUSE OF ACTION

24 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

25 **(Lab. Code §§ 201, 202, 203)**

26 **(Plaintiff and Waiting Time Penalties Sub-Class)**

27 132. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

28 133. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members

1 have been entitled, upon the end of their employment with Defendants, to timely payment of all
2 wages earned and unpaid before termination or resignation.

3 134. At all relevant times, pursuant to Labor Code § 201, employees who have been
4 discharged have been entitled to payment of all final wages immediately upon termination.

5 135. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
6 after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of
7 all final wages at the time of resignation.

8 136. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
9 after giving less than seventy-two (72) hours' notice of resignation have been entitled to payment of
10 all final wages within seventy-two (72) hours' of giving notice of resignation.

11 137. During the applicable limitations period, Defendants failed to pay Plaintiff all of her
12 final wages in accordance with the Labor Code by failing to timely pay her all of her wages.

13 138. Plaintiff is informed and believes that, at all relevant times during the applicable
14 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
15 members all of their final wages in accordance with the Labor Code.

16 139. Plaintiff is informed and believes that, at all relevant times during the applicable
17 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
18 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
19 §§ 201 or 202 by failing to timely pay them all final wages.

20 140. Pursuant to Labor Code § 226, Code of Civil Procedure § 1021.5, the substantial
21 benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time**
22 **Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

23 **SEVENTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION**

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

26 **(Plaintiff and UCL Class)**

27 141. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

28 142. Business and Professions Code § 17200 defines "unfair competition" to include any

1 unlawful business practice.

2 143. Business and Professions Code §§ 17203–17204 allow a person who has lost money
3 or property as a result of unfair competition to bring a class action in accordance with Code of Civil
4 Procedure § 382 to recover money or property that may have been acquired from similarly situated
5 persons by means of unfair competition.

6 144. California law requires employers to pay hourly, non-exempt employees for all hours
7 they are permitted or suffered to work, including hours that the employer knows or reasonably
8 should know that employees have worked.

9 145. Plaintiff, on behalf of herself and the **UCL Class** members, re-alleges and
10 incorporates the FIRST, SECOND, THIRD, and FOURTH, causes of action herein.

11 146. Plaintiff lost money and/or property as a result of the aforementioned unfair
12 competition.

13 147. Defendants have or may have acquired money by means of unfair competition.

14 148. Plaintiff is informed and believes and thereupon alleges that, by committing the
15 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 215, 216,
16 225, 226.6, 354, 408, 553, 1175, 1199 and 2802. Defendants thus committed misdemeanors by
17 violating the Labor Code as alleged herein.

18 149. Defendants have committed criminal conduct through their policies and practices of,
19 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-
20 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each
21 work period of five or more hours, by failing to pay non-exempt employees for all hours worked,
22 and by failing to reimburse them for all expenses.

23 150. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
24 employees and entitled to the full protections of both the Labor Code and the applicable Wage
25 Order.

26 151. Defendants' unlawful conduct as alleged in this Complaint amounts to and
27 constitutes unfair competition within the meaning of Business and Professions Code section 17200
28 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition

1 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of
2 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of herself and on
3 behalf of similarly situated persons in a class-action proceeding.

4 152. As a result of Defendants' violations of the Labor Code during the applicable
5 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
6 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'
7 conduct.

8 153. Plaintiff is informed and believes that other similarly situated persons have been
9 subject to the same unlawful policies or practices of Defendants.

10 154. Due to the unfair and unlawful business practices in violation of the Labor Code,
11 Defendants have gained a competitive advantage over other comparable companies doing business
12 in the State of California that comply with their legal obligations.

13 155. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
14 relief for "any unlawful, unfair or fraudulent business act or practice," including a practice or act
15 that violates, or is considered unlawful under, any other state or federal law.

16 156. Accordingly, pursuant to Business & Professions Code §§ 17200 and 17203,
17 Plaintiff requests the issuance of temporary, preliminary, and permanent injunctive relief enjoining
18 Defendants, and each of them, and their agents and employees, from further violations of the Labor
19 Code and applicable Industrial Welfare Commission Wage Orders, and upon a final hearing, an
20 order permanently enjoining Defendants, and each of them, and their respective agents and
21 employees, from further violations of the Labor Code and applicable Industrial Welfare
22 Commission Wage Orders.

23 157. Pursuant to Business and Professions Code § 17203, Plaintiff, on behalf of herself
24 and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully belonging
25 to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair
26 business practices.

27 158. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
28 the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable

1 attorneys' fees in connection with their unfair competition claims.

2 **EIGHTH CAUSE OF ACTION**

3 **CIVIL PENALTIES**

4 **(Lab. Code §§ 2698 *et seq.*)**

5 159. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

6 160. During the applicable limitations period, Defendants have violated Labor Code §§
7 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1198, and 2802.

8 161. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
9 herself and other current and former employees, to bring a representative civil action to recover
10 civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,
11 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

12 162. Plaintiff, a former employee against whom Defendants committed one or more of the
13 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
14 within the meaning of Labor Code § 2699(c).

15 163. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
16 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
17 ("LWDA") and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an
18 intent to investigate.

19 164. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
20 penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7,
21 227.3, 510, 512, 1194, 1197, 1198 and 2802:

22 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1194, 1198
23 and 2802, one hundred dollars (\$100) for each employee per pay period for
24 each initial violation and two hundred dollars (\$200) for each employee per
25 pay period for each subsequent violation (penalties set by Labor Code §
26 2699(f)(2));

27 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
28 thirty (30) days' pay as waiting time (penalties set by Labor Code § 256);

- 1 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
2 employee for each initial violation that was neither willful nor intentional,
3 two hundred dollars (\$200) for each employee, plus 25% of the amount
4 unlawfully withheld from each employee, for each initial violation that was
5 either willful or intentional, and two hundred dollars (\$200) for each
6 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
7 from each employee, for each subsequent violation, regardless of whether the
8 subsequent violation was either willful or intentional (penalties set by Labor
9 Code § 210);
- 10 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
11 employee for each initial violation that was neither willful nor intentional,
12 two hundred dollars (\$200) for each employee, plus twenty-five percent
13 (25%) of the amount unlawfully withheld from each employee, for each
14 initial violation that was either willful or intentional, and two hundred dollars
15 (\$200) for each employee, plus twenty-five percent (25%) of the amount
16 unlawfully withheld from each employee, for each subsequent violation,
17 regardless of whether the subsequent violation was either willful or
18 intentional (penalties set by Labor Code § 225.5);
- 19 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
20 citation, two hundred and fifty dollars (\$250) for each employee for each
21 violation. Alternatively, if an initial citation or its equivalent occurred before
22 the filing of this action, one thousand dollars (\$1,000) for each employee for
23 each violation (penalties set by Labor Code § 226.3);
- 24 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
25 employee for each initial pay period for which the employee was underpaid,
26 and one hundred dollars (\$100) for each employee for each subsequent pay
27 period for which the employee was underpaid (penalties set by Labor Code §
28 558);

vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);

viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- (1) An order that the action be certified as a class action;
- (2) An order that Plaintiff be appointed class representative;
- (3) An order that counsel for Plaintiff be appointed class counsel;
- (4) Unpaid wages;
- (5) Actual damages;
- (6) Liquidated damages;
- (7) Restitution;
- (8) Declaratory relief;
- (9) Pre-judgment interest;
- (10) Statutory penalties;
- (11) Civil penalties;
- (12) Costs of suit;
- (13) Reasonable attorneys' fees; and
- (14) Such other relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself, all other similarly situated, and the general public, hereby demands a jury trial on all issues so triable.

Dated: December 19, 2023 SETAREH LAW GROUP

/s/ Thomas Segal
SHAUN SETAREH
THOMAS SEGAL
FARRAH GRANT
Attorneys for Plaintiff
Demetrius Crook

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On December 19, 2023, I served the foregoing documents described as:

in this action by transmitting a true copy thereof addressed as follows:


Diana Maytorena

EXHIBIT 2

to Request for Judicial Notice

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

Jeffrey S. Herman (State Bar #280058)

jeffrey@bamlawca.com

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

Assigned for All Purposes

Judge William Claster

Dept. CX101

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

TRINITY MARTINEZ, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

LEGENDS HOSPITALITY, LLC, a limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 30-2024-01380394-CU-OE-CXC

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
218, 221, 226(a), 226.7, 227.3, 246, 510,
512, 558(a)(1)(2), 1194, 1197, 1197.1,
1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B), California Code of
Regulations, Title 8, Section 1 1070(14)
(Failure to Provide Seating), and the
applicable Wage Order(s).

1 Plaintiff Trinity Martinez ("PLAINTIFF"), on behalf of the people of the State of
2 California and as an "aggrieved employee" acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA") only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant Legends Hospitality, LLC
8 (referred to as "DEFENDANT") seeking only to recover PAGA civil penalties for himself, and
9 on behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
11 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT's violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Legends Hospitality, LLC ("DEFENDANT") is a limited liability company that
24 at all relevant times mentioned herein conducted and continues to conduct substantial business
25 in California.

26 5. DEFENDANT is a food, beverage, merchandise, retail, and stadium operations
27 company serving entertainment venues and companies in California.
28

1 6. PLAINTIFF was employed by DEFENDANT in California from May 2021 to
2 July 18, 2023. PLAINTIFF was at all times classified by DEFENDANT as a non-exempt
3 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
4 payment of minimum and overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to
8 himself and all individuals who are or previously were employed by DEFENDANT in
9 California, including any employees staffed with DEFENDANT by a third party, and classified
10 as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of October
11 19, 2022 until a date as determined by the Court (the "PAGA PERIOD").

12 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES
13 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
14 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
15 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,
16 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
17 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California
18 Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the
19 applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED
20 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

21 9. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
23 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
24 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
25 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
26 they are ascertained. PLAINTIFF is informed and believes, and based upon that information
27 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
28

1 50, inclusive, are responsible in some manner for one or more of the events and happenings
2 that proximately caused the injuries and damages hereinafter alleged.

3 10. The agents, servants and/or employees of the Defendants and each of them
4 acting on behalf of the Defendants acted within the course and scope of his, her or its
5 authority as the agent, servant and/or employee of the Defendants, and personally
6 participated in the conduct alleged herein on behalf of the Defendants with respect to the
7 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
8 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and
9 all the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the
10 conduct of the Defendants' agents, servants and/or employees.

11 THE CONDUCT

12
13 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
14 was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time
15 worked, meaning the time during which an employee is subject to the control of an
16 employer, including all the time the employee is suffered or permitted to work.
17 DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without
18 paying them for all the time they are under DEFENDANT's control. Among other things,
19 DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to
20 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
21 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal
22 break. DEFENDANT, as a matter of established company policy and procedure,
23 administers a uniform practice of rounding the actual time worked and recorded by
24 PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT,
25 so that during the course of their employment, PLAINTIFF and the AGGRIEVED
26 EMPLOYEES are paid less than they would have been paid had they been paid for actual
27 recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the
28 practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work off

1 the clock in that DEFENDANT, as a condition of employment, required these employees to
2 submit to mandatory temperature checks and symptom questionnaires for COVID-19
3 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a
4 result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime
5 wage compensation, and off-duty meal breaks by working without their time being correctly
6 recorded and without compensation at the applicable rates. DEFENDANT's policy and
7 practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, is
8 evidenced by DEFENDANT's business records.

9 12. State law provides that employees must be paid overtime and meal and rest
10 break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and the
11 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is
12 tied to specific elements of an employee's performance.

13 13. The second component of PLAINTIFF's and the AGGRIEVED
14 EMPLOYEES' compensation is DEFENDANT's non-discretionary incentive program that
15 paid PLAINTIFF and the AGGRIEVED EMPLOYEES incentive wages based on their
16 performance for DEFENDANT. The non-discretionary incentive program provided all
17 employees paid on an hourly basis with incentive compensation when the employees met the
18 various performance goals set by DEFENDANT. However, when calculating the regular
19 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
20 the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive
21 compensation as part of the employees' "regular rate of pay" for purposes of calculating
22 overtime pay and meal and rest break premium pay. Management and supervisors described
23 the incentive program to potential and new employees as part of the compensation package.
24 As a matter of law, the incentive compensation received by PLAINTIFF and the
25 AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to
26 do so has resulted in a underpayment of overtime compensation and meal and rest break
27 premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES by DEFENDANT.

1 14. As a result of their rigorous work schedules, PLAINTIFF and the
2 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off
3 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
4 and the AGGRIEVED EMPLOYEES were required from time to time to perform work as
5 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving
6 a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
7 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in
8 which these employees were required by DEFENDANT to work ten (10) hours of work.
9 DEFENDANT also engaged in the practice of rounding the meal period times to avoid
10 paying penalties to PLAINTIFF and the AGGRIEVED EMPLOYEES. PLAINTIFF and the
11 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
12 and in accordance with DEFENDANT's corporate policy and practice.

13 15. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED
14 EMPLOYEES were also required from time to time to work in excess of four (4) hours
15 without being provided ten (10) minute rest periods. Further, these employees were denied
16 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
17 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
18 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
19 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
20 hours or more from time to time. PLAINTIFF and the AGGRIEVED EMPLOYEES were
21 also not provided with one hour wages in lieu thereof. Additionally, the applicable
22 California Wage Order requires employers to provide employees with off-duty rest periods,
23 which the California Supreme Court defined as time during which an employee is relieved
24 from all work related duties and free from employer control. In so doing, the Court held that
25 the requirement under California law that employers authorize and permit all employees to
26 take rest period means that employers must relieve employees of all duties and relinquish
27 control over how employees spend their time which includes control over the locations
28 where employees may take their rest period. Employers cannot impose controls that prohibit

1 an employee from taking a brief walk - five minutes out, five minutes back. Here,
2 DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED EMPLOYEES from
3 unconstrained walks and is unlawful based on DEFENDANT's rule which states
4 PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
5 their rest period.

6 16. During the PAGA PERIOD, DEFENDANT failed to accurately record and
7 pay PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
8 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
9 DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for
10 all time worked, meaning the time during which an employee was subject to the control of
11 an employer, including all the time the employee was permitted or suffered to permit this
12 work. DEFENDANT required these employees to work off the clock without paying them
13 for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or
14 should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES were under
15 compensated for all time worked. As a result, PLAINTIFF and the AGGRIEVED
16 EMPLOYEES forfeited time worked by working without their time being accurately
17 recorded and without compensation at the applicable minimum wage and overtime wage
18 rates. To the extent that the time worked off the clock does not qualify for overtime
19 premium payment, DEFENDANT failed to pay minimum wages for the time worked off-
20 the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

21 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
22 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
23 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
24 provides that every employer shall furnish each of his or her employees with an accurate
25 itemized wage statement in writing showing, among other things, gross wages earned and all
26 applicable hourly rates in effect during the pay period and the corresponding amount of time
27 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
28 an hourly basis. As such, the wage statements should reflect all applicable hourly rates

1 during the pay period and the total hours worked, and the applicable pay period in which the
2 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
3 DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to
4 identify such information. More specifically, the wage statements failed to identify the
5 accurate total hours worked each pay period. When the hours shown on the wage statements
6 were added up, they did not equal the actual total hours worked during the pay period in
7 violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this
8 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that
9 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT
10 from time to time provided PLAINTIFF and the AGGRIEVED EMPLOYEES with wage
11 statements which violated Cal. Lab. Code § 226.

12 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
13 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
14 the wages are paid not more than seven (7) calendar days following the close of the payroll
15 period. Cal. Lab. Code § 210 provides:

16 in [I]n addition to, and entirely independent and apart from, any other penalty provided
17 this article, every person who fails to pay the wages of each employee as provided in
18 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
19 violation, one hundred dollars (\$100) for each failure to pay each employee; (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.

20 19. DEFENDANT from time to time failed to pay PLAINTIFF and the
21 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
22 accordance with Cal. Lab. Code § 204(d), including but not limited to the “Hourly” regular
23 wage payments.

24 20. DEFENDANT underpaid sick pay wages to PLAINTIFF and the
25 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in
26 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
27 employees earn non-discretionary remuneration, including, but not limited to, incentives,
28 shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay,

1 DEFENDANT underpays sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES at
2 their base rates of pay.

3 21. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt
4 employees be calculated by dividing the employee's total wages, not including overtime
5 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
6 days of employment.

7 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
8 at the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely
9 earned non-discretionary incentive wages which increased their regular rate of pay.
10 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
11 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as
12 required under Cal. Lab. Code Section 246.

13 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
14 and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
15 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
16 believes and based thereon alleges that such failure to pay sick pay at regular rate was
17 willful, such that the AGGRIEVED EMPLOYEES whose employment has separated are
18 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

19 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
20 to collect or receive from an employee any part of wages theretofore paid by said employer
21 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and
22 the AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
23 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
24 deductions from compensation payable to PLAINTIFF and the AGGRIEVED
25 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable
26 pay period and upon termination.

27 25. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
28 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred

1 by the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of
2 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
3 2802, employers are required to indemnify employees for all expenses incurred in the course
4 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
5 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
6 employee in direct consequence of the discharge of his or her duties, or of his or her
7 obedience to the directions of the employer, even though unlawful, unless the employee, at
8 the time of obeying the directions, believed them to be unlawful."

9 26. In the course of their employment PLAINTIFF and the AGGRIEVED
10 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
11 personal cellular phones as a result of and in furtherance of their job duties as employees for
12 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
13 associated with the use of their personal cellular phones for DEFENDANT's benefit.
14 Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were required by
15 DEFENDANT to use their personal cellular phones. As a result, in the course of their
16 employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES
17 incurred unreimbursed business expenses which included, but were not limited to, costs
18 related to the use of their personal cellular phones all on behalf of and for the benefit of
19 DEFENDANT.

20 27. In violation of the applicable sections of the California Labor Code and the
21 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
22 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
23 knowingly and systematically failed to provide PLAINTIFF and the other AGGRIEVED
24 EMPLOYEES suitable seating when the nature of these employees' work reasonably
25 permitted sitting.

26 28. DEFENDANT knew or should have known that PLAINTIFF and other
27 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit
28 when it did not interfere with the performance of their duties, and that DEFENDANT did

1 not provide suitable seating and/or did not allow them to sit when it did not interfere with
2 the performance of their duties.

3 29. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
4 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage
5 Order 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties
6 on behalf of PLAINTIFF and other AGGRIEVED EMPLOYEES as provided herein.
7 Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's
8 intentional disregard of the obligation to meet this burden, DEFENDANT violated the
9 California Labor Code and regulations promulgated thereunder as herein alleged.

10 30. The employment of PLAINTIFF and some AGGRIEVED EMPLOYEES has
11 terminated and DEFENDANT has not tendered payment of all wages owed as required by
12 law. Additionally, at all times during the term of PLAINTIFF's employment with
13 DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES earned and accrued
14 vested vacation and holiday time on the date of their termination pursuant to
15 DEFENDANT's uniform vacation policies and applicable California law. The amount of
16 vacation pay PLAINTIFF and the other AGGRIEVED EMPLOYEES earned and
17 accumulated is evidenced by DEFENDANT's business records. Additionally,
18 DEFENDANT also underpaid accrued vested vacation wages to PLAINTIFF and other
19 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay and
20 more specifically the final rate of pay that included all non-discretionary incentive
21 compensation. Rather than pay vacation wages at the regular rate of pay, DEFENDANT
22 underpaid vacation wages to PLAINTIFF and other AGGRIEVED EMPLOYEES at their
23 base rates of pay, instead of including all of PLAINTIFF's and other AGGRIEVED
24 EMPLOYEES' non-discretionary incentive compensation into the vacation wage payment
25 calculations. DEFENDANT failed to specify in DEFENDANT's written vacation policy the
26 rate at which PLAINTIFF and other AGGRIEVED EMPLOYEES would be paid vacation
27 upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful
28 practice, policy and procedure to deny paying the PLAINTIFF and other AGGRIEVED

1 EMPLOYEES all of their vested vacation and holiday time, DEFENDANT failed to pay the
2 PLAINTIFF and other AGGRIEVED EMPLOYEES all vested vacation time as wages due
3 upon employment termination, in violation of the California Labor Code, Sections 201, 202,
4 203 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to PLAINTIFF
5 and other AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of
6 PLAINTIFF's and other AGGRIEVED EMPLOYEES' non-discretionary compensation into
7 the waiting time penalty calculations. This failure by DEFENDANT is believed to be the
8 result of DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation for
9 earned, accrued and vested vacation and holiday time, as well as the corresponding waiting
10 time penalties that were paid. DEFENDANT perpetrated this unlawful, unfair and deceptive
11 practice to the detriment of PLAINTIFF and other AGGRIEVED EMPLOYEES.

12 DEFENDANT's uniform practice and policy of failing to pay the AGGRIEVED
13 EMPLOYEES for all vested vacation and holiday time accumulated at employment
14 termination violated and continues to violate Section 227.3 of the California Labor Code.

15 31. All of the conduct and violations alleged herein occurred during the PAGA
16 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
17 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
18 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
19 2018 AJDAR 12157 (Certified for Publication 12/19/18). The amount in controversy for
20 PLAINTIFF individually does not exceed the sum or value of \$75,000.

21 **JURISDICTION AND VENUE**

22 32. This Court has jurisdiction over this Action pursuant to California Code of
23 Civil Procedure, Section 410.10.

24 33. Venue is proper in this Court pursuant to California Code of Civil Procedure,
25 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
26 employs AGGRIEVED EMPLOYEES across California, including in this County, and
27 committed the wrongful conduct herein alleged in this County against AGGRIEVED
28

1 EMPLOYEES.

2 **FIRST CAUSE OF ACTION**

3 **For Violation of the Private Attorneys General Act**

4 **[Cal. Lab. Code §§ 2698, *et seq.*]**

5 **(By PLAINTIFF and Against All Defendants)**

6 34. PLAINTIFF realleges and incorporates by this reference, as though fully set
7 forth herein, the prior paragraphs of this Complaint.

8 35. PAGA is a mechanism by which the State of California itself can enforce state
9 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
10 the state's labor law enforcement agencies. An action to recover civil penalties under
11 PAGA is fundamentally a law enforcement action designed to protect the public and not to
12 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
13 but to create a means of "deputizing" citizens as private attorneys general to enforce the
14 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
15 public interest to allow aggrieved employees, acting as private attorneys general to recover
16 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
17 claims cannot be subject to arbitration.

18 36. PLAINTIFF, and such persons that may be added from time to time who
19 satisfy the requirements and exhaust the administrative procedures under the Private
20 Attorney General Act, brings this Representative Action on behalf of the State of California
21 with respect to himself and all individuals who are or previously were employed by
22 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
23 party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the
24 time period of October 19, 2022 until a date as determined by the Court (the "PAGA
25 PERIOD").

26 37. On October 19, 2023, PLAINTIFF gave written notice by electronic mail to
27 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
28 employer of the specific provisions of this code alleged to have been violated as required by

1 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
2 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
3 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
4 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
5 pursuant to Section 2699 as the proxy of the State of California with respect to all
6 AGGRIEVED EMPLOYEES as herein defined.

7 38. The policies, acts and practices heretofore described were and are an unlawful
8 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
9 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
10 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
11 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
12 required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable
13 seating, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
14 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2),
15 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
16 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure
17 to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil
18 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
19 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
20 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
21 and the AGGRIEVED EMPLOYEES.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
24 severally, as follows:

25 1. On behalf of the State of California and with respect to all AGGRIEVED
26

27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

EMPLOYEES:

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and,

B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699.

Dated: February 16, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: /s/ Nicholas De Blouw
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw

Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

**2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037**

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:
1004

October 19, 2023
CA3047

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Legends Hospitality, LLC
Certified Mail #9589071052700182377072
CSC - LAWYERS INCORPORATING
SERVICE
BECKY DEGEORGE
2710 GATEWAY OAKS DRIVE, Suite
150N
SACRAMENTO, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Legends Hospitality, LLC in California, including any employees staffed with Legends Hospitality, LLC by a third party, and classified as non-exempt employees during the time period of October 19, 2022 until a date as determined by the Court. Our offices represent Plaintiff Trinity Martinez (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Legends Hospitality, LLC (“Defendant”). Plaintiff was employed by Defendant in California from May 2021 to July 18, 2023. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and

Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

EXHIBIT 3

to Request for Judicial Notice

Dennis F. Moss (SBN 77512)
Jeremy F. Bollinger (SBN 240132)
Ari E. Moss (SBN 238579)
Mariela I. de Loera Figueroa (SBN 349500)
MOSS BOLLINGER LLP
15300 Ventura Blvd., Ste. 207
Sherman Oaks, California 91403
Telephone: (310) 982-2984
Facsimile: (818) 963-5954
jeremy@mossbollinger.com
dennis@mossbollinger.com
ari@mossbollinger.com

Attorneys for Plaintiff SCOTT SHUSTER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

SCOTT SHUSTER, an individual, on behalf
of himself and all others similarly situated,

Plaintiff,

vs.

LEGENDS HOSPITALITY, LLC, a
Delaware Limited Liability Company and
DOES 1-50,

Defendants.

Case No. 22STCV32193

**THIRD AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES:**

1. FAILURE TO TIMELY PAY ALL WAGES OWED UPON DISCHARGE [Lab. Code §§ 201-203];
2. FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS [Lab. Code §§ 226.7, 516];
3. FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES [Lab. Code § 2802];
4. FAILURE TO PROVIDE LEGALLY COMPLIANT WAGE STATEMENTS [Lab. Code § 226 et seq.];
5. UNFAIR BUSINESS PRACTICES [Cal. Bus. & Prof. Code §§ 17200];
6. PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004 (PAGA).

DEMAND FOR JURY TRIAL

1 Plaintiff SCOTT SHUSTER (“Plaintiff”), on behalf of himself and other similarly situated
2 persons, hereby brings this Complaint against Defendant LEGENDS HOSPITALITY, LLC
3 (“Legends”) and DOES 1- 50, inclusive, (collectively referred to herein as “Defendants”) and
4 alleges as follows:
5

6 **INTRODUCTION**

7 1. This is a class action lawsuit brought on behalf of Plaintiff and others similarly situated
8 against Defendants under Code of Civil Procedure § 382, seeking:

- 9 (a) Waiting time penalties for failure to timely pay all wages due to employees
10 pursuant to Labor Code §§ 201 and 203;
- 11 (b) Statutory remedies arising from Defendants’ failure to provide rest breaks in
12 conformance with the requirements of the California Labor Code §§ 226.7, 516 and
13 Section 12 of the applicable Industrial Welfare Commission Wage Orders,
14 including Wage Order 5;
- 15 (c) Reimbursement for costs pursuant to Labor Code § 2802 incurred by Defendants’
16 employees on account of the requirement that they use their personal cell phones,
17 computers and related supplies and equipment to fulfill their responsibilities as
18 Defendants’ employees;
- 19 (d) Statutory remedies arising from Defendants’ failure to provide wage statements that
20 comply with the requirements of the California Labor Code § 226;
- 21 (e) Restitution and other equitable relief arising from Defendants’ violation of Business
22 and Professions Code §17200 et seq. deriving from the statutory violations
23 heretofore asserted and the additional ground that Defendants failed to pay its
24 tipped workers all the gratuities left for them by Defendants’ patrons in credit card
25 transactions; and
- 26 (f) Reasonable attorneys’ fees and costs.
- 27
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2. Plaintiff, as a proxy for the State of California, also brings a representative law enforcement action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code Section 2698 et seq., to recover civil penalties against Defendants.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under Article 6 of the California Constitution and California Code of Civil Procedure § 410.10.

4. This Court has jurisdiction over Plaintiff's and Class Members' claims for waiting time penalties pursuant to California Labor Code §§ 201-203 and 218.

5. This Court has jurisdiction over Plaintiff's and Class Members' claims for premium pay on account of rest break violations committed by Defendants pursuant to Labor Code § 218 et seq.

6. This Court has jurisdiction over Plaintiff's and the Class Members' claims for expense reimbursements pursuant to Labor Code § 2802.

7. This Court has jurisdiction over Plaintiff's and the Class Members' claims for penalties for inaccurate wage statement violations pursuant to Labor Code § 226(e).

8. This Court has jurisdiction over Plaintiff's and the Class Members' claims for restitution of unpaid wages and other ill-gotten benefits arising from Defendants' unlawful and/or unfair business practices under California Business & Professions Code §§ 17200 et seq.

9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure § 395.5 because the acts alleged herein took place in Los Angeles County, California, among other counties in California.

PARTIES

10. Defendant Legends Hospitality, LLC, is in the hospitality industry providing, among other things, food and beverage services at stadiums, arenas, amphitheaters and similar entertainment venues throughout the United States, including in Northern and Southern California. Plaintiff has worked for Legends as a bartender at venues operated by Legends in Southern California, including at the Banc of California Stadium (Currently known as BMO Stadium), SoFi Stadium, YouTube Theater and the Los Angeles Coliseum. Legends is a limited liability company

1 organized and existing under the laws of Delaware, licensed to do business and actually doing
2 business in California, including in Los Angeles County. Plaintiff is informed and believes, and
3 thereon alleges, that its principal place of business is in New York City.

4 11. Plaintiff Scott Shuster is a resident of California. During the four-year period preceding
5 the filing of this action, Plaintiff has intermittently worked as a bartender in California for
6 Legends. His “home” venue, and where he has worked most frequently, is at Banc of California
7 Stadium (currently known as BMO Stadium). When he is assigned to other Legends venues, he is
8 “loaned out.” There is a collective bargaining agreement (“CBA”) between Legends and Local 11
9 of The Hotel and Restaurant Employees Union, UNITEHERE! Local 11, that has applied to
10 Plaintiff’s work when he works at Banc of California Stadium (currently known as BMO
11 Stadium). Although the CBA contains grievance and arbitration provisions, the grievance and
12 arbitration provisions do not cover claims of statutory, as opposed to contractual, violations.
13 *Wright v. Universal Maritime Service Corp.* (1998) 525 U.S. 70; *Vasquez v. Superior Court* (2000)
14 80 Cal. App. 4th 430.

15 12. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 50 are
16 corporations, individuals, limited liability partnerships, limited liability companies, general
17 partnerships, sole proprietorships or are other business entities or organizations of a nature not
18 currently known to Plaintiff.

19 13. Plaintiff is unaware of the true names of Defendants DOES 1 through 50. Plaintiff sues
20 said Defendants by said fictitious name and will amend this complaint when the true names and
21 capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted
22 by law or by the Court. Plaintiff is informed and believes, and thereon alleges, that each of the
23 fictitiously named Defendants is in some manner responsible for the events and allegations set
24 forth in this complaint.

25 14. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, each Defendant, including all Defendants sued under fictitious names, was the
27 employee, or representative of each of the remaining Defendants, and in doing the things
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hereinafter alleged, was at times acting within the course and scope of this employment, and at other times, acting in his or her own individual capacity. In the alternative, each of the individually named Defendants, acted in concert and in furtherance of a fraudulent plan and scheme and each actively participated in the wrongful acts alleged in this complaint.

FACTS

15. During the liability period, Defendants employed Plaintiff and other similarly situated intermittently employed non-exempt workers as food and beverage service employees on event days at entertainment venues operated by Legends throughout California.

16. Defendants hire intermittently employed workers to work assignments on an assignment-by-assignment basis.

17. During the liability period, when an event concluded, and intermittently employed workers were not on the schedule to return to work for Defendants for a week or longer, they were laid off until they returned to work for another assignment.

18. During the liability period, when Plaintiff and other intermittently employed workers were laid off between events for a week or more, they were not paid immediately, but rather paid no earlier than a week after the end of the pay period during which the layoff occurred.

19. Throughout the applicable statute of limitations period, Plaintiff and other intermittently employed workers who worked at Defendants' venues in Los Angeles County where Plaintiff worked, including Banc of California Stadium (currently known as BMO Stadium), The Los Angeles Coliseum, SoFi Stadium and YouTube Theater, were employed under working conditions where they could not take rest breaks in conformance with the requirements of California law on account of break length and location limitations and restrictions on activities they could engage in outside of break locations. They were not given 10 minute duty free breaks as required by law because of the amount of time allotted by Legends for breaks and the time necessary to walk to and from designated break locations. Further, they could not simply leave their assigned workstations to take rest breaks. They could not take a break absent directions to take a break given to them by a "shift lead," "stand manager" or other supervisory employee.

1 Plaintiff and his co-workers were consistently deprived of breaks on account of the failure of
2 Defendants to direct them to take breaks in compliance with California law.

3 20. Further, Defendants did not apprise intermittently employed workers who were going
4 to be working at an assignment for more than six hours, but less than eight hours, that they were
5 entitled to two ten-minute breaks during their shifts.

6 21. During the liability period, Defendants frequently communicated with their
7 intermittently employed workers, including Plaintiff, through phone calls, text messages and
8 emails on the topics of assignments, training, cancellations, eligibility to take assignments, payroll
9 and other employment-related matters; and, the intermittently employed workers responded to
10 Defendants' communications through phone calls, text messages and emails. They were required
11 to have the tools to receive and respond to communications from Defendants, and Defendants
12 required employees to download a number of applications to facilitate communications between
13 Legends and its intermittently employed employees.

14 22. Defendants did not reimburse the intermittently employed workers for the costs of their
15 personal devices or for maintaining data plans that allowed them to receive and respond to
16 Defendants communications on their personal devices, nor did Defendants provide the employees
17 with the necessary devices and data plans to receive and send employment-related
18 communications.

19 23. During the liability period, Defendants knowingly and intentionally did not provide
20 intermittently employed workers with wage statements that accurately reflected earned break
21 violation premium wages during each pay period. Employees suffered injury on account of their
22 incomplete and inaccurate wage statements.

23 24. Plaintiff is informed and believes, and thereon alleges, that during the liability period,
24 he and other similarly situated employees who are regularly left gratuities by Defendants' patrons
25 in credit card transactions were not paid all such gratuities by Defendants.

26 25. Section 14 of the applicable Industrial Welfare Commission's Wage Orders, including
27 Wage Order 5, provide in relevant part: "(B) When employees are not engaged in the active duties
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of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.” When serving customers and preparing food or beverages, Plaintiff and other intermittent employees who work events at some Legends venues must stand to perform their work tasks. When there are lulls in their work, or when at times they can take breaks, there are frequently no seats in reasonable proximity to where they work available for them to use in violation of the Section 14(B) of the Wage Order. Defendants’ violations of Section 14 of the applicable Wage Orders constitute a violation of Labor Code Section 1198, which prohibits employment under conditions of labor that violate the IWC Wage Orders.

CLASS DEFINITIONS AND CLASS ALLEGATIONS

26. Plaintiff brings this action on behalf of himself, on behalf of all others similarly situated, and as a member of the Classes defined as follows:

- a) Labor Code § 201 and § 203 Class: All persons employed intermittently by Legends Hospitality, Inc., in California, through the date Notice is mailed to the Class who worked at venues that were not covered by a collective bargaining agreement that contains provisions that clearly constitute waivers of employee rights to bring claims of statutory violations in court as opposed to arbitration. (As used hereinafter, the term “Persons employed intermittently” refers to persons whose employment by Legends is limited, with rare exceptions (e.g., for training), to work performed on days when Defendants’ venues at which the employees work have events where the employees provide food and beverage services to patrons.)
- b) Rest Break Class: All persons employed intermittently by Legends Hospitality, Inc., in California during the period from August 21, 2021 through the date Notice is mailed to the Class who worked at the Banc of California Stadium (Currently

known as BMO Stadium), the Los Angeles Coliseum, SoFi Stadium, or YouTube Theater.

c) Reimbursement Class: All persons employed intermittently by Legends Hospitality, Inc., in California during the period from August 21, 2021 through the date Notice is mailed to the Class who worked at venues that were not covered by a collective bargaining agreement that contains provisions that clearly constitute waivers of employee rights to bring claims of statutory violations in court as opposed to arbitration.

d) Wage Statement Class: All persons employed intermittently by Legends Hospitality, Inc., in California during the period from October 3, 2021, through the date Notice is mailed to the Class who worked at the Banc of California Stadium (Currently known as BMO Stadium), the Los Angeles Coliseum, SoFi Stadium, or YouTube Theater.

e) Labor Code § 351 Class: All persons employed by Legends Hospitality, Inc., in California during the period from October 3, 2018, through the date Notice is mailed to the Class who worked in positions, including but not limited to the position of bartender, that receive tips on credit cards left by patrons at venues that were not covered by a collective bargaining agreement that contains provisions that clearly constitute waivers of employee rights to bring claims of statutory violations in court as opposed to arbitration.

27. This action has been brought and may be properly maintained as a class action pursuant to the provisions of California Code of Civil Procedure § 382 and other applicable law.

28. **Numerosity**: Code of Civil Procedure § 382: Members of the Classes are so numerous that their individual joinder is impracticable. The precise number of Class Members and their addresses are unknown to Plaintiff. However, Plaintiff is informed and believes, and thereon alleges, that the number of Class Members exceeds 200 persons and can be obtained from

Defendants' records. Class Members may be notified of the pendency of this action by mail, electronic mail, the Internet, or published notice.

29. **Predominance of Common Questions of Fact and Law:** Code of Civil Procedure § 382: Common questions of law and fact exist as to all members of the Classes. These questions predominate over any questions effecting only individual members of the Classes. These common factual and legal questions include:

- (a) Whether Defendants violated Labor Code § 201 by not immediately paying members of the Labor Code § 201 Class wages owed to them when laid off at the conclusion of assignments.
- (b) Whether Defendants' conduct in not paying members of the Labor Code § 201 Class immediately upon lay off was willful.
- (c) Whether the failure of Defendants to direct members of the Rest Break Class to take rest breaks gives rise to liability under Labor Code § 226.7 and the applicable Wage Orders?
- (d) Whether the failure of Defendants to explain to members of the Rest Break Class that they are entitled to second rest breaks when working more than six hours but less than eight hours gives rise to liability under Labor Code § 226.7 and the applicable Wage Orders.
- (e) Whether members of the Reimbursement Class are entitled to relief pursuant to Labor Code § 2802 on account of the need for them to use their personal devices to engage in work-related communications with Defendants.
- (f) Whether Defendants' affirmative defenses, if any, raise any common issues of law or fact as to Plaintiff and the members of each Class as a whole.

30. **Typicality:** Plaintiff's claims are typical of the claims of the members of each Class because Plaintiff, as someone employed on an intermittent basis as a bartender by Defendants, was repeatedly exposed to the same unlawful business practice as the members of the classes. Plaintiff

1 sustained the same types of injuries and losses that the class members sustained. Plaintiff is subject
2 to the same affirmative defenses as the members of the class.

3 31. **Adequacy**: Plaintiff will adequately and fairly protect the interests of the members of
4 the Classes. Plaintiff has no interest adverse to the interests of absent Class Members. Plaintiff is
5 represented by legal counsel who have substantial class action experience in civil litigation and
6 employment law.

7 32. **Superiority**: A class action is superior to other available means for fair and efficient
8 adjudication of the claims of the Class and would be beneficial for the parties and the court. Class
9 action treatment will allow a large number of similarly situated persons to prosecute their common
10 claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of
11 effort and expense that numerous individual actions would require. The monetary amounts due to
12 many individual Class members are likely to be relatively small, and the burden and expense of
13 individual litigation would make it difficult or impossible for individual members of the Class to
14 seek and obtain relief. A class action will serve an important public interest by permitting such
15 individuals to effectively pursue recovery of the sums owed to them. Further, class litigation
16 prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

17 **FIRSTCAUSE OF ACTION**

18 **FAILURE TO PAY WAGES TIMELY UPON CESSATION OF EMPLOYMENT**

19 **(Plaintiff, the Labor Code § 201 and § 203 Class, Against All Defendants)**

20 33. Plaintiff incorporates all of the foregoing paragraphs of this complaint as if fully
21 alleged herein.

22 34. Plaintiff and the other members of the Labor Code § 201 and § 203 Class were
23 employees of DEFENDANTS covered by Labor Code § 201 and § 203 .

24 35. Labor Code § 201 provides: “(a) If an employer discharges an employee, the wages
25 earned and unpaid at the time of discharge are due and payable immediately. An employer who
26 lays off a group of employees by reason of the termination of seasonal employment in the curing,
27 canning, or drying of any variety of perishable fruit, fish or vegetables, shall be deemed to have
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1 made immediate payment when the wages of said employees are paid within a reasonable time as
2 necessary for computation and payment thereof; provided, however, that the reasonable time shall
3 not exceed 72 hours, and further provided that payment shall be made by mail to any employee
4 who so requests and designates a mailing address therefor.”

5 36. At times relevant hereto, Plaintiff and other members of the Labor Code § 201 and §
6 203 Class were discharged by layoff by Defendants at the end of events to which they were
7 assigned by Defendants to work. Pursuant to Labor Code § 201, Plaintiff and other members of
8 the Labor Code § 201 and § 203 Class were entitled upon each layoff they experienced, to
9 immediate payment of all wages earned and unpaid prior to each layoff. Defendant failed to pay
10 Plaintiff and members of the Labor Code § 201 and § 203 Class all wages earned and unpaid at the
11 time of each layoff they experienced during the relevant period in accordance with Labor Code §
12 201, paying them instead typically at least one week later. *See Smith v. Superior Court*, (2006) 39
13 Cal. 4th 77, 92 (releases from a period of employment or upon completion of an assignment
14 qualify as “discharges” under California law.)

15 37. Plaintiff is informed and believes, and thereon alleges, that at all relevant times within
16 the applicable limitations period, Defendants maintained and continue to maintain a policy and
17 practice of not paying wages due under Labor Code § 201 and § 203 Class to employees
18 intermittently employed upon discharge from an assignment.

19
20 38. Defendants’ failure to timely pay Plaintiff and other members of the Labor Code § 201
21 and § 203 Class wages in accordance with Labor Code § 201 was willful. Defendants had the
22 ability to pay all wages earned by intermittently employed workers at the time of each layoff as
23 required by Labor Code § 201.

24 39. Pursuant to Labor Code § 203, Plaintiff and other members of the Labor Code § 201
25 and § 203 Class are entitled to continuation of their wages, from the day their earned and unpaid
26 wages were due upon discharge until they were paid, up to a maximum of 30 days.

40. As a result of Defendants' conduct, Plaintiff and members of the Labor Code § 201 and § 203 Class have suffered damages in an amount, subject to proof, to the extent they were not paid all continuation wages owed under Labor Code § 203.

41. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and other members of the Labor Code § 201 and § 203 Class are entitled to recover the full amount of their continuation wages under Labor Code § 203, reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and other members of the Labor Code § 201 and § 203 Class are entitled to recover prejudgment interest on the amount of their unpaid wages and unpaid continuation wages.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS

(Plaintiff and the Rest Break Class Against All Defendants)

42. Plaintiff incorporates all of the foregoing paragraphs of this complaint as if fully alleged herein.

43. At all relevant times, Plaintiff and the other members of the Rest Break Class were employees of Defendants covered by Labor Code § 226.7 and Section 12 of the applicable IWC Wage Orders, including Wage Order 5-2001.

44. Pursuant to Labor Code § 226.7 and Section 12 of Wage Order 5-2001, Plaintiff and the other members of the Rest Break Class were entitled to rest periods of at least 10 minutes for each four-hour period of work, or major fraction thereof, and one hour of additional pay for every day a required rest period was not provided.

45. Defendants failed to allow Plaintiff and other members of the Rest Break Class to take rest periods in accordance with Labor Code § 226.7 and Section 12(A) of the applicable IWC Wage Orders, including Wage Order 5-2001.

46. Plaintiff is informed and believes, and thereon alleges, that at all relevant times within the applicable limitations period, Defendants maintained policies and working conditions preventing members of the Rest Break Class from taking legally compliant rest breaks by

1 restricting where they could take rest breaks and by providing them insufficient time to travel to
2 and from workstations to the required break areas and take the 10 minute breaks required by law;
3 and by not allowing them to simply leave their assigned workstations to take 10-minute rest
4 periods for each four hours of work or major fraction thereof in accordance with Labor Code §
5 226.7 and Wage Order 5-2001.

6 47. Plaintiff is informed and believes, and thereon alleges, that at all relevant times within
7 the applicable limitations period, Defendants maintained and continue to maintain a policy or
8 practice of failing to apprise members of the Rest Break Class who were going to be working at an
9 assignment for more than six hours, but less than eight hours, that they were entitled to two ten-
10 minute breaks during their shifts.

11 48. Defendants failed to provide Plaintiff and other members of the Rest Break Class the
12 additional hour of pay required by Labor Code § 226.7 and Section 12(B) of Wage Order 5-2001.
13 Plaintiff is informed and believes, and thereon alleges, that at all relevant times within the
14 applicable limitations period, Defendants maintained and continue to maintain a policy or practice
15 of not paying additional pay to employees for missed or non-compliant rest periods.

16 49. As a result of Defendants' unlawful conduct, Plaintiff and other members of the Rest
17 Break Class have suffered damages in an amount, subject to proof, to the extent they were not paid
18 premiums owed for rest period violations

19 50. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Class
20 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
21 pay owed for non-compliant rest periods.

22 51. Pursuant to Labor Code § 218, Plaintiff and other members of the Rest Break Class are
23 entitled to recover the full amount of their unpaid additional pay for rest period violations.
24 Pursuant to Labor Code § 218.5, Plaintiff and other members of the Rest Break Class are entitled
25 to recover their reasonable attorney's fees and costs of suit. Pursuant to Labor Code § 218.6 or
26 Civil Code § 3287(a), Plaintiff and other members of the Rest Break Class are entitled to recover
27 prejudgment interest on the additional pay owed for rest period violations.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

3 **(Plaintiff and the Reimbursement Class Against All Defendants)**

4 52. Plaintiff incorporates all of the foregoing paragraphs of this complaint as if fully
5 alleged herein.

6 53. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee
7 for all necessary expenditures or losses incurred by the employee in direct consequence of the
8 discharge of his or her duties.”

9 54. As part of the discharge their duties for Defendants, Plaintiff and the other members of
10 the Reimbursement Class were required and/or expected by Defendants to use their personal cell
11 phones, computers and other devices for Defendants’ business-related communications. However,
12 Defendants did not pay for the expenses incurred as a result of Plaintiff’s and Class Members’ use
13 of their personal devices for business.

14 55. Plaintiff and other members of the Reimbursement Class are entitled to reimbursement
15 for these necessary expenditures, plus interest under Labor Code § 2802.

16 56. As a result of Defendants’ violations of Labor Code § 2802, Defendants are also liable
17 for attorneys’ fees and costs under Labor Code § 2802(c). Plaintiff, on behalf of himself and all
18 other members of the Reimbursement Class, requests relief as described below.

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE LEGALLY COMPLIANT WAGE STATEMENTS**

21 **(Plaintiff and the Wage Statement Class Against All Defendants)**

22 57. Plaintiff incorporates all of the foregoing paragraphs of this complaint as if fully
23 alleged herein.

24 58. Section 226(a) of the California Labor Code requires Defendant to accurately report all
25 gross and net wages earned by Plaintiff and the other members of the Wage Statement Class.
26 Defendant has knowingly and intentionally failed to comply with Labor Code section 226(a) on
27 each wage statement provided to Plaintiff and the other members of the Wage Statement Class
28

1 during pay periods in which Defendant failed to pay premium wages owed to Plaintiff or a
2 member of the proposed class.

3 59. As a consequence of Defendant's knowing and intentional failure to comply with Labor
4 Code section 226(a), Plaintiff and each Wage Statement Class member he seeks to represent are
5 each entitled to actual damages or penalties not to exceed \$4,000 pursuant to Labor Code section
6 226(b), together with interest thereon and attorneys' fees and costs.

7 **FIFTH CAUSE OF ACTION**

8 **UNFAIR BUSINESS PRACTICES**

9 **(Plaintiff and All Classes Against All Defendants)**

10 60. Plaintiff incorporates all of the foregoing paragraphs of this complaint as if fully
11 alleged herein.

12 61. The unlawful conduct of Defendants alleged herein constitutes unfair competition
13 within the meaning of Business and Professions Code Section 17200. Due to its unlawful and
14 unfair business practices in violation of the Labor Code, Defendants have gained a competitive
15 advantage over other comparable companies doing business in the State of California that comply
16 with their obligations to compensate employees for all earned wages as required by law.

17 62. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and other
18 members of the Class have suffered injury in fact and lost money or property. Plaintiffs and
19 members of the Class have been deprived of their rights to lawfully compliant rest periods,
20 reimbursement for business-related expenses; and/or timely payment of all earned wages due upon
21 termination of employment. In addition, members of the Labor Code § 351 Class are entitled to
22 gratuities from credit card transactions withheld by Defendants.

23 63. Pursuant to Business and Professions Code Section 17203, Plaintiff and the other
24 members of the Classes are entitled to restitution of all wages and other monies owed and
25 belonging to them, including interest thereon, that Defendants wrongfully withheld from them and
26 retained for itself by means of its unlawful and unfair business practices.

64. Plaintiffs and the other members of the Classes are entitled to recover reasonable attorneys' fees in connection with their unfair competition claims pursuant to Code of Civil Procedure Section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

SIXTH CAUSE OF ACTION

CIVIL PENALTIES UNDER PAGA

(Plaintiff, Aggrieved Employees and the State of California Against Defendants)

65. Plaintiff incorporates all of the foregoing paragraphs of this complaint as if fully alleged herein.

66. At all times relevant to this action, Plaintiff and other Aggrieved Employees were "aggrieved employees" within the meaning of Labor Code Section 2699.

67. Defendants' conduct as described herein, arising from Defendants' failure to immediately pay employees at the time of layoff in violation of Labor Code § 201, failure to provide legally compliant rest periods in violation of Labor Code §§ 226.7 and the applicable IWC Wage Orders, failure to reimburse for business expenses under Labor Code § 2802, failure to provide accurate wage statements pursuant to Labor Code § 226, failure to provide suitable seating and failure to comply with Labor Code § 351.

68. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3.

69. Plaintiff has complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By letter dated September 29, 2022, Plaintiff gave written notice to the Labor and Workforce Development Agency ("LWDA") via its online filing system and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the September 29, 2022, letter is attached hereto as **Exhibit 1**. To date, more than 65 days after the postmark date of September 29, 2022, the LWDA has not advised Plaintiff that it intends to investigate Plaintiff's allegations.

70. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other Aggrieved Employees are entitled to civil penalties for Defendants' violations of the Labor Code and the applicable Wage Orders of the Industrial Welfare Commission, including Wage Order 5-2001, in the amount of 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. Pursuant to Labor Code Section 2699(i), 75% of the civil penalties recovered shall be distributed to the LWDA, and 25% shall be distributed to the aggrieved employees.

71. Pursuant to Labor Code Section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with his claims for civil penalties.

PRAYER FOR RELIEF

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

CLASS CERTIFICATION:

1. An order that the action be certified as a class action;
2. An order that Plaintiff be certified as the representative of the Classes;
3. An order that counsel for Plaintiff be confirmed as Class counsel;

ON THE FIRST CAUSE OF ACTION:

1. Waiting Time Penalties pursuant to Labor Code Section 203, according to proof;
2. Prejudgment interest;

ON THE SECOND CAUSE OF ACTION:

1. Damages including, but not limited to, Labor Code § 226.7 remedies, owing on account of the unavailability of required rest periods;
2. Prejudgment interest;

ON THE THIRD CAUSE OF ACTION:

1. Damages for unreimbursed business expenses;
2. Prejudgment interest;

ON THE FOURTH CAUSE OF ACTION:

1. Damages for inaccurate wage statements for each relevant pay period;
2. Prejudgment interest;

ON THE FIFTH CAUSE OF ACTION:

1. Restitution of all unpaid wages and other monies, including gratuities, owed and belonging to members of the Classes that Defendants unlawfully withheld from them and retained for themselves;
2. Prejudgment interest;

ON THE SIXTH CAUSE OF ACTION:

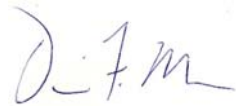
1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to aggrieved employees);
2. Costs;
3. Reasonable attorney's fees; and
4. Such other and further relief as this Court may deem just and proper

ON ALL CAUSES OF ACTION:

1. Judgment in favor of Plaintiff and the putative Classes and against Defendants;
2. Reasonable attorney's fees;
3. Costs of suit; and
4. Such other relief as the Court deems just and proper.

Dated: August 9, 2024

MOSS BOLLINGER LLP

By:  _____

Dennis F. Moss

Attorneys for Plaintiff SCOTT SHUSTER

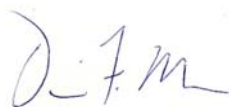
DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for himself and the Classes on all claims so triable.

August 9, 2024

MOSS BOLLINGER LLP

By: _____



Dennis F. Moss

Attorneys for Plaintiff SCOTT SHUSTER

EXHIBIT 1



Moss Bollinger
LLP

DENNIS F. MOSS

310.982.2984/fax: 818.963.5954
dennis@mossbollinger.com

September 29, 2022

VIA PAGA ONLINE FILING

Secretary Natalie Palugyai
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Legends Hospitality LLC
c/o Agent for service of Process
CSC-Lawyers Incorporation Service
2710 Gateway Oaks Dr. suite 150n
Sacramento, CA 95833

Re: Notice pursuant to Labor Code Section 2699.3
Labor Code Private Attorneys General Act ("PAGA")

Employer: Legends Hospitality LLC

Employee: Scott Shuster, on behalf of himself and on behalf of all current and former intermittently employed California employees of Legends Hospitality, LLC ("Legends" or "Defendant") who during the one year period preceding the writing of this letter:

1. Have been subject to layoffs and were not paid immediately upon layoff. (Not applicable to layoffs at the conclusion of baseball stadium assignments per Labor Code § 201.8; or layoffs from those concert venue assignments (if there are any operated by Legends) where employees are enrolled in and routinely dispatched to employment through a hiring hall or other system of short-term employment established in accordance with a bona fide collective bargaining agreement that establishes the time limits for payment of wages to an employee who is discharged or laid off per Labor Code § 201.9);

2. Have been required to use their personal phones and/or their personal computers in connection with communications from and to Legends arising from their employment;
3. Have not been provided with seating in reasonable proximity to their work areas when they are not engaged in the active duties of their employment for use when the seats do not interfere with the performance of their duties;
4. Have not received all gratuities left for them by patrons on credit cards on the payday following the date the unpaid gratuities have been left for them; and
5. Have not been provided two ten-minute rest breaks during each four hours of work or major fraction thereof on shifts that have lasted more than 6 hours.

Dear Secretary Palugyai:

Pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”), representative employee Scott Shuster (“Plaintiff”), on behalf of himself and all other similarly situated non-exempt employees who have worked in food and drink services at events in California venues operated by Legends Hospitality, LLC, alleges that Defendant violated the California Labor Code throughout the time Plaintiff worked for Defendant and within the one year prior to the mailing of this letter.

RELEVANT FACTS

During the relevant one year period before the date Plaintiff submitted this letter to the Labor & Workforce Development Agency (“LWDA”), Plaintiff worked for Defendant as a bartender primarily assigned to work at the Banc of California Stadium in Los Angeles, California. During that period he also occasionally worked for Defendant as a bartender at SoFi Stadium, YouTube Theatre, and the Los Angeles Coliseum in Los Angeles County, California, and at Angel Stadium in Anaheim California. He has worked for Legends since 2018.

Facts related to Labor Code §§ 201 and 203 Layoff Claims

Legends provides food and drink services at stadium, amphitheatre, arena and other venues throughout Northern and Southern California. A large complement of Legends employees work strictly on event dates at the scheduled events. They are intermittent employees, essentially day laborers working on days when there are stadium, amphitheatre or arena events, and not working on days when the venues where they work are “dark.” At the conclusion of events, at times, they are laid off for several weeks, if not longer, until they are returned to work for another assignment.

During the year prior to the sending of this letter, when assignments were concluded and employees were laid off without new assignments scheduled for a week, weeks or longer,

Legends did not pay wages owed immediately at the time of layoff, but rather waited for the next regular payday, typically at least one week in arrears. In Plaintiff's case, when working events at Banc of California Stadium, Plaintiff's workweeks ran from Wednesday to Tuesday. He was paid wages earned during a workweek one week after the workweek ended irrespective of whether he had experienced a layoff and had no assignments scheduled for a week or more.

Facts related to Labor Code § 2802 Claims

During the year prior to the sending of this letter, Plaintiff and other Legends intermittent employees were required to use personal cell phones and/or personal computers to work for Legends. For example, Legends assigned them to work events by communicating via text, phone calls, and emails, conducted training over the internet, and had employees confirm their fitness for duty over the internet. Plaintiff and other intermittently employed Legends employees communicated their availability for and acceptance of assignments by phone, text or email. Legends communicated changes in schedule and cancellations of assignments via texts and emails. The collective bargaining agreement between Legends and the union that represents the Banc of California Stadium bargaining unit that includes Plaintiff and his coworkers expressly contemplates communications by Legends to its intermittently employed workforce by telephone and email.

Additionally, Plaintiff and others he works with routinely must use use their personal cell phones out of necessity during events to contact supervisors and others for a myriad of reasons including the replenishment of supplies and issues arising with POS systems. Legends does not provide communication devices for these purposes.

Legends does not provide phones or computers to the intermittently employed workers nor reimburses them for the costs they incur on account of their use of such devices.

Given the nature of the workforces at Legends' other venues in California, workforces that would not necessarily frequent the venues where they work on other than event days, Legends' need to make assignments, have assignments accepted and confirmed, and to make adjustments to assignments at those venues, Plaintiff is informed and believes and thereon alleges, that the intermittently employed workers at Legends' other venues in California are similarly required to use their personal phones and personal computers, and are similarly not reimbursed for their expenses in doing so.

Facts related to Seating Claim

During the year prior to the mailing of this letter, when serving customers and preparing food or beverages, Plaintiff and other intermittent employees who work events at some Legends venues

must stand to perform their work tasks. When there are lulls in their work, there are frequently no seats in reasonable proximity to where they work available for them to use.

Facts related to Gratuity Claim

During the year prior to the mailing of this letter, patrons of Legends venues have been permitted to leave gratuities by credit card for employees, including Plaintiff. At times during the last year, Legends did not pay the tipped employees all the gratuities that patrons paid through credit card transactions on the next regular pay day following a pay period in which patrons have left gratuities for employees through credit card transactions.

Facts related to Rest Break Claim

During the year prior to the mailing of this letter, the collective bargaining agreement that covers the employment of Plaintiff and others employed by Legends to work at the Banc of California Stadium provided that all eight-hour employees shall be given two ten minute paid breaks, and all six hour employees shall receive one 15-minute break. Frequently, Plaintiff and his colleagues work more than six hours and less than eight hours. The collective bargaining agreement does not provide for a second break for these employees. The collective bargaining agreement contemplates that a category of employee called “stand lead” will advise employees as to when to take their breaks. During the year prior to the sending of this letter, employees with authority over Plaintiff and others regularly failed to direct them as to when to take breaks and, as a consequence, both first and second breaks were routinely not provided. Plaintiff experienced the lack of breaks at venues not covered by the Banc of California Stadium CBA;, and therefore is informed and believes that Legends employees throughout the State were routinely not provided with the rest breaks required by the law.

PLAINTIFF’S CLAIMS

Failure to Immediately Pay Laid Off Employees

Defendant was the employer of Plaintiff within the meaning of Labor Code § 201. Labor Code § 201 requires immediate payment of final wages to employees upon *discharge*. Given the text of Labor Code § 201 with its exception for *layoffs* in certain industries, the *layoff* exceptions in other industries memorialized in Labor Code §§ 201.5, 201.7, 201.8, 201.9, the DLSE’s long held view regarding Labor Code § 201 that requires immediate payment upon layoff: (“3.2.2 Layoff. If an employee is laid off without a specific return date within the normal pay period, the wages earned up to and including the lay off date are due and payable in accordance with Section 201. (*Campos v. EDD* (1982) 132 Cal.App.3d 961; 183 Cal.Rptr. 637; see also O.L.1993.05.04 and O.L. 1996.05.30). If there is a return date within the pay period and the employee is scheduled to return to work, the wages may be paid at the next regular pay day),” the settled

meaning of the term “layoff,” and the reasoning of the California Supreme Court in *Smith v. Superior Court (L'Oreal)* (2006) 39 Cal. 4th 77, during the year prior to the mailing of this letter, Plaintiff and other persons intermittently employed by Legends experienced discharges in the form of layoffs and should have been paid immediately when laid off. Such immediate payment as required by Labor Code § 201 was not forthcoming, and Defendant did not pay waiting time penalties pursuant to Labor Code § 203.

As Defendant failed to timely pay final wages upon each discharge as required by Labor Code § 201, Defendant is liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation. Further, as Defendant failed to pay waiting time penalties for each such violation as required by Labor Code § 203, Defendant is liable for additional penalties of \$100 per pay period for the first violation of Labor code 203 within the statutory period, and \$200 per pay period for each additional violation.

Failure to Reimburse Business Expenses

Pursuant to California Labor Code Section 2802:

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, or of his or her obedience to the directions of the employer...

As set forth above, during the one-year period preceding the date of this letter, Plaintiff and other intermittently employed Legends employees were required to use their personal cell phones and personal computers in direct consequence of the discharge of their duties. Defendant did not reimburse Plaintiff and other similarly situated employees for any portion of the expense Plaintiff and other similarly situated employees incurred for the use of their personal cell phones and personal computers.

As Defendant failed to reimburse Plaintiff and other similarly situated employees for business expenses they incurred, Defendant is liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Violation of the IWC Wage Order 5's Suitable Seating Requirements

As set forth above, Plaintiff contends that, during the one year period preceding this letter, at times, aggrieved employees of Legends such as him, who are required to stand while providing services to patrons, are not provided with suitable seating within reasonable proximity of where they work for use by them when there are lulls in the work they perform while standing.

Section 14 of the applicable Industrial Welfare Commission's Wage Orders, including Wage Order 5, provide in relevant part:

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Legends' violations of Section 14 of the applicable Wage Orders constitute a violation of Labor Code Section 1198, which prohibits employment under conditions of labor that violate the IWC Wage Orders.

As Defendant failed to provide suitable seating to Plaintiff and those similarly situated employees in compliance with Section 14 of the applicable Wage Orders, Defendant is liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Violation of Labor Code § 351

Pursuant to California Labor Code Section 351, on the payday following a pay period in which patrons paid gratuities to Legends' employees in a credit card transaction, Legends was required to pay the gratuities to the tipped employees. As set forth above, during the year prior to the sending of this letter, at times, Legends has failed to timely pay all such gratuities to their intended recipients, including Plaintiff and other similarly situated employees.

As Defendant violated Section 351, Defendant is liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Failure to Make Available Rest Periods

California law requires that employers must authorize and permit non-exempt employees to take a paid rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. *Id.* at 1029

During the year prior to the sending of this letter, Defendant did not inform Plaintiff and similarly situated intermittent employees of their rights under California law to second rest periods when they work more than 6 hours but less than 8 hours. Further, Defendant had a practice of not allowing intermittent employees to take rest breaks without someone in authority directing them to take a break. During the year preceding the mailing of this letter, Plaintiff and

other intermittently employed employees were consistently not provided with the necessary direction regarding rest breaks; and therefore were unable to take breaks. When these violations occurred, Defendant did not pay rest period premium wages, as required by California Labor Code sections 512, 226.7 and Section 12 of the applicable Wage Orders, including Wage Order 5-2001.

As Defendant failed to provide all rest periods required by California law and did not pay the required break premiums when such violations occurred, Defendant is liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

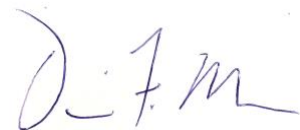
Civil Penalties

At all times relevant to this action, Plaintiff and other employees who were subject to the above violations of their rights were “aggrieved employees” within the meaning of Labor Code Section 2699. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3.

As a result of the foregoing, Defendant is liable for civil penalties as provided for by California law. Consequently, Plaintiff and all other similarly employed persons who worked for Defendant in California are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

Plaintiff requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA’s provisions. Alternatively, Plaintiff requests that the agency inform him if it does not intend to investigate these violations so that he may file a lawsuit with respect to the allegations discussed in this letter, to the extent Defendant does not cure those violations that are curable under PAGA. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. F. Moss".

Dennis F. Moss

MOSS BOLLINGER, LLP

1 **PROOF OF SERVICE**

2 ***SHUSTER V. LEGENDS HOSPITALITY, LLC***
3 ***LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 22STCV32193***

4 I am over the age of eighteen years and not a party to the within action. My business
5 address is 15300 Ventura Boulevard, Suite 207, Sherman Oaks, CA 91403. On August 26, 2024,
6 I served the foregoing document(s) described as:

7 **THIRD AMENDED COMPLAINT**

8 On the interested party(ies) below, using the following means:

9 Eugene C. Ryu
10 Gene.Ryu@klgates.com
11 Penny Chen Fox
12 Penny.Chen@klgates.com
13 Neil A. Eddington
14 Neil.Eddington@klgates.com
15 Amy Portillo
16 Amy.Portillo@klgates.com
17 Dyana Estrada
18 Dyana.Estrada@klgates.com
19 K&L GATES LLP
20 10100 Santa Monica Boulevard
21 Eighth Floor
22 Los Angeles, California 90067
23 *ATTORNEYS FOR DEFENDANT LEGENDS*
24 *HOSPITALITY, LLC*

25 **[X] BY ELECTRONIC TRANSMISSION:** On the date set forth below I caused to be
26 transmitted the document(s) listed above on the parties listed herein at their most
27 recent known e-mail address(s) or e-mail of record in this action before 6:00 p.m. I
28 hereby certify that this document was served from Sherman Oaks, California.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

Executed at Los Angeles County, California, on August 26, 2024

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