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Attorneys for PLAINTIFF,
Sativa Tucker

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

SATIVA TUCKER, an individual, and in a
representative capacity on behalf of the State of
California and other Aggrieved Employees,

Plaintiff,

vs.

OMERTA SD, INC., a California corporation;
YANNIS ALBANA, an individual; and DOES
1-15

Defendants.

Case No. 25CU032698C

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

PLAINTIFF SATIVA TUCKER ("PLAINTIFF"), an individual, on behalf of herself and in
a representative capacity on behalf of the State of California and other AGGRIEVED
EMPLOYEES, defined below, against DEFENDANT OMERTA SD, INC., a California
corporation, YANNIS ALBANA, an individual, and DOES 1-15 ("Defendant DOES") (collectively
"DEFENDANTS"), allege on information and belief, except for their own acts and knowledge
which are based on personal knowledge, the following:

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I. INTRODUCTION

1. PLAINTIFF brings this action individually and as a representative action on behalf of the State of California and pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of herself and other current and former AGGRIEVED EMPLOYEES of DEFENDANTS for engaging in a pattern and practice of wage and hour violations under the California Labor Code.

2. PLAINTIFF seeks recovery of all individual damages in addition to all civil penalties permitted pursuant to California Labor Code § 2699, *et seq.*

3. PLAINTIFF is informed and believes, and thereon allege, that DEFENDANTS decreased their employment-related costs by systematically violating California wage and hour laws including, *inter alia*:

- a. Misclassification of employees;
- b. Failure to provide rest periods;
- c. Failure to provide meal periods;
- d. Failure to pay minimum wages;
- e. Failure to pay overtime wages;
- f. Failure to pay wages when due;
- g. Failure to provide accurate payroll records;
- h. Failure to provide accurate itemized wage statements;
- i. Failure to reimburse for required business expenses; and
- j. Failure to timely pay wages upon termination of employment.

4. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

II. PARTIES

5. PLAINTIFF SATIVA TUCKER (“PLAINTIFF TUCKER”), an individual, has resided, and at all times mentioned in this Complaint, continues to reside in San Diego County.

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1 6. DEFENDANT OMERTA SD, INC., (“DEFENDANT OMERTA”) a California
2 corporation, registered with the California Secretary of State as entity No. 4663559, that at all
3 relevant times mentioned herein conducted and continues to conduct substantial and regular
4 business throughout California.

5 7. Defendant YANNIS ALBANA (“DEFENDANT ALBANA”) is, on information and
6 belief, a California resident and does business in California. Defendant YANNIS ALBANA is the
7 Chief Executive Officer, Secretary, and Chief Financial Officer of Defendant OMERTA SD, INC.
8 On information and belief, at all relevant times, Defendant YANNIS ALBANA has been an owner,
9 director, officer, or managing agent of Defendant OMERTA SD, INC.

10 8. Defendant DOES 1-15 (“Defendant DOES”) are persons and/or entities that at all
11 relevant times mentioned herein conducted and continue to conduct substantial and regular business
12 throughout California.

13 9. Each of the fictitiously named DEFENDANTS participated in the acts alleged in this
14 Complaint. The true names and capacities, whether individual, corporate, subsidiary, partnership,
15 associate, or otherwise of DEFENDANT DOES 1 through 15, inclusive, are presently unknown to
16 PLAINTIFF who therefore sue these DEFENDANTS by such fictitious names pursuant to Cal. Civ.
17 Proc. Code. § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names
18 and capacities of DOES 1 through 15, inclusive, when they are ascertained. PLAINTIFF is informed
19 and believes, and based upon that information and belief alleges, that the DEFENDANTS named in
20 this Complaint, including DOES 1 through 15, inclusive (hereinafter collectively
21 “DEFENDANTS”), are responsible in some manner for one or more of the events and happenings
22 that proximately caused the injuries and damages hereinafter alleged.

23 10. DEFENDANTS own, operate, and/or manage a bar and nightclub in San Diego,
24 California.

25 11. DEFENDANTS employed PLAINTIFF between approximately April 2024 and
26 April 2025 as a bartender. Between April 2024 and November 2024, DEFENDANTS paid Plaintiff
27 in cash and a flat rate of \$50.00 per shift. Between November 2024 and April 2025, DEFENDANTS
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1 paid PLAINTIFF as an independent contract paying Plaintiff minimum wage and a percentage of
2 bottle sales and tips.

3 **III. PRIVATE ATTORNEYS GENERAL ACT AND DEFENDANTS' LIABILITY**

4 12. PLAINTIFF brings the representative action on behalf of the State of California and
5 on behalf of all hourly non-exempt individuals who are or previously were employed by
6 DEFENDANTS, including those misclassified as independent contractors, and performed work for
7 DEFENDANTS, in California who suffered one or more Labor Code violations enumerated in
8 Labor Code §§ 2698 *et seq.* (hereinafter "AGGRIEVED EMPLOYEES") between April 14, 2024,
9 and the present ("PAGA PERIOD").

10 13. PLAINTIFF is an "AGGRIEVED EMPLOYEE" within the meaning of Labor Code
11 § 2699(c) because she was employed by DEFENDANTS and suffered each of alleged Labor Code
12 violations committed by DEFENDANT.

13 14. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times
14 were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code
15 and the applicable Industrial Welfare Commission Wage Order.

16 15. The Private Attorney General Act ("PAGA") permits an aggrieved employee to
17 enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* §
18 2699(a).)

19 16. Section 558 of the California Labor Code provides that "any employer *or other*
20 *person* acting on behalf of an employer who violates, or causes to be violated, a section of this
21 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
22 Commissions shall be subject to a civil penalty..." (*Lab. Code* § 558(a).)

23 17. Section 1197.1 of the Labor Code provides that "[a]ny employer *or other person*
24 acting either individually or as an officer, agent, or employee of another person, who pays or causes
25 to be paid to any employee a wage less than the minimum fixed by an applicable state or local law,
26 or by an order of the commission shall be subject to a civil penalty..." (*Lab. Code* § 1197.1(a).)

27 18. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held
28 that a corporate employer's owners, officers and directors, are subject to civil penalties for the

1 employer's failure to pay appropriate wages to its employees, and, since liability under either 558
2 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings are
3 necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v.*
4 *Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203
5 Cal.App.4th 1112, 1145-1146.

6 19. Section 558.1 of the California Labor Code provides that "any employer *or other*
7 *person acting* on behalf of an employer, who violates, *or causes to be violated*, any provision
8 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
9 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802,
10 may be held liable as the employer for such violation." (*Lab. Code* § 558.1(a).) Section 558.1(b)
11 identifies the "other person acting on behalf of an employer" includes "owner, director, officer, or
12 managing agent" of the employer. (*Lab. Code* § 558.1(b).)

13 20. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS and
14 each of them, are subject to civil penalties for their failure to pay PLAINTIFF and other
15 AGGRIEVED EMPLOYEES the appropriate wages as complained of herein and proximately
16 caused the complaints, injuries, and damages alleged herein.

17 21. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS and
18 each of them, are subject to liability for their failure to pay PLAINTIFF and other AGGRIEVED
19 EMPLOYEES the appropriate wages as complained of herein and proximately caused the
20 complaints, injuries, and damages alleged herein.

21 22. DEFENDANTS have been personally involved in the purported violations and/or
22 had sufficient participation in the employer, such that DEFENDANTS may be deemed to have
23 contributed to, and "caused" the labor code violations alleged.

24 23. At all relevant times, each DEFENDANT, whether named or fictitious, was the
25 agent, employee or other person acting on behalf of each other DEFENDANT, and, in participating
26 in the acts alleged in this Complaint, acted within the scope of such agency or employment and
27 ratified the acts of the other.

1 24. Each DEFENDANT, whether named or fictitious, exercised control over
2 PLAINTIFFS'S and other AGGRIEVED EMPLOYEES' wages, working hours, and/or working
3 conditions.

4 25. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to
5 this action as the agent of the other DEFENDANT, carried out a joint scheme, business plan or
6 policy, and the acts of each DEFENDANT are legally attributable to the other DEFENDANTS.

7 **IV. JURISDICTION AND VENUE**

8 26. This Court has jurisdiction over this Action pursuant to the California Code of Civil
9 Procedure, Section 410.10.

10 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,
11 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
12 DEFENDANTS (i) currently maintain and at all relevant times-maintained offices and facilities in
13 this County, and (ii) committed the wrongful conduct herein alleged in this County against
14 PLAINTIFFS.

15 **V. FACTUAL ALLEGATIONS**

16 A. Misclassification as Independent Contractor

17 28. DEFENDANTS own, operate, and/or manage the bar and nightclub Omerta in San
18 Diego, California.

19 29. DEFENDANTS misclassified PLAINTIFF and other AGGRIEVED EMPLOYEES
20 as an independent contractor despite these individuals performing work within the scope of an
21 employee, in order to avoid employer obligations such as payroll taxes, paying minimum and
22 overtime wages, and provide to rest and meal periods.

23 30. PLAINTIFF and other AGGRIEVED EMPLOYEES performed work within the
24 usual course of DEFENDANTS' business. DEFENDANTS exerted control and directed in
25 PLAINTIFF and other AGGRIEVED EMPLOYEES' performance of work under both the terms of
26 the contract and in actual performance. Further, PLAINTIFF and other AGGRIEVED
27 EMPLOYEES were not customarily engaged in an independently established trade, occupation, or
28 business.

1 31. PLAINTIFF and other AGGRIEVED EMPLOYEES were non-exempt employees
2 entitled to minimum wages, overtime wages, meal and rest periods, and the protections afforded
3 under the California Labor Code.

4 32. DEFENDANTS nonetheless willfully misclassified PLAINTIFF and other
5 AGGRIEVED EMPLOYEES as independent contractors to unlawfully avoid their obligations as an
6 employer.

7 33. As a result of DEFENDANTS' misclassification practices, DEFENDANTS
8 systematically violated the provisions of California Labor Code and applicable IWC Wage Order
9 resulting in damage to PLAINTIFF and other AGGRIEVED EMPLOYEES.

10 B. Rest Period Violations

11 34. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
12 work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of
13 DEFENDANTS' policies and practices.

14 35. Further, for the same reasons DEFENDANTS denied PLAINTIFF and other
15 AGGRIEVED EMPLOYEES their first rest periods of at least ten (10) minutes for shifts worked of
16 at least two (2) to four (4) hours, DEFENDANTS denied PLAINTIFF and other AGGRIEVED
17 EMPLOYEES a first and second rest period of at least ten (10) minutes for some shifts worked of
18 between six (6) and eight (8) hours.

19 36. Specifically, DEFENDANTS prohibited PLAINTIFF and other AGGRIEVED
20 EMPLOYEES from being able to take any rest periods during their shifts. DEFENDANTS'
21 managers told employees that if they wanted a break, the only appropriate time to take a rest period
22 would be within the first two hours of the shift, when service is slow. However, when PLAINTIFF
23 and the other AGGRIEVED EMPLOYEES tried to take a rest period or other break,
24 DEFEDENDANTS' managers verbally reprimanded PLAINTIFF and other AGGRIEVED
25 EMPLOYEES and even disciplined PLAINTIFF and the other AGGRIEVED EMPLOYEES.
26 Further, even when it was slow, DEFENDANTS instructed PLAINTIFF and the other
27 AGGRIEVED EMPLOYEES to perform side work such as wiping check books, reorganizing the
28 fridge, or just general cleaning duties. The only time DEFENDANTS permitted employees to take

1 a break was if they worked a double shift, often exceeding twelve (12) hours.

2 37. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
3 forfeit their rest periods without providing these employees with one-hour wages *in lieu* thereof. As
4 a result, DEFENDANTS and DEFENDANTS' managers denied PLAINTIFF and other
5 AGGRIEVED EMPLOYEES their proper rest periods.

6 38. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
7 required to provide rest periods to PLAINTIFF and other AGGRIEVED EMPLOYEES per every
8 four (4) hours worked or major fraction thereof or provide the employee one (1) hour of pay at the
9 employee's regular rate of compensation for each workday the rest period is not provided. During
10 the entirety of PLAINTIFFS'S employment and the PAGA Period, DEFENDANTS required
11 PLAINTIFF and other AGGRIEVED EMPLOYEES to work through rest periods without paying
12 them in accordance with Industrial Wage Orders. As a result, PLAINTIFF and other AGGRIEVED
13 EMPLOYEES forfeited their regular wages by working without compensation at the applicable
14 wage and rates. DEFENDANTS had, and may continue to practice, a uniform policy to not pay
15 PLAINTIFF and other AGGRIEVED EMPLOYEES all rest premiums owed.

16 C. Meal Period Violations

17 39. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
18 work during the meal break that what is scheduled to be PLAINTIFF'S and other AGGRIEVED
19 EMPLOYEES' off-duty meal break due to the nature and constraints of her job duties,
20 DEFENDANTS' scheduling practices, DEFENDANTS' policies and practices.

21 40. Specifically and similarly to rest periods, DEFENDANTS prohibited PLAINTIFF
22 and other AGGRIEVED EMPLOYEES from taking meal periods. DEFENDANTS only permitted
23 on-site truncated breaks in the event PLAINTIFF and other AGGRIEVED EMPLOYEES worked
24 more than twelve (12) hours in a single day. As a result of the nature and constraints of the position
25 and fast-paced environment, DEFENDANTS did not provide meal periods to PLAINTIFF and other
26 AGGRIEVED EMPLOYEES.

27 41. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
28 required to provide meal periods of not less than thirty (30) minutes to PLANITIFF and other

1 AGGRIEVED EMPLOYEES for each work period of more than five (5) hours, except when that
2 work period is not more than six (6) and validly waived or provide one (1) hour of pay at the
3 employee's regular rate of compensation.

4 42. As a result of DEFENDANTS' policies and practices, DEFENDANTS required
5 PLAINTIFF and other AGGRIEVED EMPLOYEES to forfeit their (30) minute off-duty meal
6 periods and did not fully relieved PLAINTIFF and other AGGRIEVED EMPLOYEES of duty for
7 a meal period. Therefore, PLANITIFF and other AGGRIEVED EMPLOYEES forfeited their meal
8 periods without compensation at the applicable wage and rates. DEFENDANTS had, and may
9 continue to practice, a uniform policy to not pay PLANITIFF and other AGGRIEVED
10 EMPLOYEES meal premiums.

11 43. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
12 perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without
13 receiving a meal break. On these occasions, PLAINTIFF and other AGGRIEVED EMPLOYEES
14 worked in excess of six (6) hours. The nature of the work performed by PLAINTIFF and the other
15 AGGRIEVED EMPLOYEES does not qualify for limited and narrowly construed "on-duty" meal
16 period exception. DEFENDANTS therefore required PLAINTIFF and other AGGRIEVED
17 EMPLOYEES to forfeit meal breaks without additional compensation and in accordance with
18 DEFENDANTS' policies and practices.

19 D. Commissions and DEFENDANTS' Failure to Calculate Employees' Regular Rate of Pay

20 44. During the PAGA PERIOD, DEFENDANTS failed and continue to fail to
21 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
22 overtime and from time-to-time double time hours worked, meal and rest period premiums, and
23 sick pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due
24 them for working overtime without compensation at the correct overtime and double time rates,
25 meal and rest period premiums, and sick pay rates.

26 45. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the other
27 AGGRIEVED EMPLOYEES the correct rate for all overtime and double time worked, meal and
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1 rest period premiums, and sick pay in accordance with applicable law is evidenced by
2 DEFENDANTS' business records.

3 46. State law provides that employees must be paid overtime at one-and-one-half times
4 their "regular rate of pay." The second component of PLAINTIFFS's and other AGGRIEVED
5 EMPLOYEES' compensation was DEFENDANTS' non-discretionary incentive program tied to
6 specific elements of PLAINTIFF and other AGGRIEVED EMPLOYEES' performance. The non-
7 discretionary bonus program provided all employees paid on an hourly basis with bonus
8 compensation when the employees met the various performance goals set by DEFENDANTS.

9 47. However, when calculating the regular rate of pay, in pay periods where
10 PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid meal and
11 rest period premium payments, and/or sick pay, and earned this non-discretionary bonus or
12 incentive, DEFENDANTS failed to accurately include the non-discretionary bonus compensation
13 and/or incentive and/or shift differential paid as part of the employees' "regular rate of pay" and/or
14 calculated all hours worked rather than just all non-overtime hours worked. Management and
15 supervisors described the incentive/bonus program to potential and new employees as part of the
16 compensation package. As a matter of law, the incentive compensation received by PLAINTIFF
17 and other AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure
18 to do so has resulting in a systematic underpayment of overtime and double time compensation,
19 meal and rest period premiums, and redeemed sick pay to PLAINTIFF and other AGGRIEVED
20 EMPLOYEES by DEFENDANTS.

21 48. Specifically, California Labor Code Section 246 mandates that paid sick time for
22 employees and non-employees shall be calculated in the same manner as the regular rate of pay for
23 the workweek in which the non-exempt employee uses paid sick time, whether or not the employee
24 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
25 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
26 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
27 recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

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1 49. In violation of the applicable sections of the California Labor Code and the
2 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
3 matter of company policy, practice, and procedure, intentionally and knowingly failed to
4 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the correct rate of pay for
5 all overtime and double time worked, meal and rest period premiums, and sick pay. This uniform
6 policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the correct
7 overtime and double time compensation, meal and rest period premiums, and sick pay as required
8 by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage
9 over competitors who complied with the law. To the extent equitable tolling operates to toll claims
10 by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be
11 adjusted accordingly.

12 E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

13 50. During PLAINTIFF'S employment and the PAGA Period, DEFENDANTS failed to
14 accurately pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all hours worked.

15 51. DEFENDANTS implemented a policy and practice in which employees were
16 required to report to work and attend events at other local bars and restaurants. DEFENDANTS
17 instructed PLAINTIFF and other AGGRIEVED EMPLOYEES to attend such events as they were
18 mandatory work-events. However, DEFENDANTS failed to provide any compensation and
19 necessary wages to PLAINTIFF and other AGGRIEVED EMPLOYEES for attending and
20 performing work at DEFENDANTS' direction, request, and benefit. During such events,
21 DEFENDANTS "compensated" PLAINTIFF and the other AGRIEVED EMPLOYEES by
22 purchasing alcohol or food for employees to share. DEFENDANTS reprimanded PLAINTIFF and
23 other AGGRIEVED EMPLOYEES if they did not participate in such outings.

24 52. As a result of DEFENDANTS paying PLAINTIFF and other AGGRIEVED
25 EMPLOYEES minimum wage, this off-the-clock work resulted in PLAINTIFF and other
26 AGGRIEVED EMPLOYEES failing to receive at least minimum wage for all hours worked.

27 53. DEFENDANTS directed and directly benefited from the uncompensated off-the-
28 clock work performed by PLAINTIFF and other AGGRIEVED EMPLOYEES.

1 54. DEFENDANTS controlled the work schedules, duties, protocols, applications,
2 assignments, and employment conditions of PLAINTIFF and other AGGRIEVED EMPLOYEES.

3 55. DEFENDANTS were able to track the amount of time PLAINTIFF and other
4 AGGRIEVED EMPLOYEES spent working however, DEFENDANTS failed to accurately
5 document, track, and pay PLAINTIFF and other AGGRIEVED EMPLOYEES all wages earned and
6 owed for all the work they performed, including off-the-clock work. From time-to-time this included
7 overtime wages.

8 56. PLAINTIFF and other AGGRIEVED EMPLOYEES were non-exempt employees,
9 subject to the requirements of the California Labor Code.

10 57. Further, as a result of DEFENDANTS misclassification practices, DEFENDANTS
11 failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES any overtime wages
12 for shifts worked in excess of eight (8) hours per day, and in excess of forty (40) hours per week.
13 DEFENDANTS paid PLAINTIFF and the other AGGRIEVED EMPLOYEES a flat hourly rate for
14 all work performed at their direction.

15 58. DEFENDANTS' policies and practices deprived PLAINTIFF and other
16 AGGRIEVED EMPLOYEES of all regular wages and from time to time, overtime wages owed for
17 the off-the-clock work and undercompensated activities.

18 59. DEFENDANTS knew or should have known that PLAINTIFF and other
19 AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

20 60. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited wages due
21 them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent while
22 off-the-clock. DEFENDANTS have a uniform policy and practice to not pay PLAINTIFF and other
23 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law.

24 61. Moreover, as a result, DEFENDANTS provided PLAINTIFF and other
25 AGGRIEVED EMPLOYEES with a paystub that failed to comply with Cal. Lab. Code § 226 and
26 did not maintain accurate payroll and timekeeping records. In fact, DEFENDANTS failed, and
27 continue to fail, to provide any wage statements to PLAINTIFF and other AGGRIEVED
28 EMPLOYEES.

1 F. Violations for Untimely Payment of Wages

2 62. Pursuant to California Labor Code section 204, PLAINTIFF and other
3 AGGRIEVED EMPLOYEES are entitled to timely payment of wages during their employment.

4 63. During PLAINTIFFS'S employment and the PAGA Period, DEFENDANTS failed
5 to pay PLAINTIFF and other AGGRIEVED EMPLOYEES all minimum and overtime wages, and
6 meal and rest premiums within the permissible time period and on days designated in advance by
7 the employer as regular payday.

8 64. As a result, DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED
9 EMPLOYEES all earned wages in violation of Labor Code § 204.

10 65. To the extent wages are deemed to be owed to PLAINTIFF and other
11 AGGRIEVED EMPLOYEES, whose employment has terminated, DEFENDANTS conduct
12 additionally violates Labor Code sections 201 and/or 202, and therefore PLAINTIFF and other
13 AGGRIEVED EMPLOYEES are entitled to waiting time penalties under Labor Code section 203,
14 which penalties are sought herein on behalf of the PLAINTIFF and other AGGRIEVED
15 EMPLOYEES. DEFENDANTS' conduct as alleged herein was willful, intentional, and not in good
16 faith. Further, PLAINTIFF is entitled to seek and recover statutory costs.

17 G. Failure to Reimburse

18 66. DEFENDANTS failed to indemnify PLAINTIFF and other AGGRIEVED
19 EMPLOYEES for use of their personal cell phone and costs of uniforms as a direct consequence of
20 discharging work duties.

21 67. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
22 use personal cellphone for work related communications. These communications were daily, and
23 DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to engage in these
24 communications and confirm receipt of the text and direction provided.

25 68. DEFENDANTS additionally required PLAINTIFF and other AGGRIEVED
26 EMPLOYEES to purchase required uniforms in the discharge of work duties. DEFENDANTS
27 failed to provide these required uniforms to employees. DEFENDANTS managers personally sold
28 PLAINTIFF and the other AGGRIEVED EMPLOYEES portions of their uniform including

1 stockings.

2 69. Further, if PLAINTIFF and other AGGRIEVED EMPLOYEES requested to wear a
3 sweater or jacket because of the cold temperature of the venue, DEFENDANTS required
4 PLAINTIFF and other AGGRIEVED EMPLOYEES to purchase jackets with DEFENDANTS'
5 logo. DEFENDANTS prohibited PLAINTIFF and other AGGRIEVED EMPLOYEES from
6 wearing jackets or sweaters that featured other logos or marks.

7 70. DEFENDANTS failed to provide employees with a designated work phone or work
8 uniforms and failed to provide employees reimbursement for the cost of their phone or uniforms.

9 71. DEFENDANTS shifted the costs associated with running a business onto
10 PLAINTIFF and other AGGRIEVED EMPLOYEES.

11 H. Inaccurate Itemized Wage Statements

12 72. California Labor Code Section 226 requires an employer to furnish its employees an
13 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3)
14 the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
15 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
16 employee and only the last four digits of the employee's social security number or an employee
17 identification number other than a social security number, (8) the name and address of the legal
18 entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate by the employee.

20 73. DEFENDANTS failed to provide any wage statements to PLAINTIFF and the other
21 AGGRIEVED EMPLOYEES. DEFENDANTS did not provide PLAINTIFF and the other
22 AGGRIEVED EMPLOYEES with information about their hourly rate or total hours worked to make
23 it difficult for these employees to verify correct wages.

24 74. DEFENDANTS failed to keep, maintain, and store accurate payroll records in
25 violation of Cal. Lab. Code §1174.5 and failed to provide wage statements that comply with Cal.
26 Lab. Code § 226. DEFENDANTS' violations are knowing and intentional and were not isolated or
27 due to an unintentional payroll error due to clerical or inadvertent mistake.

28 75. PLAINTIFF and other AGGRIEVED EMPLOYEES suffered damages as a result of

1 DEFENDANTS' aforementioned violation because they could not promptly and easily determine
2 from the wage statement alone the applicable hourly rate and the corresponding number of hours
3 worked at the applicable hourly rate for this remuneration.

4 I. Improper Tip Pooling

5 76. Pursuant to California Labor Code section 351, gratuities left for an employee by
6 patrons are the sole property of the employee, and it is unlawful for the employer to take or receive
7 any part of such gratuities.

8 77. PLAINTIFF and other AGGRIEVED EMPLOYEES are entitled to their full amount
9 of gratuity without any deductions for any credit card payment processing fees or costs that may be
10 charged to the employer by the credit card company.

11 78. During PLAINTIFFS'S employment and the PAGA Period, DEFENDANTS failed
12 to accurately pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all gratuities earned.

13 79. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
14 pay the Hookah Service \$4 per hookah sold, provide 18% of all cash and credit card tips to the
15 barbacks, and provide "the house" with 10% of all credit card tips.

16 80. PLAINTIFF and other AGGRIEVED EMPLOYEES contend that portions of their
17 gratuities were kept by DEFENDANTS in violation of California law because PLAINTIFF and
18 other AGGRIEVED EMPLOYEES provided the service for to whom the gratuity should have been
19 paid.

20 81. California Labor Code § 351 establishes the requirements for an employer regarding
21 the payment of gratuities. Specifically, gratuities are the sole property of the employees. California
22 Labor Code § 351 expressly prohibits employers and their agents from collecting, taking, or
23 receiving any portion of a gratuity. California Labor Code § 350(e) defines the term "gratuity" as
24 including any money that has been paid or given or left for an employee by a patron of a business
25 over and above the actual amount due the business for services rendered or for goods, food, drink
26 or articles sold or served to such patron. Labor Code § 353 requires employers to keep accurate
27 records of all gratuities they receive, directly or indirectly.

28 82. Although tip pooling is not expressly prohibited by the Labor Code, employees who

1 mandate tip pooling must only distribute pooled tips to employees in the “chain of service.” By
2 miscalculating tips owed and underpaying PLAINTIFF and other AGGRIEVED EMPLOYEES
3 their earned tips, DEFENDANTS violated and may continue to violate the legal requirements for
4 handling pooled tips.

5 J. DEFENDANTS’ Sexual Harassment and Retaliation

6 83. DEFENDANTS’ complete disregard for California Labor Code extended to a
7 complete disregard for California laws protecting employees from sexual harassment in the
8 workplace.

9 84. DEFENDANTS require PLAINTIFF and other AGGRIEVED EMPLOYEES to
10 wear small and sexually provocative work uniforms. Typically, these work uniforms leave
11 PLAINTIFF and other AGGRIEVED EMPLOYEES’ breasts and/or buttock accentuated and
12 exposed.

13 85. DEFENDANT ALBANA regularly reported to work while under the influence of
14 alcohol and while visibly intoxicated. While in this state and during PLAINTIFF’S shifts,
15 DEFENDANT ALBANA became engaged in unwelcomed physical contact with employees.

16 86. On one occasion, DEFENDANT ALBANA utilized his position of power to violate
17 PLAINTIFF while she was wearing a work uniform that left her buttock exposed. DEFENDANT
18 ALBANA made a physical sexual advance toward PLAINTIFF in which he groped PLAINTIFF’S
19 buttock and continued to run his hand down PLAINTIFF’S leg.

20 87. PLAINTIFF stood in complete shock and disbelief when another employee, a cook,
21 verbally objected to DEFENDANT ALBANA’S conduct and directed him to keep his hands to
22 himself.

23 88. DEFENDANTS required PLAINTIFF to work the remainder of her shift and failed
24 to direct DEFENDANT ALBANA to leave the premises. PLAINTIFF remained at work mortified,
25 embarrassed, and worked the remainder of her shift trying to avoid any contact with DEFENDANT
26 ALBANA.

27 89. PLAINTIFF felt there was no available means for reporting DEFENDANT
28 ALBANA’S conduct because of his position and ownership and control over PLAINTIFF’S

1 schedule and livelihood.

2 90. DEFENDANTS knew of DEFENDANT ALBANA'S conduct toward PLAINTIFF
3 and downplayed and ratified his behavior to avoid repercussions for DEFENDANT ALBANA.
4 Instead, DEFENDANTS started removing PLAINTIFF from the schedule and eventually provided
5 her with no shifts and terminated her employment.

6 91. PLAINTIFF has exhausted all administrative requirements for proceeding with
7 claims under the Fair Employment and Housing Act ("FEHA"), codified at California Government
8 Code section 12960, et seq., by timely filing a complaint with the California Civil Rights
9 Department and receiving a Right-to-Sue Letter attached hereto as Exhibit A.

10 **VI. CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION**

12 For Failure to Provide Rest Periods
13 (Cal. Lab. Code §§ 226.7 & 512)
(Plaintiff Against All DEFENDANTS)

14 92. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
15 every allegation set forth above.

16 93. Labor Code Sections 226.7 and 512 and the Industrial Wage Orders require
17 DEFENDANTS to provide employees with all rest periods specified in the applicable Wage Order.
18 These laws and regulations further entitle employees to be paid one additional hour of pay at their
19 regular rate of compensation for each day of denied rest period.

20 94. As a result of the work schedules and staffing practices by DEFENDANTS,
21 PLAINTIFF was denied her proper rest periods by DEFENDANTS and DEFENDANTS' managers

22 95. PLAINTIFF was required to work in excess of four (4) hours without being provided
23 ten (10) minute rest periods. Further and for the same reasons PLAINTIFF was denied her first rest
24 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
25 PLAINTIFF was denied a first and second rest period of at least ten (10) minutes for shifts worked
26 of between six (6) and eight (8) hours. PLAINTIFF was also not provided with one-hour wages in
27 lieu thereof.

28 96. DEFENDANTS violated California Labor Code §§ 226.7 and the applicable IWC

1 Wage Order by failing to compensate PLAINTIFF who was not provided a rest period, in
2 accordance with the applicable Wage Order, one additional hour of compensation at each
3 employee's regular rate of pay for each workday that rest period was not provided.

4 97. As a proximate result of the aforementioned violations, PLAINTIFF has been
5 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,
6 penalties, expenses and costs of suit.

7 **SECOND CAUSE OF ACTION**

8 For Failure to Provide Meal Periods

9 (Cal. Lab. Code §§ 226.7 & 512)

(Plaintiff Against All DEFENDANTS)

10 98. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
11 every allegation set forth above.

12 99. Labor Code Sections 226.7 and 512 and the Industrial Wage Orders require
13 DEFENDANTS to provide employees with all meal periods specified in the applicable Wage Order.
14 These laws and regulations further entitle employees to be paid one additional hour of pay at their
15 regular rate of compensation for each day of denied meal period.

16 100. DEFENDANTS failed to provide all the legally required off-duty meal breaks to
17 PLAINTIFF as required by the applicable Wage Order and Labor Code. The nature of the work
18 performed by PLAINTIFF does not prevent DEFENDANTS from relieving their employees of all
19 job duties in order to take a legally required off-duty meal periods. As a result of DEFENDANTS
20 policies and practices, PLAINTIFF was not fully relieved of duty by DEFENDANT for meal
21 periods.

22 101. DEFENDANTS further violated California Labor Code §§ 226.7, 512 and the
23 applicable IWC Wage Order by failing to compensate PLAINTIFF who was not provided a meal
24 period, in accordance with the applicable Wage Order, one additional hour of compensation at each
25 employee's regular rate of pay for each workday that a meal period was not provided.

26 102. As a proximate result of the aforementioned violations, PLAINTIFF has been
27 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,
28 penalties, expenses and costs of suit.

1 **THIRD CAUSE OF ACTION**

2 For Failure to Pay Minimum Wages
3 (Cal. Lab. Code § 1194, 1194.2, 1197& 1197.1, 218.5, 218.6)
4 (Plaintiff Against All DEFENDANTS)

5 103. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
6 every allegation set forth above.

7 104. PLAINTIFF brings a claim for DEFENDANTS' willful and intentional violations of
8 California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS'
9 failure to accurately calculate and pay minimum wages to PLAINTIFFS.

10 105. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
11 including minimum wage compensation and interest thereon, together with the costs of suit. Cal.
12 Lab. § 1194.2 further establishes an employee's right to liquidated damages in an amount equal to
13 the unpaid minimum wages according to proof at trial.

14 106. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF without
15 regard to the correct amount of time worked. As set forth herein, DEFENDANTS' uniform policy
16 and practice was to unlawfully and intentionally deny payment of wages due to PLAINTIFF for all
17 hours worked and therefore did not receive minimum wage for all hours worked as required by Cal.
18 Lab. Code § 1197.

19 107. In committing these violations of the California Labor Code, DEFENDANTS failed
20 to track and calculate the amount of time worked and consequently underpaid the actual time worked
21 by PLAINTIFFS. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned
22 wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
23 Commission requirements and other applicable laws and regulations.

24 108. PLAINTIFF was paid less for time worked than PLAINTIFF was entitled to,
25 constituting a failure to pay all earned wages.

26 109. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
27 PLAINTIFF has suffered and will continue to suffer an economic injury including the use and
28 enjoyment of wages and lost interest on such wages all to her damage in amounts in amounts which
are presently unknown, and which will be ascertained according to proof at trial.

110. DEFENDANTS knew or should have known that PLAINTIFF was under-compensated for PLAINTIFFS'S time worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF the correct wages for all time worked.

111. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate PLAINTIFF for all time worked and provide the requisite compensation, DEFENDANTS acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF with a conscious disregard for PLAINTIFFS'S legal rights, or the consequences to PLAINTIFFS, and with the intent of depriving PLAINTIFF of PLAINTIFFS'S property and legal rights, and otherwise causing injury in order to increase company profits at the expense of this employee.

112. PLAINTIFF, therefore, request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable statutes.

FOURTH CAUSE OF ACTION

For Failure to Pay Overtime Wages
(Cal. Lab. Code §§ 558, 510, 1194, 1198)
(Plaintiff Against All DEFENDANTS)

113. PLAINTIFF incorporate by reference and reallege as if fully stated herein each and every allegation set forth above.

114. Labor Code section 558 provides for a civil penalty to be assessed against any employer or other person acting on behalf of an employer who fails to compensate employees at the statutory overtime rate for any work in excess of eight hours in one day or any work in excess of 40 hours in any workweek or who fails to compensate employees at the statutory double time rates for any work in excess of twelve hours in one day or any work in excess of 8 hours on the seventh day of a workweek.

115. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code

1 § 1198 further states that the employment of an employee for longer hours than those fixed by the
2 Industrial Welfare Commission is unlawful.

3 116. Pursuant to Labor Code section 558, PLAINTIFF is entitled to recover a penalty of
4 \$50.00 for the initial failure to compensate employees at the statutory overtime rate for any work in
5 excess of eight hours in one day or any work in excess of 40 hours in any workweek and/or failure
6 to compensate employees at the statutory double time rates for any work in excess of twelve hours
7 in one day in addition to any underpaid wages; and \$100.00 for each subsequent failure to
8 compensate employees at the statutory overtime rate for any work in excess of eight hours in one
9 day or any work in excess of 40 hours in any workweek in addition to any underpaid wages.

10 117. DEFENDANTS routinely and systematically failed to properly record accurate time
11 records for each employee showing when each employee began and ended each work period. This
12 work included overtime. By failing to properly record hours, DEFENDANTS routinely and
13 systematically failed to compensate employees at the statutory overtime rate for any work in excess
14 of eight (8) hours in one day or any work in excess of forty (40) hours in any workweek as required
15 by Labor Code section 510 and Section 3 of the applicable Wage Order.

16 118. During PLAINTIFFS'S employment, DEFENDANTS required PLAINTIFF to
17 perform work, including overtime, for DEFENDANTS and was not paid for all the time worked.

18 119. As a proximate result of DEFENDANTS' failure to pay overtime wages as alleged
19 above, PLAINTIFF is entitled to recover from DEFENDANTS penalties pursuant to section 558 as
20 may be established according to proof at trial. As a direct result of DEFENDANTS' unlawful wage
21 practices as alleged herein, PLAINTIFF did not receive the correct overtime compensation for her
22 time worked for DEFENDANTS.

23 120. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages,
24 and other benefits in violation of the California Labor Code, the Industrial Welfare Commission
25 requirements and other applicable laws and regulations.

26 121. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
27 the overtime requirements of the law. For portions of PLAINTIFFS'S employment, these
28 exemptions did not apply to PLAINTIFFS. Further, PLAINTIFF is not subject to a valid collective

1 bargaining agreement that would preclude the causes of action contained herein this Complaint.

2 122. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
3 compensation to PLAINTIFF for the true amount of overtime worked, PLAINTIFF has suffered
4 and will continue to suffer an economic injury in amounts which are presently unknown to her, and
5 which will be ascertained according to proof at trial.

6 123. DEFENDANTS knew or should have known that PLAINTIFF was under
7 compensated for her time worked. DEFENDANTS systematically elected, either through intentional
8 malfeasance or gross nonfeasance, to not pay her for labor as a matter of uniform company policy,
9 practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
10 PLAINTIFF the correct overtime wages for their overtime worked.

11 124. In performing the acts and practices herein alleged in violation of California labor
12 laws, and refusing to compensate PLAINTIFF for all time worked and provide her with the requisite
13 compensation, DEFENDANTS acted and continues to act intentionally, oppressively, and
14 maliciously toward PLAINTIFF with a conscious of and utter disregard for her legal rights, or the
15 consequences to her, and with the despicable intent of depriving her of her property and legal rights,
16 and otherwise causing her injury in order to increase company profits at the expense of these
17 employees.

18 125. Therefore, PLAINTIFF request recovery of overtime wages, according to proof,
19 interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS,
20 in a sum as provided by the California Labor Code and/or other applicable statutes.

21 **FIFTH CAUSE OF ACTION**

22 For Failure To Pay All Wages

23 (Cal. Lab. Code § 204, 210)

(Plaintiff Against All DEFENDANTS)

24 126. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
25 every allegation set forth above.

26 127. Labor Code Section 204 provides in part provides in part that "all wages, ..., earned
27 by any person in any employment are due and payable twice during each calendar month, on days
28 designated in advance by the employer as the regular paydays."

128. PLAINTIFF is informed and believes, and thereon alleges that DEFENDANTS did not pay PLAINTIFF all earned wages, including regular and/or overtime and meal and rest premiums, on regularly established paydays.

129. In violation of Labor Code section 204, DEFENDANTS knowingly and willfully refused to perform their obligations to compensate their employees for all wages earned.

130. Pursuant to Labor Code section 210, PLAINTIFF is entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee all of the wages earned, and \$200.00 for each subsequent failure to pay each employee all of the wages earned; in addition, pursuant to section 210, for each subsequent failure to pay in compliance with Labor Code section 204, PLAINTIFF is entitled to recover an additional amount equal to 25% of the unlawfully withheld wages.

131. As a direct and proximate result of DEFENDANTS' conduct in violation of Labor Code section 204 as alleged above, DEFENDANTS' employees have suffered, and continue to suffer, losses related to the use and enjoyment of wages and lost interest on such wages all to their damage in amounts according to proof at trial.

SIXTH CAUSE OF ACTION

For Failure to Pay Wages Upon Termination

(Cal. Lab. Code § 203)

(Plaintiff Against All DEFENDANTS)

132. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and every allegation set forth above.

133. If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, . . . 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. (Cal. Lab. Code § 203).

134. To date, DEFENDANTS have yet to pay PLAINTIFF all of the wages earned including minimum and overtime wages, and all premiums due for missed meal breaks and missed rest breaks and DEFENDANTS have failed to pay any penalty wages owed under California Labor

1 Code section 203.

2 135. Additionally, DEFENDANTS terminated PLAINTIFFS'S employment, and
3 DEFENDANTS have not tendered payment of wages to PLAINTIFF who was underpaid for
4 minimum and overtime wages, and/or missed meal and rest breaks, as required by law.

5 136. DEFENDANTS knowingly and willfully violated the laws, regulations and orders
6 governing the wages of PLAINTIFF as described in the causes of action above.

7 137. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself whose
8 employment has terminated, PLAINTIFF demands up to thirty (30) days of pay as penalty for not
9 paying all wages due at time of termination and demand an accounting and payment of all wages
10 due, plus interest and statutory costs as allowed by law.

11 **SEVENTH CAUSE OF ACTION**

12 For Failure to Reimburse Business Expenses

13 (Cal. Lab. Code §§ 2802)

14 (Plaintiff Against ALL DEFENDANTS)

15 138. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
16 every allegation set forth above.

17 139. Pursuant to California Labor Code section 2802, DEFENDANTS are required to
18 indemnify PLAINTIFF for the expenses and losses incurred during the performance of job
19 duties. The purpose of this statute is to prevent employers from passing their operating expenses on
20 to their employees.

21 140. DEFENDANTS required PLAINTIFF to use PLAINTIFFS'S personal cell phones
22 and purchase required uniforms in the discharge work duties but failed to reimburse PLAINTIFF
23 for the use or cost of PLAINTIFFS'S personal cell phone and costs of required uniforms.

24 141. In violation of Labor Code section 2802, DEFENDANTS failed to reimburse
25 PLAINTIFF for necessary business expenditures related to personal cell phone and required
26 uniforms.

27 142. DEFENDANTS sought to pay their own pockets at the expense of their employees,
28 and instead of compensating their employees for the necessary business costs, the employer passed
on its costs to its employees.

1 143. DEFENDANTS intentionally failed to reimburse its employees for the actual
2 expenses incurred and thereby increased its own profits to the detriment of its employees.

3 144. PLAINTIFF seeks to recover these business expenditures, plus interest thereon,
4 reasonable attorneys' fees, and costs, and statutory and civil penalties as provided by the Labor Code
5 in an amount to be proven.

6 145. Interest accrues from the date the employee incurred the necessary expenditure or
7 loss.

8 **EIGHTH CAUSE OF ACTION**

9 For Failure to Provide Accurate, Itemized Wage Statements

10 (Cal. Lab. Code §§ 226; 226.3; 1174.5)

(Plaintiff Against All DEFENDANTS)

11 146. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
12 every allegation set forth above.

13 147. Labor Code section 226 requires defendants to provide employees an accurate
14 itemized statement showing (1) gross wages earned, (2) total hours worked by the employee, (3) the
15 number of piece units and rates if applicable, (4) all deductions, (5) net wages earned, (6) the
16 inclusive date of the period for which the employee is paid, (7) the name of the employee and his/her
17 or her social security number, (8) the name and address of the legal entity that is the employer, and
18 (9) all applicable hourly rates in effect and the corresponding number of hours worked

19 148. DEFENDANTS failed to provide PLAINTIFF with itemized wage statements and
20 instead only provided paychecks. Even after PLAINTIFF asked for a wage statement to verify her
21 hourly rate, DEFENDANTS failed to issue any wage statements to PLAINTIFFS.

22 149. DEFENDANTS knowingly and intentionally failed to comply with Labor Code
23 section 226(a) on each and every wage statement that they provided to PLAINTIFFS.

24 150. By failing to keep adequate records, as required by Labor Code sections 226 and
25 1174, DEFENDANTS injured PLAINTIFF making it difficult for PLAINTIFF to calculate the
26 minimum wages owed. Those injuries include unpaid wages, interest, and penalties thereon.

27 151. PLAINTIFF seeks to recover the statutory penalties provided by Labor Code section
28 226(e), 226.3, and 1174.5 for the wage statement violations committed by DEFENDANTS.

1 **NINTH CAUSE OF ACTION**

2 For Tip Pool Conversion

3 (Cal. Lab. Code §§ 350, 351,353)

4 (Plaintiff Against All DEFENDANTS)

5 152. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
6 every allegation set forth above.

7 153. During PLAINTIFFS'S employment, DEFENDANTS maintained a tip pool in
8 which money left by patrons in an amount over and above the actual amount due for services was
9 pooled and distributed among employees.

10 154. Cal. Lab. Code § 351 establishes an employee's right to recover unpaid gratuities,
11 including pooling of gratuities and interest thereon, together with the costs of suit. Cal. Lab. § 354
12 further reinforces an employee's right to sole ownership of gratuities by making it a misdemeanor
13 for an employer to collect, take, or receive any part of a gratuity left for an employee, or to deduct
14 any amount from an employee's wages on account of a gratuity.

15 155. DEFENDANTS maintained a practice of pooling tips among its employees and
16 inaccurately calculating and underpaying tips earned by employees. DEFENDANTS additionally
17 required PLAINTIFF to tip out employees, including managers outside the chain of service. As a
18 result, DEFENDANTS wrongfully kept tips earned by PLAINTIFFS.

19 156. As a proximate result of the aforementioned violations, PLAINTIFF has been
20 damaged in an amount according to proof at trial, including the loss of gratuities to which she was
21 entitled.

22 **TENTH CAUSE OF ACTION**

23 Hostile Work Environment – Sexual Harassment

24 (Cal. Gov. Code § 12940 et seq.)

25 (Plaintiff against Defendant Omerta)

26 157. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
27 every allegation set forth above.

28 158. At all relevant times mentioned herein, Cal. Gov. Code §§ 12940 et. seq. was in full
force and effect and binding upon DEFENDANTS and their employees. FEHA makes it unlawful
“[f]or an employer, . . . or any other person, because of sex, gender, gender identity, gender

1 expression, . . . to harass an employee.” FEHA also states that “[h]arassment of an employee . . .
2 shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this
3 conduct and fails to take immediate and appropriate corrective action.” And FEHA requires an entity
4 to “take all reasonable steps to prevent harassment from occurring.” Finally, FEHA notes: “Loss of
5 tangible job benefits shall not be necessary in order to establish harassment.” Cal. Gov. Code §
6 12940(j).

7 159. PLAINTIFF was an employee of DEFENDANTS and was subject to repeated severe
8 and pervasive harassing conduct because she is a woman such that a reasonable woman in
9 PLAINTIFF’s circumstances would have considered the work environment to be hostile,
10 intimidating, offensive, oppressive, and abusive.

11 160. DEFENDANTS’ agent engaged in the conduct, and DEFENDANTS knew or should
12 have known of the conduct of its supervisors and failed to take immediate and appropriate corrective
13 action.

14 161. As a direct and proximate result of DEFENDANTS’ conduct as alleged above,
15 PLAINTIFF has suffered, and continue to suffer, losses in amounts according to proof at trial.

16 162. As a direct and proximate result of DEFENDANTS’ conduct as alleged above,
17 PLAINTIFF has is entitled to compensatory damages, attorneys fees, and costs.

18 163. DEFENDANTS committed the acts alleged above maliciously, fraudulently, and
19 oppressively in conscious disregard for PLAINTIFF’S rights, and PLAINTIFF is entitled to punitive
20 damages in an amount according to proof. The unlawful conduct and acts as alleged above, were
21 engaged in, and/or ratified by officers, directors, supervisors, and/or other managing agents of
22 DEFENDANTS and each of them, who were acting at all times alleged herein within the course and
23 scope of their employment entitling PLAINTIFF to punitive damages pursuant to Cal. Civ. Code §
24 3294.

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1 **TWELFTH CAUSE OF ACTION**

2 For Recovery of Civil Penalties Under the Labor Code Private Attorney General Act
(Cal. Lab. Code §§ 2698 et seq.)

3 (Plaintiff and Aggrieved Employees Against All DEFENDANTS)

4 171. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporate by reference and
5 reallege as if fully stated herein each and every allegation set forth above.

6 172. As a result of the acts alleged herein, PLAINTIFFS, as an AGGRIEVED
7 EMPLOYEE within the meaning of Labor Code section 2699, subdivision (c), on behalf of herself
8 and all other AGGRIEVED EMPLOYEES of DEFENDANTS, seeks the recovery of civil penalties
9 against DEFENDANTS pursuant to California Labor Code sections 2698 et seq., for the following
10 knowing and intentional violations of the California Labor Code:

- 11 a. Misclassification of employees as independent contractors in violation of Labor
12 Code sections 226.8, 2753, and 2275, and applicable IWC Wage Orders;
- 13 b. For failing to compensate employees who were not provided a rest period in violation
14 of Labor Code Section 226.7 and 512;
- 15 c. For failing to compensate employees who were not provided a meal period in
16 violation of Labor Code Section 226.7 and 512;
- 17 d. For failing to pay all minimum wages, in violation of Labor Code sections 1194,
18 1194.2, 1197.1, 218.5, and 218.6;
- 19 e. For failing to provide employees who worked more than eight (8) hours per workday
20 and more than forty (40) hours per workweek additional compensation beyond their
21 regular wages in violation of Labor Code Section 510, 558, 1194, and 1198;
- 22 f. For failing to pay all earned wages, in violation of Labor Code sections 204 and 210;
- 23 g. For failing to pay wages upon termination, in violation of Labor Code sections 201,
24 202, and 203;
- 25 h. For failing to reimburse employees for business-related expenses in violation of
26 Labor Code section 2802;
- 27 i. For failing to maintain for and provide accurate, itemized wage statements required
28 by Labor Code Section 226, 226.3;

1 j. For Failing to provide all earned tips to employees/ For failing to properly pool tips
2 in violation of Labor Code Section 350, 351, 353;

3 k. For failing to maintain accurate records in violation of Labor Code Section 1174.5.

4 173. The above-referenced civil penalties shall include the recovery of amounts specified
5 in the applicable sections of the Labor Code, and if not specifically provided, those under section
6 2699(f), and shall include those amounts sufficient to recover underpaid wages pursuant to C.C.R.
7 section 11040 and Labor Code sections §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7,
8 226.8, 350, 351, 353, 510, 512, 515, 558, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2275,
9 2802, 2753, and 2699, subdivisions (a) and (f).

10 174. PLAINTIFF filed this complaint after the LWDA was afforded the opportunity to
11 consider PLAINTIFF's notice of DEFENDANTS' Labor Code violations and of PLAINTIFF's
12 intent to prosecute a private enforcement action for civil penalties under PAGA. After the LWDA
13 declined to investigate, PLAINTIFF brought this PAGA cause of action against DEFENDANTS,
14 pursuant to California Labor Code section 2699.3, subdivision (a)(2)(A).

15 **DEMAND FOR RELIEF**

16 WHEREFORE, PLAINTIFF prays for a judgment against each DEFENDANT, jointly and
17 severally, as follows:

18 1. On behalf of the PLAINTIFF:

19 A. Compensatory damages, according to proof at trial, including unpaid wages and for
20 Defendants' violation of FEHA including emotional distress damages, due to PLAINTIFF, during
21 the applicable employment period, plus interest thereon at the statutory rate

22 B. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
23 applicable IWC Wage Order;

24 C. The wages of PLAINTIFF as a penalty from the due date thereof at the same rate
25 until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

26 D. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
27 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
28 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and

1 an award of costs for violation of Cal. Lab. Code § 226.

2 E. One hundred dollars (\$100) for the initial pay period in which Defendants
3 intentionally failed to pay minimum wages per employee per pay period and two hundred fifty
4 dollars (\$250) per employee per pay period for each violation in a subsequent pay period for
5 violation of Cal. Lab. Code § 1197 and 1197.1.

6 F. The amount of the expenses PLAINTIFFSS incurred in the course of her job duties,
7 plus interest, and costs of suit.

8 G. Liquidates damages pursuant to Cal. Lab. Code § 1194.2 in an amount equal to the
9 unpaid minimum wages according to proof at trial;

10 H. Punitive damages in an amount to punish DEFENDANTS to be proven at trial.

11 I. For all available injunctive, equitable, and other relief, including remedies authorized
12 by California Government Code section 12965(c);

13 J. For “affirmative relief” as defined in California Government Code section 12926(a);

14 2. On Behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES

15 A. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
16 General Act of 2004;

17 3. On all claims:

18 A. An award of interest, including prejudgment interest at the legal rate;

19 B. Such other and further relief as the Court deems just and equitable; and

20 C. An award of penalties, attorneys’ fees and cost of suit, as allowable under the law.

21 DATED: June 19, 2025

Respectfully submitted,

22 **EMRAN LAW**

23
24 By: Harris Emran

25 Harris Emran

26 Attorney for PLAINTIFF and OTHER
27 AGGRIEVED EMPLOYEES
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: June 19, 2025

EMRAN LAW

By: Harris Emran
Harris Emran
Attorney for PLAINTIFF and OTHER
AGGRIEVED EMPLOYEES

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EXHIBIT A



Civil Rights Department

651 Bannan Street, Suite 200 | Sacramento | CA | 95811
1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

April 14, 2025

Harris Emran
415 Mission St, 37th FL
San Francisco, CA 94105

RE: **Notice to Complainant's Attorney**
CRD Matter Number: 202504-28956614
Right to Sue: Tucker / OMERTA SD, INC

Dear Harris Emran:

Attached is a copy of your complaint of discrimination filed with the Civil Rights Department (CRD) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, CRD will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the CRD does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Civil Rights Department



Civil Rights Department

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1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

April 14, 2025

RE: Notice of Filing of Discrimination Complaint

CRD Matter Number: 202504-28956614

Right to Sue: Tucker / OMERTA SD, INC

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.

Sincerely,

Civil Rights Department



Civil Rights Department

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1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

April 14, 2025

Sativa Tucker

RE: **Notice of Case Closure and Right to Sue**

CRD Matter Number: 202504-28956614

Right to Sue: Tucker / OMERTA SD, INC

Dear Sativa Tucker:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective April 14, 2025 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

After receiving a Right-to-Sue notice from CRD, you may have the right to file your complaint with a local government agency that enforces employment anti-discrimination laws if one exists in your area that is authorized to accept your complaint. If you decide to file with a local agency, you must file before the deadline for filing a lawsuit that is on your Right-to-Sue notice. Filing your complaint with a local agency does not prevent you from also filing a lawsuit in court.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
Civil Rights Department
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Sativa Tucker

CRD No. 202504-28956614

Complainant,

vs.

OMERTA SD, INC
777 5TH AVENUE
SAN DIEGO, CA 92101

Respondents

1. Respondent **OMERTA SD, INC** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **Sativa Tucker**, resides in the City of , State of .

3. Complainant alleges that on or about **March 31, 2025**, respondent took the following adverse actions:

Complainant was harassed because of complainant's sex/gender, sexual harassment.

Additional Complaint Details:

1 VERIFICATION

2 I, **Kaitlin Martinez**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based on
4 information and belief, which I believe to be true. The matters alleged are based on
information and belief, which I believe to be true.

5 On April 14, 2025, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **San Francisco**