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Attorneys for Plaintiff DIONYSIOS YURI SHALLAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

DIONYSIOS YURI SHALLAN, an individual,
on behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

v.

SCOTT'S SACRAMENTO RIVER, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No: 34-2020-00288630

**DECLARATION OF SHANI O. ZAKAY
ESQ. IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Hearing Date: September 9, 2021

Hearing Time: 9:00 a.m.

Reservation No. 2562306

Honorable Judge Christopher E. Krueger
Department 54

Trial Date: Not Set

Action Filed: November 16, 2020

I, SHANI O. ZAKAY, declare as follows:

1. I am the managing partner of the law firm of Zakay Law Group, APC, co-lead counsel of record for Plaintiff DIONYSIOS YURI SHALLAN ("Plaintiff") in this matter. As such, I am fully familiar with the facts, pleadings and history of the matter. The following facts

1 are within my own personal knowledge, and if called as a witness, I could testify competently to
2 the matters stated herein.

3 2. This declaration is being submitted in support of the motion by Plaintiff for an
4 order: (1) preliminarily approving the proposed settlement of this putative class and Private
5 Attorneys General Act (“PAGA”) action with Defendant SCOTT’S SACRAMENTO RIVER,
6 INC. (“Defendant”); (2) approving the form and method for providing class-wide notice; (3)
7 directing that notice of the proposed settlement be given to the class; and (4) scheduling a final
8 approval hearing date to consider Plaintiff’s motion for final approval of the settlement and entry
9 of the Judgment, and Plaintiff’s motion for approval of attorneys’ fees and litigation expenses.
10 Attached hereto as Exhibit #1 is a copy of the fully executed Class and PAGA Action Settlement
11 Agreement (“Agreement”) along with exhibits thereto. This Declaration incorporates by
12 reference the definitions in the Agreement, and all terms defined therein shall have the same
13 meaning as set forth in the Agreement.

14 **Fairness of Settlement**

15 3. As consideration for this Settlement, the total amount to be paid by Defendant is
16 One Hundred and Two Thousand and Five Hundred Dollars (\$102,450) (the “Gross Settlement
17 Amount”). The Gross Settlement amount will settle all issues pending in this litigation between
18 the Plaintiff and the Class, on the one hand, and the Defendant, on the other hand, including:
19 payment of all Settlement Shares to Participating Class Members, the Class Representative
20 Service Payment, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment,
21 the payment to the California Labor Workforce Development Agency (“LWDA Payment”), and
22 the expenses of the Settlement Administrator. The Gross Settlement Amount does not include
23 Defendant’s share of employer payroll taxes. The Settlement is all-in with no reversion to
24 Defendant and no need to submit a claim form.

25 4. The relief provided in the settlement will benefit all members of the Class. The
26 settlement does not grant preferential treatment to the Plaintiff or segments of the Class in any
27 way. Payments to the Class Members are all determined under a neutral methodology. All Class
28

1 Members will receive the same opportunity to participate in and receive payment through a
2 neutral formula that is based upon the weeks worked for that individual.

3 5. The Parties scheduled a private mediation to take place before Honorable Steven
4 R. Denton (Ret.), a respected and experienced jurist and mediator of wage and hour class and
5 PAGA actions. In preparation for the mediation, Defendant provided Class Counsel with
6 necessary records and information for the members of the Class. Defendant produced pay records
7 and time records. Defendant also produced Defendant's relevant employment policies, including
8 compensation policies and timekeeping policies. Plaintiff analyzed the data and prepared and
9 submitted a mediation brief to Judge Denton. On September 29, 2020, the Parties participated in
10 an all-day mediation presided over by Judge Denton. At the conclusion of the mediation, the
11 Parties were able to reach an agreement pursuant to a mediator's proposal, which was accepted by
12 both Parties and memorialized in the form of a Memorandum of Understanding. Thereafter, the
13 Parties entered into the Agreement, which was signed by the Parties and is now presented to this
14 Court for preliminary approval. Plaintiff and Class Counsel believe that this Settlement is fair,
15 reasonable, and adequate.

16 6. The amounts to compensate the Class for the alleged violations at the time this
17 Settlement was negotiated were calculated by Class Counsel. For the Class, Plaintiff estimates
18 that Defendant was subject to liability for *damages* in the amount of **\$568,178.36**, consisting of
19 \$409,647.36 for unpaid gratuities, \$8,990.84 for unpaid wages, \$107.890 for meal and rest breaks,
20 and \$41,650 for unreimbursed expenses. In addition, Plaintiff calculated that Defendant could be
21 liable for \$85,750.00 for wage statement penalties and \$190,394.40 waiting time penalties.
22 Finally, Plaintiff calculated PAGA penalties in an amount exceeding \$269,150.00.¹

23 ¹ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
24 226 and various PAGA penalties, Plaintiff recognizes that these claims were subject to various
25 defenses asserted by Defendant, including, but not limited to, a good faith dispute defense as to
26 whether any premium wages for meal or rest periods or other wages were owed given
27 Defendant's position that Plaintiffs were properly compensated. See *Reber v. AIMCO/Bethesda*
28 *Holdings, Inc.*, 2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008) (granting defendant's motion
for summary judgment on claim for failure to provide accurate itemized wage statements "because
a good faith dispute exists... [therefore, defendant] was not 'knowing and intentional' in failing to
provide [Section 226] statements"). Additionally, there is serious doubt as to whether violations of
the meal/rest period regulations, which require payment of a "premium wage" for each improper

1 **Procedural History of the Litigation**

2 7. On March 24, 2020, Plaintiff filed a Notice of Violations with the Labor and
3 Workforce Development Agency (LWDA) and served the same on Defendant. The Notice to the
4 LWDA included a proposed Complaint which Plaintiff planned on filing with the Court, which
5 asserted that Defendant: (1) Violated California Business and Professions Code § 17200 *et seq.*;
6 (2) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and
7 1997.1; (3) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (4)
8 Failed to provide meal periods in violation of California Labor Code §§ 226.7 & 512, and IWC
9 Wage Order; (5) Failed to provide rest periods in violation of California Labor Code §§ 226.7 &
10 512, and IWC Wage Order; (6) Failed to provide accurate and complete itemized wage statements
11 in violation of California Labor Code § 226; (7) Failed to provide wages when due in violation of
12 California Labor Code §§ 201, 202, and 203; and (8) Failed to provide gratuities in violation of
13 California Labor Code §351.

14 8. Plaintiff sought to represent a putative class of banquet employees who worked for
15 Defendant in California between March 24, 2016 and September 29, 2020. The Action seeks
16 unpaid wages, unpaid gratuities, penalties, attorneys' fees and costs, and any other equitable or
17 legal relief allegedly due and owing to Plaintiff and the other Class Members by virtue of the
18 foregoing claims.

19 9. On July 28, 2020, after agreeing to attend mediation, the Parties entered into a
20 Statute of Limitations Tolling Agreement, preserving the statute of limitations applicable to
21 Plaintiff's claims until after the mediation is complete. Prior to mediation, the Parties engaged in
22

23 meal period, give rise to claims under sections 203 and 226. See *Naranjo v. Spectrum Sec. Servs.,*
24 *Inc.*, 40 Cal. App. 5th 444, 474, (Ct. App. 2019), which held that actions for meal break and rest
25 break premiums "do not entitle employees to pursue the derivative penalties in sections 203 and
26 226." **In fact, under *Naranjo*, the value for claims under Labor Code §§ 203 and 226 could be \$0.** Further, *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of
27 PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial
28 court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith
attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such
reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after Plaintiff actually
prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

1 investigation, formal discovery, and the exchange of documents and information. As part of this
2 process, Defendant provided payroll and time records, as well as other relevant documents to
3 Class Counsel to review and analyze. On September 29, 2020, the Parties participated in an all-
4 day mediation presided over by the Honorable Steven R. Denton (Ret.) a respected jurist and
5 mediator of wage and hour class and PAGA actions. At the conclusion of the mediation, the
6 Parties were able to reach an agreement pursuant to a mediator's proposal, which was accepted by
7 both Parties and memorialized in the form of a Memorandum of Understanding. Thereafter, the
8 Parties entered into the Agreement, which was signed by the Parties and is now presented to this
9 Court for preliminary approval. On November 16, 2020, pursuant to the Parties Agreement,
10 Plaintiff filed this Action against Defendant for the purpose of seeking approval of the
11 Agreement.

12 10. For purposes of this Settlement, the "Class" is defined as "all of Defendant's
13 current and former non-exempt banquet employees who worked for Defendant in the State of
14 California during the Class Period." (Agreement at Definition at (EE)). The Class Period is the
15 period of time from March 24, 2016 and September 29, 2020. (See Agreement at Definitions at
16 (G)).

17 11. Although a settlement has been reached, Defendant denies any liability or
18 wrongdoing of any kind associated with the claims alleged in the. Defendant contends, among
19 other things, that it has correctly and fully compensated the Class Members for wages and
20 gratuities, provided compliant meal and rest periods, provided complete, accurate itemized wage
21 statements, and complied at all times with the California Labor Code and Wage Orders. Further,
22 Defendant contends that class certification would be inappropriate for any reason other than for
23 settlement. Plaintiff contends that Defendant violated California wage and hour laws. Plaintiff
24 further contends that the Action is appropriate for class certification on the basis that the
25 Plaintiff's claims meet the requisites for class certification. Without admitting that class
26 certification is proper, Defendant has stipulated that the Class may be certified for settlement
27 purposes only. (Agreement at ¶I(F)).
28

1 12. Class Counsel have diligently evaluated the Class Members' claims against
2 Defendant. Class Counsel reviewed the time and pay data, as well as other relevant documents
3 provided by the Defendant. Class Counsel reviewed and analyzed the data. Prior to mediation,
4 counsel for Defendant provided Class Counsel with access to the necessary data and information
5 for the Class, including a sample of time and payroll data. Based on the foregoing data, the
6 evaluation of Class Counsel, and their investigation, Class Counsel believe that the settlement
7 with Defendant on the terms set forth in the Agreement is fair, reasonable, and adequate and are in
8 the best interest of the Class in light of all known facts and circumstances, including the risk of
9 significant delay, the defenses asserted by Defendant, and potential appellate issues.

10 **Settlement Terms and Plan of Allocation**

11 13. The Gross Settlement Amount to be paid by Defendant is One Hundred and Two
12 Thousand and Five Hundred Dollars (\$102,450). (Agreement at ¶III(A)(1)). Under the
13 Settlement, the Gross Settlement Amount consists of the following elements: (1) payments of the
14 Settlement Shares to Class Members, (2) Class Counsel Fees Payment and Litigation Expenses
15 Payment, (3) the fees and expenses of the Settlement Administrator, (4) the LWDA Payment, and
16 (5) the Class Representative Service Payment to the Plaintiff. (*Id.*). The Gross Settlement
17 Amount does not include Defendant's share of payroll taxes. (*Id.*). The Gross Settlement
18 Amount shall be all-in with no reversion to Defendant (*Id.*).

19 14. Within approximately forty calendar days of final approval and the Judgment
20 becoming Final, the Defendant will fund the Gross Settlement Amount. The payment of the
21 Settlement Shares to Participating Class Members will be within fifteen calendar days after
22 Defendant funds the Gross Settlement Amount, the Settlement Administrator will pay the
23 Individual Settlement Payments to the Class Members. (Agreement at ¶II(M)(1)(e)).

24 15. The Settlement Administrator will pay a Settlement Share from the Net Settlement
25 Amount to each Class Member. The submission of a claim form is not required. (Agreement at ¶
26 II(M)(1)(a)). The Settlement Share for each Class Member will be calculated based on the
27 workweeks worked during the Class Period. (Agreement at *Id.*).

28 16. The entire Net Settlement Fund shall be distributed.

1 17. Class Members will have 45 days after the mailing of the Class Notice to exclude
2 themselves or submit written objections. (Agreement at Definitions at (BB)). Class Members may
3 choose to opt-out of the Settlement by following the directions in the Class Notice. (Agreement at
4 ¶III(L)(7)). All Class Members who do not “opt out” will be deemed Class Members who will be
5 bound by the Settlement and will be entitled to receive a settlement payment. (See Agreement at
6 *Id.*). Finally, the Class Notice will advise the Class Members of their right to object to the
7 Settlement (Agreement at ¶III(L)(8)).

8 18. If a check is returned to the Settlement Administrator, the Settlement Administrator
9 will make all reasonable efforts to re-mail it to the Class Member at the correct address. If a Class
10 Member’s Individual Settlement Payment check is not cashed within 180 days after its mailing to
11 the Class Member, the funds from such uncashed check will be paid to the Children’s Advocacy
12 Institute in accordance with CCP §384 in the name of the Class Member and the Class Member
13 will remain bound by the Settlement. (Agreement at ¶III(M)(1)(f)). None of the Parties or
14 counsel has any interest, pecuniary or otherwise, in CAI.

15 19. The Parties have agreed to use ILYM Group as the Settlement Administrator for
16 the Settlement. (Agreement at Definitions at (DD)). ILYM Group shall receive payment for
17 services in an amount not to exceed \$4,500.00. (Agreement at ¶III(M)(5)).

18 20. Subject to Court approval, the Agreement provides for Class Counsel to be
19 awarded a sum not to exceed 1/3 of the Gross Settlement Amount, currently estimated to be
20 \$34,166.66, as their Class Counsel Fees Payment. (Agreement at ¶ III(M)(3)). Class Counsel will
21 also be allowed to apply separately for an award of litigation expenses incurred in the prosecution
22 and settlement of the Action (currently not exceeding \$10,000). (Agreement at *Id.*). In support of
23 this request, Class Counsel will provide evidentiary support, including lodestar. Subject to Court
24 approval, the Agreement provides for payment of Class Representative Service Payment of no
25 more than \$7,500 for Plaintiff, or such lesser amount as may be approved by the Court.²
26 (Agreement at ¶III(M)(2)).

27
28 ² Plaintiff will address the reasonableness of this award when filing his final approval papers.

1 21. Subject to Court approval, \$5,000 will be allocated from the Gross Settlement
2 Amount for settlement of civil penalties under PAGA. Pursuant to the requirements of Labor
3 Code §2699(i) the PAGA Payment shall be allocated \$3,750 (75%) to the LWDA (the “LWDA
4 Payment”) as the LWDA’s share of the settlement of civil penalties and \$1,250 (25%) to the Net
5 Settlement Amount for distribution to the Class Members. (Agreement at ¶ III(M)(4)).

6 22. Finally, the Settlement provides for non-monetary relief to ensure that Defendant’s
7 conduct giving rise to this Action does not recur in the future. Specifically, the Agreement
8 requires Defendant to revise its policy relating to Catering/Banquet Contract Service Charges to
9 either (1) clearly and unambiguously state that the Service Charge is not a gratuity and not shared
10 with the banquet staff or (2) clearly state what amount of the Service Charge is intended to be
11 used as a gratuity and share that amount with the banquet staff. (Agreement at ¶ III(A)(2)).

12 **Risks of Continued Litigation and Standards for Approval**

13 23. Plaintiff and Class Counsel recognize the expense and length of continuing to
14 litigate and trying the Action against Defendant through possible appeals which could take several
15 years. Class Counsel have also taken into account the uncertain outcome and risk of litigation,
16 especially in complex actions such as the Action. Class Counsel are also mindful of, and
17 recognize, the inherent problems of proof under, and asserted defenses to, the claims asserted in
18 the Action. Based upon their evaluation, Plaintiff and Class Counsel have determined that the
19 settlement set forth in the Agreement is in the best interest of the Class Members.

20 24. Here, a number of defenses asserted by Defendant presented serious threats to the
21 claims of the Plaintiff and the other Class Members. Defendant asserted that the employment
22 practices complied with all applicable Labor Laws.

23 25. Most importantly and relevant to this case, Defendant strongly argued that Plaintiff
24 and the Class Members did not forfeit any gratuities. Defendant argued that the service charge,
25 which was added to the banquet bills, constituted only a charge for the actual amount due for
26 managerial and planning services of the banquet, and not any sum over and above the actual
27 amount due for food and drink sold its patrons. Defendant further argued that it specifically
28 suggested to its banquet customers to separately and additionally pay gratuities to the service

1 staff, and that its customers regularly paid such additional gratuities. Defendant argued, therefore,
2 that California Labor Code § 351 did not apply to Plaintiff and the Class Members. Because this
3 claim represented approximately 2/3 of Plaintiff's damages, this defense could substantially
4 reduce any recovery to the Class. While Plaintiff believes that this defense, and others, could be
5 overcome, Defendant maintains these defenses have merit and therefore present a serious risk to
6 recovery for the Class.

7 26. There was also a risk that, if the Action was not settled, Plaintiff would be unable
8 to obtain class certification and thereby not recover on behalf of any employee other than herself.
9 Defendant argued that the individual experience of each employee varied with respect to the
10 alleged claims. While other cases have approved class certification of wage and hour claims,
11 class certification in this action would have been hotly disputed and was by no means a foregone
12 conclusion. Finally, as demonstrated by the California Supreme Court decision in *Duran v. U.S.*
13 *Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-
14 wide recovery even where the class has been certified.

15 27. Further supporting the fairness and reasonableness of the settlement is Defendant's
16 financial condition. Defendant operates a restaurant, including banquet services. This business
17 has suffered significantly as a result of the effects of the COVID-19 virus and the Governor's
18 order closing restaurants and prohibiting large events and gatherings. Considering Defendant's
19 significant financial hardship, the settlement provides great value for the Class Members, while
20 also allowing Defendant to stay in business. Simply put, Defendant could not have afforded to
21 defend the instant action while staying in business following the economic effects of COVID-19
22 on its operations. Further, during the time that Defendant's operations, including its banquet
23 services, were mandated closed by state and local authorities during the COVID-19 pandemic, the
24 alleged violations could not have occurred.

25 28. This settlement is therefore certainly entitled to preliminary approval. Were this
26 case to go to trial, the class representatives and other Class Members would need to prove to the
27 satisfaction of the Court, among other things, that wages and other damages were owed on a class-
28 wide basis. This was and is a substantial risk.

1 29. Plaintiff will apply to the Court for a service payment in consideration for his
2 service and for the risks undertaken on behalf of the Class. (Agreement at Definitions at (F)). At
3 this stage, the requested Plaintiff's service payment is well within the accepted range of awards
4 for purposes of preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S.
5 Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment
6 was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal.
7 2014) (approving \$10,000 service award where class member recovery was \$375); *Rausch v.*
8 *Hartford Fin. Servs. Grp.*, 2007 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007)
9 (approving award of \$10,000 where class member recoveries were as little as \$150); *Louie v.*
10 *Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding
11 \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*,
12 2007 WL 221862, *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award in overtime class
13 action and a pool of \$100,000.00 in enhancements). As explained in *Glass*, service awards are
14 routinely awarded to class representatives to compensate the employees for the time and effort
15 expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation
16 there from, and to serve as an incentive to vindicate the statutory rights of all employees. 2007
17 WL 221862 at *16-17.

18 30. The stage of the proceedings at which this settlement was reached also militates in
19 favor of preliminary approval and ultimately, final approval of the settlement. Class Counsel has
20 conducted a thorough investigation into the facts of the class action. Class Counsel performed
21 significant review and analysis of Defendant's data and documents. Class Counsel engaged in
22 informal discovery in preparation for the mediation and obtained substantial and meaningful
23 discovery from Defendant. Class Counsel engaged in a thorough research and analysis of the
24 relevant claims and data. Class Counsel were also experienced with the claims at issue here, as
25 Class Counsel previously litigated and settled similar claims in numerous other actions.
26 Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient
27 information to make an informed judgment regarding the likelihood of success on the merits and
28 results that could be obtained through further litigation.

1 31. Based on the foregoing data and their own independent investigation and
2 evaluation, Class Counsel is of the opinion that the settlement with Defendant for the terms set
3 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in
4 light of all known facts and circumstances, including the risk of significant delay, defenses
5 asserted by Defendant, and numerous potential appellate issues. There can be no doubt that
6 Counsel for both Parties possessed sufficient information to make an informed judgment
7 regarding the likelihood of success on the merits and the results that could be obtained through
8 further litigation.

9 **Class Certification Issues**

10 32. Plaintiff contends that the proposed settlement meets all the requirements for class
11 certification under the California Code of Civil Procedure §382 as demonstrated below, and
12 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
13 should conditionally certify the Class for settlement purposes only, defined as follows: “All of
14 Defendant’s current and former non-exempt banquet employees who worked for Defendant in the
15 State of California during the Class Period.” (Agreement at Definitions at (EE)). The Class
16 Period is the period of time from March 24, 2016 through September 29, 2020. (Agreement at
17 Definitions at (G)). The Parties estimate that there are 66 Class Members who collectively
18 approximately worked approximately 3,332 workweeks.

- 19 a. **Numerosity** – Here, the approximately 66 current and former non-exempt
20 banquet employees that comprise the Class can be identified based on
21 Defendant’s records and are sufficiently numerous for class certification.
- 22 b. **Common Issues Predominate** - Here, Plaintiff contends that common
23 questions of law and fact are present, and specifically the common questions of
24 whether Defendant’s employment practices were lawful, whether Defendant
25 failed to pay gratuities, failed to provide breaks, whether Defendant provided
26 incomplete wage statements, whether Defendant failed to properly compensate
27 employees for overtime, and whether the Class is entitled to damages and
28 penalties.

1 c. **Typicality** – Here, the Plaintiff, like every other member of the Class, was
2 employed by Defendant as a banquet staff member and is a member of the
3 Class. Plaintiff was subject to the same employment practices concerning the
4 banquet service charges, meal and rest periods and wage compensation, and
5 received similar wage statements. Thus, the claims of the Plaintiff and the
6 Class Members arise from the same conduct by the Defendant, involve the
7 same employment policies, and are based on the same theories.

8 d. **Adequacy** – Plaintiff contends that the Class Members are adequately
9 represented here because Plaintiff and his counsel (a) do not have any conflicts
10 of interest with other class members, and (b) will prosecute the case vigorously
11 on behalf of the class (*See Hanlon* 150 F.3d at 1020). These requirements are
12 met here. First Plaintiff is well aware of his duties as the representative of the
13 Class and has actively participated in the prosecution of this case to date. He
14 effectively communicated with counsel, provided documents to counsel and
15 participated in discovery, investigation and negotiations in the Action. Second,
16 Plaintiff retained competent counsel who are experienced in employment class
17 actions. Third, there is no antagonism between the interests of the Plaintiff and
18 those of the Class. Both the Plaintiff and the Class Members seek monetary
19 relief under the same set of facts and legal theories.

20 33. Class Counsel are experienced in prosecuting class action lawsuits and can
21 competently represent the Class. Attorneys from both Class Counsel's firms have extensive class
22 litigation experienced, handling a number of class action and complex commercial cases and have
23 acted both as counsel and as lead and co-lead counsel in a variety of these matters. Class Counsel
24 have successfully prosecuted and obtained significant recoveries in numerous class action
25 lawsuits and other lawsuits involving complex issues of law and fact. Class Counsel have been
26 involved as class counsel in over two hundred class action matters, including many wage and hour
27 class actions. Class Counsel has been found to be adequate counsel by the courts throughout
28 California. A true and correct copy of the resumes of the firms comprising Class Counsel are

1 attached hereto as Exhibit #2 and in the declaration of Jean-Claude Lapuyade filed concurrently
2 herewith. Class Counsel have been approved as experienced class counsel in both state and
3 federal courts in California in contested class certification proceedings. Thus, the adequacy
4 requirement is satisfied.

5 34. The Class Notice, drafted jointly and agreed upon by the Parties through their respective
6 counsel and to be approved by the Court, includes all relevant information. (See Exhibit C to the
7 Agreement). The Class Notice will include, among other information: (i) information regarding
8 the Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii)
9 information to the Class Members regarding how to opt out and how to object to the Settlement;
10 (iv) the estimated settlement payment for each of the Class Members; (v) the amount of attorneys'
11 fees and litigation expenses to be sought; (vi) the amount of the Plaintiffs' service award request;
12 (vii) the amount being paid to the LWDA; and (viii) the administration fees to be paid to the
13 Settlement Administrator. The Class Notice will state that the Class Members shall have forty-
14 five (45) days from the date that the Class Notice is mailed to them to request exclusion or to
15 submit an objection. (Agreement at Exhibit C). The Class Members will be given an opportunity
16 to object to the terms of the Agreement and/or the request for attorneys' fees and costs and to
17 participate at the final approval hearing, in accordance with the instructions set forth in the Class
18 Notice. (Agreement at Exhibit C). Class Members will be instructed to only contact the
19 Settlement Administrator and Class Counsel and not the Court. (Agreement at Exhibit C). Class
20 Members who do not opt out will automatically receive a settlement payment. This notice
21 program was designed to meaningfully reach the Class Members and advises them of all pertinent
22 information concerning the settlement. The mailing and distribution of the Class Notice satisfies
23 the requirements of due process, and is the best notice practicable under the circumstances and
24 constitutes due and sufficient notice to all persons entitled thereto. The Class Notice provides
25 information on the terms and provisions of the settlement; the benefits that the settlement provides
26 for Class Members; the date, time and place of the final settlement approval hearing; and the
27 procedure and deadline for submitting comments, objections, and requests for exclusion. The
28 Class Notice complies with Rules of Court 3.766 and 3.769(f).

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Additional Issues

35. **Average Class Member Payment** – Should the Court approve the above distributions, the Net Settlement Amount is estimated to be \$42,583.33, which means that the average payment to a Class Members is approximately \$645.20.

36. **Right to Reject Settlement** – The Settlement provides that Defendants can void the agreement if ten percent (10%) or more of the Class Members opt out.

37. **National Change of Address** – The Settlement Administrator is required to perform a National Change of Address search on any Class Notice Packet returned by the U.S. Postal Service as non-deliverable, and re-mail the Class Notice Packet to the Class Member's new address under paragraph 7.3 of the Class Action Settlement Agreement.

38. **Information Received** – In this case, Plaintiff received all of the information needed to evaluate the claims being settled. The following is a summary of the relevant documents received, reviewed and analyzed by Plaintiff in order to evaluate the claims:

- a. Sample data showing the employees, their employment dates, and their compensation.
- b. Sample data showing time records including punch-in and punch-out times.
- c. Sample data showing pay records.
- d. Sample data concerning recorded meal periods.
- e. Defendant's Employee Handbook for the relevant time period, which outlined the wage and hour policies of Defendant.
- f. Employee file of Plaintiff.
- g. Samples of wage statements provided by Defendant to Plaintiff.
- h. Sample payroll data.
- i. Hiring and termination forms used by Defendant for employees.

1 39. **Valuation of Damages**– For the Class, Plaintiff estimates that Defendant was
2 subject to liability for *damages* in the amount of **\$568,178.36**, consisting of \$409,647.36 for
3 unpaid gratuities, \$8,990.84 for unpaid wages, \$107.890 for meal and rest breaks, and \$41,650 for
4 unreimbursed expenses. In addition, Plaintiff calculated that Defendant could be liable for
5 \$85,750.00 for wage statement penalties and \$190,394.40 waiting time penalties. Finally,
6 Plaintiff calculated PAGA penalties in an amount exceeding \$269,150.00.³ Consequently, the
7 settlement of \$102,500.00 represents more than **18%** of the value of the maximum *damages* at
8 issue. Even when including the penalties for Plaintiff’s claim for violations under Labor Code
9 §226 and Labor Code §203, the settlement represents more than **12%** of the maximum potential
10 liability, assuming all of these amounts could be proved at trial. Given the amount of the
11 settlement as compared to the potential value of claims in this case, the settlement is fair and
12 reasonable. Clearly, the goal of this litigation to provide compensation to class members for
13 unpaid time and for breaks allegedly missed has been met.

14 **a. Unpaid Gratuities** – the allegation of unpaid gratuities in this case is based
15 on a theory that Defendant charged its customers an automatic 18%-22%
16

17 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
18 226 and various PAGA penalties, Plaintiff recognizes that these claims were subject to various
19 defenses asserted by Defendant, including, but not limited to, a good faith dispute defense as to
20 whether any premium wages for meal or rest periods or other wages were owed given
21 Defendant’s position that Plaintiffs were properly compensated. See *Reber v. AIMCO/Bethesda*
22 *Holdings, Inc.*, 2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008) (granting defendant's motion
23 for summary judgment on claim for failure to provide accurate itemized wage statements "because
24 a good faith dispute exists... [therefore, defendant] was not 'knowing and intentional' in failing to
25 provide [Section 226] statements"). Additionally, there is serious doubt as to whether violations of
26 the meal/rest period regulations, which require payment of a "premium wage" for each improper
27 meal period, give rise to claims under sections 203 and 226. See *Naranjo v. Spectrum Sec. Servs.,*
28 *Inc.*, 40 Cal. App. 5th 444, 474, (Ct. App. 2019), which held that actions for meal break and rest
break premiums “do not entitle employees to pursue the derivative penalties in sections 203 and
226.”. **In fact, under *Naranjo*, the value for claims under Labor Code §§ 203 and 226 could
be \$0.** Further, *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of
PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial
court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith
attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such
reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after Plaintiff actually
prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

1 service charge for banquet events, but allocated at least a portion of that
2 service charge to managerial employees who were not in the chain of
3 service. According to the data received and assumptions made based on
4 conversations with the Plaintiff, the potential damages were estimated to be
5 \$409,647.36. Defendant presented significant defenses to this claim, as
6 discussed in detail above.

7 **b. Minimum and Overtime Wages** - The allegation of unpaid minimum and
8 overtime wages in this case is based on a theory that Defendant required
9 employees to work off the clock during what was supposed to be their off-
10 duty meal breaks. According to the data received and assumptions made
11 based on conversations with the Plaintiff, the potential damages were
12 estimated to be \$8,990.84.

13 **c. Meal and Rest Period Damages** – Meal and rest break premiums were
14 calculated as 1 hour of wages for each violation. Plaintiff calculated the
15 potential maximum value of the meal and rest break damages to be
16 \$107.890. The allegation of unpaid meal break and rest break premiums in
17 this case is based on a theory that Class Members were unable to take a
18 compliant break on a consistent basis.

19 **d. Waiting Time Penalties** - Waiting time penalties were calculated pursuant
20 to California Labor Code Section 203 for each employee with unpaid
21 wages who was terminated during the Class Period. The penalty was
22 calculated as 30 days of wages for each terminated employee (i.e., Hourly
23 Rate x 8 Hours x 30 Days). The result was an estimated maximum waiting
24 time penalty claim in the amount of \$190,394.40. It is important to note
25 that the California Supreme Court in *Kirby v. Immoos Fire Protection, Inc.*,
26 53 Cal. 4th 1244 (2012) held that meal break violations are not tied to the
27 nonpayment of wages, and therefore do not give rise to penalties under
28

1 Section 203. (see also *Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal. App.
2 5th 444, 474, (Ct. App. 2019).

3 **e. Wage Statement Penalties** - Wage statement penalties were calculated
4 pursuant to California Labor Code Section 226(e) as \$50 per employee per
5 pay period with a violation, subject to a \$4,000 maximum penalty per
6 employee. The result was an estimated maximum wage statement penalty
7 claim in the amount of \$85,750.00. It is important to note that the
8 California Court of Appeals in *Maldonado v. Epsilon Plastics, Inc.*, 22
9 Cal.App.5th 1308 (2018) recently held that liability under Section 226
10 cannot be derivative. In other words, the court held that a Plaintiff cannot
11 recover penalties under Section 226 based on Plaintiff's allegations that the
12 Defendants violated other Labor Code sections that affected the accuracy of
13 the wage statements. .

14 **f. PAGA Penalties** PAGA penalty calculations are highly variable. Class
15 Counsel is unaware of any PAGA judgment in which substantial PAGA
16 penalties were awarded at the full statutory rate, rather, the PAGA
17 judgments have typically decreased the amount of the per violation penalty
18 to a fraction of the statutory amount. Without reducing or mitigating the
19 PAGA penalties, Plaintiff calculated that the potential PAGA penalties at
20 the maximum rate of \$269,150.00. Though these PAGA penalty amounts
21 were duplicative and were likely not awardable at the maximum rate, there
22 is an additional basis for concluding that the settlement in this case is
23 reasonable even with PAGA penalties in this amount. Specifically, PAGA
24 penalties are not seriously valued by employers for purposes of settlement.
25 This is true because PAGA penalty claims are routinely settled at a small
26 fraction of the potential penalties. For example, Judge Nelson in Price v.
27 Uber Technologies, (Los Angeles Superior Court case no. BC554512),
28 recently approved a PAGA settlement of \$7.75 million for 1.5 million

1 drivers where the maximum PAGA liability was \$151 billion. Thus, the
2 PAGA penalties were settled for 0.005% of the PAGA liability. Notably,
3 this was the largest PAGA settlement in the 15-year history of PAGA. So
4 while PAGA penalty figures may be inflated to significant numbers,
5 realistic settlements of PAGA claims result in a settlement amount of less
6 than 1% of the PAGA liability.

7 40. **Notice to LWDA.** On August 13, 2021, at the time this motion was submitted for
8 filing, I submitted a copy of the fully executed settlement agreement to the LWDA through their
9 online filing system, and received an email confirming the submission of the proposed settlement
10 (See Exhibit 3).

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct. Executed this 13th day of August 2021, at San Diego, California.

13
14 By: 
15 Shani O. Zakay
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EXHIBIT 1

1 JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)
2 **JCL LAW FIRM, APC**
3 3990 OLD TOWN AVENUE, SUITE C204
4 SAN DIEGO, CA 92110
5 TEL: 619-599-8292
6 FAX: 619-599-8291

7 SHANI O. ZAKAY, ESQ. (SBN 277924)
8 **ZAKAY LAW GROUP, APLC**
9 5850 OBERLIN DRIVE SUITE 230A
10 SAN DIEGO, CA 92121
11 TEL: 619-255-9047
12 FAX: 858-404-9203

13 ATTORNEYS FOR PLAINTIFF DIONYSIOS SHALLAN

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DIONYSIOS YURI SHALLAN, an
individual, on behalf of themselves, and on
behalf of all persons similarly situated

PLAINTIFFS,

vs.

SCOTT'S SACRAMENTO RIVER, INC., a
California corporation and Does 1 through 50,
Inclusive,

Case No. 34-2020-00288630

[Action Filed 11/16/2020]

**STIPULATION OF SETTLEMENT OF
CLASS ACTION AND PRIVATE
ATTORNEYS GENERAL ACT CLAIMS
AND RELEASE OF CLAIMS**

Judge: Hon.
Dept.:

STIPULATION OF SETTLEMENT OF CLASS ACTION AND RELEASE OF CLAIMS

1 This Stipulation of Class and Representative Action Settlement and Release of Claims is
2 entered into by and between named Plaintiff DIONYSIOS SHALLAN (hereinafter "Plaintiff"),
3 individually and on behalf of the Settlement Class, and Defendant SCOTT'S SACRAMENTO
4 RIVER, INC. a California corporation (hereinafter "Defendant"). Plaintiff and Defendant will be
5 referred to collectively herein as the "Parties."

6 **DEFINITIONS**

7 A. "Action" shall mean *Shallan, v. Scott's Sacramento River, Inc.*, currently pending in
8 the Superior Court for the County of Sacramento, Case No. 34-2020-00288630 filed November 16,
9 2020.

10 B. "Aggrieved Employees" means all current and former non-exempt banquet
11 employees who worked for Defendant in the State of California between the period of March 24,
12 2016 through September 29, 2020.

13 C. "Agreement" or "Settlement Agreement" means this Stipulation of Settlement of
14 Class Action and Release of Claims.

15 D. "Class Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL LAW FIRM, APC,
16 and Shani O. Zakay, Esq. of the ZAKAY LAW GROUP, APLC

17 E. "Class Counsel Award" means the award of fees and expenses that the Court
18 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the
19 Settlement Class Members, consisting of attorneys' fees currently not to exceed one-third of the
20 Total Settlement Amount currently estimated to be \$34,166.66 (33.33%) out of \$102,500.00 plus
21 costs and expenses not to exceed \$10,000.

22 F. "Class Data" means information regarding Settlement Class Members that
23 Defendant will in good faith compile from its records and provide as confidential for settlement
24 purposes only to the Settlement Administrator. It shall be formatted as a Microsoft Excel
25 spreadsheet and shall include: each Settlement Class Member's full name; last known address;
26 Social Security Number; start dates and end dates of employment, and number of Workweeks as a
27 Settlement Class Member during the Class Period and PAGA Period and email address, if known.

28 G. "Class Period" means the period from March 24, 2016 to September 29, 2020.

1 H. "Class Representative Service Award" means the amount that the Parties agree that
2 named Plaintiff may request an award of up to seven thousand five hundred dollars (\$7,500), to be
3 paid from the Net Settlement Amount, subject to approval by the Court, for his services as the
4 representative of the Class, which will be reported on IRS Form 1099. Plaintiff assumes sole
5 responsibility for tax reporting and payment on his Class Representative Service Award. To the
6 extent that the Court awards an Service Award that is less than the allocation set forth herein, the
7 amount that is not awarded will be included in the Net Settlement Amount for distribution to the
8 Settlement Class Members. Defendant will not oppose a request for a Class Representative Service
9 Award that is made in accordance with this section.

10 I. "Class Representative" means Plaintiff DIONYSIOS SHALLAN.

11 J. "Court" means the Superior Court for the State of California, County of
12 Sacramento.

13 K. "Defendant" shall mean SCOTT'S SACRAMENTO RIVER, INC., a California
14 corporation.

15 L. "Effective Date" means the earliest date, following entry by the Court of an order
16 and judgment finally approving this Settlement, upon which one of the following have occurred: (i)
17 if no objectors appear at the hearing for final approval, ten (10) calendar days following the Court's
18 entry of the order granting final approval, (ii) the expiration of all potential appeal periods without
19 a filing of a notice of appeal of the final approval order or judgment; (iii) final affirmance of the
20 final approval order and judgment by an appellate court as a result of any appeal(s), or (iv) final
21 dismissal or denial of all such appeals (including any petition for review, rehearing, certiorari, etc.)
22 such that the final approval order and judgment is no longer subject to further judicial review.

23 M. "Funding Date" shall mean thirty (30) calendar days after the Effective Date and is
24 the date Defendant transfers the Total Settlement Amount into the QSF in accord with the terms of
25 this Agreement.

26 N. "Individual Settlement Payment" means the amount payable from the Net
27 Settlement Amount to each Settlement Class Member and excludes any amounts distributed to
28 Settlement Class Members pursuant to PAGA.

O. "Net Settlement Amount" or "NSA" means the Total Settlement Amount, less Class Counsel Award, Class Representative Service Award, PAGA Settlement, and Settlement Administration Costs.

P. "Notice Packet" means the Class Notice to be provided to the Settlement Class Members by the Settlement Administrator in the form set forth as Exhibit C to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).

Q. "PAGA" means the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*

R. "PAGA Payment" means the twenty-five percent (25%) from the PAGA Settlement for distribution to the Aggrieved Employees.

S. "PAGA Period" means the period between March 24, 2019 and September 29, 2020.

T. "PAGA Settlement" shall mean Five Thousand Dollars (\$5,000.00) to be allocated from the Total Settlement Amount.

U. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either Plaintiff or Defendant, individually.

V. "Payment Ratio" means the respective Workweeks for each Settlement Class Member divided by the sum total Workweeks for all Settlement Class Members.

W. "Plaintiff" shall mean DIONYSIOS SHALLAN.

X. "QSF" means the Qualified Settlement Fund established, designated and maintained by the Settlement Administrator to fund the Total Settlement Amount.

Y. "Released Claims" means upon the Effective Date, Plaintiff and the Settlement Class Members, fully release and discharge Defendant and the Released Parties, as defined herein, from any and all claims, actions, demands, causes of action, suits, debts, obligations, guarantees, costs, expenses, attorneys' fees, damages, restitution, injunctive relief, penalties, rights or liabilities, of any nature and description whatsoever, arising during the Class Period or PAGA Class Period, that are alleged in the operative complaint in the Action or that could have been alleged in the Action based on the facts and theories alleged in the operative complaint in the

1 Action, including but not limited to, failure to pay minimum wage, straight time wages, and
2 overtime wages, unpaid premium pay for violations of California's meal period and rest break law,
3 waiting time penalties, penalties for non-compliant wage statements and failure to keep accurate
4 payroll records, and failure to reimburse employees for reasonably incurred business expenses, and
5 failure to pay gratuities and claims pursuant to Labor Code sections 201, 202, 203, 204, 206.5,
6 210, 225.5, 226, 226.3, 226.7, 350, 351, 510, 511, 512, 515, 558, 1174, 1175, 1194, 1194.2, 1197,
7 1197.1, 1198, and 1199, and 2802, and claims under Business and Professions Code section 17200,
8 *et seq.*

9 Z. "Released PAGA Claims" means upon the Effective Date, Plaintiff and the
10 Settlement Class Members, fully release and discharge Defendant and the Released Parties, as
11 defined herein, from any and all claims, actions, demands, causes of action, suits, debts,
12 obligations, guarantees, costs, expenses, attorneys' fees, damages, restitution, injunctive relief,
13 penalties, rights or liabilities, of any nature and description whatsoever, alleged or that could have
14 been alleged based on the facts and theories alleged in the operative complaint in the Action arising
15 during the Class Period or PAGA Class Period, arising out of the facts and claims asserted in the
16 Action for civil penalties under the Private Attorney General Act of 2004 Cal. Labor Code § 2698
17 *et seq.* based upon the facts alleged in the operative complaint in the Action, including but not
18 limited to, failure to pay minimum wage, straight time wages, and overtime wages, unpaid
19 premium pay for violations of California's meal period and rest break law, waiting time penalties,
20 penalties for non-compliant wage statements and failure to keep accurate payroll records, and
21 failure to reimburse employees for reasonably incurred business expenses, and failure to pay
22 gratuities.

23 AA. "Released Parties" means Defendant and its respective present and former parent
24 companies, subsidiaries, divisions, related or affiliated companies and joint ventures, shareholders,
25 officers, directors, management level employees, agents, attorneys, insurers, reinsurers, successors
26 and assigns.

BB. "Response Deadline" means the date forty-five (45) days after the Settlement Administrator mails Notice Packets to Settlement Class Members and the last date on which Settlement Class Members may submit requests for exclusion or objections to the Settlement.

CC. "Settlement" means the disposition of the Action pursuant to this Agreement.

DD. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L, Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement Administrator establishes, designates and maintains, as a QSF under Internal Revenue Code section 468B and Treasury Regulation section 1.468B-1, into which the amount of the Total Settlement Amount is deposited for the purpose of resolving the claims of Settlement Class Members. The Settlement Administrator shall maintain the funds until distribution in an account(s) segregated from the assets of Defendant and any person related to Defendant. ***All accrued interest shall be paid and distributed to the Settlement Class Members as part of their respective Settlement Payment.***

EE. "Settlement Class Members" or "Settlement Class" means all of Defendant's current and former non-exempt banquet employees who worked for Defendant in the State of California during the Class Period. The "Settlement Class Members" shall not include any person who submits a timely and valid request for exclusion as provided in this Agreement.

FF. "Total Settlement Amount" means One Hundred and Two Thousand Five Hundred Dollars and Zero Cents (\$102,500.00) that Defendant must pay into the QSF in connection with this Settlement, inclusive of the sum of the Individual Settlement Payments, the Class Representative Service Payment Awards, the Class Counsel Award, PAGA Settlement and the Settlement Administration Costs.

GG. "Workweeks", for purposes of calculating the distribution of the Net Settlement Amount, means the number of weeks of employment during the Class Period that each Settlement Class Member worked for Defendant. To calculate the amount each Settlement Class Member will receive based on their number of Workweeks, the Net Settlement Amount will be divided by the total number of Workweeks worked by the Settlement Class Members during the Class Period and then allocated to the Settlement Class Members on a pro rata basis. For purposes of distributing

the PAGA Settlement to the Aggrieved Employees, Workweeks means the number of weeks each Aggrieved Employee worked for Defendant during the PAGA Period.

I. RECITALS

A. Plaintiff worked for Defendant in a non-exempt hourly position from approximately 2011 through March 11, 2020 when Defendant's restaurant, Scott's Seafood on the River, was mandated closed by various State and local health ordinances and regulations related to the ongoing COVID-19 pandemic.

B. On March 24, 2020, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant. Attached as Exhibit A is a true and correct copy of the Notice of Violations that the Plaintiff filed with the LWDA.

C. On July 28, 2020, after agreeing to attend mediation, the Parties entered into a Statute of Limitations Tolling Agreement, preserving the statute of limitations applicable to Plaintiff's claims until after the mediation is complete.

D. On September 29, 2020, the Parties participated in mediation presided over by the Honorable Judge Steven R. Denton (Ret.), a respected jurist and mediator. Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Action that was memorialized in the form of a Memorandum of Understanding ("MOU").

E. On November 16, 2020, pursuant to the Parties' MOU and with the intent of seeking approval of the Settlement, Plaintiff filed this Action against Defendant in the Superior Court of the State of California, County of Sacramento. In the Complaint, Plaintiff asserts claims that Defendant:

1. Violated California Business and Professions Code § 17200 *et seq.*;
2. Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1;
3. Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*;
4. Failed to provide required meal breaks in violation of California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order;

5. Failed to provide required rest breaks in violation of California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order;
6. Failed to provide accurate itemized wage statements in violation of California Labor Code § 226;
7. Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203;
8. Failed to provide gratuities in violation of California Labor Code §351;; and,
9. Violated the Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”).

Attached as Exhibit B is a true and correct copy of Plaintiff’s operative class and representative complaint against Defendant.

F. This Agreement replaces and supersedes the MOU and any other agreements, understandings, or representations between the Parties. To the extent there is a conflict between the MOU and this Settlement Agreement, the terms and conditions of this Agreement shall prevail. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant’s defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

II. TERMS OF AGREEMENT

A. Settlement Consideration and Settlement Payments by Defendant.

1. Settlement Monetary Consideration. In full and complete settlement of the Action, and in exchange for the releases set forth below, Defendant will pay the sum of the Individual Settlement Payments, the Class Representative Service Award, the Class

1 Counsel Award, PAGA Settlement, and the Settlement Administration Costs, as specified
2 in this Agreement, equal to the Total Settlement Amount of One Hundred Two Thousand
3 Five Hundred Dollars and Zero Cents (\$102,500.00). The Parties agree that this is a non-
4 reversionary Settlement and that no portion of the Total Settlement Amount shall revert to
5 Defendant. Other than the Defendant's share of employer payroll taxes, or as otherwise
6 specified in the Agreement, Defendant shall not be required to pay more or less than the
7 Total Settlement Amount.

8 2. Non-Monetary Consideration. Within thirty (30) days after final approval
9 from the Court, Defendant will revise its policy and practice relating to Catering/Banquet
10 Contract Service Charges to either (1) clearly and unambiguously state that the Service
11 Charge is not a gratuity and not shared with the banquet staff or (2) clearly state what
12 amount of the Service Charge is intended to be used as a gratuity and share that amount
13 with the banquet staff.

14 3. Class Size Modification. Defendant has represented that 66 Settlement Class
15 Members collectively worked approximately 3,332 workweeks during the Class Period. In
16 regard hereto, Defendant will provide a declaration under penalty of perjury confirming the
17 number of Class Members and Workweeks they worked during the Class Period and PAGA
18 Class Period prior to the filing of the motion for preliminary approval. The Total Settlement
19 Amount will increase proportionally with added workweeks if the number is more than
20 7.5% of the estimate stated herein on an estimated 66 Settlement Class Members and 3,332
21 Workweeks.

22 4. Settlement Payment. Defendant shall pay, via wire transfer, or other secured
23 means of directly remitting the Total Settlement Amount to the Settlement Administrator on
24 the Funding Date.

25 5. Defendant's Share of Payroll Taxes. The Defendant's share of employer side
26 payroll taxes is in addition to the Total Settlement Amount and shall be paid by Defendant
27 upon request by the Settlement Administrator.

1 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
2 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members release the
3 Released Parties from the Released Claims for the Class Period.

4 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
5 consideration set forth in this Agreement, the Aggrieved Employees release the Released Parties
6 from the PAGA Released Claims for the PAGA Period.

7 D. General Release by Plaintiff. Plaintiff will execute, concurrently with the execution
8 of this Agreement, a separate, confidential, settlement agreement that includes a broad general
9 release of all his individual potential claims pertaining to his former employment with said general
10 release agreement to include a non-disparagement and confidentiality provision by Plaintiff in
11 favor of the Released Parties, and a Section 1542 waiver. The individual settlement agreement and
12 the amount of the Individual Settlement Payment will be maintained as confidential and will not be
13 submitted to the Court for approval, except that Plaintiff shall be permitted to disclose his
14 individual settlement to the Court if required to obtain Court Final Court Approval. In that event,
15 the parties will cooperate to protect the confidentiality of these settlement agreement to the greatest
16 extent the Court will allow, such as by submitting them for review in camera only, filing it under
17 seal, or other procedure which the Court may permit.

18 E. Conditions Precedent: This Settlement will become final and effective only upon
19 the occurrence of all of the following events:

- 20 1. The Court enters an order granting preliminary approval of the Settlement;
- 21 2. The Court enters an order granting final approval of the Settlement and a
22 Final Judgment;
- 23 3. If an objector appears at the final approval hearing, the time for appeal of the
24 Final Judgment and Order Granting Final Approval of Class Action
25 Settlement expires; or, if an appeal is timely filed, there is a final resolution
26 of any appeal from the Judgment and Order Granting Final Approval of
27 Class Action Settlement; and
- 28 4. Defendant fully funds the Total Settlement Amount.

1 F. Nullification of Settlement Agreement. In the event that this Settlement Agreement
2 is not preliminarily or finally approved by the Court, fails to become effective, or is reversed,
3 withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining
4 a complete resolution of the Released Claims:

- 5 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
6 and shall not be admissible in any judicial, administrative or arbitral
7 proceeding for any purpose or with respect to any issue, substantive or
8 procedural;
- 9 2. The conditional class certification (obtained for any purpose) shall be void
10 *ab initio* and of no force or effect, and shall not be admissible in any judicial,
11 administrative or arbitral proceeding for any purpose or with respect to any
12 issue, substantive or procedural; and
- 13 3. None of the Parties to this Settlement will be deemed to have waived any
14 claims, objections, defenses or arguments in the Action, including with
15 respect to the issue of class certification.

16 G. Certification of the Settlement Class. The Parties stipulate to conditional class
17 certification of the Settlement Class for the Class Period for purposes of settlement only. In the
18 event that this Settlement is not approved by the Court, fails to become effective, or is reversed,
19 withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining
20 a complete resolution of the Released Claims, the conditional class certification (obtained for any
21 purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any
22 judicial, administrative or arbitral proceeding for any purpose or with respect to any issue,
23 substantive or procedural.

24 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
25 effect of the payments called for, and Settlement Class Members are not relying on any statement
26 or representation by the Parties in this regard. Settlement Class Members understand and agree
27 that they will be responsible for the payment of any taxes and penalties assessed on the Individual
28

Settlement Payments described and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Payments.

I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

J. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with the Court a Motion for Order Granting Preliminary Approval and supporting papers, which shall include this Settlement Agreement. Defendant shall not oppose Plaintiff’s Motion for Order Granting Preliminary Approval provided that it is consistent with the terms and conditions of the Parties’ Agreement as set forth herein. Class Counsel will provide Defendant’s Counsel an opportunity to review the Motion for Order Granting Preliminary Approval and provide appropriate suggested revisions, if any.

K. Settlement Administrator. The Settlement Administrator shall be responsible for: establishing and administering the QSF; calculating, processing and mailing payments to the Class Representatives, Class Counsel, LWDA and Settlement Class Members; printing, mailing and

1 emailing the Notice Packets to the Settlement Class Members as directed by the Court; establishing
2 and maintaining the a landing page hosted on its website to containing information about the
3 Settlement; receiving and reporting the objections and requests for exclusion; calculating,
4 deducting and remitting all legally required taxes from Individual Settlement Payments and
5 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual Settlement
6 Payments; processing and mailing tax payments to the appropriate state and federal taxing
7 authorities; providing declaration(s) as necessary in support of preliminary and/or final approval of
8 this Settlement; posting notice of entry of judgment on its website; and other tasks as the Parties
9 mutually agree or the Court orders the Settlement Administrator to perform. The Settlement
10 Administrator shall keep the Parties timely apprised of the performance of all Settlement
11 Administrator responsibilities by among other things, sending a weekly status report to the Parties'
12 counsel stating the date of the mailing, the of number of Elections Not to Participate in Settlement
13 it receives (including the numbers of valid and deficient), and number of objections received.

14 L. Notice Procedure.

15 1. Class Data. No later than fourteen (14) calendar days after the Preliminary
16 Approval Date, Defendant shall provide the Settlement Administrator with
17 the Class Data for purposes of preparing and mailing Notice Packets to
18 Settlement Class Members. Defendant shall verify the total number of
19 Workweeks at the time Class Data is provided to the Settlement Administer.

20 2. Notice Packets.

21 a) The Notice Packet shall contain the Notice of Class Action Settlement in a
22 form substantially similar to the form attached as Exhibit C. The Notice of Class Action
23 Settlement shall inform Settlement Class Members that they need not do anything in order
24 to receive an Individual Settlement Payment and to keep the Settlement Administrator
25 apprised of their current mailing address, to which the Individual Settlement Payments will
26 be mailed following the Funding Date.

27 b) The Notice of Class Action Settlement shall set forth the release to be given
28 by all members of the Settlement Class who do not request to be excluded from the

1 Settlement Class in exchange for an Individual Settlement Payment, the number of
2 Workweeks worked by each Settlement Class Member during the Class Period, and the
3 estimated amount of their Individual Settlement Payment if they do not request to be
4 excluded from the Settlement. The Settlement Administrator shall use the Class Data to
5 determine Class Members' Workweeks. Settlement Class Members' dispute over
6 Workweeks will be addressed as provided in Section L(2)(5).

7 c) The Notice Packet's mailing envelope shall include the following language:
8 "IMPORTANT LEGAL DOCUMENT- YOU MAY BE ENTITLED TO PARTICIPATE
9 IN A CLASS ACTION SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
10 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED NOTICE."

11 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
12 the Settlement Administrator will perform a search based on the National Change of
13 Address Database to update and correct any known or identifiable address changes. No
14 later than fourteen (14) calendar days after receiving the Class Data from Defendant, the
15 Settlement Administrator shall mail and email copies of the Notice Packet to all Settlement
16 Class Members via regular First-Class U.S. Mail and electronic mail. The Settlement
17 Administrator shall exercise its best judgment to determine the current mailing address for
18 each Settlement Class Member. The address identified by the Settlement Administrator as
19 the current mailing address shall be presumed to be the best mailing address for each
20 Settlement Class Member.

21 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
22 Administrator as non-delivered on or before the Response Deadline shall be re-mailed to
23 any forwarding address provided. If no forwarding address is provided, the Settlement
24 Administrator shall promptly attempt to determine a correct address by lawful use of skip-
25 tracing, or other search using the name, address and/or Social Security number of the
26 Settlement Class Member involved, and shall then perform a re-mailing, if another mailing
27 address is identified by the Settlement Administrator. In addition, if any Notice Packets,
28 which are addressed to Settlement Class Members who are currently employed by

1 Defendant, are returned to the Settlement Administrator as non-delivered and no forwarding
2 address is provided, the Settlement Administrator shall notify Defendant. Defendant will
3 request that the currently employed Settlement Class Member provide a corrected address
4 and transmit to the Administrator any corrected address provided by the Settlement Class
5 Member. Settlement Class Members who received a re-mailed Notice Packet shall have
6 their Response Deadline extended fifteen (15) days from the original Response Deadline.

7 5. Disputes Regarding Individual Settlement Payments. The Class Notice will
8 provide that a Class Member may dispute the number of Workweeks credited to him or her
9 based on Defendant's records, which will be listed on his or her Class Notice, by mailing a
10 written dispute to the Settlement Administrator ("Workweeks Dispute") that contains: (1)
11 the Class Member's full name, address, telephone number, signature, and last four digits of
12 his or her Social Security Number; (2) the case name and number of the Lawsuit; (3) a clear
13 statement indicating that the Class Member wishes to dispute the Workweeks credited to
14 him or her and indicating the number of Workweeks the Class Member believes should be
15 credited to him or her, and (4) any documentation in support of the Class Member's
16 contention. The Settlement Administrator will confer with Defendant's Counsel to
17 determine whether or not the Workweeks credited to a disputing Class Member should be
18 modified, and the Settlement Administrator will make a final determination regarding all
19 such disputes. Defendant will make additional information available to the Settlement
20 Administrator as necessary to facilitate the Settlement Administrator's consideration and
21 determination of Workweeks Disputes.

22 6. Disputes Regarding Administration of Settlement. Any disputes not
23 resolved by the Settlement Administrator concerning the administration of the Settlement
24 will be resolved by the Court under the laws of the State of California. Before any such
25 involvement of the Court, counsel for the Parties will confer in good faith to resolve the
26 disputes without the necessity of involving the Court.

27 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
28 Packet shall state that Settlement Class Members who wish to exclude themselves from the

1 Settlement must submit a written request for exclusion by the Response Deadline. The
2 written request for exclusion must state that the Settlement Class Member wishes to
3 exclude himself or herself from the Settlement and (1) must contain the name, address, and
4 the last four digits of the Social Security number of the person requesting exclusion; (2)
5 must be signed by the Settlement Class Member; (3) must be postmarked or fax stamped by
6 the Response Deadline and returned to the Settlement Administrator at the specified address
7 or fax telephone number; and (4) contain a typewritten or handwritten notice stating in
8 substance: "I wish to opt out of the settlement of the class action lawsuit entitled *Shallan v.*
9 *Scott's Sacramento River, Inc.*, Superior Court of California, County of Sacramento
10 Number 34-2020-00288630. I understand that by requesting to be excluded from the
11 settlement, I will receive no money from the Settlement described in this Notice." The
12 request for exclusion will not be valid if it is not timely submitted, if it is not signed by the
13 Settlement Class Member, or if it does not contain the name and address and last four digits
14 of the Social Security number of the Settlement Class Member. The date of the postmark
15 on the mailing envelope or fax stamp on the request for exclusion shall be the exclusive
16 means used to determine whether the request for exclusion was timely submitted. Any
17 Settlement Class Member who requests to be excluded from the Settlement Class will not
18 be entitled to an Individual Settlement Payment and will not be otherwise bound by the
19 terms of the Settlement or have any right to object, appeal or comment thereon. However,
20 any Settlement Class Member that submits a timely request for exclusion that is also a
21 member of the Aggrieved Employees will still receive their pro rata share of the PAGA
22 Settlement, as specified below, and in consideration, will be bound by the PAGA Release
23 by the Aggrieved Employees as set forth herein. Settlement Class Members who fail to
24 submit a valid and timely written request for exclusion on or before the Response Deadline
25 shall be bound by all terms of the Settlement and any final judgment entered in this Action
26 if the Settlement is approved by the Court. No later than fourteen (14) calendar days after
27 the Response Deadline, the Settlement Administrator shall provide counsel for the Parties
28 with a final list of the Settlement Class Members who have timely submitted written

1 requests for exclusion. At no time shall any of the Parties or their counsel seek to solicit or
2 otherwise encourage members of the Settlement Class to submit requests for exclusion from
3 the Settlement. If more than 10% of the Class Members exclude themselves from this
4 Settlement, then Defendant shall reserve the right to rescind this Agreement.

5 8. Objections. The Notice of Class Action Settlement contained in the Notice
6 Packet shall state that Settlement Class Members who wish to object to the Settlement must
7 mail to the Settlement Administrator a written statement of objection (“Notice of
8 Objection”) by the Response Deadline. The postmark date of mailing shall be deemed the
9 exclusive means for determining that a Notice of Objection was served timely. The Notice
10 of Objection must be signed by the Settlement Class Member and state: (1) the case name
11 and number; (2) the name of the Settlement Class Member; (3) the address of the
12 Settlement Class Member; (4) the last four digits of the Settlement Class Member’s Social
13 Security number; (4) the basis for the objection; and (5) if the Settlement Class Member
14 intends to appear at the Final Approval/Settlement Fairness Hearing. Settlement Class
15 Members who fail to make objections in the manner specified above shall be deemed to
16 have waived any objections and shall be foreclosed from making any objections (whether
17 by appeal or otherwise) to the Settlement. Settlement Class Members who submit a timely
18 Notice of Objection will have a right to appear at the Final Approval/Settlement Fairness
19 Hearing in order to have their objections heard by the Court. At no time shall any of the
20 Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to
21 file or serve written objections to the Settlement or appeal from the Order and Final
22 Judgment. Settlement Class Members who submit a written request for exclusion may not
23 object to the Settlement. If more than 10% of the Class Members opt out of this Settlement,
24 then Defendant shall reserve the right to rescind this Agreement.

25 M. Funding and Allocation of the Total Settlement Amount. Defendant is required to
26 pay the Total Settlement Amount on or before the Funding Date, plus any employer’s share of
27 payroll taxes as mandated by law within the time specified herein.

1 1. Individual Settlement Payments. Individual Settlement Payments shall be
2 paid from the Net Settlement Amount and shall be paid pursuant to the formula set forth
3 below.

4 a) Calculation of Individual Settlement Payments. Class Members who do not
5 timely and validly request exclusion from the Settlement, *i.e.*, Settlement Class Members,
6 will automatically be entitled to a *pro rata* share of the Net Settlement Amount (Individual
7 Settlement Share) without need to submit a claim form. Using the Class Data, the
8 Settlement Administrator shall add up the total number of Workweeks for all Settlement
9 Class Members. The respective Workweeks for each Settlement Class Member will be
10 divided by the total Workweeks for all Settlement Class Members, resulting in the Payment
11 Ratio for each Settlement Class Member. Each Settlement Class Member's Payment Ratio
12 will then be multiplied by the Net Settlement Amount to calculate each Settlement Class
13 Member's estimated Individual Settlement Payments. Each Individual Settlement Payment
14 will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll
15 taxes, etc.). Individual Settlement Payments for Class Members who submit valid and
16 timely requests for exclusion will be redistributed to Settlement Class Members who do not
17 submit valid and timely requests for exclusion on a pro rata basis based on their respective
18 Payment Ratios.

19 b) Calculation of Individual Payments to the Aggrieved Employees. Using the
20 PAGA Payment, the Settlement Administrator shall determine the Individual Payments the
21 Aggrieved Employees in proportion to the number of Workweeks each Aggrieved
22 Employee worked during the PAGA Period and allocate the PAGA Payment on a pro rata
23 basis.

24 c) Allocation of Individual Settlement Payments. For tax purposes, Individual
25 Settlement Payments shall be allocated and treated as follows: 25% as wages ("Wage
26 Portion"); 75% as penalties and interest ("Non-Wage Portion"). The Wage Portion is
27 subject to wage withholdings and shall be reported on IRS Form W-2. The Non-Wage
28 Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099.

Each Individual Settlement Share will be reduced for employee's share of taxes and withholding with respect to the Wage Portion and the net payment of the Individual Settlement Share is the "Individual Settlement Payment." Defendant will pay its employer's share of payroll taxes and contributions with respect to the Wage Portion separately from and in addition to the Maximum Settlement Amount.

d) Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved Employee Settlement Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099.

e) Mailing. Individual Settlement Payments and Aggrieved Employee Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' last known mailing address no later than fifteen (15) calendar days after the Funding Date.

f) Expiration. Any checks issued to Settlement Class Members shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. If a Settlement Class Member does not cash his or her settlement check within 90 days, the Settlement Administrator will send a letter to such persons, advising that the check will expire after the 180th day, and invite that Settlement Class Member to request reissuance in the event the check was destroyed, lost or misplaced. In the event an Individual Settlement Payment check has not been cashed within one hundred and eighty (180) days, all funds represented by such uncashed checks, plus any interest accrued thereon, shall be distributed consistent with California Code of Civil Procedure Section 384 as follows: to The Children's Advocacy Institute (CAI), founded at the nonprofit University of San Diego School of Law in 1989. Neither Class Counsel nor Defendant's counsel has any interest, pecuniary or otherwise, in CAI.

2. Class Representative Service Award. In addition to the Individual Settlement Payment to be paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than \$7,500 as the Class Representative Service Award. Defendant will not oppose a Class Representative Service Award of no more than \$7,500 for Plaintiff provided that it is consistent with the terms and conditions herein. The Settlement Administrator

1 shall pay the Class Representative Service Award, either in the amount stated herein if
2 approved by the Court or some other amount as approved by the Court, to Plaintiff from the
3 Total Settlement Amount no later than ten (10) calendar days after the Funding Date. Any
4 portion of the requested Class Representative Service Award that is not awarded to the
5 Class Representatives shall be part of the Net Settlement Amount and shall be distributed to
6 Settlement Class Members as provided in this Agreement. The Settlement Administrator
7 shall issue an IRS Form 1099 to Plaintiff for his Class Representative Service Award.
8 Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on their
9 Class Representative Service Awards and shall hold harmless the Defendant and Released
10 Parties from any claim or liability for taxes, penalties, or interest arising as a result of the
11 Class Representative Service Awards. The Class Representative Service Awards shall be in
12 addition to Plaintiff's Individual Settlement Payment as a Settlement Class Member.
13 Approval of this Settlement shall not be conditioned on Court approval of the requested
14 amount of the Class Representative Service Award. In the event that the Court reduces or
15 does not approve the requested Class Representative Service Awards, Plaintiffs shall not
16 have the right to revoke the Settlement, and it will remain binding.

17 3. Class Counsel Award. Defendant understands a motion by Class Counsel
18 for attorneys' fees not to exceed one-third of the Total Settlement Amount currently
19 estimated to be \$34,166.66, plus costs and expenses supported by declaration not to exceed
20 Ten Thousand Dollars (\$10,000.00), from the Total Settlement Amount will be filed. Any
21 portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be
22 part of the Net Settlement Amount and shall be distributed to Settlement Class Members as
23 provided in this Agreement. The Settlement Administrator shall allocate and pay the Class
24 Counsel Award to Class Counsel from the Total Settlement Amount no later than five (5)
25 calendar days after the Funding Date. Class Counsel shall be solely and legally responsible
26 to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement
27 Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments
28 made pursuant to this paragraph. In the event that the Court reduces or does not approve

1 the requested Class Counsel Award, Plaintiffs and Class Counsel shall not have the right to
2 revoke the Settlement, or to appeal such order, and the Settlement will remain binding. The
3 attorneys' fees portion of the Class Counsel Award shall be divided as follows: 50% to
4 Zakay Law Group, APC and 50% to the JCL Law Firm, APC.

5 4. PAGA Settlement. Five Thousand Dollars (\$5,000) shall be allocated from
6 the Total Settlement Amount for settlement of claims for civil penalties under the Private
7 Attorneys General Act of 2004 ("PAGA Settlement"). The Settlement Administrator shall
8 pay seventy-five percent (75%) of the PAGA Settlement (\$3,750) to the California Labor
9 and Workforce Development Agency no later than twenty-five (25) calendar days after the
10 Funding Date (hereinafter "LWDA Payment"). Twenty-five (25%) of the PAGA
11 Settlement (\$1,250) will be distributed to the Aggrieved Employees as described in this
12 Agreement (hereinafter "Aggrieved Employee Payment"). For purposes of distributing the
13 PAGA Settlement to the Aggrieved Employees, each Aggrieved Employee shall receive
14 their pro-rata share of the Aggrieved Employee Payment using the PAGA Payment Ratio as
15 defined above.

16 5. Settlement Administration Costs. The Settlement Administrator shall be
17 paid for the costs of administration of the Settlement from the Total Settlement Amount.
18 The estimate of the Settlement Administration Costs is \$4,500. The Settlement
19 Administrator shall be paid the Settlement Administration Costs no later than twenty-five
20 (25) calendar days after the Funding Date.

21 N. Final Approval Motion. Class Counsel and Plaintiffs shall use best efforts to file
22 with the Court a Motion for Order Granting Final Approval and Entering Judgment, within twenty-
23 eight (28) days following the expiration of the Response Deadline, which motion shall request final
24 approval of the Settlement and a determination of the amounts payable for the Class Representative
25 Service Award, the Class Counsel Award, the PAGA Settlement, and the Settlement
26 Administration Costs.

27 1. Declaration by Settlement Administrator. No later than fourteen (14) days
28 after the Response Deadline, the Settlement Administrator shall submit a declaration in

1 support of Plaintiffs' motion for final approval of this Settlement detailing the number of
2 Notice Packets mailed and re-mailed to Settlement Class Members, the number of
3 undeliverable Notice Packets, the number of timely requests for exclusion, the number of
4 objections received, the amount of the average Individual Settlement Payment, the
5 Settlement Administration Costs, and any other information as the Parties mutually agree or
6 the Court orders the Settlement Administrator to provide.

7 2. Final Approval Order and Judgment. Class Counsel shall present an Order
8 Granting Final Approval of Class Action Settlement to the Court for its approval, and
9 Judgment thereon, at the time Class Counsel files the Motion for Final Approval.

10 N. Defendant's Option to Revoke Settlement. Defendant has the unilateral right to
11 revoke the Settlement and Defendant shall have, in its sole discretion, the option to terminate this
12 Settlement if, after the Response Deadline, the number of Settlement Class Members who
13 submitted timely and valid written requests for exclusion from the Settlement is at least ten percent
14 (10%) of all Settlement Class Members. If Defendant exercises the option to terminate this
15 Settlement, Defendant shall: (a) provide written notice to Class Counsel within five (5) calendar
16 days after (i) providing the Class Data to the Settlement Administrator or (ii) the Settlement
17 Administrator provides information regarding opt outs (which is to occur no later than fourteen
18 (14) calendar days after the Response Deadline, and (b) pay all Settlement Administration Costs
19 incurred up to the date or as a result of the termination; and the Parties shall proceed in all respects
20 as if this Agreement had not been executed.

21 O. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
22 an opportunity for Counsel for Defendant to review and propose revisions the Motions for
23 Preliminary and Final Approval, including the Order Granting Final Approval of Class Action
24 Settlement, and Judgment before filing with the Court. The Parties and their counsel will
25 cooperate with each other and use their best efforts to affect the Court's approval of the Motions
26 for Preliminary and Final Approval of the Settlement, and entry of Judgment. Defendants will not
27 oppose Plaintiff's Motions for Preliminary and Final Approval, including the Order Granting Final
28 Approval of the Class Action Settlement, and Judgment provided that Defendant's counsel has the

1 opportunity to participate in and propose revisions thereto and that the terms and conditions are
2 consistent with the Settlement Agreement as set forth herein.

3 P. Cooperation. The Parties and their counsel will cooperate with each other and use
4 their best efforts to execute all documents, to seek the necessary court approvals, and to do all other
5 things reasonably necessary to conclude the
6 Agreement and obtain entry of Final Approval and Judgment in the lawsuit in accordance with this
7 Agreement. The Parties agree to cooperate fully to achieve final approval of the Settlement
8 substantially in accordance with the terms outlined herein.

9 Q. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
10 except such proceedings necessary to implement and complete the Settlement, pending the Final
11 Approval/Settlement Fairness Hearing to be conducted by the Court

12 R. Amendment or Modification. This Agreement may be amended or modified only
13 by a written instrument signed by counsel for all Parties or their successors-in-interest.

14 S. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
15 Agreement among these Parties, and no oral or written representations, warranties or inducements
16 have been made to any Party concerning this Agreement or its Exhibits other than the
17 representations, warranties and covenants contained and memorialized in this Agreement and its
18 Exhibits.

19 T. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant
20 and represent they are expressly authorized by the Parties whom they represent to negotiate this
21 Agreement and to take all appropriate Action required or permitted to be taken by such Parties
22 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
23 effectuate the terms of this Agreement. The persons signing this Agreement on behalf of
24 Defendant represents and warrants that he is authorized to sign this Agreement on behalf of
25 Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that
26 he has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.
27 Parties confirm that they understand all of the terms of the Agreement and have been advised by
28 counsel regarding the terms and conditions of this Agreement.

1 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and
2 inure to the benefit of, the successors or assigns of the Parties, as previously defined.

3 V. California Law Governs. All terms of this Agreement and the Exhibits and any
4 disputes shall be governed by and interpreted according to the laws of the State of California.

5 W. Counterparts. This Agreement may be executed in one or more counterparts. All
6 executed counterparts and each of them shall be deemed to be one and the same instrument
7 provided that counsel for the Parties to this Agreement shall exchange among themselves copies or
8 originals of the signed counterparts. The Parties acknowledge and agree that electronic signatures
9 shall be as binding as original signatures and necessary and appropriate given ongoing social
10 distancing and remote work means related to the COVID-19 pandemic.

11 X. Class Signatures. It is agreed that because the Settlement Class Members are
12 numerous, it is impossible or impractical to have each Settlement Class Member execute this
13 Agreement. Plaintiff executes this Agreement on behalf of the Settlement Class Members. The
14 Class Notice will advise all Class Members of the binding nature of the release of Released Claims,
15 as to the Settlement Class Members, and such will have the same force and effect as if this
16 Agreement were executed by each Settlement Class Member.

17 Y. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this
18 Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this
19 Settlement after extensive arms-length negotiations, taking into account all relevant factors, present
20 and potential.

21 Z. Jurisdiction of the Court. After approval of this Agreement, and pursuant to Code
22 of Civil Procedure § 664.6, the Parties agree that the Court shall retain jurisdiction with respect
23 to the interpretation, implementation and enforcement of the terms of this Agreement and all orders
24 and judgments entered in connection therewith, and the Parties and their counsel submit to the
25 jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement
26 and all orders and judgments entered in connection with this Agreement. In addition, this Court
27 will have continuing jurisdiction for purposes of addressing settlement administration matters, and
28 other such matters as may be appropriate under court rules or as set forth in this Agreement.

1 AA. Invalidity of Any Provision. Before declaring any provision of this Agreement
2 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
3 consistent with applicable precedents so as to define all provisions of this Agreement valid and
4 enforceable. Should any provision of this Agreement be declared or determined by this Court to be
5 unenforceable, illegal, or otherwise invalid, the legality, validity, or enforceability of the remaining
6 parts, terms, or provisions shall not be affected, and the illegal, unenforceable, or invalid part, term,
7 or provision shall be deemed not part of this Agreement.

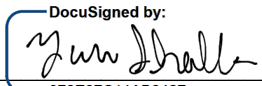
8 BB. No Unalleged Claims. Plaintiffs and Class Counsel represent that they do not
9 currently intend to pursue any claims against the Released Parties, including, but not limited to, any
10 and all claims relating to or arising from Plaintiffs' employment with Defendant, regardless of
11 whether Class Counsel is currently aware of any facts or legal theories upon which any claims or
12 causes of action could be brought against Released Parties, including those facts or legal theories
13 alleged in the operative complaint in this Action. The Parties further acknowledge, understand and
14 agree that this representation is essential to the Agreement and that this Agreement would not have
15 been entered into were it not for this representation.

16 CC. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
17 class certification for purposes of this settlement only.

18 DD. No Admissions by the Parties. Plaintiff has claimed and continue to claim that the
19 Released Claims have merit and give rise to liability on the part of Defendant. Defendant claims
20 that the Released Claims have no merit and do not give rise to liability. This Agreement is a
21 compromise of disputed claims. Nothing contained in this Agreement and no documents referred
22 to and no action taken to carry out this Agreement may be construed or used as an admission by or
23 against the Defendant or Plaintiffs or Class Counsel as to the merits or lack thereof of the claims
24 asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and
25 shall bear its/his own attorney's fees and costs.

1 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

2
3 DATED: 6/23/2021

DocuSigned by:

DIONYSIOS SHALLAN
072E87C11AB8427...

4
5
6 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

7
8 DATED:

SCOTT'S SACRAMENTO RIVER, INC.

9
10 Printed Name:

11
12 By:

13 Its:

1 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

2

3 DATED: _____

4

DIONYSIOS SHALLAN

5

6 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

7

8 DATED: _____

9

SCOTT'S SACRAMENTO RIVER, INC.

10

ALAN P. IRVINE

11

Printed Name:

12



13

By: President

14

Its:

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EXHIBIT A



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #26701

March 24, 2020

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

SCOTT'S SACRAMENTO RIVER, INC c/o ALAN IRVINE 1020 CAPTAINS TABLE RD #3 SACRAMENTO CA 95822	GORDON REES SCULLY MANSUKHANI Mark S. Posard Annette L. Rose 3 Parkcenter Drive, Suite 200 Sacramento, CA 92825
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Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiffs DIONYSIOS YURI SHALLAN ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against SCOTT'S SACRAMENTO RIVER, INC. ("Defendant"). Plaintiff was employed by Defendant in California since 2014 as a nonexempt employee entitled to overtime and the legally required meal and rest breaks and payment for all time worked under Defendants' control, including minimum wage and overtime worked, as well as to other compensation in the form of service charges, gratuities and tips. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, including minimum wage and overtime wages, and for all of their missed meal and rest breaks. Furthermore, Defendant routinely added anywhere from 18%-22% service charges to its food and beverage banquet bills. These service charges were in the form of automatic charges which customers are required to pay, and which reasonably appear to be gratuities for the service staff. It is typical and customary in the hospitality industry that establishments impose gratuity charges in the range of 18%-22% of the food and beverage bill. Thus, when customers have paid these charges, it is reasonable for them to have believed they were gratuities to be paid to the service staff. Indeed, because many of these charges are depicted to customers, and the custom in the food and beverage industry that gratuities in the range of 18%-22% are paid for food and beverage service, customers have paid these charges reasonably believing they were remitted to the service staff. However, Defendant has not remitted the total proceeds of these gratuities to the non-managerial employees who serve the food and beverages. Instead, Defendant has a policy and

practice of retaining for itself a portion or the entirety of these gratuities and/or using a portion of these gratuities to pay managers or other non-service employees. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to them, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226, 226(a), 226.7, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
5850 Oberlin Drive Suite 230A
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203

JCL LAW FIRM, APC
Jean-Claude Lapuyade, Esq.
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619) 599-8292
Facsimile: (619) 599-8291

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO**

DIONYSIOS YURI SHALLAN, an
individual, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

v.

SCOTT'S SACRAMENTO RIVER, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351; and,
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiff DIONYSIOS YURI SHALLAN (“PLAINTIFF”), individuals, on behalf of
2 himself and all other similarly situated current and former employees, alleges on information and
3 belief, except for his own acts and knowledge which are based on personal knowledge, the
4 following:

5 **INTRODUCTION**

6 1. Defendant SCOTT'S SACRAMENTO RIVER, INC. (“DEFENDANT”) is a
7 California corporation that at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business in the state of California.

9 2. DEFENDANT manages and operates a restaurant and banquet hall.

10 3. PLAINTIFF has been employed by DEFENDANT since 2014 and has been at all
11 times classified by DEFENDANTS as a non-exempt employee, paid in whole or in part on an
12 hourly basis.

13 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
14 defined as all individuals who are or previously were employed by DEFENDANT in California
15 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
16 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
17 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
18 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
(\$5,000,000.00)

19 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
20 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
21 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
22 which failed to lawfully compensate these employees. DEFENDANT’s uniform policy and
23 practice alleged herein is an unlawful, unfair and deceptive business practice whereby
24 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of
25 the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS
26 seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named
27 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
28

1 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
2 equitable relief.

3 6. The true names and capacities, whether individual, corporate, subsidiary,
4 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
5 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
6 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this First Amended
7 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
8 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
9 alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive,
10 are responsible in some manner for one or more of the events and happenings that proximately
11 caused the injuries and damages hereinafter alleged.

12 7. The agents, servants and/or employees of the Defendants and each of them acting
13 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
14 agent, servant and/or employee of the Defendants, and personally participated in the conduct
15 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
16 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
17 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
18 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
19 Defendants' agents, servants and/or employees.

20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
22 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
23 meaning the time during which an employee is subject to the control of an employer, including
24 all the time the employee is suffered or permitted to work. From time to time DEFENDANT
25 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all
26 the time they were under DEFENDANT's control. Specifically, DEFENDANT required
27 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty
28 meal break. PLAINTIFF were from time to time interrupted by work assignments, including

1 assisting with customer service needs and banquet service issues. Additionally, PLAINTIFF and
2 CALIFORNIA CLASS Members were required by DEFENDANT to clock out of
3 DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT as
4 required to meet DEFENDANT's job requirements. DEFENDANT required PLAINTIFF and
5 CALIFORNIA CLASS Members to clock out of DEFENDANT's timekeeping system and
6 perform job tasks assigned by DEFENDANT, all while not being paid by DEFENDANT. As a
7 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage,
8 overtime wage compensation, and meal break wages, by working without their time being
9 correctly recorded and without compensation at the applicable rates. DEFENDANT's uniform
10 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
11 time worked, is evidenced by DEFENDANT's business records. As a result, the PLAINTIFF and
12 other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
13 regularly working without their time being accurately recorded and without compensation at the
14 applicable minimum wage and overtime rates. DEFENDANT knew or should have known that
15 PLAINTIFF and other CALIFORNIA CLASS Members were working off the clock and were not
16 being paid their correct minimum wage and overtime compensation.

17 9. In violation of the applicable sections of the California Labor Code and the
18 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
19 matter of company policy, practice and procedure, intentionally and knowingly failed to
20 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for all overtime
21 worked. This uniform policy and practice of DEFENDANT is intended to purposefully avoid the
22 payment of overtime compensation as required by California law which allowed DEFENDANT
23 to illegally profit and gain an unfair advantage over competitors who complied with the law. To
24 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
25 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

26 10. As a result of his rigorous work schedule, PLAINTIFF and other CALIFORNIA
27 CLASS Members was from time to time unable to take off duty meal breaks and was not fully
28 relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were

1 required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift
2 without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF
3 and CALIFORNIA CLASS Members with a second off-duty meal period from time to time in
4 which these employees were required by DEFENDANT to work ten (10) hours of work.
5 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks
6 without the correct meal premium compensation and in accordance with DEFENDANT's strict
7 corporate policy and practice.

8 11. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
9 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
10 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
11 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a
12 first and second rest period of at least ten (10) minutes for some shifts worked of between six (6)
13 and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
14 shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members
15 were also not provided with one hour wages in lieu thereof. As a result of his rigorous work
16 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their
17 proper rest periods by DEFENDANT and DEFENDANT's managers.

18 12. When PLAINTIFF and other CALIFORNIA CLASS Members worked missed
19 meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other members
20 of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
21 among other things, the correct overtime rate for overtime worked, including, work performed in
22 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct
23 penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every
24 employer shall furnish each of his or her employees with an accurate itemized wage statement in
25 writing showing, among other things, gross wages earned and all applicable hourly rates in effect
26 during the pay period and the corresponding amount of time worked at each hourly rate. Aside,
27 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
28 an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

1 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of the
2 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226

3 13. During the CALIFORNIA CLASS period, pursuant to DEFENDANT's company
4 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
5 forfeit gratuities left for them by customers to DEFENDANT's agents who provided no service
6 to the customers that resulted in the gratuity. DEFENDANT routinely added anywhere from
7 18%-22% service charges to its food and beverage banquet bills. These service charges were in
8 the form of automatic charges which customers are required to pay, and which reasonably appear
9 to be gratuities for the service staff. It is typical and customary in the hospitality industry that
10 establishments impose gratuity charges in the range of 18%-22% of the food and beverage bill.
11 Thus, when customers have paid these charges, it is reasonable for them to have believed they
12 were gratuities to be paid to the service staff. Indeed, because many of these charges are depicted
13 to customers, and the custom in the food and beverage industry that gratuities in the range of 18%-
14 22% are paid for food and beverage service, customers have paid these charges reasonably
15 believing they were remitted to the service staff. However, DEFENDANT has not remitted the
16 total proceeds of these gratuities to the non-managerial employees who serve the food and
17 beverages. Instead, DEFENDANT has a policy and practice of retaining for itself a portion or the
18 entirety of these gratuities and/or using a portion of these gratuities to pay managers or other non-
19 service employees. As a result, PLAINTIFF and CALIFORNIA CLASS Members have not
20 received the total proceeds of the gratuities, to which they are entitled to under California law

21 14. DEFENDANT is generally in the business of owning and operating a restaurant
22 and a banquet hall. In addition, DEFENDANT also provides banquet services to large groups,
23 such as wedding parties and other banquet events. During the CALIFORNIA CLASS PERIOD,
24 PLAINTIFF and other CALIFORNIA CLASS Members were in the "chain of service" and earned
25 gratuities based on their service for their customers. However, PLAINTIFF and CALIFORNIA
26 CLASS Members were forced to forfeit portions of their gratuities, which said gratuities were
27 kept by DEFENDANT and their agents who were not in the chain of service from which the
28 gratuity resulted. PLAINTIFF and other CALIFORNIA CLASS Members contend that any

1 gratuities kept by DEFENDANT were illegal and in violation of California law because
2 PLAINTIFF and other CALIFORNIA CLASS Members, not DEFENDANT, provided the
3 service for to whom the gratuity should have been paid.

4 15. California Labor Code § 351 establishes the requirements for an employer
5 regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees.
6 California Labor Code § 351 expressly prohibits employers and their agents from collecting,
7 taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the term
8 “gratuity” as including any money that has been paid or given or left for an employee by a patron
9 of a business over and above the actual amount due the business for services rendered or for
10 goods, food, drink or articles sold or served to such patron. Labor Code § 353 requires employers
11 to keep accurate records of all gratuities they receive, directly or indirectly.

12 16. Although tip pooling is not expressly prohibited by the Labor Code, employees
13 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
14 By distributing tips to DEFENDANT directly and to their agents who were not in the “chain of
15 service,” DEFENDANT has violated and continue to violate the legal requirements for handling
16 pooled tips and violated the holding in *O’Grady v. Merchant Exchange Productions, Inc.*, No.
17 A148513 (Court of Appeals of California, First District, Division Two.).

18 17. By reason of this uniform conduct applicable to PLAINTIFF and all
19 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
20 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
21 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
22 calculate and record the overtime worked by PLAINTIFFS and other CALIFORNIA CLASS
23 Members. The proper calculation of these employees’ overtime is the DEFENDANT’s burden.
24 As a result of DEFENDANT’s intentional disregard of the obligation to meet this burden,
25 DEFENDANT failed to properly calculate and/or pay all required overtime compensation for
26 work performed by the members of the CALIFORNIA CLASS and violated the California Labor
27 Code and regulations promulgated thereunder as herein alleged.

1 18. Specifically as to PLAINTIFF pay, from time to time, PLAINTIFF would clock
2 out during what was supposed to be his off-duty meal breaks, as well as at the end of his shifts,
3 and continue to perform work as required by DEFENDANT. As a result, DEFENDANT failed
4 to pay PLAINTIFF all minimum and overtime wages due to them for all time spent under
5 DEFENDANT's control. PLAINTIFF was also from time to time unable to take off duty meal
6 and rest breaks and was not fully relieved of duty for his meal periods. PLAINTIFF was required
7 to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without
8 receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a
9 second off-duty meal period from time to time in which they were required by DEFENDANT to
10 work ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest breaks without the
11 correct premium compensation and in accordance with DEFENDANT's strict corporate policy
12 and practice. DEFENDANT also provided PLAINTIFF with a paystub that failed to accurately
13 display PLAINTIFF's correct overtime pay and payments for missed meal and rest periods for
14 certain pay periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully
15 paid PLAINTIFF the compensation still owed to him or any penalty wages owed to him under
16 Cal. Lab. Code § 203. The amount in controversy for PLAINTIFFS individually does not exceed
17 the sum or value of \$75,000.

18 19. DEFENDANT as a matter of corporate policy, practice and procedure,
19 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and
20 the other CALIFORNIA CLASS Members for required business expenses incurred by
21 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
22 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
23 are required to indemnify employees for all expenses incurred in the course and scope of their
24 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
25 employee for all necessary expenditures or losses incurred by the employee in direct consequence
26 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
27 even though unlawful, unless the employee, at the time of obeying the directions, believed them
28 to be unlawful."

1 20. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
2 Members, as a business expense, were required by DEFENDANTS to use personal cellular phones
3 as a result of and in furtherance of their job duties as employees for DEFENDANT but were not
4 reimbursed or indemnified by DEFENDANT for the cost associated with the use of the personal
5 cellular phones for DEFENDANT's benefit. As a result, in the course of their employment with
6 DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed
7 business expenses which included, but were not limited to, costs related to the use of their personal
8 cellular phones all on behalf of and for the benefit of DEFENDANT. The amount in controversy
9 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

10 **JURISDICTION AND VENUE**

11 21. This Court has jurisdiction over this Action pursuant to California Code of Civil
12 Procedure, Section 410.10.

13 22. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times
15 maintained offices and facilities in this County and/or conducts substantial business in this
16 County, and (ii) committed the wrongful conduct herein alleged in this County against
17 CALIFORNIA CLASS Members.

18 **THE CALIFORNIA CLASS**

19 23. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
20 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
21 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
22 individuals who are or previously were employed by DEFENDANT in California and classified
23 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
24 on the date four (4) years prior to the filing of this Complaint and ending on the date as determined
25 by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the
26 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
27 (\$5,000,000.00).
28

1 24. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

4 25. The California Legislature has commanded that “all wages... ..earned by any
5 person in any employment are due and payable twice during each calendar month, on days
6 designated in advance by the employer as the regular paydays”, and further that “[a]ny work in
7 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .
8 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay
9 for an employee.” (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),
10 however, is statutorily authorized to “establish exemptions from the requirement that an overtime
11 rate of compensation be paid... ..for executive, administrative, and professional employees,
12 provided [inter alia] that the employee is primarily engaged in duties that meet the test of the
13 exemption, [and] customarily and regularly exercises discretion and independent judgment in
14 performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members
15 of the CALIFORNIA CLASS and/or the CALIFORNIA LABOR SUB-CLASS qualify for
16 exemption from the above requirements.

17 26. DEFENDANT, as a matter of company policy, practice and procedure, and in
18 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
19 requirements, and the applicable provisions of California law, intentionally, knowingly, and
20 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly pay
21 overtime compensation for overtime worked by PLAINTIFF and the other members of the
22 CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required
23 employees to perform this work and permitted or suffered to permit this work.

24 27. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
25 CLASS Member is paid for all overtime worked. DEFENDANT, however, as a matter of uniform
26 and systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
27 PERIOD and still fails to have in place a policy or practice to ensure that each and every
28 CALIFORNIA CLASS Member is paid overtime for all overtime worked. This common business

1 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
2 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
3 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

4 28. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
5 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
6 employee for all overtime worked, as required by California Labor Code §§ 204 and 510, *et seq.*

7 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
8 CLASS Members is impracticable.

9 30. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
10 California law by:

- 11 a. Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
12 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
13 deceptively having in place company policies, practices and procedures
14 that uniformly and systematically failed to record and pay PLAINTIFF and
15 the other members of the CALIFORNIA CLASS for all time worked,
16 including minimum wages owed and overtime wages owed for work
17 performed by these employees;
- 18 b. Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
20 failing to provide mandatory meal and/or rest break premium pay to
21 PLAINTIFF and the CALIFORNIA CLASS members; and
- 22 c. Committing an act of unfair competition in violation of the UCL, by failing
23 to provide the PLAINTIFF and the other members of the CALIFORNIA
24 CLASS with all gratuities in violation of Cal. Lab. Code Section 351;

25 31. This Class Action meets the statutory prerequisites for the maintenance of a Class
26 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 1 a. The persons who comprise the CALIFORNIA CLASS are so numerous
2 that the joinder of all such persons is impracticable and the disposition of
3 their claims as a class will benefit the parties and the Court;
- 4 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues
5 that are raised in this Complaint are common to the CALIFORNIA CLASS
6 will apply uniformly to every member of the CALIFORNIA CLASS;
- 7 c. The claims of the representative PLAINTIFF are typical of the claims of
8 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other
9 members of the CALIFORNIA CLASS, were subjected to the uniform
10 employment practices of DEFENDANT and were and are non-exempt
11 employees paid on an hourly basis who have been subjected to the
12 DEFENDANT's practice and policy which fails to pay overtime wages due
13 to the CALIFORNIA CLASS for all overtime worked by the
14 CALIFORNIA CLASS and thereby systematically underpays overtime
15 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained
16 economic injury as a result of DEFENDANT's employment practices.
17 PLAINTIFF and the members of the CALIFORNIA CLASS were and are
18 similarly or identically harmed by the same unlawful, deceptive, unfair and
19 pervasive pattern of misconduct engaged in by DEFENDANT; and,
- 20 d. The representative PLAINTIFF will fairly and adequately represent and
21 protect the interest of the CALIFORNIA CLASS, and has retained counsel
22 who are competent and experienced in Class Action litigation. There are
23 no material conflicts between the claims of the representative PLAINTIFF
24 and the members of the CALIFORNIA CLASS that would make class
25 certification inappropriate. Counsel for the CALIFORNIA CLASS will
26 vigorously assert the claims of all CALIFORNIA CLASS Members.

27 32. In addition to meeting the statutory prerequisites to a Class Action, this action is
28 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 1 a. Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution of
3 separate actions by individual members of the CALIFORNIA CLASS will
4 create the risk of:
- 5 i. Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA CLASS; and/or
- 9 ii. Adjudication with respect to individual members of the
10 CALIFORNIA CLASS which would as a practical matter be
11 dispositive of interests of the other members not party to the
12 adjudication or substantially impair or impede their ability to
13 protect their interests.
- 14 b. The parties opposing the CALIFORNIA CLASS have acted or refused to
15 act on grounds generally applicable to the CALIFORNIA CLASS, making
16 appropriate class-wide relief with respect to the CALIFORNIA CLASS as
17 a whole in that DEFENDANT uniformly failed to pay all wages due.
18 Including the correct overtime rate, for all worked by the members of the
19 CALIFORNIA CLASS as required by law;
- 20 i. With respect to the First Cause of Action, the final relief on behalf
21 of the CALIFORNIA CLASS sought does not relate exclusively to
22 restitution because through this claim PLAINTIFF seeks
23 declaratory relief holding that the DEFENDANT's policy and
24 practices constitute unfair competition, along with declaratory
25 relief, injunctive relief, and incidental equitable relief as may be
26 necessary to prevent and remedy the conduct declared to constitute
27 unfair competition;
28

1 c. Common questions of law and fact exist as to the members of the
2 CALIFORNIA CLASS, with respect to the practices and violations of
3 California law as listed above, and predominate over any question affecting
4 only individual CALIFORNIA CLASS Members, and a Class Action is
5 superior to other available methods for the fair and efficient adjudication
6 of the controversy, including consideration of:

7 i. The interests of the members of the CALIFORNIA CLASS in
8 individually controlling the prosecution or defense of separate
9 actions in that the substantial expense of individual actions will be
10 avoided to recover the relatively small amount of economic losses
11 sustained by the individual CALIFORNIA CLASS Members when
12 compared to the substantial expense and burden of individual
13 prosecution of this litigation;

14 d. Class certification will obviate the need for unduly duplicative litigation
15 that would create the risk of:

16 1. Inconsistent or varying adjudications with respect to
17 individual members of the CALIFORNIA CLASS, which
18 would establish incompatible standards of conduct for the
19 DEFENDANT; and/or

20 2. Adjudications with respect to individual members of the
21 CALIFORNIA CLASS would as a practical matter be
22 dispositive of the interests of the other members not parties
23 to the adjudication or substantially impair or impede their
24 ability to protect their interests;

25 e. In the context of wage litigation because a substantial number of individual
26 CALIFORNIA CLASS Members will avoid asserting their legal rights out
27 of fear of retaliation by DEFENDANT, which may adversely affect an
28 individual's job with DEFENDANT or with a subsequent employer, the

1 Class Action is the only means to assert their claims through a
2 representative; and

- 3 f. class action is superior to other available methods for the fair and efficient
4 adjudication of this litigation because class treatment will obviate the need
5 for unduly and unnecessary duplicative litigation that is likely to result in
6 the absence of certification of this action pursuant to Cal. Code of Civ.
7 Proc. § 382.

8 33. This Court should permit this action to be maintained as a Class Action pursuant
9 to Cal. Code of Civ. Proc. § 382 because:

- 10 a. The questions of law and fact common to the CALIFORNIA CLASS
11 predominate over any question affecting only individual CALIFORNIA
12 CLASS Members because the DEFENDANT's employment practices are
13 uniform and systematically applied with respect to the CALIFORNIA
14 CLASS;
- 15 b. A Class Action is superior to any other available method for the fair and
16 efficient adjudication of the claims of the members of the CALIFORNIA
17 CLASS because in the context of employment litigation a substantial
18 number of individual CALIFORNIA CLASS Members will avoid
19 asserting their rights individually out of fear of retaliation or adverse
20 impact on their employment;
- 21 c. The members of the CALIFORNIA CLASS are so numerous that it is
22 impractical to bring all members of the CALIFORNIA CLASS before the
23 Court;
- 24 d. PLAINTIFF and the other CALIFORNIA CLASS Members, will not be
25 able to obtain effective and economic legal redress unless the action is
26 maintained as a Class Action;
- 27 e. There is a community of interest in obtaining appropriate legal and
28 equitable relief for the acts of unfair competition, statutory violations and

1 other improprieties, and in obtaining adequate compensation for the
2 damages and injuries which DEFENDANT's actions have inflicted upon
3 the CALIFORNIA CLASS;

- 4 f. There is a community of interest in ensuring that the combined assets of
5 DEFENDANT are sufficient to adequately compensate the members of the
6 CALIFORNIA CLASS for the injuries sustained;
- 7 g. DEFENDANT has acted or refused to act on grounds generally applicable
8 to the CALIFORNIA CLASS, thereby making final class-wide relief
9 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 10 h. The members of the CALIFORNIA CLASS are readily ascertainable from
11 the business records of DEFENDANT; and
- 12 i. Class treatment provides manageable judicial treatment calculated to bring
13 an efficient and rapid conclusion to all litigation of all wage and hour
14 related claims arising out of the conduct of DEFENDANT as to the
15 members of the CALIFORNIA CLASS.

16 34. DEFENDANT maintains records from which the Court can ascertain and identify
17 by job title each of DEFENDANT's employees who as have been systematically, intentionally
18 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein
19 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
20 of similarly situated employees when they have been identified.

21 **THE CALIFORNIA LABOR SUB-CLASS**

22 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
23 Eighth, and Ninth causes of Action on behalf of a California sub-class, defined as all members of
24 the CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
25 SUB-CLASS") at any time during the period beginning on the date three (3) years prior to the
26 filing of the complaint and ending on the date as determined by the Court (the "CALIFORNIA
27 LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in
28

1 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under
2 five million dollars (\$5,000,000.00).

3 36. DEFENDANT, as a matter of company policy, practice and procedure, and in
4 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
5 requirements, and the applicable provisions of California law, intentionally, knowingly, and
6 willfully, engaged in a practice whereby DEFENDANT failed to pay overtime compensation for
7 the overtime worked, even though DEFENDANT enjoyed the benefit of this work, required
8 employees to perform this work and permitted or suffered to permit this work. To the extent
9 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
10 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
11 accordingly.

12 37. DEFENDANT maintains records from which the Court can ascertain and identify
13 by name and job title, each of DEFENDANT’s employees who have been systematically,
14 intentionally and uniformly subjected to DEFENDANT’s company policy, practices and
15 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any
16 additional job titles of similarly situated employees when they have been identified.

17 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
18 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

19 39. Common questions of law and fact exist as to members of the CALIFORNIA
20 LABOR SUB-CLASS, including, but not limited, to the following:

- 21 a. Whether DEFENDANT unlawfully failed to pay overtime compensation
22 to members of the CALIFORNIA LABOR SUB-CLASS in violation of
23 the California Labor Code and California regulations and the applicable
24 California Wage Order;
- 25 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are
26 entitled to overtime compensation for overtime worked under the overtime
27 pay requirements of California law;

- c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- e. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- f. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- g. Whether DEFENDANT's conduct was willful.

40. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all the correct pay for meal period violations and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate and applicable overtime

1 rates in effect during the pay period and the corresponding amount of time
2 worked at each overtime rate by the employee;

- 3 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
4 when an employee is discharged or quits from employment, the employer
5 must pay the employee all wages due without abatement, by failing to
6 tender full payment and/or restitution of wages owed or in the manner
7 required by California law to the members of the CALIFORNIA LABOR
8 SUB-CLASS who have terminated their employment; and
9 f. Violating Cal. Lab. Code § 351 by failing to pay PLAINTIFF and the
10 CALIFORNIA LABOR SUB-CLASS all gratuities.

11 41. This Class Action meets the statutory prerequisites for the maintenance of a Class
12 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 13 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
14 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
15 Members is impracticable and the disposition of their claims as a class will
16 benefit the parties and the Court;
17 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues
18 that are raised in this Complaint are common to the CALIFORNIA
19 LABOR SUB-CLASS and will apply uniformly to every member of the
20 CALIFORNIA LABOR SUB-CLASS;
21 c. The claims of the representative PLAINTIFF are typical of the claims of
22 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
23 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
24 was a non-exempt employee paid on an hourly basis and entitled to
25 gratuities who has been subjected to the DEFENDANT's practice and
26 policy which failed to pay overtime wages and gratuities due to the
27 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic
28 injury as a result of DEFENDANT's employment practices. PLAINTIFF

1 and the members of the CALIFORNIA LABOR SUB-CLASS were and
2 are similarly or identically harmed by the same unlawful, deceptive, unfair
3 and pervasive pattern of misconduct engaged in by DEFENDANT; and
4 d. The representative PLAINTIFF will fairly and adequately represent and
5 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
6 retained counsel who are competent and experienced in Class Action
7 litigation. There are no material conflicts between the claims of the
8 representative PLAINTIFF and the members of the CALIFORNIA
9 LABOR SUB-CLASS that would make class certification inappropriate.
10 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
11 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

12 42. In addition to meeting the statutory prerequisites to a Class Action, this action is
13 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

14 a. Without class certification and determination of declaratory, injunctive,
15 statutory and other legal questions within the class format, prosecution of
16 separate actions by individual members of the CALIFORNIA LABOR
17 SUB-CLASS will create the risk of:

18 i. Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA LABOR SUB-CLASS which
20 would establish incompatible standards of conduct for the parties
21 opposing the CALIFORNIA LABOR SUB-CLASS; or,

22 ii. Adjudication with respect to individual members of the
23 CALIFORNIA LABOR SUB-CLASS which would as a practical
24 matter be dispositive of interests of the other members not party to
25 the adjudication or substantially impair or impede their ability to
26 protect their interests.

27 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
28 or refused to act on grounds generally applicable to the CALIFORNIA

1 LABOR SUB-CLASS, making appropriate class-wide relief with respect
2 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
3 DEFENDANT uniformly failed to pay all wages due. Including the correct
4 overtime rate, for all overtime worked by the members of the
5 CALIFORNIA LABOR SUB-CLASS as required by law;

6 c. Common questions of law and fact predominate as to the members of the
7 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
8 violations of California Law as listed above, and predominate over any
9 question affecting only individual CALIFORNIA LABOR SUB-CLASS
10 Members, and a Class Action is superior to other available methods for the
11 fair and efficient adjudication of the controversy, including consideration
12 of:

13 i. The interests of the members of the CALIFORNIA LABOR SUB-
14 CLASS in individually controlling the prosecution or defense of
15 separate actions in that the substantial expense of individual actions
16 will be avoided to recover the relatively small amount of economic
17 losses sustained by the individual CALIFORNIA LABOR SUB-
18 CLASS Members when compared to the substantial expense and
19 burden of individual prosecution of this litigation;

20 ii. Class certification will obviate the need for unduly duplicative
21 litigation that would create the risk of:

22 1. Inconsistent or varying adjudications with respect to
23 individual members of the CALIFORNIA LABOR SUB-
24 CLASS, which would establish incompatible standards of
25 conduct for the DEFENDANT; and/or,

26 2. Adjudications with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS would as a practical
28 matter be dispositive of the interests of the other members

not parties to the adjudication or substantially impair or
impede their ability to protect their interests.

- d. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- e. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

43. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

- d. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

3 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 44. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 45. DEFENDANTS are a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

10 46. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
12 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
13 as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair competition may
15 be enjoined in any court of competent jurisdiction. The court may make such orders or
16 judgments, including the appointment of a receiver, as may be necessary to prevent the
17 use or employment by any person of any practice which constitutes unfair competition, as
18 defined in this chapter, or as may be necessary to restore to any person in interest any
19 money or property, real or personal, which may have been acquired by means of such
20 unfair competition. (Cal. Bus. & Prof. Code § 17203).

21 47. By the conduct alleged herein, DEFENDANTS have engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 204, 206.5, 226.7, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, for which
25 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
26 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
27 competition, including restitution of wages wrongfully withheld.

28 48. By the conduct alleged herein, DEFENDANT’S practices were unlawful and
unfair in that these practices violated public policy, were immoral, unethical, oppressive
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203

1 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 49. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,
4 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

7 50. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
8 fraudulent in that DEFENDANT’S uniform policy and practice failed to provide the legally
9 mandated meal and rest periods and the required amount of compensation for missed meal and
10 rest periods, and failed to pay overtime correctly, due to a systematic business practice that cannot
11 be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
12 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
13 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
14 restitution of wages wrongfully withheld.

15 51. By the conduct alleged herein, DEFENDANT’S practices were also unfair and
16 deceptive in that DEFENDANT’S uniform policies, practices and procedures failed to provide
17 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

18 52. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
19 fraudulent in that DEFENDANTS’ uniform policy and practice failed to pay PLAINTIFF, and
20 other members of the CALIFORNIA CLASS, all gratuities due to them due to a systematic policy
21 of keeping these gratuities for persons and/or entities not in the chain of service that cannot be
22 justified pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
23 requirements in violation of Cal. Bus. Code §§17200, *et seq.*, and for which this Court should
24 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code §17203, including
25 restitution of wages wrongfully withheld.

26 53. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
28 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

3 54. PLAINTIFF further demands on behalf of herself and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
5 not timely provided as required by law.

6 55. By and through the unlawful and unfair business practices described herein,
7 DEFENDANT ha obtained valuable property, money and services from PLAINTIFF and the
8 other members of the CALIFORNIA CLASS, including earned gratuity wages and earned wages
9 for all overtime worked, and has deprived them of valuable rights and benefits guaranteed by law
10 and contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as
11 to allow DEFENDANTS to unfairly compete against competitors who comply with the law.

12 56. All the acts described herein as violations of, among other things, the Industrial
13 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
14 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
15 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
16 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

17 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
18 and do, seek such relief as may be necessary to restore to them the money and property which
19 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
20 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
21 business practices, including earned but unpaid wages for all overtime worked.

22 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
23 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
24 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
25 engaging in any unlawful and unfair business practices in the future.

26 59. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANT is restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**
7 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

8 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
9 **Defendants)**

10 60. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
11 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
12 this ended Complaint.

13 61. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
14 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code
15 and the Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately
16 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

17 62. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
18 policy, an employer must timely pay its employees for all hours worked.

19 63. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
20 commission is the minimum wage to be paid to employees, and the payment of a wage less than
21 the minimum so fixed is unlawful.

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

24 65. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
25 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
26 of time they work. As set forth herein, DEFENDANTS' uniform policy and practice was to
27 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS.

1 66. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
3 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
5 pay.

6 67. In committing these violations of the California Labor Code, DEFENDANT
7 inaccurately calculated the correct time worked and consequently underpaid the actual time
8 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
9 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
10 benefits in violation of the California Labor Code, the Industrial Welfare Commission
11 requirements and other applicable laws and regulations.

12 68. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
14 the correct minimum wage compensation for their time worked for DEFENDANT.

15 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
17 they were entitled to, constituting a failure to pay all earned wages.

18 70. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
19 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR
21 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
22 presently unknown to them and which will be ascertained according to proof at trial.

23 71. DEFENDANT knew or should have known that PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
25 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
26 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
27 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
minimum wages for their time worked.

1 72. In performing the acts and practices herein alleged in violation of California labor
2 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
3 time worked and provide them with requisite compensation, DEFENDANT acted and continues
4 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
5 the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal rights,
6 or the consequences to them, and with the despicable intent of depriving them of their property
7 and legal rights, and otherwise causing them injury in order to increase company profits at the
8 expense of these employees.

9 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
11 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
12 the California Labor Code and/or other applicable statutes. To the extent minimum wage
13 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
14 who have terminated their employment, DEFENDANT'S conduct also violates Labor Code §§
15 201 and/or 202, and therefore these individuals are also entitled to waiting time penalties under
16 Cal. Lab. Code §203, which penalties are sought herein on behalf of these CALIFORNIA LABOR
17 SUB-CLASS Members. DEFENDANT'S conduct as alleged herein was willful, intentional and
18 not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
19 are entitled to seek and recover statutory costs.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

22 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

23 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
24 **Defendants)**

25 74. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
26 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
27 this Complaint.

28 75. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code

1 and the Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately
2 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
3 CALIFORNIA LABOR SUB-CLASS and DEFENDANT’S failure to properly compensate the
4 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
5 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

6 76. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
7 policy, an employer must timely pay its employees for all hours worked.

8 77. Cal. Lab. Code § 510 further provides that employees in California shall not be
9 employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek
10 unless they receive additional compensation beyond their regular wages in amount specified by
11 law.

12 78. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
13 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
14 Code § 1198 further states that the employment of an employee for longer hours than those fixed
15 by the Industrial Welfare Commission is unlawful.

16 79. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
17 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
18 of overtime worked and correct applicable overtime rate for the amount of overtime they worked.
19 As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and
20 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the
21 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to
22 pay these employees the correct applicable overtime wages for all overtime worked.

23 80. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
24 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
25 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
26 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
27 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
28 in any workweek.

1 81. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
3 consequently underpaid the actual time worked by PLAINTIFF and other members of the
4 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
5 payment of all earned wages, and other benefits in violation of the California Labor Code, the
6 Industrial Welfare Commission requirements and other applicable laws and regulations.

7 82. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
9 full compensation for all overtime worked.

10 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
11 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
12 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
14 bargaining agreement that would preclude the causes of action contained herein this Complaint.
15 Rather, PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA LABOR SUB-
16 CLASS based on DEFENDANT'S violations of non-negotiable, non-waivable rights provided by
the State of California.

17 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
18 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
19 they were entitled to, constituting a failure to pay all earned wages.

20 85. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
22 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
23 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
24 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
25 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT's
26 business records and witnessed by employees.

27 86. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
28 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

1 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR
2 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
3 presently unknown to them and which will be ascertained according to proof at trial.

4 87. DEFENDANT knew or should have known that PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
6 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
7 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
8 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
9 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable
10 overtime rate.

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

19 89. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
21 interest, statutory costs, as well as the assessment of any statutory penalties against
22 DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable
23 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
24 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT'S
25 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be
26 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein
27 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as
28 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

90. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

91. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT'S failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT'S business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT'S strict corporate policy and practice.

92. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

93. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

1
2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

4 **(Cal. Lab. Code §§ 226.7 & 512)**

5 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
6 **Defendants)**

7 94. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
8 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
9 this Complaint.

10 95. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
11 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
12 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
13 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
14 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
15 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
16 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided
17 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
18 and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper
19 rest periods by DEFENDANT and DEFENDANT'S managers.

20 96. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
21 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
22 CLASS Members who were not provided a rest period, in accordance with the applicable Wage
23 Order, one additional hour of compensation at each employee's regular rate of pay for each
24 workday that rest period was not provided.

25 97. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
27 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
28

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES

(Cal. Lab. Code §2802)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

98. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

99. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

100. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT'S benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones, all on behalf of and for the benefit of DEFENDANT'S. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones to respond to work related issues. DEFENDANT'S uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from same. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

1 101. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
2 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
3 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at
4 the statutory rate and costs under Cal. Lab. Code § 2802.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

7 **(Cal. Lab. Code §226)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
9 **Defendants)**

10 102. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
11 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
12 this Complaint.

13 103. Cal. Labor Code § 226 provides that an employer must furnish employees with an
14 “accurate itemized” statement in writing showing:

- 15 (1) gross wages earned,
16 (2) total hours worked by the employee, except for any employee whose compensation is
17 solely based on a salary and who is exempt from payment of overtime under subdivision
18 (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
19 (3) the number of piecerate units earned and any applicable piece rate if the employee is
20 paid on a piece-rate basis,
21 (4) all deductions, provided that all deductions made on written orders of the employee
22 may be aggregated and shown as one item,
23 (5) net wages earned,
24 (6) the inclusive dates of the period for which the employee is paid,
25 (7) the name of the employee and his or her social security number, except that by January
26 1, 2008, only the last four digits of his or her social security number or an employee
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1 identification number other than a social security number may be shown on the itemized
2 statement,

3 (8) the name and address of the legal entity that is the employer, and (9) all applicable
4 hourly rates in effect during the pay period and the corresponding number of hours worked
5 at each hourly rate by the employee.

6
7 104. When DEFENDANT did not accurately record PLAINTIFF's and other
8 CALIFORNIA CLASS Members' missed meal and rest breaks, did not pay the correct overtime
9 wages, and failed to pay gratuities, DEFENDANT violated Cal. Lab. Code § 226 in that
10 DEFENDANT failed to provide an accurate wage statement in writing that properly and
11 accurately itemizes all missed meal and rest periods and reporting time wages owed to
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby also
13 failed to set forth the correct wages earned by the employees.

14 105. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
15 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
16 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating
17 the correct wages for all missed meal and rest breaks and the amount of employment taxes which
18 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
19 Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may
20 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
21 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
22 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
23 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
24 member of the CALIFORNIA LABOR SUB-CLASS herein).

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EIGHTH CAUSE OF ACTION
FAILURE TO PAY WAGES WHEN DUE
(Cal. Lab. Code §§201, 202, 203)
(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

106. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

107. Cal. Lab. Code § 200 provides that:

As used in this article:(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

108. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

109. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

110. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR SUB-CLASS Members’ employment contract.

111. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty

1 from the due date thereof at the same rate until paid or until an action therefor is
2 commenced; but the wages shall not continue for more than 30 days.

3 112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
4 Members terminated and DEFENDANT has not tendered payment of overtime wages, to these
5 employees who actually worked overtime, as required by law.

6 113. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
7 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF
8 demands up to thirty days of pay as penalty for not paying all wages due at time of termination
9 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
10 PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory
11 costs as allowed by law.

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO PAY STATUTORY GRATUITIES**

14 **(Cal. Lab. Code § 351 et seq.)**

15 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
16 Defendants)**

17 114. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
18 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
19 paragraphs of this Complaint.

20 115. DEFENDANT's conduct, as set forth above, in failing to remit to non-
21 managerial banquet service employees the total proceeds of gratuities added to banquet
22 customers' bills constitutes a violation of California Labor Code Section 351. This violation is
23 enforceable pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code 17200
24 et seq. DEFENDANT's conduct constitutes unlawful, unfair, and/or fraudulent business acts or
25 practices, in that DEFENDANT has violated California Labor Code Section 351 in not remitting
26 to the non-managerial service employees the total gratuities that were charged to customers.

27 116. As a proximate result of the aforementioned violations, PLAINTIFFS and
28 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to

1 proof at trial, including the loss of gratuities to which they were entitled. and seek all wages
2 earned and due, interest, penalties, expenses and costs of suit.

3 **TENTH CAUSE OF ACTION**

4 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

5 **[Cal. Lab. Code §§ 2698 et seq.]**

6 **(Alleged by PLAINTIFF against all Defendants)**

7 117. PLAINTIFF reallege and incorporate by this reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

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

18 119. PLAINTIFF, and such persons that may be added from time to time who satisfy
19 the requirements and exhaust the administrative procedures under the Private Attorney General
20 Act, bring this Representative Action on behalf of the State of California with respect to himself
21 and all individuals who are or previously were employed by DEFENDANT and classified as non-
22 exempt employees in California during the time period of March 19, 2020 until the present (the
23 "AGGRIEVED EMPLOYEES").

24 120. On March 19, 2020, PLAINTIFF gave written notice by certified mail to the Labor
25 and Workforce Development Agency (the "Agency") and the employer of the specific
26 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
27 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
28 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,

1 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
2 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
3 AGGRIEVED EMPLOYEES as herein defined.

4 121. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
7 and provide legally required meal and rest periods, (c) failed to pay wages when due, (d) failed
8 to pay overtime compensation, (e) failed to pay minimum wages, and (f) failed to pay gratuities,
9 all in violation of the applicable Labor Code sections listed in Labor Code Sections §§ 201, 202,
10 203, 204, 226(a), 226.7, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, and the applicable
11 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
12 PLAINTIFFS hereby seek recovery of civil penalties as prescribed by the Labor Code Private
13 Attorney General Act of 2004 as the representatives of the State of California for the illegal
14 conduct perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

15 122. Some or all of the conduct and violations alleged herein occurred during the PAGA
16 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
17 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
18 affected other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30
19 Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal. App.
20 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor
21 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
22 committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

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3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for a judgment against each Defendants, as follows:

5
6 1. On behalf of the CALIFORNIA CLASS:

- 7 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
8 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
9 b. An order temporarily, preliminarily and permanently enjoining and restraining
10 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
11 c. An order requiring DEFENDANTS to pay all wages and all sums unlawfully
12 withheld from compensation due to PLAINTIFF and the other members of the
13 CALIFORNIA CLASS; and
14 d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
15 for restitution of the sums incidental to DEFENDANTS' violations due to
16 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

17 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
19 Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
20 class action pursuant to Cal. Code of Civ. Proc. § 382;
21 b. Compensatory damages, according to proof at trial, including compensatory
22 damages for minimum, overtime compensation, and gratuities due PLAINTIFF and
23 the other members of the CALIFORNIA LABOR SUB-CLASS, during the
24 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at
25 the statutory rate;
26 c. 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 each member of the
28 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226

- d. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
- e. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order; and,
- f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

4. On all Claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and,
- c. An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §218.5, §226 and/or § 1198.

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiff

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DEMAND FOR A JURY TRIAL

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

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiff

EXHIBIT B

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

SCOTT'S SACRAMENTO RIVER, INC., a California corporation; and
DOES 1 through 50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

DIONYSIOS YURI SHALLAN, an individual, on behalf of himself and
on behalf of all persons similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED/ENDORSED

NOV 16 2020

By: K. Johnson
Deputy Clerk

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Sacramento Superior Court, Gordon D. Schaber Courthouse
720 9th Street
Sacramento, CA 95814

CASE NUMBER:

(Número del Caso):

34-2020-00288630

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291

JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE:

(Fecha)

NOV 16 2020

Clerk, by

(Secretario)

K. JOHNSON

, Deputy

(Adjunto)

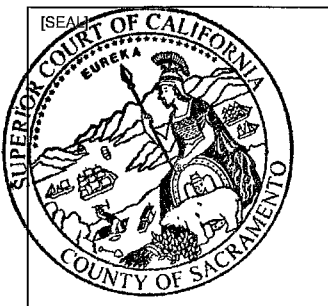
(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):



1 **ZAKAY LAW GROUP, APLC**
2 Shani O. Zakay (State Bar #277924)
3 5850 Oberlin Drive Suite 230A
4 San Diego, CA 92121
5 Telephone: (619) 255-9047
6 Facsimile: (858) 404-9203

7 **JCL LAW FIRM, APC**
8 Jean-Claude Lapuyade, Esq.
9 3990 Old Town Avenue, Suite C204
10 San Diego, CA 92110
11 Telephone: (619) 599-8292
12 Facsimile: (619) 599-8291

13 Attorneys for Plaintiff

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SACRAMENTO**

16 DIONYSIOS YURI SHALLAN, an
17 individual, on behalf of himself and on
18 behalf of all persons similarly situated,

19 Plaintiff,

20 v.

21 SCOTT'S SACRAMENTO RIVER, INC., a
22 California corporation; and DOES 1 through
23 50, inclusive,

24 Defendants.

FILED/ENDORSED

NOV 05 2020

By: K. Johnson
Deputy Clerk

Case No: **34-2020-00288630**

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351; and,
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiff DIONYSIOS YURI SHALLAN (“PLAINTIFF”), individuals, on behalf of
2 himself and all other similarly situated current and former employees, alleges on information and
3 belief, except for his own acts and knowledge which are based on personal knowledge, the
4 following:

5 **INTRODUCTION**

6 1. Defendant SCOTT'S SACRAMENTO RIVER, INC. (“DEFENDANT”) is a
7 California corporation that at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business in the state of California.

9 2. DEFENDANT manages and operates a restaurant and banquet hall.

10 3. PLAINTIFF has been employed by DEFENDANT since 2014 and has been at all
11 times classified by DEFENDANTS as a non-exempt employee, paid in whole or in part on an
12 hourly basis.

13 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
14 defined as all individuals who are or previously were employed by DEFENDANT in California
15 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
16 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
17 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
18 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
(\$5,000,000.00)

19 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
20 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
21 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
22 which failed to lawfully compensate these employees. DEFENDANT’s uniform policy and
23 practice alleged herein is an unlawful, unfair and deceptive business practice whereby
24 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of
25 the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS
26 seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named
27 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
28

1 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
2 equitable relief.

3 6. The true names and capacities, whether individual, corporate, subsidiary,
4 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
5 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
6 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this First Amended
7 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
8 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
9 alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive,
10 are responsible in some manner for one or more of the events and happenings that proximately
11 caused the injuries and damages hereinafter alleged.

12 7. The agents, servants and/or employees of the Defendants and each of them acting
13 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
14 agent, servant and/or employee of the Defendants, and personally participated in the conduct
15 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
16 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
17 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
18 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
19 Defendants' agents, servants and/or employees.

20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
22 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
23 meaning the time during which an employee is subject to the control of an employer, including
24 all the time the employee is suffered or permitted to work. From time to time DEFENDANT
25 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all
26 the time they were under DEFENDANT's control. Specifically, DEFENDANT required
27 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty
28 meal break. PLAINTIFF were from time to time interrupted by work assignments, including

1 assisting with customer service needs and banquet service issues. Additionally, PLAINTIFF and
2 CALIFORNIA CLASS Members were required by DEFENDANT to clock out of
3 DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT as
4 required to meet DEFENDANT's job requirements. DEFENDANT required PLAINTIFF and
5 CALIFORNIA CLASS Members to clock out of DEFENDANT's timekeeping system and
6 perform job tasks assigned by DEFENDANT, all while not being paid by DEFENDANT. As a
7 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage,
8 overtime wage compensation, and meal break wages, by working without their time being
9 correctly recorded and without compensation at the applicable rates. DEFENDANT's uniform
10 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
11 time worked, is evidenced by DEFENDANT's business records. As a result, the PLAINTIFF and
12 other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
13 regularly working without their time being accurately recorded and without compensation at the
14 applicable minimum wage and overtime rates. DEFENDANT knew or should have known that
15 PLAINTIFF and other CALIFORNIA CLASS Members were working off the clock and were not
16 being paid their correct minimum wage and overtime compensation.

17 9. In violation of the applicable sections of the California Labor Code and the
18 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
19 matter of company policy, practice and procedure, intentionally and knowingly failed to
20 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for all overtime
21 worked. This uniform policy and practice of DEFENDANT is intended to purposefully avoid the
22 payment of overtime compensation as required by California law which allowed DEFENDANT
23 to illegally profit and gain an unfair advantage over competitors who complied with the law. To
24 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
25 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

26 10. As a result of his rigorous work schedule, PLAINTIFF and other CALIFORNIA
27 CLASS Members was from time to time unable to take off duty meal breaks and was not fully
28 relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were

1 required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift
2 without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF
3 and CALIFORNIA CLASS Members with a second off-duty meal period from time to time in
4 which these employees were required by DEFENDANT to work ten (10) hours of work.
5 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks
6 without the correct meal premium compensation and in accordance with DEFENDANT's strict
7 corporate policy and practice.

8 11. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
9 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
10 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
11 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a
12 first and second rest period of at least ten (10) minutes for some shifts worked of between six (6)
13 and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
14 shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members
15 were also not provided with one hour wages in lieu thereof. As a result of his rigorous work
16 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their
17 proper rest periods by DEFENDANT and DEFENDANT's managers.

18 12. When PLAINTIFF and other CALIFORNIA CLASS Members worked missed
19 meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other members
20 of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
21 among other things, the correct overtime rate for overtime worked, including, work performed in
22 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct
23 penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every
24 employer shall furnish each of his or her employees with an accurate itemized wage statement in
25 writing showing, among other things, gross wages earned and all applicable hourly rates in effect
26 during the pay period and the corresponding amount of time worked at each hourly rate. Aside,
27 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
28 an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

1 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of the
2 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226

3 13. During the CALIFORNIA CLASS period, pursuant to DEFENDANT's company
4 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
5 forfeit gratuities left for them by customers to DEFENDANT's agents who provided no service
6 to the customers that resulted in the gratuity. DEFENDANT routinely added anywhere from
7 18%-22% service charges to its food and beverage banquet bills. These service charges were in
8 the form of automatic charges which customers are required to pay, and which reasonably appear
9 to be gratuities for the service staff. It is typical and customary in the hospitality industry that
10 establishments impose gratuity charges in the range of 18%-22% of the food and beverage bill.
11 Thus, when customers have paid these charges, it is reasonable for them to have believed they
12 were gratuities to be paid to the service staff. Indeed, because many of these charges are depicted
13 to customers, and the custom in the food and beverage industry that gratuities in the range of 18%-
14 22% are paid for food and beverage service, customers have paid these charges reasonably
15 believing they were remitted to the service staff. However, DEFENDANT has not remitted the
16 total proceeds of these gratuities to the non-managerial employees who serve the food and
17 beverages. Instead, DEFENDANT has a policy and practice of retaining for itself a portion or the
18 entirety of these gratuities and/or using a portion of these gratuities to pay managers or other non-
19 service employees. As a result, PLAINTIFF and CALIFORNIA CLASS Members have not
20 received the total proceeds of the gratuities, to which they are entitled to under California law

21 14. DEFENDANT is generally in the business of owning and operating a restaurant
22 and a banquet hall. In addition, DEFENDANT also provides banquet services to large groups,
23 such as wedding parties and other banquet events. During the CALIFORNIA CLASS PERIOD,
24 PLAINTIFF and other CALIFORNIA CLASS Members were in the "chain of service" and earned
25 gratuities based on their service for their customers. However, PLAINTIFF and CALIFORNIA
26 CLASS Members were forced to forfeit portions of their gratuities, which said gratuities were
27 kept by DEFENDANT and their agents who were not in the chain of service from which the
28 gratuity resulted. PLAINTIFF and other CALIFORNIA CLASS Members contend that any

1 gratuities kept by DEFENDANT were illegal and in violation of California law because
2 PLAINTIFF and other CALIFORNIA CLASS Members, not DEFENDANT, provided the
3 service for to whom the gratuity should have been paid.

4 15. California Labor Code § 351 establishes the requirements for an employer
5 regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees.
6 California Labor Code § 351 expressly prohibits employers and their agents from collecting,
7 taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the term
8 “gratuity” as including any money that has been paid or given or left for an employee by a patron
9 of a business over and above the actual amount due the business for services rendered or for
10 goods, food, drink or articles sold or served to such patron. Labor Code § 353 requires employers
11 to keep accurate records of all gratuities they receive, directly or indirectly.

12 16. Although tip pooling is not expressly prohibited by the Labor Code, employees
13 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
14 By distributing tips to DEFENDANT directly and to their agents who were not in the “chain of
15 service,” DEFENDANT has violated and continue to violate the legal requirements for handling
16 pooled tips and violated the holding in *O’Grady v. Merchant Exchange Productions, Inc.*, No.
17 A148513 (Court of Appeals of California, First District, Division Two.).

18 17. By reason of this uniform conduct applicable to PLAINTIFF and all
19 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
20 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
21 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
22 calculate and record the overtime worked by PLAINTIFFS and other CALIFORNIA CLASS
23 Members. The proper calculation of these employees’ overtime is the DEFENDANT’s burden.
24 As a result of DEFENDANT’s intentional disregard of the obligation to meet this burden,
25 DEFENDANT failed to properly calculate and/or pay all required overtime compensation for
26 work performed by the members of the CALIFORNIA CLASS and violated the California Labor
27 Code and regulations promulgated thereunder as herein alleged.

1 18. Specifically as to PLAINTIFF pay, from time to time, PLAINTIFF would clock
2 out during what was supposed to be his off-duty meal breaks, as well as at the end of his shifts,
3 and continue to perform work as required by DEFENDANT. As a result, DEFENDANT failed
4 to pay PLAINTIFF all minimum and overtime wages due to them for all time spent under
5 DEFENDANT's control. PLAINTIFF was also from time to time unable to take off duty meal
6 and rest breaks and was not fully relieved of duty for his meal periods. PLAINTIFF was required
7 to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without
8 receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a
9 second off-duty meal period from time to time in which they were required by DEFENDANT to
10 work ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest breaks without the
11 correct premium compensation and in accordance with DEFENDANT's strict corporate policy
12 and practice. DEFENDANT also provided PLAINTIFF with a paystub that failed to accurately
13 display PLAINTIFF's correct overtime pay and payments for missed meal and rest periods for
14 certain pay periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully
15 paid PLAINTIFF the compensation still owed to him or any penalty wages owed to him under
16 Cal. Lab. Code § 203. The amount in controversy for PLAINTIFFS individually does not exceed
17 the sum or value of \$75,000.

18 19. DEFENDANT as a matter of corporate policy, practice and procedure,
19 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and
20 the other CALIFORNIA CLASS Members for required business expenses incurred by
21 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
22 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
23 are required to indemnify employees for all expenses incurred in the course and scope of their
24 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
25 employee for all necessary expenditures or losses incurred by the employee in direct consequence
26 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
27 even though unlawful, unless the employee, at the time of obeying the directions, believed them
28 to be unlawful."

1 20. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
2 Members, as a business expense, were required by DEFENDANTS to use personal cellular phones
3 as a result of and in furtherance of their job duties as employees for DEFENDANT but were not
4 reimbursed or indemnified by DEFENDANT for the cost associated with the use of the personal
5 cellular phones for DEFENDANT's benefit. As a result, in the course of their employment with
6 DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed
7 business expenses which included, but were not limited to, costs related to the use of their personal
8 cellular phones all on behalf of and for the benefit of DEFENDANT. The amount in controversy
9 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

10 **JURISDICTION AND VENUE**

11 21. This Court has jurisdiction over this Action pursuant to California Code of Civil
12 Procedure, Section 410.10.

13 22. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times
15 maintained offices and facilities in this County and/or conducts substantial business in this
16 County, and (ii) committed the wrongful conduct herein alleged in this County against
17 CALIFORNIA CLASS Members.

18 **THE CALIFORNIA CLASS**

19 23. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
20 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
21 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
22 individuals who are or previously were employed by DEFENDANT in California and classified
23 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
24 on the date four (4) years prior to the filing of this Complaint and ending on the date as determined
25 by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the
26 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
27 (\$5,000,000.00).
28

1 24. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

4 25. The California Legislature has commanded that “all wages... ..earned by any
5 person in any employment are due and payable twice during each calendar month, on days
6 designated in advance by the employer as the regular paydays”, and further that “[a]ny work in
7 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .
8 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay
9 for an employee.” (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),
10 however, is statutorily authorized to “establish exemptions from the requirement that an overtime
11 rate of compensation be paid... ..for executive, administrative, and professional employees,
12 provided [inter alia] that the employee is primarily engaged in duties that meet the test of the
13 exemption, [and] customarily and regularly exercises discretion and independent judgment in
14 performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members
15 of the CALIFORNIA CLASS and/or the CALIFORNIA LABOR SUB-CLASS qualify for
16 exemption from the above requirements.

17 26. DEFENDANT, as a matter of company policy, practice and procedure, and in
18 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
19 requirements, and the applicable provisions of California law, intentionally, knowingly, and
20 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly pay
21 overtime compensation for overtime worked by PLAINTIFF and the other members of the
22 CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required
23 employees to perform this work and permitted or suffered to permit this work.

24 27. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
25 CLASS Member is paid for all overtime worked. DEFENDANT, however, as a matter of uniform
26 and systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
27 PERIOD and still fails to have in place a policy or practice to ensure that each and every
28 CALIFORNIA CLASS Member is paid overtime for all overtime worked. This common business

1 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
2 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
3 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

4 28. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
5 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
6 employee for all overtime worked, as required by California Labor Code §§ 204 and 510, *et seq.*

7 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
8 CLASS Members is impracticable.

9 30. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
10 California law by:

- 11 a. Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
12 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
13 deceptively having in place company policies, practices and procedures
14 that uniformly and systematically failed to record and pay PLAINTIFF and
15 the other members of the CALIFORNIA CLASS for all time worked,
16 including minimum wages owed and overtime wages owed for work
17 performed by these employees;
- 18 b. Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
20 failing to provide mandatory meal and/or rest break premium pay to
21 PLAINTIFF and the CALIFORNIA CLASS members; and
- 22 c. Committing an act of unfair competition in violation of the UCL, by failing
23 to provide the PLAINTIFF and the other members of the CALIFORNIA
24 CLASS with all gratuities in violation of Cal. Lab. Code Section 351;

25 31. This Class Action meets the statutory prerequisites for the maintenance of a Class
26 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, were subjected to the uniform employment practices of DEFENDANT and were and are non-exempt employees paid on an hourly basis who have been subjected to the DEFENDANT's practice and policy which fails to pay overtime wages due to the CALIFORNIA CLASS for all overtime worked by the CALIFORNIA CLASS and thereby systematically underpays overtime compensation to the CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

32. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 1 a. Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution of
3 separate actions by individual members of the CALIFORNIA CLASS will
4 create the risk of:
- 5 i. Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA CLASS; and/or
- 9 ii. Adjudication with respect to individual members of the
10 CALIFORNIA CLASS which would as a practical matter be
11 dispositive of interests of the other members not party to the
12 adjudication or substantially impair or impede their ability to
13 protect their interests.
- 14 b. The parties opposing the CALIFORNIA CLASS have acted or refused to
15 act on grounds generally applicable to the CALIFORNIA CLASS, making
16 appropriate class-wide relief with respect to the CALIFORNIA CLASS as
17 a whole in that DEFENDANT uniformly failed to pay all wages due.
18 Including the correct overtime rate, for all worked by the members of the
19 CALIFORNIA CLASS as required by law;
- 20 i. With respect to the First Cause of Action, the final relief on behalf
21 of the CALIFORNIA CLASS sought does not relate exclusively to
22 restitution because through this claim PLAINTIFF seeks
23 declaratory relief holding that the DEFENDANT's policy and
24 practices constitute unfair competition, along with declaratory
25 relief, injunctive relief, and incidental equitable relief as may be
26 necessary to prevent and remedy the conduct declared to constitute
27 unfair competition;
28

1 c. Common questions of law and fact exist as to the members of the
2 CALIFORNIA CLASS, with respect to the practices and violations of
3 California law as listed above, and predominate over any question affecting
4 only individual CALIFORNIA CLASS Members, and a Class Action is
5 superior to other available methods for the fair and efficient adjudication
6 of the controversy, including consideration of:

7 i. The interests of the members of the CALIFORNIA CLASS in
8 individually controlling the prosecution or defense of separate
9 actions in that the substantial expense of individual actions will be
10 avoided to recover the relatively small amount of economic losses
11 sustained by the individual CALIFORNIA CLASS Members when
12 compared to the substantial expense and burden of individual
13 prosecution of this litigation;

14 d. Class certification will obviate the need for unduly duplicative litigation
15 that would create the risk of:

16 1. Inconsistent or varying adjudications with respect to
17 individual members of the CALIFORNIA CLASS, which
18 would establish incompatible standards of conduct for the
19 DEFENDANT; and/or

20 2. Adjudications with respect to individual members of the
21 CALIFORNIA CLASS would as a practical matter be
22 dispositive of the interests of the other members not parties
23 to the adjudication or substantially impair or impede their
24 ability to protect their interests;

25 e. In the context of wage litigation because a substantial number of individual
26 CALIFORNIA CLASS Members will avoid asserting their legal rights out
27 of fear of retaliation by DEFENDANT, which may adversely affect an
28 individual's job with DEFENDANT or with a subsequent employer, the

1 Class Action is the only means to assert their claims through a
2 representative; and

- 3 f. class action is superior to other available methods for the fair and efficient
4 adjudication of this litigation because class treatment will obviate the need
5 for unduly and unnecessary duplicative litigation that is likely to result in
6 the absence of certification of this action pursuant to Cal. Code of Civ.
7 Proc. § 382.

8 33. This Court should permit this action to be maintained as a Class Action pursuant
9 to Cal. Code of Civ. Proc. § 382 because:

- 10 a. The questions of law and fact common to the CALIFORNIA CLASS
11 predominate over any question affecting only individual CALIFORNIA
12 CLASS Members because the DEFENDANT's employment practices are
13 uniform and systematically applied with respect to the CALIFORNIA
14 CLASS;
- 15 b. A Class Action is superior to any other available method for the fair and
16 efficient adjudication of the claims of the members of the CALIFORNIA
17 CLASS because in the context of employment litigation a substantial
18 number of individual CALIFORNIA CLASS Members will avoid
19 asserting their rights individually out of fear of retaliation or adverse
20 impact on their employment;
- 21 c. The members of the CALIFORNIA CLASS are so numerous that it is
22 impractical to bring all members of the CALIFORNIA CLASS before the
23 Court;
- 24 d. PLAINTIFF and the other CALIFORNIA CLASS Members, will not be
25 able to obtain effective and economic legal redress unless the action is
26 maintained as a Class Action;
- 27 e. There is a community of interest in obtaining appropriate legal and
28 equitable relief for the acts of unfair competition, statutory violations and

1 other improprieties, and in obtaining adequate compensation for the
2 damages and injuries which DEFENDANT's actions have inflicted upon
3 the CALIFORNIA CLASS;

- 4 f. There is a community of interest in ensuring that the combined assets of
5 DEFENDANT are sufficient to adequately compensate the members of the
6 CALIFORNIA CLASS for the injuries sustained;
- 7 g. DEFENDANT has acted or refused to act on grounds generally applicable
8 to the CALIFORNIA CLASS, thereby making final class-wide relief
9 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 10 h. The members of the CALIFORNIA CLASS are readily ascertainable from
11 the business records of DEFENDANT; and
- 12 i. Class treatment provides manageable judicial treatment calculated to bring
13 an efficient and rapid conclusion to all litigation of all wage and hour
14 related claims arising out of the conduct of DEFENDANT as to the
15 members of the CALIFORNIA CLASS.

16 34. DEFENDANT maintains records from which the Court can ascertain and identify
17 by job title each of DEFENDANT's employees who as have been systematically, intentionally
18 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein
19 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
20 of similarly situated employees when they have been identified.

21 **THE CALIFORNIA LABOR SUB-CLASS**

22 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
23 Eighth, and Ninth causes of Action on behalf of a California sub-class, defined as all members of
24 the CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
25 SUB-CLASS") at any time during the period beginning on the date three (3) years prior to the
26 filing of the complaint and ending on the date as determined by the Court (the "CALIFORNIA
27 LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in
28

1 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under
2 five million dollars (\$5,000,000.00).

3 36. DEFENDANT, as a matter of company policy, practice and procedure, and in
4 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
5 requirements, and the applicable provisions of California law, intentionally, knowingly, and
6 willfully, engaged in a practice whereby DEFENDANT failed to pay overtime compensation for
7 the overtime worked, even though DEFENDANT enjoyed the benefit of this work, required
8 employees to perform this work and permitted or suffered to permit this work. To the extent
9 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
10 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
11 accordingly.

12 37. DEFENDANT maintains records from which the Court can ascertain and identify
13 by name and job title, each of DEFENDANT’s employees who have been systematically,
14 intentionally and uniformly subjected to DEFENDANT’s company policy, practices and
15 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any
16 additional job titles of similarly situated employees when they have been identified.

17 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
18 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

19 39. Common questions of law and fact exist as to members of the CALIFORNIA
20 LABOR SUB-CLASS, including, but not limited, to the following:

- 21 a. Whether DEFENDANT unlawfully failed to pay overtime compensation
22 to members of the CALIFORNIA LABOR SUB-CLASS in violation of
23 the California Labor Code and California regulations and the applicable
24 California Wage Order;
- 25 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are
26 entitled to overtime compensation for overtime worked under the overtime
27 pay requirements of California law;

- c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- e. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- f. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- g. Whether DEFENDANT's conduct was willful.

40. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all the correct pay for meal period violations and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate and applicable overtime

1 rates in effect during the pay period and the corresponding amount of time
2 worked at each overtime rate by the employee;

- 3 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
4 when an employee is discharged or quits from employment, the employer
5 must pay the employee all wages due without abatement, by failing to
6 tender full payment and/or restitution of wages owed or in the manner
7 required by California law to the members of the CALIFORNIA LABOR
8 SUB-CLASS who have terminated their employment; and
9 f. Violating Cal. Lab. Code § 351 by failing to pay PLAINTIFF and the
10 CALIFORNIA LABOR SUB-CLASS all gratuities.

11 41. This Class Action meets the statutory prerequisites for the maintenance of a Class
12 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 13 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
14 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
15 Members is impracticable and the disposition of their claims as a class will
16 benefit the parties and the Court;
17 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues
18 that are raised in this Complaint are common to the CALIFORNIA
19 LABOR SUB-CLASS and will apply uniformly to every member of the
20 CALIFORNIA LABOR SUB-CLASS;
21 c. The claims of the representative PLAINTIFF are typical of the claims of
22 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
23 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
24 was a non-exempt employee paid on an hourly basis and entitled to
25 gratuities who has been subjected to the DEFENDANT's practice and
26 policy which failed to pay overtime wages and gratuities due to the
27 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic
28 injury as a result of DEFENDANT's employment practices. PLAINTIFF

1 and the members of the CALIFORNIA LABOR SUB-CLASS were and
2 are similarly or identically harmed by the same unlawful, deceptive, unfair
3 and pervasive pattern of misconduct engaged in by DEFENDANT; and
4 d. The representative PLAINTIFF will fairly and adequately represent and
5 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
6 retained counsel who are competent and experienced in Class Action
7 litigation. There are no material conflicts between the claims of the
8 representative PLAINTIFF and the members of the CALIFORNIA
9 LABOR SUB-CLASS that would make class certification inappropriate.
10 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
11 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

12 42. In addition to meeting the statutory prerequisites to a Class Action, this action is
13 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

14 a. Without class certification and determination of declaratory, injunctive,
15 statutory and other legal questions within the class format, prosecution of
16 separate actions by individual members of the CALIFORNIA LABOR
17 SUB-CLASS will create the risk of:

18 i. Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA LABOR SUB-CLASS which
20 would establish incompatible standards of conduct for the parties
21 opposing the CALIFORNIA LABOR SUB-CLASS; or,

22 ii. Adjudication with respect to individual members of the
23 CALIFORNIA LABOR SUB-CLASS which would as a practical
24 matter be dispositive of interests of the other members not party to
25 the adjudication or substantially impair or impede their ability to
26 protect their interests.

27 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
28 or refused to act on grounds generally applicable to the CALIFORNIA

1 LABOR SUB-CLASS, making appropriate class-wide relief with respect
2 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
3 DEFENDANT uniformly failed to pay all wages due. Including the correct
4 overtime rate, for all overtime worked by the members of the
5 CALIFORNIA LABOR SUB-CLASS as required by law;

6 c. Common questions of law and fact predominate as to the members of the
7 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
8 violations of California Law as listed above, and predominate over any
9 question affecting only individual CALIFORNIA LABOR SUB-CLASS
10 Members, and a Class Action is superior to other available methods for the
11 fair and efficient adjudication of the controversy, including consideration
12 of:

13 i. The interests of the members of the CALIFORNIA LABOR SUB-
14 CLASS in individually controlling the prosecution or defense of
15 separate actions in that the substantial expense of individual actions
16 will be avoided to recover the relatively small amount of economic
17 losses sustained by the individual CALIFORNIA LABOR SUB-
18 CLASS Members when compared to the substantial expense and
19 burden of individual prosecution of this litigation;

20 ii. Class certification will obviate the need for unduly duplicative
21 litigation that would create the risk of:

22 1. Inconsistent or varying adjudications with respect to
23 individual members of the CALIFORNIA LABOR SUB-
24 CLASS, which would establish incompatible standards of
25 conduct for the DEFENDANT; and/or,

26 2. Adjudications with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS would as a practical
28 matter be dispositive of the interests of the other members

not parties to the adjudication or substantially impair or impede their ability to protect their interests.

- d. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- e. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

43. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

- 1 d. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS
2 Members, will not be able to obtain effective and economic legal redress
3 unless the action is maintained as a Class Action;
- 4 e. There is a community of interest in obtaining appropriate legal and
5 equitable relief for the acts of unfair competition, statutory violations and
6 other improprieties, and in obtaining adequate compensation for the
7 damages and injuries which DEFENDANT's actions have inflicted upon
8 the CALIFORNIA LABOR SUB-CLASS;
- 9 f. There is a community of interest in ensuring that the combined assets of
10 DEFENDANT are sufficient to adequately compensate the members of the
11 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 12 g. DEFENDANT has acted or refused to act on grounds generally applicable
13 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
14 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
15 CLASS as a whole;
- 16 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
17 ascertainable from the business records of DEFENDANT. The
18 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
19 CLASS Members classified as non-exempt employees during the
20 CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 21 i. Class treatment provides manageable judicial treatment calculated to bring
22 an efficient and rapid conclusion to all litigation of all wage and hour
23 related claims arising out of the conduct of DEFENDANT as to the
24 members of the CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

3 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 44. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 45. DEFENDANTS are a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

10 46. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
12 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
13 as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair competition may
15 be enjoined in any court of competent jurisdiction. The court may make such orders or
16 judgments, including the appointment of a receiver, as may be necessary to prevent the
17 use or employment by any person of any practice which constitutes unfair competition, as
18 defined in this chapter, or as may be necessary to restore to any person in interest any
19 money or property, real or personal, which may have been acquired by means of such
20 unfair competition. (Cal. Bus. & Prof. Code § 17203).

21 47. By the conduct alleged herein, DEFENDANTS have engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 204, 206.5, 226.7, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, for which
25 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
26 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
27 competition, including restitution of wages wrongfully withheld.

28 48. By the conduct alleged herein, DEFENDANT’S practices were unlawful and
unfair in that these practices violated public policy, were immoral, unethical, oppressive
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203

1 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 49. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,
4 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

7 50. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
8 fraudulent in that DEFENDANT’S uniform policy and practice failed to provide the legally
9 mandated meal and rest periods and the required amount of compensation for missed meal and
10 rest periods, and failed to pay overtime correctly, due to a systematic business practice that cannot
11 be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
12 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
13 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
14 restitution of wages wrongfully withheld.

15 51. By the conduct alleged herein, DEFENDANT’S practices were also unfair and
16 deceptive in that DEFENDANT’S uniform policies, practices and procedures failed to provide
17 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

18 52. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
19 fraudulent in that DEFENDANTS’ uniform policy and practice failed to pay PLAINTIFF, and
20 other members of the CALIFORNIA CLASS, all gratuities due to them due to a systematic policy
21 of keeping these gratuities for persons and/or entities not in the chain of service that cannot be
22 justified pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
23 requirements in violation of Cal. Bus. Code §§17200, *et seq.*, and for which this Court should
24 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code §17203, including
25 restitution of wages wrongfully withheld.

26 53. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
28 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

3 54. PLAINTIFF further demands on behalf of herself and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
5 not timely provided as required by law.

6 55. By and through the unlawful and unfair business practices described herein,
7 DEFENDANT ha obtained valuable property, money and services from PLAINTIFF and the
8 other members of the CALIFORNIA CLASS, including earned gratuity wages and earned wages
9 for all overtime worked, and has deprived them of valuable rights and benefits guaranteed by law
10 and contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as
11 to allow DEFENDANTS to unfairly compete against competitors who comply with the law.

12 56. All the acts described herein as violations of, among other things, the Industrial
13 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
14 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
15 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
16 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

17 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
18 and do, seek such relief as may be necessary to restore to them the money and property which
19 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
20 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
21 business practices, including earned but unpaid wages for all overtime worked.

22 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
23 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
24 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
25 engaging in any unlawful and unfair business practices in the future.

26 59. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANT is restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**
7 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

8 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
9 **Defendants)**

10 60. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
11 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
12 this ended Complaint.

13 61. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
14 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code
15 and the Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately
16 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

17 62. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
18 policy, an employer must timely pay its employees for all hours worked.

19 63. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
20 commission is the minimum wage to be paid to employees, and the payment of a wage less than
21 the minimum so fixed is unlawful.

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

24 65. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
25 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
26 of time they work. As set forth herein, DEFENDANTS' uniform policy and practice was to
27 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS.

1 66. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
3 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
5 pay.

6 67. In committing these violations of the California Labor Code, DEFENDANT
7 inaccurately calculated the correct time worked and consequently underpaid the actual time
8 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
9 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
10 benefits in violation of the California Labor Code, the Industrial Welfare Commission
11 requirements and other applicable laws and regulations.

12 68. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
14 the correct minimum wage compensation for their time worked for DEFENDANT.

15 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
17 they were entitled to, constituting a failure to pay all earned wages.

18 70. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
19 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR
21 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
22 presently unknown to them and which will be ascertained according to proof at trial.

23 71. DEFENDANT knew or should have known that PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
25 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
26 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
27 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
minimum wages for their time worked.

1 72. In performing the acts and practices herein alleged in violation of California labor
2 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
3 time worked and provide them with requisite compensation, DEFENDANT acted and continues
4 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
5 the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal rights,
6 or the consequences to them, and with the despicable intent of depriving them of their property
7 and legal rights, and otherwise causing them injury in order to increase company profits at the
8 expense of these employees.

9 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
11 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
12 the California Labor Code and/or other applicable statutes. To the extent minimum wage
13 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
14 who have terminated their employment, DEFENDANT'S conduct also violates Labor Code §§
15 201 and/or 202, and therefore these individuals are also entitled to waiting time penalties under
16 Cal. Lab. Code §203, which penalties are sought herein on behalf of these CALIFORNIA LABOR
17 SUB-CLASS Members. DEFENDANT'S conduct as alleged herein was willful, intentional and
18 not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
19 are entitled to seek and recover statutory costs.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

22 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

23 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
24 **Defendants)**

25 74. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
26 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
27 this Complaint.

28 75. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code

1 and the Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately
2 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
3 CALIFORNIA LABOR SUB-CLASS and DEFENDANT’S failure to properly compensate the
4 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
5 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

6 76. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
7 policy, an employer must timely pay its employees for all hours worked.

8 77. Cal. Lab. Code § 510 further provides that employees in California shall not be
9 employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek
10 unless they receive additional compensation beyond their regular wages in amount specified by
11 law.

12 78. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
13 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
14 Code § 1198 further states that the employment of an employee for longer hours than those fixed
15 by the Industrial Welfare Commission is unlawful.

16 79. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
17 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
18 of overtime worked and correct applicable overtime rate for the amount of overtime they worked.
19 As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and
20 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the
21 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to
22 pay these employees the correct applicable overtime wages for all overtime worked.

23 80. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
24 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
25 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
26 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
27 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
28 in any workweek.

1 81. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
3 consequently underpaid the actual time worked by PLAINTIFF and other members of the
4 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
5 payment of all earned wages, and other benefits in violation of the California Labor Code, the
6 Industrial Welfare Commission requirements and other applicable laws and regulations.

7 82. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
9 full compensation for all overtime worked.

10 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
11 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
12 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
14 bargaining agreement that would preclude the causes of action contained herein this Complaint.
15 Rather, PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA LABOR SUB-
16 CLASS based on DEFENDANT’S violations of non-negotiable, non-waivable rights provided by
17 the State of California.

18 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
19 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
20 they were entitled to, constituting a failure to pay all earned wages.

21 85. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
22 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
23 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
24 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
26 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT’s
27 business records and witnessed by employees.

28 86. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

1 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR
2 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
3 presently unknown to them and which will be ascertained according to proof at trial.

4 87. DEFENDANT knew or should have known that PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
6 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
7 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
8 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
9 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable
10 overtime rate.

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

19 89. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
21 interest, statutory costs, as well as the assessment of any statutory penalties against
22 DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable
23 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
24 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT'S
25 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be
26 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein
27 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as
28 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

90. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

91. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT'S failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT'S business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT'S strict corporate policy and practice.

92. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

93. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

1
2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

4 **(Cal. Lab. Code §§ 226.7 & 512)**

5 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
6 **Defendants)**

7 94. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
8 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
9 this Complaint.

10 95. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
11 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
12 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
13 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
14 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
15 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
16 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided
17 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
18 and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper
19 rest periods by DEFENDANT and DEFENDANT'S managers.

20 96. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
21 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
22 CLASS Members who were not provided a rest period, in accordance with the applicable Wage
23 Order, one additional hour of compensation at each employee's regular rate of pay for each
24 workday that rest period was not provided.

25 97. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
27 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
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1 101. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
2 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
3 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at
4 the statutory rate and costs under Cal. Lab. Code § 2802.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

7 **(Cal. Lab. Code §226)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
9 **Defendants)**

10 102. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
11 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
12 this Complaint.

13 103. Cal. Labor Code § 226 provides that an employer must furnish employees with an
14 “accurate itemized” statement in writing showing:

- 15 (1) gross wages earned,
16 (2) total hours worked by the employee, except for any employee whose compensation is
17 solely based on a salary and who is exempt from payment of overtime under subdivision
18 (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
19 (3) the number of piecerate units earned and any applicable piece rate if the employee is
20 paid on a piece-rate basis,
21 (4) all deductions, provided that all deductions made on written orders of the employee
22 may be aggregated and shown as one item,
23 (5) net wages earned,
24 (6) the inclusive dates of the period for which the employee is paid,
25 (7) the name of the employee and his or her social security number, except that by January
26 1, 2008, only the last four digits of his or her social security number or an employee
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1 identification number other than a social security number may be shown on the itemized
2 statement,

3 (8) the name and address of the legal entity that is the employer, and (9) all applicable
4 hourly rates in effect during the pay period and the corresponding number of hours worked
5 at each hourly rate by the employee.

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7 104. When DEFENDANT did not accurately record PLAINTIFF's and other
8 CALIFORNIA CLASS Members' missed meal and rest breaks, did not pay the correct overtime
9 wages, and failed to pay gratuities, DEFENDANT violated Cal. Lab. Code § 226 in that
10 DEFENDANT failed to provide an accurate wage statement in writing that properly and
11 accurately itemizes all missed meal and rest periods and reporting time wages owed to
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby also
13 failed to set forth the correct wages earned by the employees.

14 105. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
15 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
16 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating
17 the correct wages for all missed meal and rest breaks and the amount of employment taxes which
18 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
19 Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may
20 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
21 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
22 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
23 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
24 member of the CALIFORNIA LABOR SUB-CLASS herein).

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EIGHTH CAUSE OF ACTION
FAILURE TO PAY WAGES WHEN DUE
(Cal. Lab. Code §§201, 202, 203)
(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
Defendants)

106. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

107. Cal. Lab. Code § 200 provides that:

As used in this article:(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

108. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

109. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

110. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR SUB-CLASS Members’ employment contract.

111. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty

1 from the due date thereof at the same rate until paid or until an action therefor is
2 commenced; but the wages shall not continue for more than 30 days.

3 112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
4 Members terminated and DEFENDANT has not tendered payment of overtime wages, to these
5 employees who actually worked overtime, as required by law.

6 113. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
7 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF
8 demands up to thirty days of pay as penalty for not paying all wages due at time of termination
9 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
10 PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory
11 costs as allowed by law.

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO PAY STATUTORY GRATUITIES**

14 **(Cal. Lab. Code § 351 et seq.)**

15 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
16 Defendants)**

17 114. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
18 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
19 paragraphs of this Complaint.

20 115. DEFENDANT's conduct, as set forth above, in failing to remit to non-
21 managerial banquet service employees the total proceeds of gratuities added to banquet
22 customers' bills constitutes a violation of California Labor Code Section 351. This violation is
23 enforceable pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code 17200
24 et seq. DEFENDANT's conduct constitutes unlawful, unfair, and/or fraudulent business acts or
25 practices, in that DEFENDANT has violated California Labor Code Section 351 in not remitting
26 to the non-managerial service employees the total gratuities that were charged to customers.

27 116. As a proximate result of the aforementioned violations, PLAINTIFFS and
28 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to

1 proof at trial, including the loss of gratuities to which they were entitled. and seek all wages
2 earned and due, interest, penalties, expenses and costs of suit.

3 **TENTH CAUSE OF ACTION**

4 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

5 **[Cal. Lab. Code §§ 2698 et seq.]**

6 **(Alleged by PLAINTIFF against all Defendants)**

7 117. PLAINTIFF reallege and incorporate by this reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

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

18 119. PLAINTIFF, and such persons that may be added from time to time who satisfy
19 the requirements and exhaust the administrative procedures under the Private Attorney General
20 Act, bring this Representative Action on behalf of the State of California with respect to himself
21 and all individuals who are or previously were employed by DEFENDANT and classified as non-
22 exempt employees in California during the time period of March 19, 2020 until the present (the
23 "AGGRIEVED EMPLOYEES").

24 120. On March 19, 2020, PLAINTIFF gave written notice by certified mail to the Labor
25 and Workforce Development Agency (the "Agency") and the employer of the specific
26 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
27 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
28 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,

1 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
2 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
3 AGGRIEVED EMPLOYEES as herein defined.

4 121. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
7 and provide legally required meal and rest periods, (c) failed to pay wages when due, (d) failed
8 to pay overtime compensation, (e) failed to pay minimum wages, and (f) failed to pay gratuities,
9 all in violation of the applicable Labor Code sections listed in Labor Code Sections §§ 201, 202,
10 203, 204, 226(a), 226.7, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, and the applicable
11 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
12 PLAINTIFFS hereby seek recovery of civil penalties as prescribed by the Labor Code Private
13 Attorney General Act of 2004 as the representatives of the State of California for the illegal
14 conduct perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

15 122. Some or all of the conduct and violations alleged herein occurred during the PAGA
16 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
17 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
18 affected other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30
19 Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal. App.
20 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor
21 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
22 committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

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3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for a judgment against each Defendants, as follows:

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6 1. On behalf of the CALIFORNIA CLASS:

- 7 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
8 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
9 b. An order temporarily, preliminarily and permanently enjoining and restraining
10 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
11 c. An order requiring DEFENDANTS to pay all wages and all sums unlawfully
12 withheld from compensation due to PLAINTIFF and the other members of the
13 CALIFORNIA CLASS; and
14 d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
15 for restitution of the sums incidental to DEFENDANTS' violations due to
16 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

17 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
19 Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
20 class action pursuant to Cal. Code of Civ. Proc. § 382;
21 b. Compensatory damages, according to proof at trial, including compensatory
22 damages for minimum, overtime compensation, and gratuities due PLAINTIFF and
23 the other members of the CALIFORNIA LABOR SUB-CLASS, during the
24 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at
25 the statutory rate;
26 c. 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 each member of the
28 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

1 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
2 an award of costs for violation of Cal. Lab. Code § 226

- 3 d. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
4 CLASS as a penalty from the due date thereof at the same rate until paid or until an
5 action therefore is commenced, in accordance with Cal. Lab. Code § 203;
6 e. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
7 the applicable IWC Wage Order; and,
8 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
9 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
10 costs of suit.

11 3. On behalf of the State of California and with respect to all AGGRIEVED
12 EMPLOYEES:

- 13 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
14 General Act of 2004.

15 4. On all Claims:

- 16 a. An award of interest, including prejudgment interest at the legal rate;
17 b. Such other and further relief as the Court deems just and equitable; and,
18 c. An award of penalties, attorneys' fees and cost of suit, as allowable under the
19 law, including, but not limited to, pursuant to Labor Code §218.5, §226 and/or
20 § 1198.

21 DATED: November 5, 2020

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23 **JCL LAW FIRM, APC**

24 By: _____

25 Jean-Claude Lapuyade
26 Attorney for Plaintiff
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DEMAND FOR A JURY TRIAL

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

DATED: November 5, 2020

JCL LAW FIRM, APC

By: _____
Jean-Claude Lapuyade
Attorney for Plaintiff

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #26701

March 24, 2020

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

SCOTT'S SACRAMENTO RIVER, INC c/o ALAN IRVINE 1020 CAPTAINS TABLE RD #3 SACRAMENTO CA 95822	GORDON REES SCULLY MANSUKHANI Mark S. Posard Annette L. Rose 3 Parkcenter Drive, Suite 200 Sacramento, CA 92825
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Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiffs DIONYSIOS YURI SHALLAN ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against SCOTT'S SACRAMENTO RIVER, INC. ("Defendant"). Plaintiff was employed by Defendant in California since 2014 as a nonexempt employee entitled to overtime and the legally required meal and rest breaks and payment for all time worked under Defendants' control, including minimum wage and overtime worked, as well as to other compensation in the form of service charges, gratuities and tips. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, including minimum wage and overtime wages, and for all of their missed meal and rest breaks. Furthermore, Defendant routinely added anywhere from 18%-22% service charges to its food and beverage banquet bills. These service charges were in the form of automatic charges which customers are required to pay, and which reasonably appear to be gratuities for the service staff. It is typical and customary in the hospitality industry that establishments impose gratuity charges in the range of 18%-22% of the food and beverage bill. Thus, when customers have paid these charges, it is reasonable for them to have believed they were gratuities to be paid to the service staff. Indeed, because many of these charges are depicted to customers, and the custom in the food and beverage industry that gratuities in the range of 18%-22% are paid for food and beverage service, customers have paid these charges reasonably believing they were remitted to the service staff. However, Defendant has not remitted the total proceeds of these gratuities to the non-managerial employees who serve the food and beverages. Instead, Defendant has a policy and

practice of retaining for itself a portion or the entirety of these gratuities and/or using a portion of these gratuities to pay managers or other non-service employees. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to them, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226, 226(a), 226.7, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
5850 Oberlin Drive Suite 230A
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203

JCL LAW FIRM, APC
Jean-Claude Lapuyade, Esq.
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619) 599-8292
Facsimile: (619) 599-8291

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO**

DIONYSIOS YURI SHALLAN, an
individual, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

v.

SCOTT'S SACRAMENTO RIVER, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351; and,
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiff DIONYSIOS YURI SHALLAN (“PLAINTIFF”), individuals, on behalf of
2 himself and all other similarly situated current and former employees, alleges on information and
3 belief, except for his own acts and knowledge which are based on personal knowledge, the
4 following:

5 **INTRODUCTION**

6 1. Defendant SCOTT'S SACRAMENTO RIVER, INC. (“DEFENDANT”) is a
7 California corporation that at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business in the state of California.

9 2. DEFENDANT manages and operates a restaurant and banquet hall.

10 3. PLAINTIFF has been employed by DEFENDANT since 2014 and has been at all
11 times classified by DEFENDANTS as a non-exempt employee, paid in whole or in part on an
12 hourly basis.

13 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
14 defined as all individuals who are or previously were employed by DEFENDANT in California
15 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
16 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
17 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
18 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
(\$5,000,000.00)

19 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
20 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
21 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
22 which failed to lawfully compensate these employees. DEFENDANT’s uniform policy and
23 practice alleged herein is an unlawful, unfair and deceptive business practice whereby
24 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of
25 the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS
26 seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named
27 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
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1 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
2 equitable relief.

3 6. The true names and capacities, whether individual, corporate, subsidiary,
4 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
5 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
6 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this First Amended
7 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
8 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
9 alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive,
10 are responsible in some manner for one or more of the events and happenings that proximately
11 caused the injuries and damages hereinafter alleged.

12 7. The agents, servants and/or employees of the Defendants and each of them acting
13 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
14 agent, servant and/or employee of the Defendants, and personally participated in the conduct
15 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
16 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
17 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
18 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
19 Defendants' agents, servants and/or employees.

20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
22 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
23 meaning the time during which an employee is subject to the control of an employer, including
24 all the time the employee is suffered or permitted to work. From time to time DEFENDANT
25 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all
26 the time they were under DEFENDANT's control. Specifically, DEFENDANT required
27 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty
28 meal break. PLAINTIFF were from time to time interrupted by work assignments, including

1 assisting with customer service needs and banquet service issues. Additionally, PLAINTIFF and
2 CALIFORNIA CLASS Members were required by DEFENDANT to clock out of
3 DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT as
4 required to meet DEFENDANT's job requirements. DEFENDANT required PLAINTIFF and
5 CALIFORNIA CLASS Members to clock out of DEFENDANT's timekeeping system and
6 perform job tasks assigned by DEFENDANT, all while not being paid by DEFENDANT. As a
7 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage,
8 overtime wage compensation, and meal break wages, by working without their time being
9 correctly recorded and without compensation at the applicable rates. DEFENDANT's uniform
10 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
11 time worked, is evidenced by DEFENDANT's business records. As a result, the PLAINTIFF and
12 other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
13 regularly working without their time being accurately recorded and without compensation at the
14 applicable minimum wage and overtime rates. DEFENDANT knew or should have known that
15 PLAINTIFF and other CALIFORNIA CLASS Members were working off the clock and were not
16 being paid their correct minimum wage and overtime compensation.

17 9. In violation of the applicable sections of the California Labor Code and the
18 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
19 matter of company policy, practice and procedure, intentionally and knowingly failed to
20 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for all overtime
21 worked. This uniform policy and practice of DEFENDANT is intended to purposefully avoid the
22 payment of overtime compensation as required by California law which allowed DEFENDANT
23 to illegally profit and gain an unfair advantage over competitors who complied with the law. To
24 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
25 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

26 10. As a result of his rigorous work schedule, PLAINTIFF and other CALIFORNIA
27 CLASS Members was from time to time unable to take off duty meal breaks and was not fully
28 relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were

1 required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift
2 without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF
3 and CALIFORNIA CLASS Members with a second off-duty meal period from time to time in
4 which these employees were required by DEFENDANT to work ten (10) hours of work.
5 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks
6 without the correct meal premium compensation and in accordance with DEFENDANT's strict
7 corporate policy and practice.

8 11. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
9 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
10 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
11 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a
12 first and second rest period of at least ten (10) minutes for some shifts worked of between six (6)
13 and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
14 shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members
15 were also not provided with one hour wages in lieu thereof. As a result of his rigorous work
16 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their
17 proper rest periods by DEFENDANT and DEFENDANT's managers.

18 12. When PLAINTIFF and other CALIFORNIA CLASS Members worked missed
19 meal and rest breaks, DEFENDANT also failed to provide PLAINTIFF and the other members
20 of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
21 among other things, the correct overtime rate for overtime worked, including, work performed in
22 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct
23 penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every
24 employer shall furnish each of his or her employees with an accurate itemized wage statement in
25 writing showing, among other things, gross wages earned and all applicable hourly rates in effect
26 during the pay period and the corresponding amount of time worked at each hourly rate. Aside,
27 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
28 an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

1 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of the
2 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226

3 13. During the CALIFORNIA CLASS period, pursuant to DEFENDANT's company
4 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
5 forfeit gratuities left for them by customers to DEFENDANT's agents who provided no service
6 to the customers that resulted in the gratuity. DEFENDANT routinely added anywhere from
7 18%-22% service charges to its food and beverage banquet bills. These service charges were in
8 the form of automatic charges which customers are required to pay, and which reasonably appear
9 to be gratuities for the service staff. It is typical and customary in the hospitality industry that
10 establishments impose gratuity charges in the range of 18%-22% of the food and beverage bill.
11 Thus, when customers have paid these charges, it is reasonable for them to have believed they
12 were gratuities to be paid to the service staff. Indeed, because many of these charges are depicted
13 to customers, and the custom in the food and beverage industry that gratuities in the range of 18%-
14 22% are paid for food and beverage service, customers have paid these charges reasonably
15 believing they were remitted to the service staff. However, DEFENDANT has not remitted the
16 total proceeds of these gratuities to the non-managerial employees who serve the food and
17 beverages. Instead, DEFENDANT has a policy and practice of retaining for itself a portion or the
18 entirety of these gratuities and/or using a portion of these gratuities to pay managers or other non-
19 service employees. As a result, PLAINTIFF and CALIFORNIA CLASS Members have not
20 received the total proceeds of the gratuities, to which they are entitled to under California law

21 14. DEFENDANT is generally in the business of owning and operating a restaurant
22 and a banquet hall. In addition, DEFENDANT also provides banquet services to large groups,
23 such as wedding parties and other banquet events. During the CALIFORNIA CLASS PERIOD,
24 PLAINTIFF and other CALIFORNIA CLASS Members were in the "chain of service" and earned
25 gratuities based on their service for their customers. However, PLAINTIFF and CALIFORNIA
26 CLASS Members were forced to forfeit portions of their gratuities, which said gratuities were
27 kept by DEFENDANT and their agents who were not in the chain of service from which the
28 gratuity resulted. PLAINTIFF and other CALIFORNIA CLASS Members contend that any

1 gratuities kept by DEFENDANT were illegal and in violation of California law because
2 PLAINTIFF and other CALIFORNIA CLASS Members, not DEFENDANT, provided the
3 service for to whom the gratuity should have been paid.

4 15. California Labor Code § 351 establishes the requirements for an employer
5 regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees.
6 California Labor Code § 351 expressly prohibits employers and their agents from collecting,
7 taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the term
8 “gratuity” as including any money that has been paid or given or left for an employee by a patron
9 of a business over and above the actual amount due the business for services rendered or for
10 goods, food, drink or articles sold or served to such patron. Labor Code § 353 requires employers
11 to keep accurate records of all gratuities they receive, directly or indirectly.

12 16. Although tip pooling is not expressly prohibited by the Labor Code, employees
13 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
14 By distributing tips to DEFENDANT directly and to their agents who were not in the “chain of
15 service,” DEFENDANT has violated and continue to violate the legal requirements for handling
16 pooled tips and violated the holding in *O’Grady v. Merchant Exchange Productions, Inc.*, No.
17 A148513 (Court of Appeals of California, First District, Division Two.).

18 17. By reason of this uniform conduct applicable to PLAINTIFF and all
19 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
20 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
21 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
22 calculate and record the overtime worked by PLAINTIFFS and other CALIFORNIA CLASS
23 Members. The proper calculation of these employees’ overtime is the DEFENDANT’s burden.
24 As a result of DEFENDANT’s intentional disregard of the obligation to meet this burden,
25 DEFENDANT failed to properly calculate and/or pay all required overtime compensation for
26 work performed by the members of the CALIFORNIA CLASS and violated the California Labor
27 Code and regulations promulgated thereunder as herein alleged.

1 18. Specifically as to PLAINTIFF pay, from time to time, PLAINTIFF would clock
2 out during what was supposed to be his off-duty meal breaks, as well as at the end of his shifts,
3 and continue to perform work as required by DEFENDANT. As a result, DEFENDANT failed
4 to pay PLAINTIFF all minimum and overtime wages due to them for all time spent under
5 DEFENDANT's control. PLAINTIFF was also from time to time unable to take off duty meal
6 and rest breaks and was not fully relieved of duty for his meal periods. PLAINTIFF was required
7 to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without
8 receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a
9 second off-duty meal period from time to time in which they were required by DEFENDANT to
10 work ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest breaks without the
11 correct premium compensation and in accordance with DEFENDANT's strict corporate policy
12 and practice. DEFENDANT also provided PLAINTIFF with a paystub that failed to accurately
13 display PLAINTIFF's correct overtime pay and payments for missed meal and rest periods for
14 certain pay periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully
15 paid PLAINTIFF the compensation still owed to him or any penalty wages owed to him under
16 Cal. Lab. Code § 203. The amount in controversy for PLAINTIFFS individually does not exceed
17 the sum or value of \$75,000.

18 19. DEFENDANT as a matter of corporate policy, practice and procedure,
19 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and
20 the other CALIFORNIA CLASS Members for required business expenses incurred by
21 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
22 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
23 are required to indemnify employees for all expenses incurred in the course and scope of their
24 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
25 employee for all necessary expenditures or losses incurred by the employee in direct consequence
26 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
27 even though unlawful, unless the employee, at the time of obeying the directions, believed them
28 to be unlawful."

1 20. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
2 Members, as a business expense, were required by DEFENDANTS to use personal cellular phones
3 as a result of and in furtherance of their job duties as employees for DEFENDANT but were not
4 reimbursed or indemnified by DEFENDANT for the cost associated with the use of the personal
5 cellular phones for DEFENDANT's benefit. As a result, in the course of their employment with
6 DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed
7 business expenses which included, but were not limited to, costs related to the use of their personal
8 cellular phones all on behalf of and for the benefit of DEFENDANT. The amount in controversy
9 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

10 **JURISDICTION AND VENUE**

11 21. This Court has jurisdiction over this Action pursuant to California Code of Civil
12 Procedure, Section 410.10.

13 22. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times
15 maintained offices and facilities in this County and/or conducts substantial business in this
16 County, and (ii) committed the wrongful conduct herein alleged in this County against
17 CALIFORNIA CLASS Members.

18 **THE CALIFORNIA CLASS**

19 23. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
20 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
21 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
22 individuals who are or previously were employed by DEFENDANT in California and classified
23 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
24 on the date four (4) years prior to the filing of this Complaint and ending on the date as determined
25 by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the
26 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
27 (\$5,000,000.00).
28

1 24. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

4 25. The California Legislature has commanded that “all wages... ..earned by any
5 person in any employment are due and payable twice during each calendar month, on days
6 designated in advance by the employer as the regular paydays”, and further that “[a]ny work in
7 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek .
8 . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay
9 for an employee.” (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC),
10 however, is statutorily authorized to “establish exemptions from the requirement that an overtime
11 rate of compensation be paid... ..for executive, administrative, and professional employees,
12 provided [inter alia] that the employee is primarily engaged in duties that meet the test of the
13 exemption, [and] customarily and regularly exercises discretion and independent judgment in
14 performing those duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members
15 of the CALIFORNIA CLASS and/or the CALIFORNIA LABOR SUB-CLASS qualify for
16 exemption from the above requirements.

17 26. DEFENDANT, as a matter of company policy, practice and procedure, and in
18 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
19 requirements, and the applicable provisions of California law, intentionally, knowingly, and
20 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly pay
21 overtime compensation for overtime worked by PLAINTIFF and the other members of the
22 CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required
23 employees to perform this work and permitted or suffered to permit this work.

24 27. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
25 CLASS Member is paid for all overtime worked. DEFENDANT, however, as a matter of uniform
26 and systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
27 PERIOD and still fails to have in place a policy or practice to ensure that each and every
28 CALIFORNIA CLASS Member is paid overtime for all overtime worked. This common business

1 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
2 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
3 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

4 28. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
5 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
6 employee for all overtime worked, as required by California Labor Code §§ 204 and 510, *et seq.*

7 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
8 CLASS Members is impracticable.

9 30. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
10 California law by:

- 11 a. Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
12 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
13 deceptively having in place company policies, practices and procedures
14 that uniformly and systematically failed to record and pay PLAINTIFF and
15 the other members of the CALIFORNIA CLASS for all time worked,
16 including minimum wages owed and overtime wages owed for work
17 performed by these employees;
- 18 b. Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
20 failing to provide mandatory meal and/or rest break premium pay to
21 PLAINTIFF and the CALIFORNIA CLASS members; and
- 22 c. Committing an act of unfair competition in violation of the UCL, by failing
23 to provide the PLAINTIFF and the other members of the CALIFORNIA
24 CLASS with all gratuities in violation of Cal. Lab. Code Section 351;

25 31. This Class Action meets the statutory prerequisites for the maintenance of a Class
26 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 1 a. The persons who comprise the CALIFORNIA CLASS are so numerous
2 that the joinder of all such persons is impracticable and the disposition of
3 their claims as a class will benefit the parties and the Court;
- 4 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues
5 that are raised in this Complaint are common to the CALIFORNIA CLASS
6 will apply uniformly to every member of the CALIFORNIA CLASS;
- 7 c. The claims of the representative PLAINTIFF are typical of the claims of
8 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other
9 members of the CALIFORNIA CLASS, were subjected to the uniform
10 employment practices of DEFENDANT and were and are non-exempt
11 employees paid on an hourly basis who have been subjected to the
12 DEFENDANT's practice and policy which fails to pay overtime wages due
13 to the CALIFORNIA CLASS for all overtime worked by the
14 CALIFORNIA CLASS and thereby systematically underpays overtime
15 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained
16 economic injury as a result of DEFENDANT's employment practices.
17 PLAINTIFF and the members of the CALIFORNIA CLASS were and are
18 similarly or identically harmed by the same unlawful, deceptive, unfair and
19 pervasive pattern of misconduct engaged in by DEFENDANT; and,
- 20 d. The representative PLAINTIFF will fairly and adequately represent and
21 protect the interest of the CALIFORNIA CLASS, and has retained counsel
22 who are competent and experienced in Class Action litigation. There are
23 no material conflicts between the claims of the representative PLAINTIFF
24 and the members of the CALIFORNIA CLASS that would make class
25 certification inappropriate. Counsel for the CALIFORNIA CLASS will
26 vigorously assert the claims of all CALIFORNIA CLASS Members.

27 32. In addition to meeting the statutory prerequisites to a Class Action, this action is
28 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 1 a. Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution of
3 separate actions by individual members of the CALIFORNIA CLASS will
4 create the risk of:
- 5 i. Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA CLASS; and/or
- 9 ii. Adjudication with respect to individual members of the
10 CALIFORNIA CLASS which would as a practical matter be
11 dispositive of interests of the other members not party to the
12 adjudication or substantially impair or impede their ability to
13 protect their interests.
- 14 b. The parties opposing the CALIFORNIA CLASS have acted or refused to
15 act on grounds generally applicable to the CALIFORNIA CLASS, making
16 appropriate class-wide relief with respect to the CALIFORNIA CLASS as
17 a whole in that DEFENDANT uniformly failed to pay all wages due.
18 Including the correct overtime rate, for all worked by the members of the
19 CALIFORNIA CLASS as required by law;
- 20 i. With respect to the First Cause of Action, the final relief on behalf
21 of the CALIFORNIA CLASS sought does not relate exclusively to
22 restitution because through this claim PLAINTIFF seeks
23 declaratory relief holding that the DEFENDANT's policy and
24 practices constitute unfair competition, along with declaratory
25 relief, injunctive relief, and incidental equitable relief as may be
26 necessary to prevent and remedy the conduct declared to constitute
27 unfair competition;
28

1 c. Common questions of law and fact exist as to the members of the
2 CALIFORNIA CLASS, with respect to the practices and violations of
3 California law as listed above, and predominate over any question affecting
4 only individual CALIFORNIA CLASS Members, and a Class Action is
5 superior to other available methods for the fair and efficient adjudication
6 of the controversy, including consideration of:

7 i. The interests of the members of the CALIFORNIA CLASS in
8 individually controlling the prosecution or defense of separate
9 actions in that the substantial expense of individual actions will be
10 avoided to recover the relatively small amount of economic losses
11 sustained by the individual CALIFORNIA CLASS Members when
12 compared to the substantial expense and burden of individual
13 prosecution of this litigation;

14 d. Class certification will obviate the need for unduly duplicative litigation
15 that would create the risk of:

16 1. Inconsistent or varying adjudications with respect to
17 individual members of the CALIFORNIA CLASS, which
18 would establish incompatible standards of conduct for the
19 DEFENDANT; and/or

20 2. Adjudications with respect to individual members of the
21 CALIFORNIA CLASS would as a practical matter be
22 dispositive of the interests of the other members not parties
23 to the adjudication or substantially impair or impede their
24 ability to protect their interests;

25 e. In the context of wage litigation because a substantial number of individual
26 CALIFORNIA CLASS Members will avoid asserting their legal rights out
27 of fear of retaliation by DEFENDANT, which may adversely affect an
28 individual's job with DEFENDANT or with a subsequent employer, the

1 Class Action is the only means to assert their claims through a
2 representative; and

- 3 f. class action is superior to other available methods for the fair and efficient
4 adjudication of this litigation because class treatment will obviate the need
5 for unduly and unnecessary duplicative litigation that is likely to result in
6 the absence of certification of this action pursuant to Cal. Code of Civ.
7 Proc. § 382.

8 33. This Court should permit this action to be maintained as a Class Action pursuant
9 to Cal. Code of Civ. Proc. § 382 because:

- 10 a. The questions of law and fact common to the CALIFORNIA CLASS
11 predominate over any question affecting only individual CALIFORNIA
12 CLASS Members because the DEFENDANT's employment practices are
13 uniform and systematically applied with respect to the CALIFORNIA
14 CLASS;
- 15 b. A Class Action is superior to any other available method for the fair and
16 efficient adjudication of the claims of the members of the CALIFORNIA
17 CLASS because in the context of employment litigation a substantial
18 number of individual CALIFORNIA CLASS Members will avoid
19 asserting their rights individually out of fear of retaliation or adverse
20 impact on their employment;
- 21 c. The members of the CALIFORNIA CLASS are so numerous that it is
22 impractical to bring all members of the CALIFORNIA CLASS before the
23 Court;
- 24 d. PLAINTIFF and the other CALIFORNIA CLASS Members, will not be
25 able to obtain effective and economic legal redress unless the action is
26 maintained as a Class Action;
- 27 e. There is a community of interest in obtaining appropriate legal and
28 equitable relief for the acts of unfair competition, statutory violations and

1 other improprieties, and in obtaining adequate compensation for the
2 damages and injuries which DEFENDANT's actions have inflicted upon
3 the CALIFORNIA CLASS;

- 4 f. There is a community of interest in ensuring that the combined assets of
5 DEFENDANT are sufficient to adequately compensate the members of the
6 CALIFORNIA CLASS for the injuries sustained;
- 7 g. DEFENDANT has acted or refused to act on grounds generally applicable
8 to the CALIFORNIA CLASS, thereby making final class-wide relief
9 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 10 h. The members of the CALIFORNIA CLASS are readily ascertainable from
11 the business records of DEFENDANT; and
- 12 i. Class treatment provides manageable judicial treatment calculated to bring
13 an efficient and rapid conclusion to all litigation of all wage and hour
14 related claims arising out of the conduct of DEFENDANT as to the
15 members of the CALIFORNIA CLASS.

16 34. DEFENDANT maintains records from which the Court can ascertain and identify
17 by job title each of DEFENDANT's employees who as have been systematically, intentionally
18 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein
19 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
20 of similarly situated employees when they have been identified.

21 **THE CALIFORNIA LABOR SUB-CLASS**

22 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
23 Eighth, and Ninth causes of Action on behalf of a California sub-class, defined as all members of
24 the CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
25 SUB-CLASS") at any time during the period beginning on the date three (3) years prior to the
26 filing of the complaint and ending on the date as determined by the Court (the "CALIFORNIA
27 LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in
28

1 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under
2 five million dollars (\$5,000,000.00).

3 36. DEFENDANT, as a matter of company policy, practice and procedure, and in
4 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
5 requirements, and the applicable provisions of California law, intentionally, knowingly, and
6 willfully, engaged in a practice whereby DEFENDANT failed to pay overtime compensation for
7 the overtime worked, even though DEFENDANT enjoyed the benefit of this work, required
8 employees to perform this work and permitted or suffered to permit this work. To the extent
9 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
10 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
11 accordingly.

12 37. DEFENDANT maintains records from which the Court can ascertain and identify
13 by name and job title, each of DEFENDANT’s employees who have been systematically,
14 intentionally and uniformly subjected to DEFENDANT’s company policy, practices and
15 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any
16 additional job titles of similarly situated employees when they have been identified.

17 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
18 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

19 39. Common questions of law and fact exist as to members of the CALIFORNIA
20 LABOR SUB-CLASS, including, but not limited, to the following:

- 21 a. Whether DEFENDANT unlawfully failed to pay overtime compensation
22 to members of the CALIFORNIA LABOR SUB-CLASS in violation of
23 the California Labor Code and California regulations and the applicable
24 California Wage Order;
- 25 b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are
26 entitled to overtime compensation for overtime worked under the overtime
27 pay requirements of California law;

- c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- e. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- f. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- g. Whether DEFENDANT's conduct was willful.

40. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all the correct pay for meal period violations and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate and applicable overtime

1 rates in effect during the pay period and the corresponding amount of time
2 worked at each overtime rate by the employee;

- 3 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
4 when an employee is discharged or quits from employment, the employer
5 must pay the employee all wages due without abatement, by failing to
6 tender full payment and/or restitution of wages owed or in the manner
7 required by California law to the members of the CALIFORNIA LABOR
8 SUB-CLASS who have terminated their employment; and
9 f. Violating Cal. Lab. Code § 351 by failing to pay PLAINTIFF and the
10 CALIFORNIA LABOR SUB-CLASS all gratuities.

11 41. This Class Action meets the statutory prerequisites for the maintenance of a Class
12 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 13 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
14 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
15 Members is impracticable and the disposition of their claims as a class will
16 benefit the parties and the Court;
17 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues
18 that are raised in this Complaint are common to the CALIFORNIA
19 LABOR SUB-CLASS and will apply uniformly to every member of the
20 CALIFORNIA LABOR SUB-CLASS;
21 c. The claims of the representative PLAINTIFF are typical of the claims of
22 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
23 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
24 was a non-exempt employee paid on an hourly basis and entitled to
25 gratuities who has been subjected to the DEFENDANT's practice and
26 policy which failed to pay overtime wages and gratuities due to the
27 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic
28 injury as a result of DEFENDANT's employment practices. PLAINTIFF

1 and the members of the CALIFORNIA LABOR SUB-CLASS were and
2 are similarly or identically harmed by the same unlawful, deceptive, unfair
3 and pervasive pattern of misconduct engaged in by DEFENDANT; and
4 d. The representative PLAINTIFF will fairly and adequately represent and
5 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
6 retained counsel who are competent and experienced in Class Action
7 litigation. There are no material conflicts between the claims of the
8 representative PLAINTIFF and the members of the CALIFORNIA
9 LABOR SUB-CLASS that would make class certification inappropriate.
10 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
11 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

12 42. In addition to meeting the statutory prerequisites to a Class Action, this action is
13 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

14 a. Without class certification and determination of declaratory, injunctive,
15 statutory and other legal questions within the class format, prosecution of
16 separate actions by individual members of the CALIFORNIA LABOR
17 SUB-CLASS will create the risk of:

18 i. Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA LABOR SUB-CLASS which
20 would establish incompatible standards of conduct for the parties
21 opposing the CALIFORNIA LABOR SUB-CLASS; or,

22 ii. Adjudication with respect to individual members of the
23 CALIFORNIA LABOR SUB-CLASS which would as a practical
24 matter be dispositive of interests of the other members not party to
25 the adjudication or substantially impair or impede their ability to
26 protect their interests.

27 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
28 or refused to act on grounds generally applicable to the CALIFORNIA

1 LABOR SUB-CLASS, making appropriate class-wide relief with respect
2 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
3 DEFENDANT uniformly failed to pay all wages due. Including the correct
4 overtime rate, for all overtime worked by the members of the
5 CALIFORNIA LABOR SUB-CLASS as required by law;

6 c. Common questions of law and fact predominate as to the members of the
7 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
8 violations of California Law as listed above, and predominate over any
9 question affecting only individual CALIFORNIA LABOR SUB-CLASS
10 Members, and a Class Action is superior to other available methods for the
11 fair and efficient adjudication of the controversy, including consideration
12 of:

13 i. The interests of the members of the CALIFORNIA LABOR SUB-
14 CLASS in individually controlling the prosecution or defense of
15 separate actions in that the substantial expense of individual actions
16 will be avoided to recover the relatively small amount of economic
17 losses sustained by the individual CALIFORNIA LABOR SUB-
18 CLASS Members when compared to the substantial expense and
19 burden of individual prosecution of this litigation;

20 ii. Class certification will obviate the need for unduly duplicative
21 litigation that would create the risk of:

22 1. Inconsistent or varying adjudications with respect to
23 individual members of the CALIFORNIA LABOR SUB-
24 CLASS, which would establish incompatible standards of
25 conduct for the DEFENDANT; and/or,

26 2. Adjudications with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS would as a practical
28 matter be dispositive of the interests of the other members

not parties to the adjudication or substantially impair or
impede their ability to protect their interests.

- d. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- e. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

43. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

- d. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

3 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 44. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 45. DEFENDANTS are a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

10 46. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
12 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
13 as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair competition may
15 be enjoined in any court of competent jurisdiction. The court may make such orders or
16 judgments, including the appointment of a receiver, as may be necessary to prevent the
17 use or employment by any person of any practice which constitutes unfair competition, as
18 defined in this chapter, or as may be necessary to restore to any person in interest any
19 money or property, real or personal, which may have been acquired by means of such
20 unfair competition. (Cal. Bus. & Prof. Code § 17203).

21 47. By the conduct alleged herein, DEFENDANTS have engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 204, 206.5, 226.7, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, for which
25 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
26 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
27 competition, including restitution of wages wrongfully withheld.

28 48. By the conduct alleged herein, DEFENDANT’S practices were unlawful and
unfair in that these practices violated public policy, were immoral, unethical, oppressive
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203

1 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 49. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,
4 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

7 50. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
8 fraudulent in that DEFENDANT’S uniform policy and practice failed to provide the legally
9 mandated meal and rest periods and the required amount of compensation for missed meal and
10 rest periods, and failed to pay overtime correctly, due to a systematic business practice that cannot
11 be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
12 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
13 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
14 restitution of wages wrongfully withheld.

15 51. By the conduct alleged herein, DEFENDANT’S practices were also unfair and
16 deceptive in that DEFENDANT’S uniform policies, practices and procedures failed to provide
17 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

18 52. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
19 fraudulent in that DEFENDANTS’ uniform policy and practice failed to pay PLAINTIFF, and
20 other members of the CALIFORNIA CLASS, all gratuities due to them due to a systematic policy
21 of keeping these gratuities for persons and/or entities not in the chain of service that cannot be
22 justified pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
23 requirements in violation of Cal. Bus. Code §§17200, *et seq.*, and for which this Court should
24 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code §17203, including
25 restitution of wages wrongfully withheld.

26 53. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
28 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

3 54. PLAINTIFF further demands on behalf of herself and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
5 not timely provided as required by law.

6 55. By and through the unlawful and unfair business practices described herein,
7 DEFENDANT ha obtained valuable property, money and services from PLAINTIFF and the
8 other members of the CALIFORNIA CLASS, including earned gratuity wages and earned wages
9 for all overtime worked, and has deprived them of valuable rights and benefits guaranteed by law
10 and contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as
11 to allow DEFENDANTS to unfairly compete against competitors who comply with the law.

12 56. All the acts described herein as violations of, among other things, the Industrial
13 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
14 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
15 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
16 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

17 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
18 and do, seek such relief as may be necessary to restore to them the money and property which
19 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
20 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
21 business practices, including earned but unpaid wages for all overtime worked.

22 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
23 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
24 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
25 engaging in any unlawful and unfair business practices in the future.

26 59. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANT is restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**
7 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

8 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
9 **Defendants)**

10 60. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
11 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
12 this ended Complaint.

13 61. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
14 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code
15 and the Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately
16 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

17 62. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
18 policy, an employer must timely pay its employees for all hours worked.

19 63. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
20 commission is the minimum wage to be paid to employees, and the payment of a wage less than
21 the minimum so fixed is unlawful.

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

24 65. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
25 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
26 of time they work. As set forth herein, DEFENDANTS' uniform policy and practice was to
27 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS.

1 66. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
3 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
5 pay.

6 67. In committing these violations of the California Labor Code, DEFENDANT
7 inaccurately calculated the correct time worked and consequently underpaid the actual time
8 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
9 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
10 benefits in violation of the California Labor Code, the Industrial Welfare Commission
11 requirements and other applicable laws and regulations.

12 68. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
14 the correct minimum wage compensation for their time worked for DEFENDANT.

15 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
17 they were entitled to, constituting a failure to pay all earned wages.

18 70. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
19 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR
21 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
22 presently unknown to them and which will be ascertained according to proof at trial.

23 71. DEFENDANT knew or should have known that PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
25 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
26 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
27 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
minimum wages for their time worked.

1 72. In performing the acts and practices herein alleged in violation of California labor
2 laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
3 time worked and provide them with requisite compensation, DEFENDANT acted and continues
4 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
5 the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal rights,
6 or the consequences to them, and with the despicable intent of depriving them of their property
7 and legal rights, and otherwise causing them injury in order to increase company profits at the
8 expense of these employees.

9 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
11 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
12 the California Labor Code and/or other applicable statutes. To the extent minimum wage
13 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
14 who have terminated their employment, DEFENDANT'S conduct also violates Labor Code §§
15 201 and/or 202, and therefore these individuals are also entitled to waiting time penalties under
16 Cal. Lab. Code §203, which penalties are sought herein on behalf of these CALIFORNIA LABOR
17 SUB-CLASS Members. DEFENDANT'S conduct as alleged herein was willful, intentional and
18 not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
19 are entitled to seek and recover statutory costs.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

22 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

23 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
24 **Defendants)**

25 74. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
26 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
27 this Complaint.

28 75. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code

1 and the Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately
2 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
3 CALIFORNIA LABOR SUB-CLASS and DEFENDANT’S failure to properly compensate the
4 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
5 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

6 76. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
7 policy, an employer must timely pay its employees for all hours worked.

8 77. Cal. Lab. Code § 510 further provides that employees in California shall not be
9 employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek
10 unless they receive additional compensation beyond their regular wages in amount specified by
11 law.

12 78. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
13 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
14 Code § 1198 further states that the employment of an employee for longer hours than those fixed
15 by the Industrial Welfare Commission is unlawful.

16 79. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
17 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
18 of overtime worked and correct applicable overtime rate for the amount of overtime they worked.
19 As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and
20 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the
21 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to
22 pay these employees the correct applicable overtime wages for all overtime worked.

23 80. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
24 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
25 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
26 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
27 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
28 in any workweek.

1 81. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
3 consequently underpaid the actual time worked by PLAINTIFF and other members of the
4 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the
5 payment of all earned wages, and other benefits in violation of the California Labor Code, the
6 Industrial Welfare Commission requirements and other applicable laws and regulations.

7 82. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
9 full compensation for all overtime worked.

10 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
11 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
12 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
14 bargaining agreement that would preclude the causes of action contained herein this Complaint.
15 Rather, PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA LABOR SUB-
16 CLASS based on DEFENDANT’S violations of non-negotiable, non-waivable rights provided by
17 the State of California.

18 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
19 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
20 they were entitled to, constituting a failure to pay all earned wages.

21 85. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
22 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
23 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
24 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
26 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT’s
27 business records and witnessed by employees.

28 86. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

1 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR
2 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
3 presently unknown to them and which will be ascertained according to proof at trial.

4 87. DEFENDANT knew or should have known that PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
6 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
7 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
8 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
9 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable
10 overtime rate.

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

19 89. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
21 interest, statutory costs, as well as the assessment of any statutory penalties against
22 DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable
23 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
24 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT'S
25 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be
26 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein
27 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as
28 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

90. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

91. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT'S failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT'S business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT'S strict corporate policy and practice.

92. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

93. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

1
2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

4 **(Cal. Lab. Code §§ 226.7 & 512)**

5 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
6 **Defendants)**

7 94. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
8 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
9 this Complaint.

10 95. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
11 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
12 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
13 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
14 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
15 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
16 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided
17 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
18 and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper
19 rest periods by DEFENDANT and DEFENDANT'S managers.

20 96. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
21 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
22 CLASS Members who were not provided a rest period, in accordance with the applicable Wage
23 Order, one additional hour of compensation at each employee's regular rate of pay for each
24 workday that rest period was not provided.

25 97. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
27 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
28

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES

(Cal. Lab. Code §2802)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

98. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

99. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

100. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT'S benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones, all on behalf of and for the benefit of DEFENDANT'S. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones to respond to work related issues. DEFENDANT'S uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from same. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

101. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS

(Cal. Lab. Code §226)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

102. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

103. Cal. Labor Code § 226 provides that an employer must furnish employees with an “accurate itemized” statement in writing showing:

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee

1 identification number other than a social security number may be shown on the itemized
2 statement,

3 (8) the name and address of the legal entity that is the employer, and (9) all applicable
4 hourly rates in effect during the pay period and the corresponding number of hours worked
5 at each hourly rate by the employee.

6
7 104. When DEFENDANT did not accurately record PLAINTIFF's and other
8 CALIFORNIA CLASS Members' missed meal and rest breaks, did not pay the correct overtime
9 wages, and failed to pay gratuities, DEFENDANT violated Cal. Lab. Code § 226 in that
10 DEFENDANT failed to provide an accurate wage statement in writing that properly and
11 accurately itemizes all missed meal and rest periods and reporting time wages owed to
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby also
13 failed to set forth the correct wages earned by the employees.

14 105. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
15 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
16 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating
17 the correct wages for all missed meal and rest breaks and the amount of employment taxes which
18 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
19 Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may
20 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
21 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
22 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
23 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
24 member of the CALIFORNIA LABOR SUB-CLASS herein).

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EIGHTH CAUSE OF ACTION
FAILURE TO PAY WAGES WHEN DUE
(Cal. Lab. Code §§201, 202, 203)
(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

106. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

107. Cal. Lab. Code § 200 provides that:

As used in this article:(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

108. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

109. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

110. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR SUB-CLASS Members’ employment contract.

111. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty

1 from the due date thereof at the same rate until paid or until an action therefor is
2 commenced; but the wages shall not continue for more than 30 days.

3 112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
4 Members terminated and DEFENDANT has not tendered payment of overtime wages, to these
5 employees who actually worked overtime, as required by law.

6 113. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
7 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF
8 demands up to thirty days of pay as penalty for not paying all wages due at time of termination
9 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS
10 PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory
11 costs as allowed by law.

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO PAY STATUTORY GRATUITIES**

14 **(Cal. Lab. Code § 351 et seq.)**

15 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
16 Defendants)**

17 114. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
18 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
19 paragraphs of this Complaint.

20 115. DEFENDANT's conduct, as set forth above, in failing to remit to non-
21 managerial banquet service employees the total proceeds of gratuities added to banquet
22 customers' bills constitutes a violation of California Labor Code Section 351. This violation is
23 enforceable pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code 17200
24 et seq. DEFENDANT's conduct constitutes unlawful, unfair, and/or fraudulent business acts or
25 practices, in that DEFENDANT has violated California Labor Code Section 351 in not remitting
26 to the non-managerial service employees the total gratuities that were charged to customers.

27 116. As a proximate result of the aforementioned violations, PLAINTIFFS and
28 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to

1 proof at trial, including the loss of gratuities to which they were entitled. and seek all wages
2 earned and due, interest, penalties, expenses and costs of suit.

3 **TENTH CAUSE OF ACTION**

4 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

5 **[Cal. Lab. Code §§ 2698 et seq.]**

6 **(Alleged by PLAINTIFF against all Defendants)**

7 117. PLAINTIFF reallege and incorporate by this reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

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

18 119. PLAINTIFF, and such persons that may be added from time to time who satisfy
19 the requirements and exhaust the administrative procedures under the Private Attorney General
20 Act, bring this Representative Action on behalf of the State of California with respect to himself
21 and all individuals who are or previously were employed by DEFENDANT and classified as non-
22 exempt employees in California during the time period of March 19, 2020 until the present (the
23 "AGGRIEVED EMPLOYEES").

24 120. On March 19, 2020, PLAINTIFF gave written notice by certified mail to the Labor
25 and Workforce Development Agency (the "Agency") and the employer of the specific
26 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
27 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
28 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,

1 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
2 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
3 AGGRIEVED EMPLOYEES as herein defined.

4 121. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
7 and provide legally required meal and rest periods, (c) failed to pay wages when due, (d) failed
8 to pay overtime compensation, (e) failed to pay minimum wages, and (f) failed to pay gratuities,
9 all in violation of the applicable Labor Code sections listed in Labor Code Sections §§ 201, 202,
10 203, 204, 226(a), 226.7, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, and the applicable
11 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
12 PLAINTIFFS hereby seek recovery of civil penalties as prescribed by the Labor Code Private
13 Attorney General Act of 2004 as the representatives of the State of California for the illegal
14 conduct perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

15 122. Some or all of the conduct and violations alleged herein occurred during the PAGA
16 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
17 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
18 affected other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30
19 Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal. App.
20 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor
21 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
22 committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

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3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for a judgment against each Defendants, as follows:

5
6 1. On behalf of the CALIFORNIA CLASS:

- 7 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
8 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
9 b. An order temporarily, preliminarily and permanently enjoining and restraining
10 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
11 c. An order requiring DEFENDANTS to pay all wages and all sums unlawfully
12 withheld from compensation due to PLAINTIFF and the other members of the
13 CALIFORNIA CLASS; and
14 d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
15 for restitution of the sums incidental to DEFENDANTS' violations due to
16 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

17 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
19 Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
20 class action pursuant to Cal. Code of Civ. Proc. § 382;
21 b. Compensatory damages, according to proof at trial, including compensatory
22 damages for minimum, overtime compensation, and gratuities due PLAINTIFF and
23 the other members of the CALIFORNIA LABOR SUB-CLASS, during the
24 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at
25 the statutory rate;
26 c. 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 each member of the
28 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226

- d. The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
- e. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order; and,
- f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

4. On all Claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and,
- c. An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §218.5, §226 and/or § 1198.

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiff

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DEMAND FOR A JURY TRIAL

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

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiff

EXHIBIT C

**NOTICE OF PENDENCY OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT
AND FINAL HEARING DATE**

Shallan v. Scott's Sacramento River, Inc.,
Sacramento Superior Court Case No. 34-2020-00288630

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendants as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below, except that you will still receive your Aggrieved Employee Payment.
Object	You may write to the Court about why you do not like the settlement. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the "Settlement") of this lawsuit entitled *Shallan v. Scott's Sacramento River, Inc.*, Case No. 34-2020-00288630, currently pending in the Superior Court for the County of Sacramento (the "Court") has been reached between DIONYSIOUS SHALLAN ("Plaintiff") and SCOTT'S SACRAMENTO RIVER, INC. ("Defendant"). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a Settlement Class Member, which is defined as:

All of Defendants' current and former banquet employees who worked for Defendant in the State of California during the Class Period.

The "Class Period" is the period of time running from March 24, 2016 and September 29, 2020.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On March 24, 2020, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant.

On November 16, 2020, Plaintiff filed a class action complaint in the Sacramento Superior Court for: (1) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200; (2) failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) failure to pay overtime wages in violation of California Labor Code sections 510 *et seq.*; (4) failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512; (5) failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512; (6) failure to provide accurate itemized wage statements in violation of California Labor Code section 226; and (7) failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203; (8) failure to pay gratuities in violation of California Labor Code section 351; and (9) violations of the Private Attorney General Act (“PAGA”) at Labor Code sections 2698 *et seq.*

On September 29, 2020, the Parties participated in mediation presided over by the Honorable Judge Steven R. Denton (Ret.), a respected jurist and mediator. Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Action based on a mediator’s proposal which was memorialized in the form of a Memorandum of Understanding. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of Zakay Law Group, APLC and JCL Law Firm, APC to serve as Class Counsel.

Defendant denies and disputes all claims asserted in the Action. Specifically, Defendant contends that the Action could not properly be maintained as a class action; that Defendant provided members of the class with all legally required meal breaks and rest breaks; that Defendant paid any members of the class all wages, including gratuities, due them at the time of their terminations; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; and that Defendant is not liable for any of the penalties claimed or that could be claimed in the Action.

3. What are the terms of the Settlement?

Total Settlement Amount. Defendant has agreed to pay an “all in” amount of One Hundred Two Thousand and Five Hundred Dollars (\$102,500.00) (the “Total Settlement Amount”) to fund the settlement. The Total Settlement Amount includes the payment of all Individual Settlement Payments to participating Settlement Class Members, the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement, and the Class Representative Service Award to the Plaintiff.

Within thirty (30) calendar days of the Effective Date, Defendant will fund the Total Settlement Amount by depositing the money into a Qualified Settlement Fund maintained by the third party Settlement Administrator.

Amounts to be Paid from the Total Settlement Amount. The Settlement provides for certain payments to be made from the Total Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Total Settlement Amount before settlement payments are made to Settlement Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$4,500.00, for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.

- Attorneys' Fees and Costs. Subject to Court approval, Class Counsel shall seek a Class Counsel Award in an amount equal to thirty-three and one-third percent (33 1/3%) of the Total Settlement Amount currently estimated to be \$34,166.66 for reasonable attorneys' fees, plus costs and expenses supported by declaration not to exceed \$10,000. The Class Counsel Award is intended to compensate and reimburse Class Counsel for all of the work already performed and all of the work remaining to be performed by Class Counsel in documenting the settlement, securing Court approval of the settlement, administering the settlement, and making sure that the settlement is fairly administered and implemented.
- Class Representative Service Award. Class Representative Service Award of up to Seven Thousand Five Hundred Dollars (\$7,500) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Settlement. A payment of \$5,000 relating to Plaintiff's claim under the Private Attorney General's Act ("PAGA"), \$3,7500 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$1,500 will be distributed to Aggrieved Employees which are all current and former non-exempt banquet employees who worked for Defendant in California between March 24, 2019 and September 29, 2020.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Settlement Administration Expenses, Class Counsel Award, the Class Representative Service Award and the PAGA Settlement are deducted from the Total Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Participating Settlement Class Members"). The Individual Settlement Payment for each Participating Class Member will be calculated by adding up the total number of workweeks for all the Settlement Class Members and then having the respective workweeks for each Settlement Class Member divided by the total Workweeks for all Settlement Class Members, resulting in a payment ratio for each eligible class member.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. 25% of each Settlement Share constitutes wages in the form of back-pay (and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment) and 75% of each Settlement Share constitutes interest, penalties and other non-wage payments (and each Participating Class Member will be issued an Internal Revenue Service Form 1099 for such payment). Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Class Claims. As of the Funding Date, in exchange for the consideration set forth in this Agreement, Plaintiff and the Settlement Class Members release the Defendant and its respective present and former parent companies, subsidiaries, divisions, related or affiliated companies and joint ventures, shareholders, officers, directors, management level employees, agents, attorneys, insurers, reinsurers, successors and assigns (collectively "Released Parties") from any and all claims, actions, demands, causes of action, suits, debts,

obligations, guarantees, costs, expenses, attorneys' fees, damages, restitution, injunctive relief, penalties, rights or liabilities, of any nature and description whatsoever, arising during the Class Period or PAGA Class Period, that are alleged in the operative complaint in the Action or that could have been alleged in the Action based on the facts and theories alleged in the operative complaint in the Action, including but not limited to, failure to pay minimum wage, straight time wages, and overtime wages, unpaid premium pay for violations of California's meal period and rest break law, waiting time penalties, penalties for non-compliant wage statements and failure to keep accurate payroll records, and failure to reimburse employees for reasonably incurred business expenses, and failure to pay gratuities and claims pursuant to Labor Code sections 201, 202, 203, 204, 206.5, 210, 225.5, 226, 226.3, 226.7, 350, 351, 510, 511, 512, 515, 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, and 2802, and claims under Business and Professions Code section 17200, *et seq.* ("Released Claims") for the Class Period.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Released PAGA Claims. Upon the Funding Date, each Aggrieved Employee, the LWDA and Plaintiff shall fully release and discharge Defendant and the Released Parties, as defined herein, from any and all claims, actions, demands, causes of action, suits, debts, obligations, guarantees, costs, expenses, attorneys' fees, damages, restitution, injunctive relief, penalties, rights or liabilities, of any nature and description whatsoever, alleged or that could have been alleged based on the facts and theories alleged in the operative complaint in the Action arising during the Class Period or PAGA Class Period, arising out of the facts and claims asserted in the Action for civil penalties under the Private Attorney General Act of 2004 Cal. Labor Code § 2698 *et seq.* based upon the facts alleged in the operative complaint in the Action, including but not limited to, failure to pay minimum wage, straight time wages, and overtime wages, unpaid premium pay for violations of California's meal period and rest break law, waiting time penalties, penalties for non-compliant wage statements and failure to keep accurate payroll records, and failure to reimburse employees for reasonably incurred business expenses, and failure to pay gratuities.

5. How much will my payment be?

Defendants' records reflect that you have <<____>> work-weeks/work-days worked during the Class Period.

Based on this information, your estimated Individual Settlement Payment is <<____>>.

Defendants' records reflect that you have <<____>> work-weeks/work-days worked during the PAGA Period.

Based on this information, your estimated Individual Settlement Payment is <<____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____, 2021 [forty-five (45) days after the Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____. (800) _____.

The Court will hold a hearing on _____ to decide whether to approve the Settlement. If the Court

approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or “opt out.” **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms.**

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____, 2021. The address for the Settlement Administrator is _____. The request for exclusion must state in substance: “I have read the Class Notice and I wish to opt out of the class action and settlement of the case *Shallan v. Scott's Sacramento River, Inc.*, Sacramento Superior Court Case No. 34-2020-00288630. The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

The address for the Settlement Administrator is _____. Written requests for exclusion that are postmarked after _____, 2021, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I don't like the Settlement?

Any Class Member, who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections must be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All objections or other correspondence must also state the name and number of the case, which is *Shallan v. Scott's Sacramento River, Inc.*, Sacramento Superior Court Case No. 34-2020-00288630.

To object to the Settlement, you must not opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

The objections must be delivered or mailed to the Settlement Administrator no later than _____, 2021 with copies to the Parties' counsel. The address for the Settlement Administrator is _____.

The addresses for the Parties' counsel are as follows:

Class Counsel: JCL LAW FIRM, APC Jean-Claude Lapuyade (State Bar #248676) 3990 Old Town Avenue, Suite C204 San Diego, CA 92110 Telephone: (619) 599-8292 Facsimile: (619) 599-8291 jlapuyade@jcl-lawfirm.com	Defendant's Counsel: Mark S. Posard (SBN: 208790) Annette L. Rose (SBN: 311274) GORDON REES SCULLY MANSUKHANI, LLP 3 Parkcenter Drive, Suite 200 Sacramento, CA 95825 Telephone: (916) 565-2900 Facsimile: (916) 920-4402 mposard@grsm.com arose@grsm.com
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ZAKAY LAW GROUP, APLC Shani O. Zakay (State Bar #277924) 3990 Old Town Avenue, Suite C204 San Diego, CA 92110 Telephone: (619) 255-9047 Facsimile: (858) 404-9203 shani@zakaylaw.com	
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The Court will hold a Final Approval Hearing at **00:00 AM/PM on _____**, at the Sacramento County Superior Court, located at 720 9th Street, Sacramento, California 95814 in Department 31 before Judge Gerrit W. Wood. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to *Shallan v. Scott's Sacramento River, Inc.*, Sacramento Superior Court Case No. 34-2020-00288630, Settlement Administrator, c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to the JCL LAW FIRM, APC, 3990 Old Town Ave., Suite C204, San Diego, CA 92110.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to San Diego County Bar Foundation in accordance with Code of Civil Procedure Section 384 in the name of the Participating Class Member. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2

Zakay Law Group, APC
3990 Old Town Ave. Suite C204
San Diego, California 92110
Telephone: (619) 255-9047
Fax: (858) 404-9203

1. Firm Practice Areas:

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation, Business Litigation, Corporate/Business General Counsel Advice.

2. Attorney Shani O. Zakay Biography:

• **PRACITCE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation, Business Litigation, Corporate/Business General Counsel Advice.

• **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)
United States District Court of California (all courts)
United States District Court of Indiana for the Northern District
United States Court of Appeals for the 9th Circuit

• **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA
Founder, April 2018

SILLDORF LAW, LLP, San Diego, CA (now known as Berding & Weil)
Partner, January 2012 – March 2018

• **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA

Juris Doctor, *magna cum laude*, April 2011

Honors: Dean's List: Spring 2009, Fall 2009, Spring 2010, Fall 2010, Spring 2011.

Academic Achievement Awards: Advanced Legal Research, Constitutional Law II, Criminal Procedure, Insurance Law & Litigation, Law Office Technologies, Property II, Products Liability, Trusts & Estates.

Activities: Associate Editor, *California Western Law Review*
Legal Skills Honor Instructor for Professor Leslie Culver
Vice President, Jewish Student Union

SAN DIEGO STATE UNIVERSITY, San Diego, CA

Bachelor of Science, Business Administration, Management, *cum laude*, May 2008

Honors: Dean's List: Spring 2007 and Fall 2007

- **COMMUNITY SERVICE**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA
Spring 2016, 2018
Moot Court Judge

COMMUNITY LAW PROJECT, San Diego, CA
October 2018 – Present
Volunteer Attorney on Employment Matters

3. **Attorney Jackland K. Hom Biography:**

- **PRACTICE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation.

- **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)
United States District Courts of California (all courts)

- **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA
Associate, January 2021 - present

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP, San Diego, CA
Associate, November 2019 – September 2020

- **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA
Juris Doctor, April 2019

Honors: Dean's List: Fall 2017, Spring 2018.

Academic Achievement Awards: Advanced Prosecution Function.

Activities: Senior Editor, *California Western Law Review*
President, Asian Pacific American Law Students Association

UNIVERSITY OF CALIFORNIA, RIVERSIDE, Riverside, CA
Bachelor of Arts: Political Science, English Literature, June 2015
Honors: Dean's List

4. Class Action & Representative Cases:

1. Hubscher v. Bodyspirit, LLC

Court	San Diego
Case No.	37-2016-00021261-CU-OE-CTL
Nature	Independent Contractor Misclassification
Status	Settled

2. Henry v. InMotion Entertainment Group, LLC

Court	San Francisco
Case No.	CGC-18-565643
Nature	Meal/Rest Break claims and overtime and regular rate claims
Status	Settled

3. Moore v. Zirx Transportation

Court	San Francisco
Case No.	CGC-18-566655
Nature	Independent Contractor Misclassification
Status	Settled

4. Pasallo v. GSG Protective Services

Court	San Diego
Case No.	37-2018-00037611-CU-OE-CTL
Nature	Meal/Rest Break claims
Status	Settled

5. Villaroman v. C.C.H.C.

Court	Orange County
Case No.	30-2018-01013128-CU-OE-CXC
Nature	Meal/Rest Break claims
Status	Settled

6. Flores v. Plastic Express

Court	Los Angeles
Case No.	BC719071
Nature	Meal/Rest Break and minimum wage claims
Status	Settled

7. Tressler v. Spoonful Management

Court	Los Angeles
Case No.	BC719405
Nature	Meal/Rest Break claims
Status	Settled

8. Leymaster v. Toms Sierra Company, Inc.

Court	Placer
Case No.	SCV0041735
Nature	Meal/Rest Break claims and overtime and regular rate claims
Status	Settled

9. Murphy v. Rockler Retailer Group, Inc.

Court	Sacramento
Case No.	34-2018-00241374
Nature	Overtime and regular rate claims and wrongful termination
Status	Settled

10. Bruemmer v. Tempur Retail Stores, LLC.

Court	Marin
Case No.	CIV1803646
Nature	Overtime and regular rate claims and wrongful termination
Status	Settled

11. Christina Cummings v. G6 Hospitality, LLC

Court	San Diego
Case No.	37-2018-00056207-CU-OE-CTL 19CV122 GPC LL
Nature	Overtime and Minimum Wage claims and Meal and Rest Breaks
Status	Settled

12. Nicolai Laguatan v. Prevent LSS

Court	San Diego
Case No.	37-2018-00057434-CU-OE-CTL
Nature	Overtime and Minimum Wage claims and Meal and Rest Breaks
Status	Settled

13. Lisa Ramirez v. Carefusion Resources, LLC

Court	San Diego
Case No.	37-2018-00058078-CU-OE-CTL 3:18-CV-02852-BEN-MSB
Nature	Overtime and Meal and Rest Breaks
Status	Settled

14. Charles Ornelas v. C&A Transportation Services

Court	San Diego
Case No.	37-2018-00061289-CU-OE-CTL
Nature	Minimum Wage and Meal/Rest Break claims
Status	Settled

15. Luz Marin v. California Marine Cleaning

Court	San Diego
Case No.	37-2018-00063483-CU-OE-CTL
Nature	Meal Break claims
Status	Settled

16. Christian Van Cleave v. Sunrise Senior Living Management

Court	San Diego
Case No.	37-2018-00061960-CU-OE-CTL 19CV0044BEN NLS
Nature	Regular rate and meal premium miscalculation
Status	Settled

17. Heather McIntyre v. JRR Enterprises

Court	Sacramento
Case No.	34-2019-00251220
Nature	Overtime and Meal and Rest Periods
Status	Settled

18. Lori Phipps v. Soapy Joe's

Court	San Diego
Case No.	37-2019-00017673-CU-OE-CTL
Nature	Tip Polling and Meal and Rest Periods
Status	Settled

19. Heather Broughton v. NFG San Francisco, LLC

Court	San Francisco
Case No.	CGC-19-574657
Nature	Meal and Rest Breaks
Status	Settled

20. Marcos Antonios v. Interface Rehab, LLC

Court	Orange County
Case No.	30-2019-01067547-CU-OE-CXC
Nature	Meal and Rest Breaks and Reporting Time Violations
Status	Settled

21. Tiffany Rodriguez v. Circle K

Court	Riverside
Case No.	RIC 1901407 5:19-cv-00469
Nature	Overtime Wage and Meal/Rest Break claims
Status	Settled

22. Derik Scott et al. v. Ultimate Performance

Court	Los Angeles
Case No.	19STCV22823
Nature	Piece Rate Pay violations
Status	Settled

23. Raymond Frazier v. Asa Carlton

Court	San Diego
Case No.	37-2019-00036147-CU-OE-CTL
Nature	Overtime Wages
Status	Settled

24. John Moreno v. Da Kitchen

Court	San Diego
Case No.	37-2019-00024885-CU-OE-CTL
Nature	Overtime Wage and Meal/Rest Break claims
Status	Settled

25. Penny Lane v. International Aero Clubs, LLC

Court	San Diego
Case No.	37-2019-00021793-CU-OE-CTL
Nature	Meal and Rest Breaks and Regular Rate Miscalculation
Status	Settled

26. Amber Price v. DMSD Restaurants

Court	San Diego
Case No.	37-2019-00024062-CU-OE-CTL
Nature	Meal and Rest Break violations
Status	Settled

27. Jamaal Johnson v. Volt Management Corp

Court	Los Angeles
Case No.	19STCV16466
Nature	On Duty Meal Break violations
Status	Settled

28. Ezzat Menias v. All American Private Security

Court	Orange County
Case No.	30-2019-01085120-CU-OE-CXC
Nature	On Duty Meal Break violations
Status	Settled

29. Mark Connor v. Ascendant Marketing

Court	San Diego
Case No.	37-2019-00026864-CU-OE-CTL
Nature	Minimum Wage violations
Status	Settled

30. Niki Nunez v. Home Depot

Court	San Joaquin
Case No.	STK-CV-406-2019-6656
Nature	Overtime Wages violations
Status	Settled

31. Alma Salazar v. Frontier Toyota

Court	Los Angeles
Case No.	19STCV20382
Nature	Rest Break violations
Status	Settled

32. Josefina Garces v. Kar Auction Services

Court	Los Angeles
Case No.	19STCV28489
Nature	Rest Break violations
Status	Settled

33. Madison Weiss v. Niznik Behavior

Court	San Diego
Case No.	37-2019-00039441-CU-OE-CTL
Nature	Meal and Rest Break violations
Status	Settled

34. Jimmy Mack v. ERM Enterprises

Court	Sacramento
Case No.	2019-00262259
Nature	Meal and Rest Break violations
Status	Settled

35. Josefina Garces v. DriverDo

Court	Los Angeles
Case No.	19STCV32773
Nature	Independent Contractor Misclassification
Status	In Litigation

36. Perseus Porras v. Tantalum Restaurant

Court	Los Angeles
Case No.	19STCV31015
Nature	Unpaid Wages + Missed Meal/Rest Breaks
Status	Settled

37. Dorcena Deutsch v. Scripps

Court	San Diego
Case No.	37-2019-00036333-CU-OE-CTL
Nature	Regular Rate Miscalculation for Nurses
Status	Settled

38. Josalyn O'Quinn v. Laugh Factory

Court	Los Angeles
Case No.	19STCV28155
Nature	Regular Rate Miscalculation, Wage Theft
Status	In Litigation

39. Nicholas Leon v. Miller Event Management

Court	San Luis Obispo
Case No.	19CV-0435
Nature	Meal/Rest Breaks, Reporting Time, 2802
Status	Settled

40. Aaris Watts v. TRL Systems

Court	Orange County
Case No.	30-2019-01102457-CU-OE-CXC
Nature	Meal/Rest Breaks, Reporting Time
Status	In Litigation

41. Faith Smith v. Island Pizza

Court	Contra Costa
Case No.	MSC19-01654
Nature	Meal/Rest Breaks, 226, 2802
Status	Settled

42. Johnathan Roa v. Otay Mesa Sales

Court	San Diego
Case No.	37-2019-00057735-CU-OE-CTL
Nature	Meal/Rest Breaks, 226
Status	In Litigation

43. Sabrina Ivon v. Sinclair Television of California

Court	Humboldt
Case No.	DR190699
Nature	Vaquero
Status	In Litigation

44. Jonathan Mitchell v. Mack Trucking

Court	San Bernardino
Case No.	CIVDS1928334
Nature	Independent Contractor Misclassification
Status	In Litigation

45. Curtis Edwards v. Resolve Group

Court	San Francisco
Case No.	CGC-19-579095
Nature	Meal & Rest Breaks + 2802
Status	In Litigation

46. Elena Kiseleva v. TotalMed Staffing, Inc

Court	Santa Clara
Case No.	19CV354635
Nature	Overtime + Meal and Rest Breaks
Status	Settled

47. Richard Jer Vang v. Bridge Property Management

Court	Alameda
Judge	Winfred Smith
Nature	Off the clock work, regular rate miscalc.
Status	Settled

48. Madison Marrero v. Stat Med

Court	Alameda
Case No.	HG19043214
Nature	Unpaid Overtime + Meal/Rest Breaks
Status	In Litigation

49. Brian Reyes v. Stowasser Buick-GMC

Court	Santa Barbara
Case No.	19CV06183
Nature	Vaquero
Status	Settled

50. Erik Foss v. Anderson Hospitality, Inc.

Court	Shasta
Case No.	195317
OPC	Wood Smith – Andrew Kleiner
Nature	Meal and Rest Breaks, Regular Rate
Status	In Litigation

51. Griselda Duran v. EmployBridge

Court	Kern
Case No.	BCV-20-101583
Nature	Regular Rate, 226
Status	In Litigation

52. Luis Rendon v. Healthcare Investments, Inc.

Court	Los Angeles
Case No.	20STCV39775
Nature	Meal and Rest Breaks
Status	In Litigation

53. Richard Melead v. TVI, Inc.

Court	Orange
Case No.	30-2020-01140887-CU-OE-CXC
Nature	Regular Rate, 226 (Magadia)
Status	In Litigation

54. David Spencer v. Asset Gas, Inc.

Court	San Diego
Case No.	37-2020-00024642-CU-OE-CTL
Nature	Meal and Rest Breaks
Status	Settled

55. Thomas Haven v. California Vocations, Inc.

Court	Butte
Case No.	20CV01514
Nature	Regular Rate + Meal and Rest Breaks
Status	In Litigation

56. Estefania Renteria v. Love's Country

Court	Kern
Case No.	BCV-20-101260
Nature	226
Status	In Litigation

57. Rachel Latin v. OneMain General Services Corp.

Court	Stanislaus
Case No.	CV-20-002498
Nature	Dart + Magadia
Status	In Litigation

58. Kalaina Dula v. 2 Kings Gaming, Inc.

Court	Merced
Case No.	#20CV-02289
Nature	Meal and Rest Breaks
Status	In Litigation

59. Jie Xu v. HT Multinational

Court	San Bernardino
Case No.	CIV-DS2015679
Nature	Exempt Misclassification
Status	In Litigation

60. Yvette Molina v. Hawaiian Airlines

Court	Los Angeles
Case No.	20STCV28079
Nature	Meal and Rest + Magadia
Status	In Litigation

61. Reinald Pillsbury v. T & T Restaurants CA

Court	Del Norte
Case No.	CVUJ-2020-1214
Nature	Meal/Rest Breaks + Regular Rate
Status	Settled

62. Luis de Jesus v. Guardian Angel Home Care

Court	San Diego
Case No.	37-2020-00021049-CU-OE-CTL
Nature	Piece-Rate
Status	In Litigation

63. Charles Sandlin v. Secure Nursing Services, Inc.

Court	Los Angeles
Case No.	20STCV25675
Nature	Regular Rate
Status	Settled

64. Gabriel Mendez v. Bondz, Inc.

Court	San Joaquin
Case No.	STK-CV-UOE-2020-0007486
Nature	Piece-Rate
Status	In Litigation

65. James Conley v. Siskiyou Forest Products

Court	Shasta
Case No.	195819
Nature	Regular Rate and Meal/Rest Breaks + 226
Status	In Litigation

66. Alex Castellanos v. Southwest Patrol

Court	San Diego
Case No.	37-2020-00024905-CU-OE-CTL
Nature	Augutus
Status	In Litigation

67. Damien Hampton v. Pegasus Investors

Court	Sacramento
Case No.	34-2020-00281394-CU-BT-GDS
Nature	Unlawful Housing
Status	In Litigation

68. Tamara Perkins v. FSEI

Court	Sacramento
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Case No.	34-2020-00287054
Nature	Regular Rate
Status	In Litigation

69. Rodney Stovall v. Javelin Logistics Company

Court	Alameda
Case No.	RG20075705
Nature	Meal / Rest Breaks
Status	In Litigation

70. Gabrielle Boyd v. Bluestone Lane Holdings, LLC

Court	San Francisco
Case No.	CGC-20-585787
Nature	Tip Pooling ; Magadia
Status	In Litigation

71. Elias Kaser v. Aviation Consultants, Inc.

Court	Orange County
Case No.	
Nature	Meal / Rest Breaks, Regular Rate
Status	Settled

72. Christopher Chacon v. Panda Motors, Inc.

Court	San Bernardino
Case No.	CIV DS2022220
Nature	Regular Rate
Status	In Litigation

73. Willie Lang v. Pathways

Court	San Diego
Case No.	37-2019-00049969
Nature	Off the Clock
Status	In Litigation

74. Norma Reyes v. Simpson Garden Grove, Inc.

Court	Orange
Case No.	30-2020-0117564-CU-OE-CJC
Nature	Meal / Rest Breaks
Status	Settled

75. Daniel Jacobs v. Rush Media Company

Court	Los Angeles
Case No.	20STCV32350
Nature	Independent Contractor Misclassification
Status	In Litigation

76. Luis Ledesma v. TVJ Sons I, Inc.

Court	Santa Barbara
Case No.	20CV03573
Nature	Vaquero
Status	In Litigation

77. Kevin Cianfarani v. Career Strategies Temporary, Inc. (MPI)

Court	Los Angeles
Case No.	
Nature	Off the clock work
Status	Settled

78. Hector Avitia v. LAZ Parking

Court	San Diego
Case No	37-2020-00030133-CU-OE-CTL
Nature	Magadia + Augustus
Status	In Litigation

79. Sukhraj Kaur v. ACES 2020, LLC

Court	Contra Costa
Case No.	C20-02482
Nature	Meal/Rest Breaks, 2802
Status	In Litigation

80. Boaventura v. Rei Do Gado

Court	Contra Costa
Case No.	37-2020-00032342-CU-OE-CTL
Nature	Meal/Rest Breaks, 2802
Status	In Litigation

81. James Rachal v. ELG Metals, Inc.

Court	Los Angeles
Case No.	20STCV45861
Nature	Meal/Rest Breaks, Regular Rate
Status	In Litigation

82. Evelyn Nwansi v. Princeton Healthcare Center, LLC

Court	Alameda
Case No.	RG20083664
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

83. Michael Ashlock v. Advantis Medical Staffing

Court	San Diego
Case No.	37-2020-00022305-CU-OE-CTL
Nature	Regular Rate
Status	Settled

84. Moe Popal v. Ameriprise Auto & Home Insurance

Court	Riverside
Case No.	RIC2000006
Nature	Exempt/Non-Exempt Misclassification
Status	Settled

85. Mark Williams v. Web to Door

Court	San Francisco
Case No.	
Nature	Meal and Rest Break + Regular Rate
Status	In Litigation

86. Jessica Barackman v. Teaz N Pleaz, Inc.

Court	El Dorado
Case No.	SC20200179
Nature	Meal/Rest Breaks, Seating
Status	In Litigation

87. Nicolas Neutall v. Urban Alchemy

Court	San Francisco
Case No.	CGC-20-588622
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

EXHIBIT 3