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and all others similarly situated and aggrieved

Electronically FILED by
Superior Court of California,
County of Los Angeles
5/22/2025 12:50 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Covarrubias, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

EDWIN DIAZ, an individual, on behalf of
himself and all others similarly situated and
aggrieved,

Plaintiff,

vs.

LEVEL 8 FIG LLC dba LEVEL 8, a
California Limited Liability Company;
MARRIOTT INTERNATIONAL, INC., a
Delaware Corporation; and DOES 1 through
25, inclusive,

Defendants.

Case No.: **25STCV15064**

**CLASS ACTION AND PAGA
REPRESENTATIVE ACTION COMPLAINT**

- (1) FAILURE TO PROVIDE MEAL PERIODS;**
- (2) FAILURE TO PROVIDE REST BREAKS;**
- (3) FAILURE TO PAY MINIMUM WAGES;**
- (4) FAILURE TO PAY OVERTIME WAGES;**
- (5) FAILURE TO REMIT ALL GRATUITIES;**
- (6) FAILURE TO PAY ALL WAGES UPON
SEPARATION;**
- (7) FAILURE TO FURNISH TIMELY AND
ACCURATE WAGE STATEMENTS;**
- (8) FAILURE TO REIMBURSE ALL
NECESSARY, BUSINESS-RELATED
EXPENSES;**
- (9) VIOLATION OF CALIFORNIA'S UNFAIR
COMPETITION LAW ("UCL"), CAL. BUS.
& PROF. CODE § 17200, *ET SEQ.*; AND**
- (10) CIVIL PENALTIES FOR VIOLATIONS
OF LABOR CODE, PURSUANT TO
CALIFORNIA'S PRIVATE ATTORNEYS
GENERAL ACT ("PAGA"), §§ 2698, *ET
SEQ.***

DEMAND FOR JURY TRIAL

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1. Plaintiff brings this class and representative action on behalf of himself, on behalf of a class defined as all current and former hourly non-exempt employees of LEVEL 8 FIG LLC doing business as LEVEL 8 and MARRIOTT INTERNATIONAL, INC. in California at any time during the Class Period beginning four years prior to the filing of this Complaint through the present (“Class Period”), and on behalf of all Aggrieved Persons who worked for Defendants as hourly, non-exempt employees in California at any time during the period beginning one year prior to the PAGA letter (defined below) through the present (“PAGA Period”).

3. Defendants operate an array of dining, drinking, and entertainment options located on one floor of the Moxy Hotel in downtown Los Angeles, California. More specifically, Level 8 offers multiple bars, restaurants, nightclubs, and lounges, some of which are poolside.

1 4. Defendants' policy and practice is to deny earned wages, including premium and overtime
2 pay, to their nonexempt employees in California. Defendants do not provide their employees with legally
3 compliant meal periods and rest breaks nor premium pay in lieu thereof. Additionally, Defendants
4 require their employees to be present and to perform work uncompensated in excess of eight hours per
5 day and/or 40 hours per work week.

6 5. Defendants mandated that Plaintiff and Class Members perform various forms of
7 compensable work off-the-clock including, but not limited to, (1) before and after scheduled shifts, to set
8 up and close down the bar and venue and (2) time spent responding to interruptions during meal periods.
9 Defendants do not provide minimum wages and overtime pay for this off-the-clock time. These off-the-
10 clock periods exist for the sole benefit of Defendants and occurred frequently and regularly at
11 Defendants' locations throughout California. This illegal practice has been in effect by Defendants since
12 at least the start of the Class Period.

13 6. Moreover, Defendants fail to timely compensate employees for all wages earned and fail
14 to properly and accurately calculate minimum wages and overtime wages and report wages earned, hours
15 worked, gratuities collected, and wage rates. For these reasons, Plaintiff brings this action on behalf of
16 himself and other hourly, nonexempt employees of Defendants to recover unpaid wages, overtime
17 compensation, unpaid gratuities, penalties, interest, injunctive relief, damages, and reasonable attorneys'
18 fees and costs.

19 7. Defendants' deliberate failure to pay their hourly, nonexempt employees their earned
20 wages and overtime compensation violates the California Labor Code and California's Unfair
21 Competition Law, codified under California's Business & Professions Code.

22 8. Defendants collected gratuities from guests, pooled gratuities, and then paid Plaintiff and
23 Class Members a pro rata portion of those gratuities based on the cumulative hours they worked during
24 the pay period. Upon information and belief, Defendants failed to remit all gratuities to Plaintiff and
25 Class Members in instances where Plaintiff and Class Members covered the shift of another coworker.
26 Those gratuities instead were paid to the originally scheduled coworker rather than Plaintiff and Class
27 Members who covered those shifts and actually performed the work.

28 9. Defendants failed to reimburse Plaintiff and Class Members for unreimbursed business

1 expenses for the use of Plaintiff's and Class Members' (1) personal cell phones, which were required to
2 carry out their duties such as clocking in and out using the smart phone application Seven Shifts and (2)
3 because Defendants did not provide laundry services nor enough uniform shirts, Plaintiffs and Class
4 Members effectively incurred additional expenses to launder their uniform shirts more frequently than
5 they would have otherwise washed loads of laundry.

6 10. Plaintiff brings a class action under the California Code of Civil Procedure section 382
7 against all Defendants on behalf of all hourly, nonexempt employees of Defendants in California for
8 failing to provide compliant meal periods and rest breaks or premium pay in lieu thereof, for unpaid
9 minimum wages including for work performed off the clock; unpaid overtime wages; failing to remit all
10 gratuities; failing to pay all wages owed upon separation; failing to provide timely, accurate wage
11 statements; failing to reimburse all necessary, business-related expenses; and other related penalties and
12 damages under the California Labor Code and California Business & Professions Code.

13 II. JURISDICTION AND VENUE

14 11. This Court has jurisdiction over this matter because Defendants are licensed to do
15 business in California, regularly conduct business in California, and committed and continue to commit
16 the unlawful acts alleged herein in California.

17 12. This Court has jurisdiction over this action pursuant to the California Constitution,
18 Article VI, section 10. The statute under which this action is brought does not specify any other basis
19 for jurisdiction.

20 13. This Court has jurisdiction over all Defendants because, on information and belief,
21 Defendants are citizens of California, have sufficient minimum contacts in California, and intentionally
22 avail themselves of the California market so as to render the exercise of jurisdiction over them by the
23 California courts consistent with traditional notions of fair play and substantial justice. There is no basis
24 for federal diversity jurisdiction in this action given that the State of California, as the real party in
25 interest in this action, is not a "citizen" for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin*
26 *Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot
27 be aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction in this
28 action, and that diversity jurisdiction cannot be established when Plaintiff's share of the civil penalties

1 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 14. Venue lies properly with this Court, as it is the place where at least one defendant resides,
3 is incorporated or has its principal place of business, or a substantial amount of the events which gave
4 rise to this suit occurred and/or a cause of action arose. Thus, venue is proper in this Court, because
5 Defendants employ persons in this county and employed at least one plaintiff in this county, and thus a
6 substantial portion of the transactions and occurrences related to this action occurred in this county.

7 15. California Labor Code sections 2698 *et seq.*, the “Labor Code Private Attorneys General
8 Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current
9 or former employers for various civil penalties for violating the California Labor Code.

10 **III. PARTIES**

11 16. Plaintiff EDWIN DIAZ (“Plaintiff” or “DIAZ”) is or was a resident of Redondo Beach,
12 California. Defendants employed Plaintiff as an hourly-paid, non-exempt employee for about 1.3 years
13 from approximately July 6, 2023 to November 1, 2024 in the position of Bartender. During his
14 employment, Plaintiff worked at Defendants’ location in Los Angeles County, California located at 1254
15 South Figueroa Street, Los Angeles, California 90015. Plaintiff typically worked five days per week
16 for eight (8) or more hours per day and at least about forty (40) hours per week. At the time of his
17 separation, Plaintiff was earning an hourly wage of \$19.73 per hour plus gratuities.

18 17. Defendant LEVEL 8 FIG LLC doing business as LEVEL 8 (“LEVEL 8”) is, on
19 information and belief, a California Limited Liability Company with its principal place of business
20 located at 6541 Hollywood Boulevard, Suite 202, Los Angeles, California 90028 and at all times
21 hereinafter mentioned, is operating in California in the hospitality industry, offering array of dining,
22 drinking, and entertainment options located on one floor of the Moxy Hotel in downtown Los Angeles,
23 California. More specifically, Defendant LEVEL 8 offers guests multiple bars, restaurants, nightclubs,
24 and lounges, some of which are poolside.

25 18. Defendant MARRIOTT INTERNATIONAL, INC. (“MARRIOTT”) is, on information
26 and belief, a Delaware Corporation doing business in California, with its principal place of business at
27 7750 Wisconsin Avenue, Bethesda, Maryland 20814 and at all times hereinafter mentioned, is the parent
28 company of employer LEVEL 8 whose employees are engaged throughout this county, in the State of

1 California. Upon information and belief, MARRIOTT receives distributions and payments from its
2 operating subsidiaries, including LEVEL 8.

3 19. Defendants created the policies and procedures described herein and, at all times during
4 the Class Period, participated in, endorsed, implemented, and performed the conduct alleged herein.

5 20. The practices and policies complained of by way of this Complaint are enforced
6 throughout the State of California, including in Los Angeles County, California.

7 21. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
8 participation in the conduct alleged herein, of the Defendants sued as Does 1-25, inclusive, but is
9 informed and believes that said Defendants are legally responsible for the conduct alleged herein and
10 therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege
11 both the true names and capacities of the Doe Defendants when ascertained. Plaintiff is informed and
12 believes, and thereon alleges, that at all times mentioned herein, all Defendants, including Doe
13 Defendants, and each of them, were agents, servants, employees, successors in interest, and/or joint
14 venturers of their co-Defendants and were, as such, acting within the course, scope, and authority of said
15 agency, employment, and/or venture, and with the consent of their co-Defendants, and/or said acts were
16 ratified by their co-Defendants, and that each and every Defendant, as aforesaid, when acting as a
17 principal, was negligent in the selection and hiring, training, and supervision of each and every other
18 Defendant as an agent, servant, employee, successor in interest, and/or joint venturer. Plaintiff is
19 informed and believes that each Defendant acted in all respects pertinent to this action as the agent of
20 the other Defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto,
21 and that the acts of each Defendant are legally attributable to each of the other Defendant.

22 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

23 22. At all times relevant herein, Defendants operate an array of dining, drinking, and
24 entertainment options located on one floor of the Moxy Hotel in downtown Los Angeles, California.
25 More specifically, Level 8 offers multiple bars, restaurants, nightclubs, and lounges, some of which
26 are poolside.

27 23. Upon information and belief, Defendant LEVEL 8 is organized in California and
28 maintains its corporate headquarters, including Human Resources in Los Angeles, California. Upon

1 information and belief, Defendant MARRIOTT is incorporated in Delaware and maintains its
2 corporate headquarters, including Human Resources in Bethesda, Maryland. Upon information and
3 belief, Defendant LEVEL 8 maintains a single, centralized Human Resources (“HR”) department at its
4 corporate headquarters in Los Angeles, California, which is responsible for conducting Defendants’
5 recruiting and hiring of new employees, as well as communicating and implementing Defendants’
6 company-wide policies, including timekeeping policies, to employees throughout California. In
7 particular, Plaintiff and other Class Members, on information and belief, received the same
8 standardized documents and/or written policies upon hire. Upon information and belief, the use of
9 standardized documents and/or written policies, including new hire documents, indicate that
10 Defendants dictated policies at the corporate-level and implemented them company-wide, regardless
11 of their employees’ assigned locations or positions. On information and belief, all transactions
12 regarding hiring, terminations, promotions, and pay increases, etc., relating to Defendants’ California
13 employees were submitted to and processed by Defendant LEVEL 8’S HR department located in Los
14 Angeles, California.

15 24. Upon information and belief, Defendants’ corporate records, business records, data, and
16 other information related to Defendants, including, in particular, HR records pertaining to Defendants’
17 California employees, are also maintained at Defendant LEVEL 8’S corporate headquarters in Los
18 Angeles, California.

19 25. At all relevant times, Defendants have been, and continue to be, a “person” as that term
20 is defined under California Business & Professions Code section 17021 and California Labor Code
21 sections 1-29.5.

22 26. At all times relevant herein, Plaintiff was employed by Defendants as an hourly,
23 nonexempt employee in the position of Bartender in California during the Class Period.

24 27. At all times relevant herein, Plaintiff and Class Members were assigned to and required
25 and permitted to work without pay while performing tasks including, but not limited to: slice drink
26 garnishes; stage alcohol bottle display pre-opening and put bottles away at closing; take drink and food
27 orders; make and deliver food and drinks; process customer payments; check customer identification;
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1 serve and assist customers with bottle service; and clean up station and venue. Plaintiff and Class
2 Members were not properly compensated for some of this work.

3 28. At all times relevant herein, Plaintiff and Class Members worked a substantial amount of
4 time while off-the-clock—meaning they were not punched in for work or their hours were reduced—
5 and therefore, those working hours were not compensated. This off-the-clock time primarily occurred
6 for (1) before and after scheduled shifts to set up and close down the bar and venue and (2) time spent
7 responding to interruptions during meal periods. So, in those instances, Plaintiff and Class Members
8 performed compensable work off the clock that was never subsequently added and, therefore, remains
9 uncompensated.

10 29. At all times relevant herein, Plaintiff and Class Members were required to perform work
11 during their meal periods due to Defendants' understaffing policies and practices, which caused Plaintiff
12 and Class Members to (1) miss their meal periods entirely; (2) begin their meal periods late after the end
13 of the fifth hour; or (3) be interrupted during a meal period in which they clocked out but had to return
14 to work, thereby cutting into their 30-minute meal periods and resulting in compensable work performed
15 off the clock. This is because Defendants instituted a timeclock that did not permit Plaintiff and Class
16 Members from clocking back in from a meal period before 30 minutes had elapsed, with no override
17 option in case Plaintiff and Class Members had to return to work early. Furthermore, upon information
18 and belief, when Plaintiff and Class Members did not clock out for meal periods, Defendants auto-
19 deducted 30-minutes for meal periods from Plaintiff's and Class Members' total hours worked, ignoring
20 the fact that Plaintiff and Class Members did not clock out for a meal period and the need that those
21 meal periods be recorded accurately and be timely—taken before the end of the fifth hour. Defendants
22 do not compensate Plaintiff and Class Members for this compensable time worked off the clock nor for
23 noncompliant meal periods.

24 30. Likewise, at all times relevant herein, Plaintiff and Class Members were required to
25 perform work during their rest breaks and missed their entire rest breaks, because of lack of available
26 staff to relieve Plaintiff and Class Members. Defendants do not compensate Plaintiff and Class Members
27 for their noncompliant rest breaks.
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31. Likewise, at all times relevant herein, Plaintiff and Class Members' meal periods and rest breaks were noncompliant because they were not off-duty because Plaintiff and Class Members missed their meal periods and rest breaks entirely or else were required to respond to interruptions requiring them to return to work early to handle time-sensitive customer-demand issues that arose while they were on their meal periods and rest breaks. These meal periods and rest breaks were noncompliant and not cured by premium compensation, and the meal periods were also not compensated or if compensated, not at the regular rate of pay, for purposes of Defendants' obligation to pay minimum wages for all hours worked.

32. At all times relevant herein, Plaintiff and Class Members were assigned to and required to work for periods lasting in excess of five hours and were not authorized nor permitted to take full-length 30-minute, uninterrupted, off-duty meal periods. Accordingly, Plaintiff's and Class Members' meal periods were on-duty for which Defendants failed to compensate Plaintiff and Class Members with both (1) premium pay for meal periods under 30 minutes and (2) the time worked that was on-duty during these meal periods.

33. Moreover, Plaintiff and Class Members regularly worked in excess of 10 hours without a second 30-minute meal period, despite not signing valid meal period waivers.

34. At all times relevant herein, Plaintiff and Class Members were assigned to and required and permitted to work shifts lasting over four hours and were not authorized nor permitted to take full, net 10-minute rest breaks during each shift or 4-hour work period.

35. At all times relevant herein, Defendants failed to authorize and permit Plaintiff and Class Members to take full, net 10-minute rest breaks during the Class Period. At the direction of Defendants and/or Defendants' knowledge and acquiescence, Plaintiff and Class Members routinely missed their entire 10-minute rest breaks. Accordingly, all rest breaks were noncompliant for which Defendants should have compensated Plaintiff and Class Members with premium pay for noncompliant rest breaks but failed to do so.

36. At all times relevant herein, Plaintiff and Class Members worked in excess of eight hours per workday or 40 hours per work week. Defendants failed to pay for all hours worked in excess of eight hours per day, and when compensated for overtime, failed to pay the correct amount of overtime

1 by under-recording and underreporting Plaintiff's and Class Members' total hours worked. Defendants
2 failed to pay current and former hourly, nonexempt employees one and one-half times (1½) their regular
3 rate of pay for hours worked in excess of eight hours per day or 40 hours per workweek. Defendants
4 also failed to pay their employees at a rate no less than twice the regular rate of pay for work in excess
5 of 12 hours in one day or for all hours worked in excess of eight hours on the seventh consecutive day
6 of work in a workweek.

7 37. During the Class Period, Defendants require their hourly, nonexempt employees to
8 perform compensable work while off the clock, including performing compensable work during their
9 meal periods because Plaintiff and Class Members either (1) clocked out for meal periods and continued
10 working or (2) did not clock out for meal periods, but Defendants auto-deducted 30 minutes for those
11 meal periods anyway. So when Plaintiff and Class Members did not clock out for their meal periods,
12 upon information and belief, Defendants auto-deducted 30 minutes each shift from Plaintiff's and Class
13 Members' total hours worked, and, therefore, did not pay Plaintiff and Class Members for those hours
14 worked during meal periods nor for their other off the clock time for setting up and closing down the
15 bar and venue before and after shifts. Accordingly, during the Class Period, Defendants did not provide
16 minimum wages and overtime pay for this time worked off-the-clock that Plaintiff and the Class endured
17 for the benefit of Defendants.

18 38. Defendants regularly failed to pay their hourly, nonexempt employees the correct amount
19 of and rate for overtime wages. Defendants fail to record all hours as overtime by failing to record all
20 hours worked in a workday. This work, done primarily for the employer's benefit, is time that hourly,
21 nonexempt employees should be, but were not compensated for, both straight hours and overtime hours
22 worked in excess of 40 hours in a week, hours worked in excess of eight hours in a day, and for the first
23 eight hours worked on the seventh consecutive day of work in a workweek.

24 39. Supervisors employed by Defendants, including at Plaintiff's location, had knowledge of
25 and required Plaintiff to perform compensable work during meal periods and off-shift. Supervisors
26 throughout California were aware that Plaintiff and others similarly situated were performing work
27 during these times without proper wages or overtime compensation because they knew that Plaintiff and
28 Class Members were both working prior or after their scheduled shift times and Plaintiff and Class

Members were complying with Defendants' policy to clock in only at shift-start and clock out by shift-end.

40. In light of Defendants' failure to record employees' off-the-clock time that employees worked and Defendants' failure to acknowledge the noncompliant meal periods and rest breaks, Defendants failed to properly calculate the hourly, nonexempt employees' hours and therefore, employees' premium pay, minimum wages, and overtime wages due. Accordingly, Defendants failed to provide accurate wage statements to their hourly, nonexempt employees identifying all hours worked and all rates in effect during the pay period.

41. At all times relevant herein, the same unlawful practices and procedures described above affect hourly, nonexempt workers of Defendants employed in California.

42. At all times relevant herein, Defendants failed to pay Plaintiff and Class Members for all hours worked. Thus, Defendants did not pay Plaintiff and Class Members minimum wages in accordance with law and, because Class Members were not compensated for time worked off the clock during meal periods and before and after scheduled shift times, Defendants also did not pay nonexempt employees all overtime wages in accordance with law.

43. At all times relevant herein, Defendants willfully failed to timely pay Plaintiff's and Class Members who are no longer employed by Defendants Plaintiff's and Class Members' uncompensated hours, meal period premiums, rest break premiums, all gratuities, and any accrued paid time off upon their termination or separation from employment as required by California Labor Code sections 201 and 202.

44. Defendants failed to reimburse Plaintiff and Class Members for unreimbursed business expenses for the use of Plaintiff's and Class Members' (1) personal cell phones, which were required to carry out their duties such as clocking in and out using the smart phone application Seven Shifts and (2) because Defendants did not provide laundry services nor enough uniform shirts, Plaintiffs and Class Members effectively incurred additional expenses to launder their uniform shirts more frequently than they would have otherwise washed loads of laundry.

45. Defendants' conduct, as alleged herein, has caused Plaintiff and Class Members damages including, but not limited to, loss of wages and compensation. Defendants are liable to Plaintiff and the

1 Class for failing to pay minimum wages; failing to pay overtime wages; failing to pay all wages owed
2 every pay period; failing to remit all gratuities; failing to pay all wages owed upon separation; failing to
3 provide timely and accurate wage statements; failing to reimburse all necessary, business-related
4 expenses; and unfair competition.

5 46. Plaintiff has complied with the procedures for bringing suit specified in California Labor
6 Code section 2699.3. By letter dated March 11, 2025, Plaintiff gave written notice by certified mail to
7 the Labor and Workforce Development Agency (“LWDA”), and Defendants, of the specific provisions
8 of the Labor Code alleged to have been violated, including the facts and theories to support the alleged
9 violations.

10 **V. CLASS ACTION AND REPRESENTATIVE ACTION ALLEGATIONS**

11 47. Plaintiff is a member of and seeks to be the representative for the Class of similarly
12 situated employees who all have been exposed to, have suffered, and/or were permitted to work under
13 Defendants’ unlawful employment practices as alleged herein.

14 48. Plaintiff brings his first through ninth causes of action on behalf of himself and on behalf
15 of the following Class¹ of persons defined as:

16 All current and former hourly non-exempt employees of LEVEL 8 FIG LLC
17 doing business as LEVEL 8 in California at any time during the Class Period
18 through the present.

19 49. This action is appropriately suited for a class action pursuant to Code of Civil Procedure
20 section 382 because there exists an ascertainable and sufficiently numerous Class, a well-defined
21 community of interest, and substantial benefits from certification that render proceeding as a class
22 superior to the alternatives.

23 50. Numerosity and Ascertainability. The size of the Class makes a class action both
24 necessary and efficient. On information and belief, the proposed Class includes hundreds of current and
25 former employees at Defendants’ locations in California. Members of the Class are ascertainable through
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27 ¹ Plaintiff reserves the right under California Rules of Court, Rule 3.765, to amend or modify the Class description
28 with greater particularity or further division into subclasses or limitation to particular issues.

Defendants' records but are so numerous that joinder of all individual Class Members would be impractical.

51. Predominant Common Questions of Law and Fact. Pursuant to section 382, common questions of law and fact exist as to all Class Members. These questions predominate over any individualized issues. These common questions include but are not limited to:

- a. Whether Defendants' policies and practices described in this Complaint were and are illegal;
- b. Whether Plaintiff and each member of the Class were not paid minimum wage for each hour worked or part thereof during which they were required to perform acts at the direction and for the benefit of Defendants;
- c. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff and the members of the Class who worked as hourly, nonexempt employees in California for the total hours worked during the Class Period;
- d. Whether Defendants have engaged in a common course of requiring or permitting their hourly, nonexempt employees to not report all hours worked during the Class Period;
- e. Whether Defendants have engaged in a common course of failing to maintain true and accurate time records for all hours worked by their nonexempt employees;
- f. Whether Defendants violated Labor Code section 226.7 and/or section 512 and engaged in a pattern or practice of failing to provide timely, off-duty, 30-minute meal periods to Plaintiff and members of the Class who worked as hourly, nonexempt employees in California during the Class Period;
- g. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and Class Members who worked as hourly, nonexempt employees in California during the Class Period from taking full-length off-duty, 30-minute meal periods by understaffing events, which required Plaintiff and Class Members to forgo meal periods to attend to guests of customers' events;
- h. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and the members of the Class who worked as hourly, nonexempt employees in California during the Class Period from taking full-length off-duty, 30-minute meal periods for their second meal periods

- 1 for shifts worked in excess of 10 hours but not more than 12 hours, where these second meal
2 periods were not waived by mutual consent;
- 3 i. Whether Defendants engaged in a pattern or practice of failing to properly record the start and
4 stop times that Plaintiff and Class Members took their meal periods;
- 5 j. Whether Defendants engaged in a pattern or practice of failing to properly compensate
6 Plaintiff and the members of the Class who worked as hourly, nonexempt employees in
7 California during the Class Period for missed, untimely, or on-duty meal periods as required
8 by California law;
- 9 k. Whether Defendants violated section 11 of the applicable California Industrial Welfare
10 Commission's ("IWC") Wage Order(s) by failing to provide Plaintiff and the members of the
11 Class who worked as hourly, nonexempt employees in California during the Class Period with
12 timely, off-duty, 30-minute meal periods;
- 13 l. Whether Defendants engaged in an unfair practice and violated California Business and
14 Professions Code, section 17200, *et seq.* by failing to provide Plaintiff and the members of
15 the Class who worked as hourly, nonexempt employees in California during the Class Period
16 with their statutory, off-duty, meal periods;
- 17 m. Whether Defendants maintained accurate time records of off-duty, 30-minute meal periods
18 taken by Plaintiff and members of the Class during the Class Period in accordance with section
19 7 of the applicable IWC Wage Order(s);
- 20 n. Whether Defendants engaged in a pattern or practice of failing to properly compensate
21 Plaintiff and the members of the Class who worked as hourly, nonexempt employees in
22 California during the Class Period for failing to provide full-length 10-minute rest breaks as
23 contemplated by California law for work periods in excess of four hours;
- 24 o. Whether Defendants failed to compensate, and therefore violated section 12 of the applicable
25 IWC Wage Order(s) and Labor Code section 226.7 by failing to provide 10-minute,
26 uninterrupted rest breaks as contemplated by California law for work periods in excess of four
27 hours;
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- 1 p. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of
2 overtime pay to Plaintiff and the Class for hours worked in excess of eight hours in a day;
- 3 q. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of
4 double time for hours worked in excess of 12 hours in a day;
- 5 r. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable
6 IWC Wage Order(s) by failing to pay overtime pay to Plaintiff and the Class for hours worked
7 in excess of eight hours in a day;
- 8 s. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable
9 IWC Wage Order(s) by failing to pay overtime pay to Plaintiff and the Class for the first eight
10 hours worked in a day on the seventh consecutive day in a workweek and double time for all
11 hours worked in excess of eight hours on such days;
- 12 t. Whether Defendants violated Labor Code sections 218.5, 204, 1197, and 1198 due to failure
13 to compensate Plaintiff and the Class for those acts Defendants required Plaintiff and
14 members of the Class to perform for the benefit of Defendants;
- 15 u. Whether Defendants violated Labor Code section 226 by issuing inaccurate wage statements
16 to Plaintiffs and members of the Class that failed to accurately state the total hours worked
17 and therefore, the total gross and net wages owed, to the detriment of Plaintiffs and the Class;
- 18 v. Whether Defendants violated Labor Code section 351 by collecting gratuities patrons paid to
19 Plaintiff and Class Members and then disbursing any portion of those gratuities instead to the
20 originally-scheduled coworkers whose shifts were being covered by Plaintiff and Class
21 Members throughout the Class Period;
- 22 w. Whether Defendants violated Labor Code sections 201, 202, and 203 by engaging in a
23 common course of failing to timely pay nonexempt employees all wages due upon separation;
- 24 x. Whether Defendants violated Labor Code section 226(a) by issuing inaccurate wage
25 statements to Plaintiff and members of the Class that failed to include payments for missed,
26 untimely, and/or on-duty meal periods among wages earned throughout the Class Period;
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- 1 y. Whether Defendants violated Labor Code section 226 by issuing inaccurate wage statements
2 to Plaintiff and members of the Class that failed to accurately state the total hours worked and
3 therefore, the total gross and net wages owed, to the detriment of Plaintiff and the Class;
4 z. Whether Defendants violated California Labor Code section 2802 by failing to reimburse
5 Plaintiff and Class Members for all necessary business-related expenses they incurred;
6 aa. Whether Defendants have engaged in unfair competition by the above-listed conduct; and
7 bb. The nature and extent of class-wide injury and the measure of damages for the injury.

8 52. Typicality. Plaintiff's claims are typical of the members of the Class. Plaintiff, like other
9 members of the Class working for Defendants in California, was subjected to Defendants' policies and
10 practices of refusing to properly and fully pay minimum wages, overtime wages, meal period and rest
11 break premiums, failing to remit all gratuities, failing to pay all wages owed upon separation, failing to
12 issue accurate wage statements, and failing to reimburse necessary, business-related expenses in violation
13 of California wage and hour laws. Plaintiff's job duties were and are typical of those of other class
14 members who worked for Defendants in California.

15 53. Adequacy of Representation. Plaintiff will fairly and adequately represent the interests of
16 the Class because his individual interests are consistent with and not antagonistic to the interests of the
17 Class, and because Plaintiff has selected counsel who has the requisite resources and ability to prosecute
18 this case as a class action and are experienced labor and employment attorneys who have successfully
19 litigated other cases involving similar issues.

20 54. Superiority of Class Mechanism. The class action mechanism is superior to any
21 alternatives that might exist for the fair and efficient adjudication of these claims. Proceeding as a class
22 action would permit the large number of injured parties to prosecute their common claims in a single
23 forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort and judicial
24 resources. A class action is the only practical way to avoid the potentially inconsistent results that
25 numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means
26 by which Plaintiff can effectively litigate against a large, well-represented corporate defendant like
27 Defendants. In the absence of a class action, Defendants would be unjustly enriched because they would
28 be able to retain the benefits and fruits of the many wrongful violations of the California state laws.

1 Numerous repetitive individual actions would also place an enormous burden on the courts as they are
2 forced to take duplicative evidence and decide the same issues relating to Defendants' conduct over and
3 over again.

4 **VI. FIRST CAUSE OF ACTION**

5 **Failure to Provide Meal Periods**

6 **in Violation of Cal. Labor Code §§ 512 and 226.7; IWC Wage Order No. 5-2001, § 11**

7 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

8 55. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
9 as if fully set forth herein.

10 56. California Labor Code section 226.7(a) provides, "No employer shall require any
11 employee to work during any meal or rest period mandated by an applicable order of the Industrial
12 Welfare Commission."

13 57. IWC Wage Order No. 5-2001 (11)(A) provides, in pertinent part: "No employer shall
14 employ any person for a work period of more than five (5) hours without a meal period of not less than
15 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work
16 the meal period may be waived by mutual consent of the employer and the employee."

17 58. Section 512(k) of the California Labor Code provides, in pertinent part, that: "An
18 employer may not employ an employee for a work period of more than five hours per day without
19 providing the employee with a meal period of not less than 30 minutes, except that if the total work period
20 per day of the employee is no more than six hours, the meal period may be waived by mutual consent of
21 both the employer and employee. An employer may not employ an employee for a work period of more
22 than 10 hours per day without providing the employee with a second meal period of not less than 30
23 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be
24 waived by mutual consent of the employer and the employee only if the first meal period was not waived."

25 59. Defendants did not provide Plaintiff and other Class Members with legally compliant, off-
26 duty meal periods, because Plaintiff and other Class Members were required to skip their entire meal
27 periods or else had to respond to interruptions that then required Plaintiff and other Class Members to
28 return to work early from their meal periods.

60. Moreover, Defendants engaged in a systematic, companywide policy to not pay meal period premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Class Members one additional hour of premium pay for missed meal periods, Defendants did not pay Plaintiff and other Class Members at the correct rate of pay for premium wages because Defendants failed to include all forms of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the regular rate of pay. As a result, to the extent Defendants paid Plaintiff and other Class Members premium pay for missed meal periods, it did so at a lower rate than required by law. As a result, Defendants failed to provide Plaintiff and other Class Members compliant meal periods and failed to pay the full meal period premiums due, in accordance with California Labor Code sections 204, 210, 226.7, and 512.

61. By their actions in requiring their employees to work during the entirety or a portion of their meal periods and/or their failure to relieve nonexempt, hourly, nonexempt employees of their duties for their off-duty meal periods, Defendants have violated California Labor Code section 226.7 and section 11 of IWC Wage Order No. 5-2001 and is liable to Plaintiff and the Class.

62. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived of timely, off-duty meal periods and are entitled to recovery under Labor Code section 226.7(b) and section 11 of IWC Wage Order No. 5-2001, in the amount of one additional hour of pay at the employee's regular rate of pay for each work period during each day in which Defendants failed to provide their hourly, nonexempt employees with timely, statutory, off-duty meal periods.

VII. SECOND CAUSE OF ACTION

Failure to Provide Rest Breaks

in Violation of Cal. Labor Code §§ 226.7, 512, and 1194;

IWC Wage Order No. 5-2001, § 12

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

63. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

64. California Labor Code section 226.7(a) provides, “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

1 65. IWC Wage Order No. 5-2001, section (12)(A) provides, in pertinent part: “Every
2 employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall
3 be in the middle of each work period. The authorized rest period time shall be based on the total hours
4 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
5 However, a rest period need not be authorized for employees whose total daily work times is less than
6 three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
7 there shall be no deduction from wages.”

8 66. IWC Wage Order No. 5-2001, section (12)(B) provides, “If an employer fails to provide
9 an employee with a rest period in accordance with the applicable provisions of this order, the employer
10 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
11 workday that the rest period is not provided.”

12 67. As alleged herein, Defendants failed to authorize and permit compliant rest breaks during
13 the Class Period. Plaintiff and members of the Class were routinely required to work during their entire
14 rest breaks at the direction of Defendants and/or with Defendants’ knowledge and acquiescence.

15 68. Furthermore, as with meal periods, Defendants’ understaffing and job-assignment policies
16 required employees to forgo their 10-minute rest breaks, entirely preventing Plaintiff and Class Members
17 from being relieved of all duty in order to take compliant rest breaks; these practices forced Plaintiff and
18 other Class Members to remain on duty for part of, if not all of, their rest breaks, meaning they did not
19 receive net 10-minute rest breaks. That is, Plaintiff and Class Members’ rest breaks were noncompliant
20 because they were not off-duty; Plaintiff and Class Members were required to respond to interruptions
21 and return to work early from their rest breaks if they were able to leave to take their rest breaks at all.
22 As a result, Plaintiff and Class Members would work shifts in excess of 3.5 hours without the net 10-
23 minute rest breaks to which they were entitled. More specifically, throughout his employment, during 8-
24 hour or longer shifts, Plaintiff and Class Members regularly worked during the entirety of their 10-minute
25 rest breaks by using that time to continue performing work for Defendants.

26 69. At the same time, Defendants implemented a companywide policy to not pay rest break
27 premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Class Members one
28 additional hour of premium pay for missed rest breaks, Defendants did not pay Plaintiff and other Class

Members at the correct rate of pay for premium wages because Defendants failed to include all forms of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the regular rate of pay. As a result, to the extent Defendants paid Plaintiff and other Class Members premium pay for missed rest breaks, it did so at a lower rate than required by law. As a result, Plaintiff and other Class Members were denied compliant rest breaks and Defendants failed to pay the full rest break premiums due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s).

70. Defendants' unlawful conduct alleged herein occurred in the course of employment of Plaintiff and all others similarly situated and such conduct has continued through the filing of the initial Complaint.

71. As a direct and proximate result of Defendants' unlawful action, Plaintiff and the Class have been deprived of full-length 10-minute rest breaks and/or were not paid for rest breaks taken during the Class Period and are entitled to recovery under Labor Code section 226.7(b) in the amount of one additional hour of pay at the employee's regular rate of compensation for each work period during each day in which Defendants failed to provide employees with compliant and/or paid rest breaks.

VIII. THIRD CAUSE OF ACTION

Failure to Pay Minimum Wages

Upon Payment of Wages in Violation of Cal. Labor Code §§ 510, 1194, 1194.2,

and 1197; IWC Wage Order No. 5-2001, § 4

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

72. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

73. Labor Code section 510 provides in relevant part: "[e]ight hours of labor constitutes a day's work. Any work in excess of eight hours in one work day and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay

1 of an employee.”

2 74. Labor Code section 1197 provides: “The minimum wage for employees fixed by the
3 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
4 minimum so fixed is unlawful.”

5 75. Labor Code section 1182.12 establishes the right of employees to be paid minimum wages
6 for all hours worked in amounts set by state law.

7 76. Labor Code section 1194, subdivision (a) provides: “Notwithstanding any agreement to
8 work for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime
9 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the
10 full amount of this minimum wage or overtime compensation, including interest thereon, reasonable
11 attorney’s fees, and costs of suit.”

12 77. Labor Code section 1194.2 provides in pertinent part: “In any action under Section 1193.6
13 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed
14 by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount
15 equal to the wages unlawfully unpaid and interest thereon.”

16 78. Pursuant to IWC Wage Order No. 5-2001, section (2)(H), at all times material hereto,
17 “hours worked” includes “the time during which an employee is subject to the control of an employer,
18 and includes all the time the employee is suffered or permitted to work, whether or not required to do
19 so.”

20 79. At all times relevant during the liability period, under the provisions of IWC Wage Order
21 No. 5-2001, Plaintiff and each Class Member should have received not less than the minimum wage in a
22 sum according to proof for the time worked but not compensated.

23 80. For all hours that Plaintiff and Class Members worked, they are entitled to not less than
24 the California minimum wage and, pursuant to Labor Code section 1194.2(a) liquidated damages in an
25 amount equal to the unpaid minimum wages and interest thereon.

26 81. Pursuant to Labor Code section 1194, Plaintiff and Class Members are also entitled to
27 their attorneys’ fees, costs, and interest according to proof.

28 82. At all times relevant during the liability period, Defendants willfully failed and refused,

1 and continue to willfully fail and refuse, to pay Plaintiff and Class Members the amounts owed.

2 83. As described earlier, Defendants mandated that Plaintiff and Class Members perform
3 various forms of compensable work off-the-clock including, but not limited to, (1) before and after
4 scheduled shifts, to set up and close down the bar and venue and (2) time spent responding to interruptions
5 during meal periods for which they did not clock back in or instances where Plaintiff and Class Members
6 did not take or record a meal period but Defendants still auto-deducted 30 minutes. Defendants do not
7 provide minimum wages and overtime pay for this off-the-clock time. Defendants do not provide
8 minimum wages and overtime pay for this off-the-clock time. These off-the-clock periods exist for the
9 sole benefit of Defendants and occurred frequently and regularly at Defendants' locations throughout
10 California. This illegal practice has been in effect by Defendants since at least the start of the Class
11 Period.

12 84. As described above, Defendants required Plaintiff and other Class Members to work
13 during their meal periods so that they would serve guests of events in a timely manner despite Defendants'
14 understaffing policies and practices. That is, Plaintiff and Class Members were required to work through
15 their meal periods without clocking out, while Defendants' practice was to auto-deduct 30 minutes for
16 Plaintiff's and Class Members' meal periods. If Plaintiff and Class Members were interrupted during
17 their meal periods after clocking out, Plaintiff and Class Members were required to return to work without
18 clocking back in 30 minutes for their meal period had elapsed. Defendants did not pay at least minimum
19 wages for off-the-clock hours. And to the extent these off-the-clock hours did that qualified for overtime
20 premium pay, Defendants also did not pay overtime wages for those eligible hours worked off-the-clock.

21 85. Defendants' unlawful conduct alleged herein occurred in the course of employment of
22 Plaintiff and all other similarly situated nonexempt, hourly, nonexempt employees, and Defendants have
23 done so continuously throughout the filing of this complaint.

24 86. As a direct and proximate result of Defendants' violation of Labor Code sections 510 and
25 1197, Plaintiff and other Class Members have suffered irreparable harm and money damages entitling
26 them to damages, injunctive relief or restitution. Plaintiff, on behalf of himself and on behalf of the Class,
27 seeks damages and all other relief allowable including all wages due while working as Defendants'
28 hourly, nonexempt employees, attorneys' fees, liquidated damages, prejudgment interest, and as to those

employees no longer employed by Defendants, waiting time penalties pursuant to Labor Code sections 200, *et seq.*

87. Plaintiff and Class Members are entitled to the unpaid amount of minimum wages, pre-judgment interest, liquidated damages, statutory penalties, attorneys' fees, and costs according to Labor Code sections 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure 1021.5.

IX. FOURTH CAUSE OF ACTION

Failure to Pay Overtime Wages

in Violation of Cal. Labor Code §§ 510 and 1194, IWC Wage Order No. 5-2001, § 3

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

88. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

89. Pursuant to section 3 of IWC Wage Order No. 5-2001; California Code of Regulations, Title 8, Chapter 5, section 11040, section 12; and Labor Code sections 200, 204, 226, 500, 510, 512, 1194, and 1198, Defendants were required to compensate Plaintiff and members of the Class for all overtime hours worked, which is calculated at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight hours per day and/or 40 hours per week, and for the first eight hours on the seventh consecutive work day, with double time after eight hours on the seventh day of any work week, or after 12 hours in any work day.

90. Plaintiff and members of the Class were and are nonexempt employees entitled to the protections of IWC Wage Order No. 5-2001; California Code of Regulations, Title 8, section 11040, section 12; and Labor Code sections 200, 226, 500, 510, 512, 1194, and 1198. In addition, during the Class Period, Plaintiff and other members of the Class consistently worked five days per week for shifts of eight hours or more. During the course of Plaintiff's employment, and during the course of the employment of the members of the Class, Defendants failed to compensate Plaintiff and the Class for overtime hours worked as required under the aforementioned Labor Codes and Regulations.

91. Under the aforementioned Wage Orders, statutes, and regulations, Plaintiff and members of the Class are entitled to one and one-half (1½) times and/or double their regular rate of pay for overtime

work performed during the four years preceding the filing of this Complaint, based on appropriate calculations of the “total remuneration” for each workweek.

92. In violation of state law, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff and the Class for all wages earned and all hours worked. As a direct result, Plaintiff and the Class have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys’ fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

93. Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and the Class, from improper motives amounting to malice, and in conscious disregard of Plaintiff’s rights and the rights of the Class. Plaintiff and the Class are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof a time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

94. Defendants’ conduct described herein violates IWC Wage Order No. 5-2001; California Code of Regulations, Title 8, section 11040, section 12; and Labor Code sections 200, 226, 500, 510, 512, and 1198. Therefore, pursuant to Labor Code sections 200, 203, 204, 226, 226.7, 512, 558, and 1194, Plaintiff and the Class are entitled to recover the unpaid balance of overtime compensation Defendants owes Plaintiff and the Class, plus interest, penalties, attorneys’ fees, expenses, and costs of suit.

X. FIFTH CAUSE OF ACTION

Failure to Remit All Gratuities

in Violation of Cal. Labor Code § 351

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

95. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

96. At all relevant times herein, California Labor Code section 351 provides that no employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an

1 employee by a patron.

2 97. Further, “[a]n employer that permits patrons to pay gratuities by credit card shall pay the
3 employees the full amount of the gratuity that the patron indicated on the credit card slip, without any
4 deductions for any credit card payment processing fees or costs that may be charged to the employer by
5 the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the
6 employees not later than the next regular payday following the date the patron authorized the credit card
7 payment.”

8 98. Defendants collected gratuities from guests, pooled gratuities, and then paid Plaintiff and
9 Class Members a pro rata portion of those gratuities based on the cumulative hours they worked during
10 the pay period.

11 99. Upon information and belief, Defendants failed to remit all gratuities to Plaintiff and Class
12 Members in instances where Plaintiff and Class Members covered the shift of another coworker. Those
13 gratuities instead were paid to the originally-scheduled coworker rather than Plaintiff and Class Members
14 who covered those shifts and actually performed the work.

15 100. Defendants violated Labor Code section 351 by collecting, taking, or receiving any
16 gratuity or a part thereof that was paid, given to, or left for Plaintiffs and the Class by patrons. Violations
17 of Labor Code section 351 for failure to remit to Plaintiffs and the Class the entire gratuity paid by
18 customers or that customers would otherwise intend to leave for them. Accordingly, Plaintiffs and the
19 Class are entitled to penalties as set forth by Labor Code section 354.

20 **XI. SIXTH CAUSE OF ACTION**

21 **Failure to Pay All Wages Owed Upon Separation**

22 **in Violation of Cal. Labor Code §§ 201–203**

23 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

24 101. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
25 as if fully set forth herein.

26 102. Labor Code section 201 provides, in relevant part, “[I]f an employer discharges an
27 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

28 103. Labor Code section 202 provides, in relevant part, “[I]f an employee not having a written

1 contract for a definite period quits his or his employment, his or his wages shall become due and payable
2 not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or his
3 intention to quit, in which case the employee is entitled to his or his wages at the time of quitting.”

4 104. Section 203 of the California Labor Code provides that if an employer willfully fails to
5 pay compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the
6 employer is liable for penalties in the form of continued compensation up to 30 workdays.

7 105. At all times relevant during the liability period, Plaintiff and the other members of the
8 Class were employees of Defendants covered by Labor Code section 203. Pursuant to Labor Code
9 section 201, upon Plaintiff’s and the Class Members’ respective separation dates, Defendants were
10 required to pay Plaintiff and Class Members all wages earned. Plaintiff was terminated, but Defendants
11 did not pay Plaintiff all of his final wages immediately following his termination as required and in
12 violation of Labor Code section 201. On November 8, 2024, Defendants terminated Plaintiff. However,
13 Defendants did not give Plaintiff his final check immediately on November 8, 2024. On or about
14 November 22, 2024—over one week following his termination— Defendants paid Plaintiff some of his
15 wages via direct deposit at the time of Defendants’ regular payroll schedule. Then on December 8,
16 2024—30 days post-termination—Defendants gave Plaintiff his final check via paper check. Neither of
17 these payments were immediately upon termination as required by law, and the ultimate final check did
18 not account for all wages owed Defendants owed Plaintiff.

19 106. That is, when Defendants did pay Plaintiff, Plaintiff’s final pay did not include all unpaid
20 meal period and rest break premiums, all hours worked to-date whether straight time or overtime, and all
21 gratuities earned.

22 107. At the time of Plaintiff’s and the Class Members’ respective separation dates, Plaintiff and
23 Class Members had unpaid wages. Defendants willfully failed to pay Plaintiff and other members of the
24 Class who are no longer employed by Defendants for their uncompensated hours, uncompensated
25 overtime, and missed, untimely, or on-duty meal periods and rest breaks upon their termination or
26 separation from employment with Defendants as required by California Labor Code sections 201 and
27 202. Thus, in violation of Labor Code section 201, Defendants failed to pay Plaintiff and these Class
28 Members the full amount of wages due and owing them, in amounts to be proven at the time of trial, but

1 in excess of the jurisdictional minimum of this Court.

2 108. Defendants' failure to pay Plaintiff and the Class their respective wages due and owed to
3 them was willful, and done with the wrongful and deliberate intention of injuring Plaintiffs and the Class
4 Members and in conscious disregard of their rights.

5 109. Defendants' willful failure to pay former employee Plaintiff and the Class all of the wages
6 due and owing them constitutes violations of Labor Code sections 201 and 203, which provide that an
7 employee's wages will continue as a penalty up to 30 days from the time the wages were due. Therefore,
8 Plaintiff and the Class Members are each entitled to penalties pursuant to Labor Code section 203.

9 **XII. SEVENTH CAUSE OF ACTION**

10 **Failure to Furnish Timely and Accurate Wage Statements**

11 **Upon Payment of Wages in Violation of Cal. Labor Code § 226**

12 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

13 110. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
14 as if fully set forth herein.

15 111. Labor Code section 226(a) sets forth reporting requirements for employers when they pay
16 wages, as follows: "Every employer shall . . . at the time of each payment of wages, furnish his or her
17 employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked
18 by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the
19 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written
20 orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
21 dates of the period for which the employee is paid, (7) the name of the employee and only the last four
22 digits of their social security number or an employee identification number other than a social security
23 number, (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable
24 hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly
25 rate by the employee

26 112. Labor Code section 226(e) provides: "An employee suffering injury as a result of a
27 knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover
28 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs

1 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
2 an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and
3 reasonable attorney's fees."

4 113. Defendants failed to accurately record and display the correct total hours and overtime
5 hours worked by Plaintiff and Class Members on Plaintiff's and Class Members' wage statements, in
6 violation of Labor Code section 226(a)(2).

7 114. Defendants failed to display the correct amounts for meal period premiums and rest break
8 premiums owed to Plaintiff and Class Members on Plaintiff's and Class Members' wage statements, in
9 violation of Labor Code section 226(a)(1) and (a)(9).

10 115. Defendants failed to display the correct total amounts of gratuities owed to Plaintiff and
11 Class Members on Plaintiff's and Class Members' wage statements, also in violation of Labor Code
12 section 226 subsections (a)(1) and (a)(9).

13 116. Consequently, because Defendants failed to (1) accurately record and display the correct
14 total hours and overtime hours worked, (2) display the correct amounts for meal period premiums and
15 rest break premiums owed, and (3) display the correct total amounts of gratuities owed, Defendants also
16 failed to accurately display the gross and net wages earned, in violation of Labor Code section 226
17 subsections (a)(1) and (a)(5).

18 117. Plaintiff and Class Members were damaged by these failures because, among other things,
19 the failures hindered Plaintiff and the Class from determining the amounts of wages actually owed to
20 them.

21 118. Plaintiff and Class Members request recovery of Labor Code section 226(e) penalties
22 according to proof, as well as interest, attorneys' fees and costs pursuant to Labor Code section 226(e),
23 in a sum as provided by the Labor Code and/or other statutes.

24 **XIII. EIGHTH CAUSE OF ACTION**

25 **Failure to Reimburse All Necessary, Business-Related Expenses**

26 **in Violation of Cal. Labor Code § 2802**

27 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

28 119. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint

as if fully set forth herein.

120. California Labor Code section 2802 provides that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, 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.”

121. During the applicable statutory period, Plaintiff and Class Members incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of Defendants, Defendants did not reimburse Plaintiff and Class Members for these expenditures or losses. Such expenses include, but are not limited to, expenses for the use of Plaintiff’s and Class Members’ (1) personal cell phones, which were required to carry out their duties such as clocking in and out using the smart phone application Seven Shifts and (2) because Defendants did not provide laundry services nor enough uniform shirts, Plaintiffs and Class Members effectively incurred additional expenses to launder their uniform shirts more frequently than they would have otherwise washed loads of laundry.

122. Defendants have failed to fully reimburse Plaintiff and Class Members for necessary business-related expenses and losses.

123. Plaintiff and Class Members are entitled to recover their necessary unreimbursed business-related expenses and losses incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California, pursuant to California Labor Code section 2802.

XIV. NINTH CAUSE OF ACTION

Violations of California’s Unfair Competition Law (“UCL”),

California Business and Professions Code §§ 17200, *et seq.*

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

124. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

125. Section 17200 of the California Business and Professions Code (the “UCL”) prohibits any

unlawful, unfair, or fraudulent business practices.

126. Through their actions alleged herein, Defendants have engaged in unfair competition within the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful, unfair, and/or fraudulent business practices under the UCL.

127. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating the statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not limited to, failure to pay Class Members wages and compensation they earned through labor provided, and failing to otherwise compensate Class Members, as alleged herein. Defendants' fraudulent conduct includes, but is not limited to, issuing wage statements containing false and/or misleading information about the time the Class Members worked and the amount of wages or compensation due.

128. Defendants' violations of California wage and hour laws and illegal payroll practices or payment policies constitute a business practice because they were done repeatedly over a significant period of time, and in a systematic manner to the detriment of Plaintiff and Class Members.

129. Plaintiff has standing to assert this claim because he has suffered injury in fact and has lost money as a result of Defendants' conduct.

130. For the four years preceding the filing of this action, Plaintiff and Class Members have suffered damages and request restitutionary disgorgement of all monies and profits to be disgorged from Defendants in an amount according to proof at the time of trial and an injunction prohibiting them from engaging in the unlawful, unfair, and/or fraudulent conduct alleged herein.

XV. TENTH CAUSE OF ACTION

For Civil Penalties Pursuant to California's Private Attorneys General Act of 2004 ("PAGA"),

§§ 2698, *et seq.*, for Violations of California Labor Code Sections

(Brought by Plaintiff on Behalf of Himself and the General Public

Against Defendant LEVEL 8 FIG LLC)

131. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

132. PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order(s) that provides for a civil penalty to be assessed and collected by California's Labor and

1 Workforce Development Agency (“LWDA”) for violations of the California Labor Code and applicable
2 IWC Wage Order(s) may, as an alternative, be recovered by aggrieved employees in a civil action brought
3 on behalf of themselves and other current or former employees pursuant to procedures outlined in
4 California Labor Code section 2699.3.

5 133. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any person
6 who was employed by the alleged violator and against whom one or more of the alleged violations was
7 committed.”

8 134. Plaintiff and other current and former employees of Defendants are “aggrieved
9 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former
10 employees and one or more of the alleged violations were committed against them.

11 135. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees, including
12 Plaintiff, may pursue a civil action arising under PAGA, alleging violations of any provision listed in
13 section 2699.5, after the following requirements have been met:

- 14 a. The aggrieved employee shall give written notice (“Employee’s Notice”) by online filing
15 to the LWDA and by certified mail to the employer of the specific provisions of the
16 California Labor Code alleged to have been violated, including the facts and theories to
17 support the alleged violations;
- 18 b. The Employee’s Notice filed with the LWDA is accompanied by a \$75 filing fee; and
- 19 c. The LWDA shall provide notice (“LWDA Notice”) to the employer and the aggrieved
20 employee by certified mail that it does not intend to investigate the alleged violation within
21 60 calendar days of the postmark date of the Employee’s Notice. Upon receipt of the
22 LWDA Notice, or if the LWDA Notice is not provided within 65 calendar days of the
23 postmark date of the Employee’s Notice, the aggrieved employee may commence a civil
24 action pursuant to California Labor Code section 2699 to recover civil penalties in
25 addition to any other penalties to which the employee may be entitled.

26 136. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, including
27 Plaintiff, may pursue a civil action arising under PAGA for violations of any provision other than those
28 listed in section 2699.5 after the following requirements have been met:

- a. The aggrieved employee shall give written notice by online filing (“Employee’s Notice”) to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The Employee’s Notice filed with the LWDA is accompanied by a \$75 filing fee; and
- c. The employer may cure the alleged violation within 33 calendar days of the postmark date of the Employee’s Notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

137. On March 11, 2025, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff’s notice to the LWDA was accompanied by the \$75 filing fee. A true and correct copy of Plaintiff’s written notice to the LWDA; LEVEL 8 FIG LLC doing business as LEVEL 8 dated March 11, 2025 is attached hereto as “**Exhibit 1.**” Exhibit 1 is incorporated into this Complaint by reference.

138. As of the filing date of the initial complaint, over 65 days have passed since Plaintiff sent the LWDA Notice described above, and the LWDA has not responded that it intends to investigate Plaintiff’s claims. Defendants have not given notice that it has cured the alleged violations set forth in this Complaint. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code section 2699.3(a) and (c) to recover civil penalties against all defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

139. Labor Code section 558(a) provides that “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil

penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

140. Defendants, at all times relevant herein, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other non-party aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

141. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order(s), including:

- a. Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage Order(s) for Defendants’ failure to provide Plaintiff and other Class Members with compliant meal periods and/or rest breaks, as set forth above;
- b. Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC Wage Order(s) for Defendants’ failure to compensate Plaintiff and other Class Members with at least minimum wages for all hours worked as set forth above;
- c. Violations of Labor Code sections 510, 1198, and the applicable IWC Wage Order(s) for Defendants’ failure to compensate Plaintiff and other Class Members with overtime wages for all hours worked in excess of eight in one day or 40 in one week and double time for all hours worked in excess of 12 hours, as set forth above;
- d. Violations of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order(s) for failure to provide accurate and complete wage statements to Plaintiff and other Class Members as set forth above;
- e. Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order(s) for failure to maintain payroll records. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order(s). Section

1 1198 further provides that “[t]he employment of any employees for longer hours than
2 those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
3 Pursuant to the applicable IWC Wage Order(s), employers are required to keep accurate
4 time records showing when the employee begins and ends each work period and meal
5 period. During the relevant time period, Defendants failed, on a companywide basis, to
6 keep records of meal period start and stop times for Plaintiff and other non-party aggrieved
7 employees in violation of section 1198. California Labor Code section 1174(d) provides
8 that “[e]very person employing labor in this state shall . . . [k]eep a record showing the
9 names and addresses of all employees employed and the ages of all minors” and “[k]eep,
10 at a central location in the state or at the plants or establishments at which employees are
11 employed, payroll records showing the hours worked daily by and the wages paid to, and
12 the number of piece-rate units earned by and any applicable piece rate paid to, employees
13 employed at the respective plants or establishments” During the relevant time period,
14 and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain
15 accurate payroll records for Plaintiff and other non-party aggrieved employees showing
16 the daily hours they actually worked and the wages paid thereto as a result of failing to
17 record the off-the-clock hours that they worked;

- 18 f. Violations of Labor Code section 204 for failure to pay all earned wages during
19 employment as set forth above;
- 20 g. Violations of Labor Code section 351 for failure to remit all gratuities as set forth above;
- 21 h. Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages
22 upon termination as set forth above;
- 23 i. Violations of Labor Code section 2802 for failure to reimburse employees for all
24 necessary, business-related expenses incurred during employment as set forth above;
- 25 j. Plaintiff and other non-party aggrieved employees are therefore entitled to recover
26 penalties, attorneys’ fees, costs, and interest thereupon, pursuant to Labor Code section
27 2699(f)-(g); and
- 28 k. Any and all additional applicable civil penalties and sums as provided by the California

1 Labor Code and/or other relevant statutes.

2 142. Pursuant to California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558,
3 Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of
4 civil penalties for himself, all other non-party aggrieved employees, and the State of California against
5 all Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202,
6 203, 204, 226(a), 226.7, 351, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

7 143. In addition, Plaintiff seeks and is entitled to sixty-five percent (65%) of all penalties
8 obtained under California Labor Code section 2699 to be allocated to the LWDA, for education of
9 employers and employees about their rights and responsibilities under the California Labor Code, and
10 thirty-five percent (35%) to all aggrieved employees.

11 144. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant to
12 California Labor Code sections 2699(g)(1), 218.5, 1194(a) and any other applicable statute.

13 **XVI. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated and also on behalf
15 of the general public, respectfully requests that this Court find against all defendants as follows:

- 16 1. An order that this action may proceed and may be maintained as a class action;
- 17 2. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member
18 on their minimum wage claims;
- 19 3. All unpaid overtime wages due to Plaintiff and each Class Member;
- 20 4. One hour of wages due to Plaintiff and each Class Member for each work period of more than
21 four hours when they did not receive an uninterrupted 10-minute rest break;
- 22 5. One hour of wages due to Plaintiff and each Class Member for each work period of more than
23 five hours when they did not receive an uninterrupted 30-minute meal period;
- 24 6. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member
25 on their minimum wage claim;
- 26 7. For restitution of all monies due to Plaintiff and members of the Class and disgorged profits
27 from the unlawful business practices of Defendants, including withholding of gratuities;
- 28 8. For waiting time penalties pursuant to Labor Code section 203;

- 1 9. Statutory penalties under Labor Code section 226(e);
- 2 10. For reimbursement of business expenses under California Labor Code section 2802;
- 3 11. For penalties pursuant to violations of Labor Code sections 201, 202, 203, 204, 206, 210,
- 4 225.5, 226, 226.3, 226.7, 351, 510, 512, 558, 1174.5, 1182.12, 1194, 1194.2, 1197.1, 1198, and 2802;
- 5 12. For injunctive relief enjoining Defendants from engaging in the unlawful and unfair business
- 6 practices complained of herein;
- 7 13. For all civil penalties permitted by California's Private Attorneys General Act of 2004, Labor
- 8 Code sections 2698, *et seq.*, based on all the alleged statutory violations set forth in this Complaint;
- 9 14. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and 1194;
- 10 15. Prejudgment interest at the maximum legal rate on all due and unpaid wages pursuant to Labor
- 11 Code section 218.6 and Civil Code sections 3287 and 3289;
- 12 16. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226, 1194, 2699(g), and
- 13 Code of Civil Procedure section 1021.5;
- 14 17. Accounting of Defendants' records for the liability period;
- 15 18. General, special, and consequential damages, to the extent allowed by law; and
- 16 19. All such other and further relief that the Court may deem just and proper.

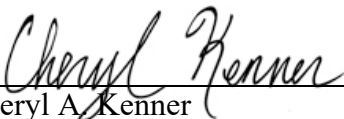
17 Dated: May 22, 2025

ABRAMSON LABOR GROUP

18

19

20 By:


Cheryl A. Kenner

21 Attorneys for Plaintiff EDWIN DIAZ
22 and all others similarly situated and aggrieved
23
24
25
26
27
28

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff EDWIN DIAZ, on behalf of himself and all others similarly situated and aggrieved, hereby
3 demands a jury trial with respect to all issues triable of right by jury.

4 Dated: May 22, 2025

5 **ABRAMSON LABOR GROUP**

6 By: Cheryl Kenner
7 Cheryl A. Kenner

8 Attorneys for Plaintiff EDWIN DIAZ
9 and all others similarly situated and aggrieved

EXHIBIT 1



1700 W Burbank Blvd.
Burbank, California 91506
t | 213.493.6300
Cheryl.K@abramsonlabor.com
www.AbramsonLaborGroup.com

March 11, 2025

VIA ONLINE SUBMISSION

Stewart Knox, Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL

Level 8 Fig LLC
Attn: Legal Department
1260 S. Figueroa St.
Los Angeles, CA 90015

Level 8 Fig LLC
Attn: Legal Department
6541 Hollywood Blvd., Ste. 202
Los Angeles, CA 90028

Level 8 Fig LLC
Attn: Legal Department
1254 S. Figueroa St., 8th Floor
Los Angeles, CA 90015

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE
SECTION 2698, ET SEQ.**

To: The California Labor and Workforce Development Agency; Level 8 Fig LLC dba Level 8

From: Edwin Diaz, on behalf of himself and all other current and former hourly nonexempt employees for violations of the California Labor Code

To Whom It May Concern:

Abramson Labor Group has been retained by former employee Edwin Diaz ("Mr. Diaz") to seek compensation and all other available relief, including civil penalties on his behalf and on the behalf of all those similarly aggrieved (collectively with Mr. Diaz, "Claimants") who have been injured by Level 8 Fig LLC doing business as Level 8's ("Level 8") violations of the California Labor Code. Mr. Diaz, on behalf

of himself and all other similarly aggrieved current and former hourly nonexempt employees of Level 8, intend to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Factual Statement:

Level 8 operates an array of dining, drinking, and entertainment options located on one floor of the Moxy Hotel in downtown Los Angeles, California. More specifically, Level 8 offers multiple bars, restaurants, nightclubs, and lounges, some of which are poolside.

Claimant Mr. Diaz worked for Level 8 from approximately July 6, 2023 to November 1, 2024 as an hourly, nonexempt employee in the position of Bartender (earning \$19.73 per hour plus pooled gratuities). Mr. Diaz, on behalf of himself and all other similarly aggrieved current and former employees in California in various positions, are or were generally engaged in serving food and drinks, including alcoholic beverages, to customers. As part of his employment with Level 8, Mr. Diaz and Claimant and other hourly, nonexempt employees, collectively, "hourly nonexempt employees," are or were assigned to and required to suffer and permitted to work without pay, while performing tasks collectively including, but not limited to, slice drink garnishes; stage alcohol bottle display pre-opening and put bottles away at closing; take drink and food orders; make and deliver food and drinks; process customer payments; check customer identification; serve and assist customers with bottle service; and clean up station and venue.

Claimant Mr. Diaz regularly worked about five days per week for eight hours or more hours per day. During the entire course of his employment, Level 8 failed to provide Mr. Diaz and continues to fail to provide those similarly aggrieved with some overtime pay and compliant meal periods and rest breaks. Level 8 has also failed to remit all gratuities paid by customers and pay minimum wages to Mr. Diaz and other hourly, nonexempt employees in violation of Labor Code sections 351, 510, 1194, 1197, and 1182.12, and section 4 of IWC Wage Order No. 5-2001. As a consequence of failing to pay minimum wages, Level 8 has failed to comply with Labor Code sections 226.7, 510, and 512, and sections 3, 11, and 12 of all applicable Industrial Welfare Commission ("IWC") Wage Orders, including but not limited to, IWC Wage Order No. 5-2001. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, Level 8 has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Level 8 has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Level 8 has failed and continues to fail to provide timely, accurate wage statements to Mr. Diaz and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by Level 8, including Mr. Diaz, Level 8 violated Labor Code section 203 by failing to timely pay all wages due upon separation. Level 8 has failed and continues to fail to fully reimburse Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for (1) the use of their personal cell phones, which were required to carry out their duties such as clocking in and out using the smart phone application Seven Shifts, and (2) uniform laundering expenses, in violation of Labor Code section 2802. Mr. Diaz is informed and believes that such violations are ongoing, systematic, and continuous. Mr. Diaz intend to bring an action against Level 8 under the Private Attorneys General Act ("PAGA") to recover wages and penalties as provided by California law.¹

¹ Without limitation, Mr. Diaz, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

Theories of Labor Code Violations and Remedies:

Claimant Mr. Diaz was employed by Level 8 from approximately July 6, 2023 to November 1, 2024 as an hourly, nonexempt employee holding the position of Bartender. For a period of at least four (4) years prior to March 2025, but for our purposes here, one (1) year prior, Level 8 has violated and continues to violate the California Labor Code sections as detailed below.

Claimants also were at all times entitled to payment of **minimum wages**. Level 8 has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and sections 4 and 5 of IWC Wage Order No. 5-2001. First, Claimants worked while off-the-clock—meaning they were not punched in for work—and therefore, those working hours were not recorded and then compensated. This off-the-clock time primarily occurred (1) before and after scheduled shifts to set up and close down the bar and venue; and (2) time spent responding to interruptions during meal periods. Accordingly, Claimants were not paid for that time spent working off the clock. That is, Defendant implemented policies and enforced practices requiring Claimants to perform compensable work while clocked out, the effects of which Defendant could have mitigated by adjusting expectations and/or by adding more staff to reduce the expected daily workload. Level 8 instructed Claimants to continue working while clocked out during their meal periods, and as explained in the two paragraphs to follow, to take short meal periods off the clock and skip rest breaks. In effect, these policies and practices cause Claimants to have noncompliant meal periods and to remain on-duty during rest breaks, and therefore, constitute a failure on Level 8's part to provide compliant meal periods and rest breaks. With that, Level 8's corresponding failure to provide premium pay at the correct regular rate, if any premiums were paid at all, in lieu of compliant meal periods and rest breaks constitutes Level 8's failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. Second, Level 8's failure to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail below, also constitutes a failure to pay minimum wages to Claimants. For all of the foregoing reasons, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 5-2001.

Claimants were at all times entitled to unpaid off-duty, uninterrupted **meal periods**. As explained in the preceding paragraph, Level 8 failed to authorize and permit timely, full-length meal periods for Mr. Diaz and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and section 11 of IWC Wage Order No. 5-2001. Mr. Diaz and all similarly aggrieved persons were regularly unable to take their 30-minute meal periods or else were interrupted while off the clock, meaning they did not receive a full 30 minutes of off-duty meal periods. Nonetheless, Level 8 enforced a policy that required

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

Claimants to return to work early but Level 8's timeclock would not permit Claimants to clock in until 30 minutes for their meal periods had elapsed, ignoring the fact that Claimants had to and did return to work early. Despite that, Level 8 did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for each workday on which they occurred. In fact, Mr. Diaz's final paycheck issued November 1, 2024 reveals that Level 8 failed to pay him a single meal period premium the entire year. Accordingly, since Level 8 required Mr. Diaz and others similarly situated to forgo their meal periods or to be on duty during meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code sections 558, section 20 of IWC Wage Order No. 5-2001, and 2699(f).

Claimants were at all times entitled to take paid, off duty 10-minute **rest breaks**. Level 8 failed to authorize and permit Mr. Diaz and all other similarly aggrieved employees to take full-length, off-duty rest breaks as required by Labor Code sections 226.7 and section 12 of IWC Wage Order No. 5-2001. Level 8 enforced a policy that did not permit Claimants to take any of their rest breaks because employees were staffed too thinly to permit bartenders and wait staff to take their rest breaks. As such, Claimants were not able to take their requisite number of 10-minute rest breaks based on their shift duration; Claimants regularly worked through their rest breaks. Level 8 did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant rest breaks for each workday on which they occurred. In fact, Mr. Diaz's final paycheck issued November 1, 2024 reveals that Level 8 failed to pay him a single rest break premium the entire year. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and section 20 of IWC Wage Order No. 5-2001. Furthermore, since Level 8 required their hourly nonexempt employees to perform work during rest periods in violation of Labor Code section 226.7(b), Claimants seek all available penalties set forth in Labor Code sections 558 and 2699.

At all times relevant herein, Claimants were entitled to the payment of **overtime**. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Level 8 was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over 12 hours per workday and eight hours on the seventh day of a workweek. Mr. Diaz occasionally worked and Claimants regularly worked overtime hours. Level 8 has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that should have been compensated as overtime, yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. In short, during the entire course of their employment, Level 8 failed to provide Mr. Diaz and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 5-2001, section 3.

Claimants were at all times entitled to receive all gratuities paid to or left for employees by patrons regardless of the form in which the gratuity was delivered, which shall not be deducted by credit card fees assessed to Level 8 by credit card companies. Cal. Lab. Code § 351. Labor Code section provides in pertinent part that "[n]o employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity. . . . Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company." Level 8 failed to remit all gratuities owed to Claimants, including Mr. Diaz, as required by Labor Code section 351. First, Level 8 engaged in improper tip withholding practices by reducing the gratuities collected by the amount credit card companies assessed to Level 8 on those particular transactions. Second, Level 8 pooled tips and included in those tip pools supervisors who are not entitled to share in the tip pool because those persons did not work during the shifts

in which the tips were collected. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Pursuant to Labor Code sections 201–203, Claimants who have since separated from Level 8, including Mr. Diaz, were entitled to be paid all **wages owed upon separation** within the statutorily allotted time—immediately (resignation with notice and termination) or within 72 hours (resignation without notice). Claimants, including Mr. Diaz, did not receive his final pay of all wages within the requisite time based on the circumstances of his separation nor did he receive all wages Level 8 owed Mr. Diaz based on Level 8’s prior failings to pay all wages owed every pay period, including but not limited to minimum and overtime wages, all meal and rest premiums owed, and all gratuities customers paid, as explained above. On or about November 22, 2024, over one week following his termination, Level 8 paid Mr. Diaz via direct deposit at the time of Level 8’s regular payroll schedule for some of his wages. Then, on or about December 8, 2024, thirty days after his November 8, 2024 termination, Level 8 paid Mr. Diaz his final wages via paper check. Neither were immediately upon termination as required by law, and the final check did not account for all wages owed to Mr. Diaz.

Claimants were at all times entitled to be provided timely and accurate **wage statements** from Level 8 pursuant to Labor Code section 226. Because Level 8 failed to pay Claimants all of their meal period and rest break premiums for noncompliant meal periods and rest breaks and failed to pay Claimants minimum wages for all hours worked before, during, and after their shifts and for all overtime wages due, Claimants’ wage statements were inaccurate in reflecting meal period and rest break premiums owed, overtime and minimum wages earned, and all hours worked every pay period. As a consequence, Claimants’ wage statements also do not reflect the accurate amount of net and gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by Level 8 for all necessary, **business-related expenses** they incurred in executing their duties for Level 8. California Labor Code section 2802 provides that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, 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.” Level 8, however, has failed to fully reimburse Mr. Diaz and Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for (1) the use of Claimants’ personal cell phones, which were required to carry out their duties such as clocking in and out using the smart phone application Seven Shifts, and (2) uniform laundering expenses because Claimants were provided too few uniform shirts to last throughout the workweek without requiring extra loads of laundry. Accordingly, Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802.

Level 8’s uniform failure to pay overtime and minimum wages, failure to authorize and permit full-length, off-duty rest breaks and meal periods or pay Claimants adequate premium compensation in lieu thereof, failure to reimburse all necessary, business-related expenses, failure to remit all gratuities, failure to furnish timely and accurate wage statements, and failure to timely pay all wages upon separation violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512, 1182.12, 1194, 1197, and 2802, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys’ fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Diaz, acting

in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Level 8 for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Should you require any additional information, please feel free to contact me.

Sincerely,

ABRAMSON LABOR GROUP

A handwritten signature in cursive script that reads "Cheryl Kenner". The signature is written in black ink and is positioned below the company name.

Cheryl A. Kenner