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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

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

Plaintiff,

vs.

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

Defendants.

Case No. 22STCV32193

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

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

DEMAND FOR JURY TRIAL

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

5 **INTRODUCTION**

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

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

4 **JURISDICTION AND VENUE**

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

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

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

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

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

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

18 9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §
19 395.5 because the acts alleged herein took place in Los Angeles County, California, among other
20 counties in California.

21 **PARTIES**

22 10. Defendant Legends Hospitality, LLC, is in the hospitality industry providing, among
23 other things, food and beverage services at stadiums, arenas, amphitheaters and similar
24 entertainment venues throughout the United States, including in Northern and Southern California.
25 Plaintiff has worked for Legends as a bartender at venues operated by Legends in Southern
26 California, including at the Banc of California Stadium (Currently known as BMO Stadium), SoFi
27 Stadium, YouTube Theater and the Los Angeles Coliseum. Legends is a limited liability company
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1 organized and existing under the laws of Delaware, licensed to do business and actually doing
2 business in California, including in Los Angeles County. Plaintiff is informed and believes, and
3 thereon alleges, that its principal place of business is in New York City.

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

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

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

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

FACTS

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

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

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

18. During the liability period, in addition to layoffs that triggered breaks in service between event assignments of a week or more, there was a COVID-19 pandemic-related layoff. Plaintiff and other workers assigned to work a soccer game at the Banc of California Stadium on March 12, 2020, were notified by email before the game on that day that the game was cancelled due to the pandemic, and that any soccer games they were scheduled to work at over the next 30 days would not be held. In fact, due to the pandemic, these employees were not returned to work for many months. Plaintiff is informed and believes, and thereon alleges, that throughout California during 2020, Defendants' employees at venues other than Banc of California Stadium were similarly laid off due to the pandemic.

19. During the liability period, when Plaintiff and other intermittently employed workers were laid off between events for a week or more, and/or when employees were laid off on account of the pandemic whether or not they were employed on an intermittent basis, they were not paid immediately, but rather paid no earlier than a week after the end of the pay period during which the layoff occurred.

1 20. Throughout the applicable statute of limitations period, Plaintiff and other
2 intermittently employed workers who worked at Defendants' venues in Los Angeles County where
3 Plaintiff worked, including Banc of California Stadium (currently known as BMO Stadium), The
4 Los Angeles Coliseum, SoFi Stadium and YouTube Theater, were employed under working
5 conditions where they could not simply leave their assigned workstations to take rest breaks. They
6 could not take a break absent directions to take a break given to them by a "shift lead," "stand
7 manager" or other supervisory employee. Plaintiff and his co-workers were consistently deprived
8 of breaks on account of the failure of Defendants to direct them to take breaks in compliance with
9 California law.

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

13 22. During the liability period, Defendants frequently communicated with their
14 intermittently employed workers, including Plaintiff, through phone calls, text messages and
15 emails on the topics of assignments, training, cancellations, eligibility to take assignments, payroll
16 and other employment-related matters; and, the intermittently employed workers responded to
17 Defendants' communications through phone calls, text messages and emails. They were required
18 to have the tools to receive and respond to communications from Defendants, and Defendants
19 required employees to download a number of applications to facilitate communications between
20 Legends and its intermittently employed employees.

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

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

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

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

CLASS DEFINITIONS AND CLASS ALLEGATIONS

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

- a) Labor Code § 201 and § 203 Class: All persons employed intermittently by Legends Hospitality, Inc., in California during the period from October 3, 2019, through the date Notice is mailed to the Class who worked at venues that were not covered by a collective bargaining agreement that contains provisions that clearly constitute waivers of employee rights to bring claims of statutory violations in court as opposed to arbitration. (As used hereinafter, the term "Persons employed intermittently" refers to persons whose employment by Legends is limited, with

1 rare exceptions (e.g., for training), to work performed on days when Defendants'
2 venues at which the employees work have events where the employees provide
3 food and beverage services to patrons.)

4 b) Pandemic Class: All persons employed by Legends Hospitality, Inc., in California
5 during the period from March 1, 2020, through the date Notice is mailed to the
6 Class who worked at venues that were not covered by a collective bargaining
7 agreement that contains provisions that clearly constitute waivers of employee
8 rights to bring claims of statutory violations in court as opposed to arbitration and
9 were laid off on account of the COVID-19 pandemic.¹

10 c) Rest Break Class: All persons employed intermittently by Legends Hospitality,
11 Inc., in California during the period from August 21, 2021 through the date Notice
12 is mailed to the Class who worked at the Banc of California Stadium (Currently
13 known as BMO Stadium), the Los Angeles Coliseum, SoFi Stadium, or YouTube
14 Theater.

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17 ¹ The period covered by the Labor Code §§ 201 and 203 Class and the Pandemic Class
18 definitions is not impacted by the Settlement and Release in *Hightower v. Legends*, Santa Clara
19 Superior Court Case No. 18CV328576. In *Hightower*, the Court made clear that the Release of
20 Labor Code § 201 claims in that case was limited to derivative claims, deriving from violations
21 of other Labor code provisions by stating:

22 "Finally, Shuster states that '[his] problem with the proposed [s]ettlement of the Labor
23 Code 203 claim is that the release ... embrac[es] not only derivative waiting penalties
24 dependent on success in the minimum wage, overtime and break claims, but any late
25 payment of wages'... However, the release of claims in the settlement is
26 appropriately tethered to the SAC's factual allegations.)...Settlement, Ex. 1, ¶ 3.A
27 [stating that the class members will release Defendant, and its related entities and
28 persons, from "all claims, demands, rights liabilities and causes of action that were
pled in the [SAC], or which could have been pled in the [SAC] based on the same or
similar factual allegations and/or claims therein, that arose during the Class Period."];
see also *Amaro, supra*, 69 Cal.App.5th at p. 538 [explaining that a release is
acceptable if it releases potential claims that reasonably relate to the allegations of the
complaint].) For these reasons, Shuster's objection is overruled." Final Approval
Order in *Hightower* filed February 6, 2023 at 14:5-17.

- 1 d) Reimbursement Class: All persons employed intermittently by Legends
2 Hospitality, Inc., in California during the period from August 21, 2021 through
3 the date Notice is mailed to the Class who worked at venues that were not covered
4 by a collective bargaining agreement that contains provisions that clearly
5 constitute waivers of employee rights to bring claims of statutory violations in
6 court as opposed to arbitration.
- 7 e) Wage Statement Class: All persons employed intermittently by Legends
8 Hospitality, Inc., in California during the period from October 3, 2021, through
9 the date Notice is mailed to the Class who worked at the Banc of California
10 Stadium (Currently known as BMO Stadium), the Los Angeles Coliseum, SoFi
11 Stadium, or YouTube Theater.
- 12 f) Labor Code § 351 Class: All persons employed by Legends Hospitality, Inc., in
13 California during the period from October 3, 2018, through the date Notice is
14 mailed to the Class who worked in positions, including but not limited to the
15 position of bartender, that receive tips on credit cards left by patrons at venues
16 that were not covered by a collective bargaining agreement that contains
17 provisions that clearly constitute waivers of employee rights to bring claims of
18 statutory violations in court as opposed to arbitration.

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

21 29. **Numerosity**: Code of Civil Procedure § 382: Members of the Classes are so numerous
22 that their individual joinder is impracticable. The precise number of Class Members and their
23 addresses are unknown to Plaintiff. However, Plaintiff is informed and believes, and thereon
24 alleges, that the number of Class Members exceeds 200 persons and can be obtained from
25 Defendants' records. Class Members may be notified of the pendency of this action by mail,
26 electronic mail, the Internet, or published notice.

1 **30. Predominance of Common Questions of Fact and Law:** Code of Civil Procedure §
2 382: Common questions of law and fact exist as to all members of the Classes. These questions
3 predominate over any questions effecting only individual members of the Classes. These common
4 factual and legal questions include:

5 (a) Whether Defendants violated Labor Code § 201 by not immediately paying
6 members of the Labor Code § 201 Class wages owed to them when laid off at
7 the conclusion of assignments.

8 (b) Whether Defendants violated Labor Code § 201 by not immediately paying
9 members of the Pandemic Class wages owed to them when laid off on account
10 of the pandemic.

11 (c) Whether Defendants' conduct in not paying members of the Labor Code § 201
12 Class and the Pandemic Class immediately upon lay off was willful.

13 (d) Whether the failure of Defendants to direct members of the Rest Break Class to
14 take rest breaks gives rise to liability under Labor Code § 226.7 and the
15 applicable Wage Orders?

16 (e) Whether the failure of Defendants to explain to members of the Rest Break
17 Class that they are entitled to second rest breaks when working more than six
18 hours but less than eight hours gives rise to liability under Labor Code § 226.7
19 and the applicable Wage Orders.

20 (f) Whether members of the Reimbursement Class are entitled to relief pursuant to
21 Labor Code § 2802 on account of the need for them to use their personal
22 devices to engage in work-related communications with Defendants.

23 (g) Whether Defendants' affirmative defenses, if any, raise any common issues of
24 law or fact as to Plaintiff and the members of each Class as a whole.

25 **31. Typicality:** Plaintiff's claims are typical of the claims of the members of each Class
26 because Plaintiff, as someone employed on an intermittent basis as a bartender by Defendants, was
27 repeatedly exposed to the same unlawful business practice as the members of the classes. Plaintiff
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1 sustained the same types of injuries and losses that the class members sustained. Plaintiff is subject
2 to the same affirmative defenses as the members of the class.

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

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

17 **FIRSTCAUSE OF ACTION**

18 **FAILURE TO PAY WAGES TIMELY UPON CESSATION OF EMPLOYMENT**
19 **(Plaintiff, the Labor Code § 201 and § 203 Class, and the Pandemic Class Against All**
20 **Defendants)**

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

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

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

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

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

20 39. Plaintiff and other members of the Pandemic Class were discharged by Defendants
21 after March 1, 2020, as a result of the COVID-19 pandemic. Pursuant to Labor Code § 201,
22 Plaintiff and other members of the Pandemic Class were entitled to immediate payment of all
23 wages earned and unpaid prior to being discharged due to the pandemic. Defendant failed to pay
24 Plaintiff and members of the Pandemic Class immediately at the time of discharge in violation of
25 Labor Code § 201.

26 40. Defendants’ failure to timely pay Plaintiff and other members of the Labor Code § 201
27 and § 203 Class and the Pandemic Class wages in accordance with Labor Code § 201 was willful.
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Defendants had the ability to pay all wages earned by intermittently employed workers at the time of each layoff and all members of the Pandemic Class at the time of discharge, as required by Labor Code § 201.

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

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

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

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS

(Plaintiff and the Rest Break Class Against All Defendants)

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

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

46. Pursuant to Labor Code § 226.7 and Section 12 of Wage Order 5-2001, Plaintiff and the other members of the Rest Break Class were entitled to rest periods of at least 10 minutes for

each four-hour period of work, or major fraction thereof, and one hour of additional pay for every day a required rest period was not provided.

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

48. Plaintiff is informed and believes, and thereon alleges, that at all relevant times within the applicable limitations period, Defendants maintained and continue to create working conditions where members of the Rest Break Class cannot simply leave their assigned workstations to take 10-minute rest periods for each four hours of work or major fraction thereof in accordance with Labor Code § 226.7 and Wage Order 5-2001.

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

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

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

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

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

THIRD CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(Plaintiff and the Reimbursement Class Against All Defendants)

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

55. Labor Code § 2802 provides that "[a]n 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."

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

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

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

1 **FOURTH CAUSE OF ACTION**

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

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

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

6 60. Section 226(a) of the California Labor Code requires Defendant to accurately report all
7 gross and net wages earned by Plaintiff and the other members of the Wage Statement Class.
8 Defendant has knowingly and intentionally failed to comply with Labor Code section 226(a) on
9 each wage statement provided to Plaintiff and the other members of the Wage Statement Class
10 during pay periods in which Defendant failed to pay premium wages owed to Plaintiff or a
11 member of the proposed class.

12 61. As a consequence of Defendant's knowing and intentional failure to comply with Labor
13 Code section 226(a), Plaintiff and each Wage Statement Class member he seeks to represent are
14 each entitled to actual damages or penalties not to exceed \$4,000 pursuant to Labor Code section
15 226(b), together with interest thereon and attorneys' fees and costs.

16 **FIFTH CAUSE OF ACTION**

17 **UNFAIR BUSINESS PRACTICES**

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

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

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

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

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

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

12 **SIXTH CAUSE OF ACTION**

13 **CIVIL PENALTIES UNDER PAGA**

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

15 67. Plaintiff incorporates all of the foregoing paragraphs of this complaint as if fully
16 alleged herein.

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

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

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

1 71. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
2 Section 2699.3. By letter dated September 29, 2022, Plaintiff gave written notice to the Labor and
3 Workforce Development Agency (“LWDA”) via its online filing system and by certified mail to
4 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
5 the facts and theories to support the alleged violations. A true and correct copy of the September
6 29, 2022, letter is attached hereto as **Exhibit 1**. To date, more than 65 days after the postmark date
7 of September 29, 2022, the LWDA has not advised Plaintiff that it intends to investigate Plaintiff’s
8 allegations.

9 72. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other Aggrieved
10 Employees are entitled to civil penalties for Defendants’ violations of the Labor Code and the
11 applicable Wage Orders of the Industrial Welfare Commission, including Wage Order 5-2001, in
12 the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the
13 initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for
14 each subsequent violation. Pursuant to Labor Code Section 2699(i), 75% of the civil penalties
15 recovered shall be distributed to the LWDA, and 25% shall be distributed to the aggrieved
16 employees.

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

19 **PRAYER FOR RELIEF**

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

22 **CLASS CERTIFICATION:**

- 23 1. An order that the action be certified as a class action;
24 2. An order that Plaintiff be certified as the representative of the Classes;
25 3. An order that counsel for Plaintiff be confirmed as Class counsel;
26
27
28

ON THE FIRST CAUSE OF ACTION:

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

ON THE SECOND CAUSE OF ACTION:

1. Damages for unpaid additional pay owed for rest period violations.
2. Prejudgment interest;

ON THE THIRD CAUSE OF ACTION:

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

ON THE FOURTH CAUSE OF ACTION:

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

ON THE FIFTH CAUSE OF ACTION:

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

ON THE SIXTH CAUSE OF ACTION:

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

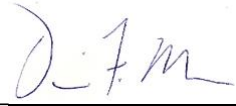
ON ALL CAUSES OF ACTION:

1. Judgment in favor of Plaintiff and the putative Classes and against Defendants;
2. Reasonable attorney's fees;
3. Costs of suit; and

1 4. Such other relief as the Court deems just and proper.
2

3 Dated: August 8, 2023

MOSS BOLLINGER LLP

4
5 By: 

6 Dennis F. Moss

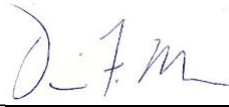
7 Attorneys for Plaintiff SCOTT SHUSTER

8 **DEMAND FOR JURY TRIAL**

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

10 Dated: August 8, 2023

MOSS BOLLINGER LLP

11
12 By: 

13 Dennis F. Moss

14 Attorneys for Plaintiff SCOTT SHUSTER
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1 **PROOF OF SERVICE**

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

4 I am over the age of eighteen years and not a party to the within action. My business
5 address is 15300 Ventura Boulevard, Suite 207, Sherman Oaks, CA 91403. On August 8, 2023, I
6 served the foregoing document(s) described as:

7 **SECOND AMENDED COMPLAINT**

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

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

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

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

Executed at Los Angeles County, California, on August 8, 2023

24 
25 _____