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Attorneys for JOVAN NEWLAND,
individually and on behalf of all others
similarly situated and aggrieved

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

JOVAN NEWLAND, individually and on behalf
of all others similarly situated and aggrieved,

Plaintiff,

vs.

WJD RESTAURANT GROUP, LLC, a California
limited liability corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 24STCV10446

*[Assigned for all purposes to Hon. Laura A.
Seigle, Dept. 17]*

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF CAL. BUS. & PROF.
CODE § 17200, ET SEQ.**
- (2) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT**

DEMAND OVER \$25,000

1 Plaintiff Jovan Newland (“Plaintiff”) hereby submits this First Amended Class and
2 Representative Action Complaint (“Complaint”) against Defendant WJD Restaurant Group, LLC
3 (“Defendant”) and Does 1 through 50 (hereinafter collectively referred to as “Defendants”), on behalf
4 of himself and all other similarly situated current and former employees of Defendants, for penalties
5 and/or damages for violations of the California Labor Code, as follows:

6 **INTRODUCTION**

7 1. This class and representative action is within the Court’s jurisdiction under California
8 Labor Code sections 351, the applicable Wage Orders of the California Industrial Welfare Commission
9 (“IWC”), Business and Professions Code section 17200 et seq. (“UCL”), and the Private Attorneys
10 General Act (“PAGA”).

11 2. This complaint challenges systemic illegal employment practices resulting in violations
12 of the California Labor Code, the applicable IWC Wage Orders, the UCL, and PAGA against
13 individuals who worked for Defendants.

14 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly and
15 severally, have acted intentionally and with deliberate indifference and conscious disregard to the rights
16 of all employees in receiving minimum wages and overtime wages for all hours worked, accurate
17 itemized wage statements, and all earned wages upon separation of employment.

18 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
19 engaged in, among other things a system of willful violations of the California Labor Code and the
20 UCL by creating and maintaining policies, practices and customs that knowingly deny employees the
21 above stated rights and benefits.

22 5. The policies, practices and customs of Defendants described above and below have
23 resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that
24 routinely adhere to the strictures of the California Labor Code and the UCL.

25 **JURISDICTION AND VENUE**

26 6. The Court has jurisdiction over the violations of the California Labor Code sections 351
27 et seq., the applicable IWC Wage Orders, the UCL, and PAGA.

7. Venue is proper because Defendant does business in Los Angeles County and maintains a business location in Los Angeles County.

PARTIES

8. Plaintiff has been employed by Defendant as a non-exempt catering server since in or around November of 2021.

9. Plaintiff was and is the victim of the policies, practices, and customs of Defendant complained of in this action in ways that have deprived him of the rights guaranteed by California Labor Code sections 351, the applicable IWC Wage Orders, the UCL, and PAGA.

10. Plaintiff is informed and believes, and based thereon alleges, that Defendant WJD Restaurant Group, LLC is a California limited liability company, which maintains operations in the State of California, including the County of Los Angeles.

11. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendant and Does 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such, and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to California Labor Code sections 351, the applicable IWC Wage Orders, the UCL, and PAGA.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiff, the class and members of the general public to be subject to the illegal employment practices, wrongs and injuries complained of herein.

13. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

14. Plaintiff is informed and believes, and based thereon alleges, that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

15. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

16. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

CLASS ACTION ALLEGATIONS

17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to California Code of Civil Procedure section 382. Plaintiff proposes the following Class: all current and former non-exempt employees of Defendant in the State of California at any time from April 25, 2020, through the present (the “Class” or “Class Members”).

18. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendant's records, including payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendant kept for itself gratuities paid by Defendant's clients and intended exclusively for Defendant's non-exempt employees. This amounts to a violation of Labor Code Section 351 and the UCL.

19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiff's attorneys

are ready, willing and able to fully and adequately represent the class and the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California state and federal courts.

20. Defendant uniformly administered a corporate policy, practice of: Keeping for itself gratuities paid by Defendant's clients and intended exclusively for Defendant's non-exempt employees, in violation of Labor Code 351 and the UCL.

21. Plaintiff is informed and believes, and based thereon alleges, that Defendant had a consistent and uniform policy, practice and procedure of willfully failing to comply with California Labor Code section 351, the applicable IWC Wage Orders, and the UCL.

22. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning Defendant's policy and practice of: Keeping for itself gratuities paid by Defendant's clients and intended exclusively for Defendant's non-exempt employees, in violation of Labor Code 351 and the UCL.

23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner as the Class members. In this case, Defendant includes a line on the invoices provided to clients entitled "Service Appreciation." The "Service Appreciation" line item is voluntary and no amount of money is required to be paid. The "Service Appreciation" line item includes a drop down bar that allows the client to select the amount of money paid to "Service Appreciation." The "Service Appreciation" line item is indisputably a gratuity as it is: 1) called "Service Appreciation", which would commonly be understood as being equivalent to "gratuity"; 2) is optional, meaning the client need not leave any amount and if they do choose to leave some amount, the amount is entirely at the discretion of the client (similar to a gratuity); and 3) could not reasonably be confused with a required "service charge" because Defendant already includes a mandatory "service charge" on client invoices. However, Defendant keeps the "Service Appreciation" monies for itself and does not distribute it to its non-exempt employees as a gratuity should be. Therefore, Plaintiff is a member of the Class and has suffered the alleged violations of Labor Code sections 351, the applicable IWC Wage Orders, and the UCL.

1 24. The California Labor Code and upon which Plaintiff bases these claims are broadly
2 remedial in nature. These laws and labor standards serve an important public interest in establishing
3 minimum working conditions and standards in California. These laws and labor standards protect the
4 average working employee from exploitation by employers who may seek to take advantage of superior
5 economic and bargaining power in setting onerous terms and conditions of employment.

6 25. The nature of this action and the format of laws available to Plaintiff and members of the
7 Class identified herein make the class action format a particularly efficient and appropriate procedure
8 to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the
9 corporate Defendants would necessarily gain an unconscionable advantage since it would be able to
10 exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior
11 financial and legal resources. Requiring each Class Member to pursue an individual remedy would
12 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
13 against their former and/or current employer for real and justifiable fear of retaliation and permanent
14 damage to their careers at subsequent employment.

15 26. The prosecution of separate actions by the individual class members, even if possible,
16 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
17 Class members against the Defendants and which would establish potentially incompatible standards
18 of conduct for the Defendants, and/or (b) adjudications with respect to individual Class members which
19 would, as a practical matter, be dispositive of the interest of the other Class members not parties to the
20 adjudications or which would substantially impair or impede the ability of the Class members to protect
21 their interests. Further, the claims of the individual members of the Class are not sufficiently large to
22 warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

23 27. Such a pattern, practice and uniform administration of corporate policy regarding illegal
24 employee compensation described herein is unlawful and creates an entitlement to recovery by Plaintiff
25 and the Class identified herein, in a civil action, for illegally keeping gratuities intended for workers,
26 applicable penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California
27 Labor Code sections 218.5, 351, the UCL and Code of Civil Procedure section 1021.5.

28. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and is representative of, will establish the right of each of the members of the Class to recovery on the causes of action alleged herein.

29. The Class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendants. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE SECTION 17200 ET SEQ.

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

31. Defendant has engaged and continues to engage in unfair and unlawful business practices in California by practicing, employing, and utilizing the employment practices outlined above. Defendant includes a line on the invoices provided to clients entitled “Service Appreciation.” Specifically, the “Service Appreciation” line item is voluntary and no amount of money is required to be paid. The “Service Appreciation” line item includes a drop down bar that allows the client to select the amount of money paid to “Service Appreciation.” The “Service Appreciation” line item is indisputably a gratuity as it is: 1) called “Service Appreciation”, which would commonly be understood as being equivalent to “gratuity”; 2) is optional, meaning the client need not leave any amount and if they do choose to leave some amount, the amount is entirely at the discretion of the client (similar to a gratuity); and 3) could not reasonably be confused with a required “service charge” because Defendant already includes a mandatory “service charge” on client invoices. However, Defendant keeps the “Service Appreciation” monies for itself and does not distribute it to its non-exempt employees as a gratuity should be, in violation of Labor Code section 351.

32. Defendant's utilization of such unfair and unlawful business practices constitutes unfair and unlawful competition and provides an unfair advantage over Defendant's competitors.

33. Plaintiff seeks, individually and on behalf of other members of the Class, full restitution

1 of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
2 converted by the Defendant by means of the unfair practices complained of herein.

3 **SECOND CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE SECTION 2698 ET SEQ. (“PAGA”)**

5 **(BY PLAINTIFF AND THE AGGRIEVED EMPLOYEES)**

6 34. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though
7 fully set forth herein.

8 35. Defendant has engaged and continues to engage in illegal business practices in California
9 by practicing, employing, and utilizing the employment practices outlined above. Defendant includes
10 a line on the invoices provided to clients entitled “Service Appreciation.” Specifically, the “Service
11 Appreciation” line item is voluntary and no amount of money is required to be paid. The “Service
12 Appreciation” line item includes a drop down bar that allows the client to select the amount of money
13 paid to “Service Appreciation.” The “Service Appreciation” line item is indisputably a gratuity as it is:
14 1) called “Service Appreciation”, which would commonly be understood as being equivalent to
15 “gratuity”; 2) is optional, meaning the client need not leave any amount and if they do choose to leave
16 some amount, the amount is entirely at the discretion of the client (similar to a gratuity); and 3) could
17 not reasonably be confused with a required “service charge” because Defendant already includes a
18 mandatory “service charge” on client invoices. However, Defendant keeps the “Service Appreciation”
19 monies for itself and does not distribute it to its non-exempt employees as a gratuity should be, in
20 violation of Labor Code section 351.

21 36. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code § 2699(c),
22 and a proper representative to bring a civil action on behalf of himself and other current and former
23 employees of Defendants pursuant to the procedures specified in California Labor Code § 2699.3,
24 because Plaintiff and Aggrieved Employees were employed by Defendants and the alleged violations
25 of the California Labor Code were committed against Plaintiff and Aggrieved Employees.¹

26 37. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code
27

28 ¹ For purposes of Plaintiff’s claim under PAGA, the term “Aggrieved Employees” refers to all current and former non-exempt employees of Defendant in the State of California at any time from April 17, 2023, through the present.

1 §§ 2698–2699.5, Plaintiff and Aggrieved Employees will seek to recover civil penalties, including but
2 not limited to penalties under California Labor Code §§ 351 and 2699. Plaintiff and Aggrieved
3 Employees will also be entitled to an award of reasonable attorneys’ fees and costs pursuant to
4 California Labor Code § 2699(g)(1).

5 38. These penalties are in addition to any other relief available under the Labor Code.

6 39. Pursuant to California Labor Code §§ 2699.3, Plaintiff gave written notice on April 17,
7 2024, by online filing to the California Labor and Workforce Development Agency (“LWDA”) and by
8 certified mail to Defendants of the specific provisions of the California Labor Code and IWC Wage
9 Orders alleged to have been violated, including the facts and theories to support the alleged violations.
10 As more than sixty-five (65) days have passed and the LWDA has not provided notice to Plaintiff that
11 it intends to investigate the alleged violations, Plaintiff has complied with all of the requirements set
12 forth in California Labor Code § 2699.3 to commence a representative action under PAGA against
13 Defendants on behalf of the State of California, himself and other Aggrieved Employees of Defendants.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit
16 is brought against Defendants, jointly and severally, as follows:

- 17 1. For an order certifying the proposed class;
- 18 2. For an order appointing Plaintiff as the representative of the class as described
19 herein;
- 20 3. For an order appointing counsel for Plaintiff as class counsel;
- 21 4. Upon the First Cause of Action, for restitution to Plaintiff and other similarly
22 effected members of the general public of all funds unlawfully acquired by Defendant by
23 means of any acts or practices declared by this Court to be in violation of Business and
24 Professions Code section 17200, *et seq.*;
- 25 5. Upon the Second Cause of Action, for all PAGA civil penalties and other
26 recoveries according to proof including, but not limited to, the amount of any and all civil
27 penalties or other amounts authorized by California Labor Code §§ 351 and 2699, or any
28 other applicable civil penalty provisions authorized under California law;

1 6. On all causes of action for attorneys' fees and costs as provided by Code of Civil
2 Procedure section 1021.5; and

3 7. For such other and further relief the Court may deem just and proper.
4

5 DATED: June 21, 2024

THE KICK LAW FIRM

6
7 By:  _____

Nick Rosenthal

8 Attorneys for Plaintiff and the Class
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to this action. My business address is 815 Moraga Drive, Los Angeles, California 90049. On the below executed date, I served the following document or documents:

**PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES**

☒ **By Electronic service (via electronic filing service provider):** I caused the documents to be electronically transmitted to Case Anywhere, an electronic filing service provider, at www.caseanywhere.com, pursuant to the Court's Electronic Case Management Order governing the matter and mandating electronic service to person(s) at the address(es) listed above. The transmission was reported as complete and without error to the addressees as stated below.

Grace Y. Horoupian, Esq. FISHER & PHILLIPS LLP 2050 Main Street, Suite 1000 Irvine, CA 92614 (949) 851-2424 (Telephone) (949) 851-0152 (Facsimile) ghoroupian@fisherphillips.com	Attorneys for Defendant WJD RESTAURANT GROUP, LLC, a California limited liability corporation
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☒ **By electronic service (via email):** Pursuant to Code Civ. Proc. § 1010.6 and Cal. Rules of Court, Rule 2.251(c), my email address is alina@kicklawfirm.com and I caused such document(s) to be electronically served to the interested parties listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmissions were unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 21, 2024.

/s/ Alina Muresan
Alina Muresan