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Superior Court of California,

County of Solano

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SUPERIOR COURT OF THE STATE CALIFORNIA

IN AND FOR THE COUNTY OF SOLANO

Case No.: CU24-01201

COMPLAINT FOR:

VILMAR ZOTTIS, an individual, on behalf of
himself and the State of California,

Plaintiff,

vs.

PAMPAS BRAZILIAN STEAK HOUSE, a
Limited Liability Company, RODRIGO JOSE
SILVA DE CARVALHO, and DOES 1-20,
inclusive,

Defendants.

1. Failure to Compensate for All Hours Worked, Cal. Lab. Code §§ 204, 204b, 223, 226.2, 1194; Wage Orders;
2. Failure to Pay Overtime Wages, Cal. Lab. Code §§ 510, 1194, IWC Wage Orders;
3. Failure to Provide Rest Breaks or Pay Wages in Lieu Thereof, Cal. Labor Code § 226.7, IWC Wage Orders;
4. Failure to Provide Meal Periods or Pay Wages in Lieu Thereof, Cal. Lab. Code §§ 226.7, 512, IWC Wage Orders;
5. Conversion of Gratuities, Cal. Labor Code § 350, *et seq.*;
6. Failure to Furnish Accurate Itemized Wage Statements, Cal. Labor Code § 226;
7. Violation of Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; and
8. Private Attorney General Act ("PAGA"), LC §§ 2698 *et seq.*

DEMAND FOR JURY TRIAL

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INTRODUCTION

1. Plaintiff Vilmar Zottis (“Plaintiff”) brings this action against Pampas Brazilian Steak House, LLC, Rodrigo Jose Silva de Carvalho, and Does 1-20, (collectively referred to herein as “Defendants”) for wages and penalties on behalf of himself and the State of California and other current and former workers pursuant to Labor Code section 2698, *et seq.*

2. The following allegations are based on Plaintiff’s knowledge, except allegations made on information and belief, which are based on a reasonable investigation under the circumstances and are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

3. At all times relevant to this action, Defendants have engaged in systematic wage theft, maintaining policies and practices that violate the rights of Plaintiff. Defendants have failed to compensate Plaintiff and, on information and belief, other workers for all hours worked in violation of the state’s minimum wage and overtime laws; failed to provide timely, complete and off-duty meal periods, or otherwise pay premium wages in lieu thereof; failed to authorize and permit rest periods in compliance with the Wage Orders and at the requisite rates for the length of shifts, or otherwise pay premium wages in lieu thereof; failed to pay all wages owed upon termination of the employment relationship; and failed to comply with record keeping requirements.

4. Defendants’ acts and omissions, which violate the Labor Code, constitute predicate unlawful and unfair business practices in violation of California’s Unfair Competition Law (“UCL”), Business & Professions Code sections 17200, *et seq.* Defendants’ violations of the Labor Code are unlawful acts which have afforded Defendants an unfair competitive advantage. Plaintiff is therefore entitled to all remedies provided under the UCL, including restitutionary, injunctive, declaratory and/or other equitable relief for a period of four years from the filing of the original complaint through the date of this action’s final disposition. Plaintiff also seeks reasonable attorneys’ fees and costs pursuant to, *inter alia*, Labor Code sections 2699, 1194(a), and 1198.5(l)

5. Plaintiff also asserts a Private Attorneys General Act (“PAGA”) claim, seeking civil penalties for Defendants’ violations of the Labor Code and Wage Orders as described herein. Plaintiff

1 has complied with Labor Code section 2699.3 by giving written notice to the employer(s) and the
2 Labor and Workforce Development Agency (“LWDA”) of the alleged Labor Code and Wage Order
3 violations, and the facts and theories supporting those violations. Plaintiff has fulfilled the
4 administrative prerequisites of Labor Code section 2699.3 and is statutorily authorized to act on behalf
5 of the State of California to enforce the State’s labor and employment laws and collect civil penalties
6 on behalf of the State and current or former employees, including himself. Accordingly, Plaintiff
7 seeks to hold Defendants and other persons who violated or caused violations of the Labor Code and
8 Wage Orders liable for civil penalties owed to the State of California and other current and former
9 employees (the “PAGA Workforce”).

10 **JURISDICTION AND VENUE**

11 6. This case is subject to the jurisdiction of this court pursuant to the California Labor
12 Code and California Code of Civil Procedure.

13 7. Defendants are located and conduct business in the County of Solano and employed
14 Plaintiff in said County.

15 8. Venue is proper in the Superior Court of Solano because this is where the alleged
16 misconduct occurred.

17 **THE PARTIES**

18 **PLAINTIFF**

19 9. Plaintiff Vilmar Zottis is, and at all times relevant hereto was, a resident of the State of
20 California. Plaintiff has been employed as a non-exempt employee at Defendants’ Pampas Brazilian
21 Steak House restaurant in Vacaville, California within the statute of limitations for PAGA from
22 approximately October 2021 to present. Plaintiff performs tasks such as cleaning, dishwashing,
23 general maintenance, bartending, and waiting tables for Defendants. Mr. Zottis was compensated by a
24 biweekly salary of \$3,000 from October 2021 to approximately October 27, 2023. At all times
25 relevant to this action, Plaintiff was denied compensation for all hours worked, was denied statutory
26 rest breaks and meal periods or wages in lieu thereof, was denied proper compensation from earned
27 tips, and was not issued accurate wage statements. As described herein, Plaintiff has lost money or
28 property and has suffered injury in fact due to Defendants’ conduct.

1 **DEFENDANTS**

2 10. On information and belief, Pampas Brazilian Steak House is a Limited Liability
3 Company listed with the California Secretary of State (SOS) as an entity that is managed by all the
4 LLC members. The business address listed with the SOS is 900 Merchant Street, Vacaville, CA
5 95688, with Rodrigo Jose Silva de Carvalho listed as its Agent for Service of Process. On information
6 and belief Pampas Brazilian Steak House LLC operates restaurants in Fairfield, Sacramento, and
7 Vacaville, California all under the Pampas Brazilian Steak House LLC name. Pampas Brazilian Steak
8 House LLC has employed Plaintiff and denied him proper compensation, including failing to pay all
9 tips earned, failing to pay him for all hours worked, for overtime, and for rest and meal period
10 premiums. As such, Pampas Brazilian Steak House LLC is sued as an employer and is liable for
11 wages, penalties, costs and attorney's fees as described herein.

12 11. Defendant Rodrigo Jose Silva de Carvalho is liable to Plaintiff for wages, interest,
13 statutory penalties, civil penalties, attorney's fees and costs as alleged in this complaint, pursuant to
14 California Labor Code sections 558.1. Plaintiff is informed and believe and thereon allege that, at all
15 times relevant to this action, Mr. Silva de Carvalho has been an owner, officer, and/or managing agent
16 of Pampas Brazilian Steak House LLC. Mr. Silva de Carvalho exercised authority over working
17 conditions, hours and wages, supervised Plaintiff and other employees, and set and enforced
18 employment, labor, and payroll policies, including those at issue in this action. Plaintiff is informed
19 and believes that Mr. Silva de Carvalho authorized or ratified the labor, employment, and
20 compensation practices which denied Plaintiff compensation for all hours worked, overtime, earned
21 tips, and rest and meal premiums. Plaintiff is further informed and believes and thereon alleges that
22 Mr. Silva de Carvalho had authority to compensate Plaintiff properly and to provide rest and meal
23 periods in conformance with the Labor Code and applicable Wage Order(s) but failed to do so. Mr.
24 Silva de Carvalho violated or caused violations of Labor Code sections 226, 226.7, 1193.6, 1194, and
25 provisions regulating minimum wages and hours and days of work in Wage Order 5, as described
26 herein. Consequently, Mr. Silva de Carvalho is liable to Plaintiff for wages, interest, statutory
27 penalties, attorney's fees and cost of suit as the employer under Labor Code section 558.1.

28 12. The true names and capacities, whether individual, plural, corporate, partnership,

1 associate, or otherwise, of DOES 1 through 20, inclusive, are unknown to Plaintiff who are therefore
2 sued under such fictitious names. The full extent of the facts linking such fictitiously sued Defendants
3 is unknown to Plaintiff.

4 13. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants
5 designated herein as a Doe was, and is, legally responsible in some manner for the unlawful acts
6 referred to herein. Each Doe defendant is liable as an employer, joint employer or person who caused
7 the alleged violations. Plaintiff will hereafter seek leave of the Court to amend this Complaint to show
8 the Defendants' true names and capacities after the same have been ascertained. Plaintiff is informed
9 and believes and thereon alleges that each of the fictitiously named defendants is legally responsible in
10 some manner for the events and occurrences alleged herein, and for the damages suffered by Plaintiff.

11 14. Plaintiff is informed and believe, and thereon allege, that at all times mentioned herein,
12 all Defendants, including DOE defendants, and each of them, were agents, servants, employees,
13 successors in interest, and/or joint venturers of their co-Defendants, and were, as such, acting within
14 the course, scope, and authority of said agency, employment, and/ or venture, and with the consent of
15 their co-Defendants, and/or said acts were ratified by their co-Defendants, and that each and every
16 Defendant, as aforesaid, when acting as a principal, was negligent in the selection and hiring, training,
17 and supervision of each and every other Defendant as an agent, servant, employee, successor in
18 interest, and/or joint venture.

19 **FACTUAL ALLEGATIONS**

20 15. Plaintiff Vilmar Zottis has worked for Defendants since October 2021. During this
21 time, he was denied proper compensation for all hours worked, denied all tips earned, and was denied
22 rest and meal periods or additional wages in lieu thereof. From October 2021 to approximately
23 October 27, 2023, Plaintiff was paid a bi-weekly salary of \$3,000. Plaintiff typically has worked shifts
24 for Defendants during the week on Tuesday, Wednesday, and Thursday. On Fridays, Saturdays, and
25 Sundays, Plaintiff often works shifts for Defendants that greater 8-hours. Plaintiff has not been paid
26 overtime wages for hours in excess of eight in a workday or 40 in a workweek. Plaintiff was also
27 denied double-time premiums for hours in excess of 12 in a workday. Defendants also failed to
28 lawfully compensate Plaintiff for his earned tips.

16. During Plaintiff's employment with Defendants, he has not been relieved of all duty for the requisite number of rest breaks required per the length of shift. Defendants failed to authorize and permit net-10 minutes of rest at the rate of two breaks for shifts greater than six hours and up to 10 hours, three breaks for shifts greater than 10 hours and up to 14 hours, and four breaks for shifts greater than 14 hours and up to 18 hours. Despite the routine failure to authorize and permit proper rest periods, Defendants failed to pay Plaintiff additional wages for rest breaks that were not properly authorized and permitted.

17. Similarly, Plaintiff was rarely if ever relieved of all duty for timely, uninterrupted meal periods, and he was rarely, if ever, relieved of all duty for a second meal period when the shift exceeded 10 hours. Despite the routine failure to provide proper meal periods, Defendants failed to pay Plaintiff additional wages for meal period non-compliance.

FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(Violation of Lab. Code §§ 204, 223, 226.2, 1194, 1194.2, 1197, and 1198)

Plaintiff Against all Defendants

18. Plaintiff realleges and incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

19. Defendants are required to compensate employees for all hours worked pursuant to the Industrial Welfare Commission Order 5-2001 and California Labor Code sections 204, 1194, 1197, and 1198.

20. California Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Orders for all hours worked.

21. California Labor Code section 223 makes it unlawful to secretly pay below the rate designated by statute or agreement while purporting to comply with the rate designated by contract or statute.

22. California Labor Code section 204 requires payment of all wages earned bi-weekly or semi-monthly on the regularly-established pay dates.

23. Defendants violated the provisions of Labor Code sections 204, 223, 1194, 1197 and 1198, and Wage Order 5, by failing to pay for all hours worked and for overtime.

24. Plaintiff routinely worked daily and weekly overtime. His daily shifts often exceeded eight and often 12 hours of work in a 24-hour period. He also worked six days per week, routinely exceeding 40 hours in a workweek without overtime pay. The salary he received only compensated Plaintiff for non-overtime hours, resulting in a large number of daily and weekly overtime hours going completely uncompensated.

25. California Labor Code section 1194 entitles employees to bring an action to recover wages, interest, attorney's fees and cost of suit for failure to pay all hours worked and violation of the minimum wage. California Labor Code section 1194.2 entitles Plaintiff to seek liquidated damages for violations of the minimum wage.

26. The violations described herein, including but not limited to the violations of Labor Code sections 1194 serve as predicate violations under PAGA. Plaintiff has complied with the administrative procedures set forth in California Labor Code § 2699.3 to bring a claim for civil penalties under PAGA, and as such seeks civil penalties on behalf of himself, the State of California and the PAGA Workforce. Civil Penalties are sought against all Defendants pursuant to Labor Code § 200, 204, 204b, 210, 223, 510, 511, 558, 1194, 1194.2, 1197, 1197.1, 1198, 2699(f) and 2698, et seq.

27. Pursuant to Labor Code section 558.1, any employer or other person (i.e., owner, officer, director or managing agent) acting on behalf of an employer who violates or causes a violation of Labor Code section 1194 may be held liable as the employer. Defendant Silva de Carvalho is liable as the employer for violating and causing the violations described herein.

28. Plaintiff seeks wages and interest thereon in an amount to be established at trial and is entitled to recover attorneys' fees and costs of suit, pursuant to Labor Code section 1194. Plaintiff also seeks liquidated damages for violation of the minimum wage, pursuant to Labor Code section 1194.2.

SECOND CAUSE OF ACTION

VIOLATION OF OVERTIME LAWS

(Violation of Cal. Lab. Code §§ 510, 515, 1185, 1194, IWC Wage Order 5-2001)

Plaintiff Against all Defendants

1 29. Plaintiff realleges and incorporates herein by reference each and every allegation and
2 statement contained in the prior paragraphs, as though fully set forth herein.

3 30. California Labor Code section 510 and Wage Order 5 mandate employers, including
4 Defendants, to pay premium wages for hours worked in excess of 8 in a workday and 40 in a
5 workweek.

6 31. Defendants violated the provisions of Labor Code section 510 and Wage Order 5 by
7 paying Plaintiff a salary that encompassed all hours worked and failed to account for all overtime
8 hours worked.

9 32. Plaintiff routinely worked daily and weekly overtime. His daily shifts often exceeded
10 eight and often 12 hours of work in a 24-hour period. He also worked six days per week, routinely
11 exceeding 40 hours in a workweek without overtime pay. The salary he received only compensated
12 Plaintiff for non-overtime hours, resulting in a large number of daily and weekly overtime hours going
13 completely uncompensated.

14 33. California Labor Code section 1194 entitles employees to bring an action to recover
15 wages, interest, attorney's fees and cost of suit for failure to pay overtime wages.

16 34. The violations described herein, including but not limited to the violations of Labor
17 Code sections 510, 1194, and 1198 serve as predicate violations under PAGA. Plaintiff has complied
18 with the administrative procedures set forth in California Labor Code § 2699.3 to bring a claim for
19 civil penalties under PAGA, and as such seeks civil penalties on behalf of himself, the State of
20 California and the PAGA Workforce. Civil Penalties are sought against all Defendants pursuant to
21 Labor Code §§ 200, 204, 204b, 210, 223, 226.3, 256, 510, 511, 558, 1194, 1194.2, 1197, 1197.1, 1198,
22 2699(f) and 2698, et seq.

23 35. Pursuant to Labor Code section 558.1, any employer or other person (i.e., owner,
24 officer, director or managing agent) acting on behalf of an employer who violates or causes a violation
25 of Labor Code section 1194 may be held liable as the employer. Defendant Silva de Carvalho is liable
26 as the employer for violating and causing the violations described herein.

27 36. Plaintiff seeks overtime wages, interest, attorney's fees and costs of suit pursuant to
28 Labor Code sections 1194.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST BREAKS OR COMPENSATION IN LIEU THEREOF**

3 (Violation of California Labor Code § 226.7 and IWC Wage Order 5)

4 Plaintiff Against all Defendants

5 37. Plaintiff realleges and incorporates herein by reference each and every allegation and
6 statement contained in the prior paragraphs, as though fully set forth herein.

7 38. California Labor Code § 226.7 states:

8 No employer shall require any employee to work during any meal or rest period
9 mandated by an applicable order of the Industrial Welfare Commission.”

10 If an employer fails to provide an employee a meal period or rest period in accordance
11 with an applicable order of the Industrial Welfare Commission, the employer shall pay
12 the employee one additional hour of pay at the employees regular rate of compensation
13 for each work day that the meal or rest period is not provided.

14 39. IWC Wage Orders provide with respect to rest periods as follows:

15 (A) Every employer shall authorize and permit all employees to take rest periods, which
16 insofar as practicable shall be in the middle of each work period. The authorized rest
17 period time shall be based on the total hours worked daily at the rate of ten (10) minutes
18 net rest time per four (4) hours or major fraction thereof. However, a rest period need
19 not be authorized for employees whose total daily work time is less than three and one-
20 half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for
21 which there shall be no deduction from wages.

22 (B) If an employer fails to provide an employee a rest period in accordance with the
23 applicable provisions of this Order, the employer shall pay the employee one (1) hour of
24 pay at the employee's regular rate of compensation for each work day that the rest
25 period is not provided.

26 40. Defendants failed to authorize and permit statutory rest breaks at the mandatory rate of
27 one break for shifts greater than 3.5 hours up to six hours, two breaks for shifts greater than six hours
28 and up to 10 hours, three breaks for shifts greater than 10 hours and up to 14 hours, and so on. Plaintiff
was not relieved of all duty for proper rest breaks, was discouraged from taking rest breaks, and was
routinely required to work through rest periods.

41. Defendants failed to pay rest period premiums to Plaintiff in lieu of proper rest periods.

42. The violations described herein, including but not limited to the violations of Labor
Code section 226.7 serve as predicate violations under PAGA. Plaintiff has complied with the

1 administrative procedures set forth in California Labor Code § 2699.3 to bring a claim for civil
2 penalties under PAGA, and as such seeks civil penalties on behalf of himself, the State of California
3 and the PAGA Workforce. Civil Penalties are sought against all Defendants pursuant to Labor Code
4 §§ 558, 2699(f) and 2698, et seq.

5 43. Pursuant to Labor Code section 558.1, any employer or other person (*i.e.*, owner,
6 officer, director or managing agent) acting on behalf of an employer who violates or causes a violation
7 of Labor Code section 226.7 may be held liable as the employer. Defendant Silva de Carvalho is
8 liable as the employer for violating and causing the violations described herein.

9 44. Wherefore, Plaintiff seeks rest breaks premiums and interest thereon pursuant to the
10 Wage Orders and Labor Code section 226.7.

11 **FOURTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

13 (Violation of California Labor Code §§ 226.7, 512, IWC Wage Order 5)

14 Plaintiff Against all Defendants

15 45. Plaintiff realleges and incorporates herein by reference each and every allegation and
16 statement contained in the prior paragraphs, as though fully set forth herein.

17 46. California Labor Code § 226.7 states:

18 (a) No employer shall require any employee to work during any meal or rest period
19 mandated by an applicable order of the Industrial Welfare Commission.

20 (b) If an employer fails to provide an employee a meal period or rest period in
21 accordance with an applicable order of the Industrial Welfare Commission, the
22 employer shall pay the employee one additional hour of pay at the employee's regular
rate of compensation for each work day that the meal or rest period is not provided.

23 47. Section 512(a) of the California Labor Code provides, in relevant part, that:

24 An employer may not employ an employee for a work period of more than five hours
25 per day without providing the employee with a meal period of not less than 30 minutes,
except that if the total work period per day of the employee is no more than six hours,
26 the meal period may be waived by mutual consent of both the employer and employee.
An employer may not employ an employee for a work period of more than 10 hours per
27 day without providing the employee with a second meal period of not less than 30
28 minutes, except that if the total hours worked is no more than 12 hours, the second meal
period may be waived by mutual consent of the employer and the employee only if the

1 first meal period was not waived.

2 48. IWC Wage Order 2-2001 § 11 states:

3 (A) No employer shall employ any person for a work period of more than five (5) hours
4 without a meal period of not less than 30 minutes, except that when a work period of not
5 more than six (6) hours will complete the day's work the meal period may be waived by
6 mutual consent of the employer and employee. Unless the employee is relieved of all
7 duty during a 30 minute meal period, the meal period shall be considered an "on duty"
8 meal period and counted as time worked. An "on duty meal period shall be permitted
9 only when the nature of the work prevents an employee from being relieved of all duty
10 and when by written agreement between the parties an on-the-job paid meal period is
11 agreed to. The written agreement shall state that the employee may, in writing revoke
12 the agreement at any time.

13 (B) If an employer fails to provide an employee a meal period in accordance with the
14 applicable provisions of this Order, the employer shall pay the employee one (1) hour of
15 pay at the employee's regular rate of compensation for each work day that the meal
16 period is not provided.

17 49. Defendants failed to relieve Plaintiff of all duty for timely, uninterrupted meal periods
18 lasting at least 30 minutes, or second meal periods during shifts greater than 10 hours. Plaintiff was
19 required routinely to work without a meal period and discouraged from taking meal periods.
20 Defendants failed to pay meal period premiums to Plaintiff for unprovided, short, and untimely meal
21 periods.

22 50. The violations described herein, including but not limited to the violations of Labor
23 Code sections 512 and 226.7 serve as predicate violations under PAGA. Plaintiff has complied with
24 the administrative procedures set forth in California Labor Code section 2699.3 to bring a claim for
25 civil penalties under PAGA, and as such seeks civil penalties on behalf of himself, the State of
26 California and the PAGA Workforce. Civil Penalties are sought against all Defendants pursuant to
27 Labor Code sections 558, 2699(f) and 2698, et seq.

28 51. Pursuant to Labor Code section 558.1, any employer or other person (*i.e.*, owner,
officer, director or managing agent) acting on behalf of an employer who violates or causes a violation
of Labor Code section 226.7 may be held liable as the employer. Defendant Silva de Carvalho is
liable as the employer for violating and causing the violations described herein.

52. Plaintiff seeks meal period premiums and interest thereon pursuant to the Wage Orders
and Labor Code sections 226.7 and 512.

1 **FIFTH CAUSE OF ACTION**

2 **CONVERSION OF GRATUITIES**

3 Violation of Labor Code § 350, *et seq.*

4 (Plaintiff against all Defendants)

5 53. Plaintiffs re-allege and incorporate the above allegations as if fully stated herein.

6 54. Labor Code section 351 provides the following with regard to tips and gratuities:

7 No employer or agent shall collect, take, or receive any gratuity or a part
8 thereof that is paid, given to, or left for an employee by a patron, or deduct
9 any amount from wages due an employee on account of a gratuity, or
10 require an employee to credit the amount, or any part thereof, of a gratuity
11 against and as a part of the wages due the employee from the employer.
12 Every gratuity is hereby declared to be the sole property of the employee
13 or employees to whom it was paid, given, or left for. An employer that
14 permits patrons to pay gratuities by credit card shall pay the employees
15 the full amount of the gratuity that the patron indicated on the credit card
16 slip, without any deductions for any credit card payment processing fees
17 or costs that may be charged to the employer by the credit card company.
18 Payment of gratuities made by patrons using credit cards shall be made to
19 the employees not later than the next regular payday following the date
20 the patron authorized the credit card payment.

21 55. On information and belief, Defendants maintain a compensation formula that violates
22 Labor Code section 351 by collecting, taking, or receiving gratuities (or parts thereof) that are paid,
23 given, or left to Plaintiff and the PAGA workforce. Defendants use these gratuities to cover overhead
24 expenses or purportedly to meet the minimum wage.

25 56. Pursuant to Labor code section 350, *et seq.*, the gratuities provided by patrons to
26 Plaintiff and the PAGA workforce are owned by Plaintiff and the PAGA workforce and constitute
27 their property. Plaintiff has a right to possess of all gratuities left to him.

28 57. Defendants substantially interfered with Plaintiff's property by knowingly or
intentionally taking possession of these gratuities and using them as if they belonged to Defendants.

58. Plaintiff and, on information and belief, members of the PAGA workforce did not
consent to Defendants' conversion of gratuities.

59. As a result of Defendants' conduct, Plaintiff has been harmed and has been deprived of
money and property in amounts to be proven at trial.

60. The violation of Labor Code section 350, *et seq.* serves as a predicate for PAGA.

SIXTH CAUSE OF ACTION

FAILURE TO FURNISH ACCURATE WAGE STATEMENTS

Violation of Labor Code § 226

(Plaintiff against all Defendants)

61. Plaintiffs re-allege and incorporate the above allegations as if fully stated herein.

62. Labor Code section 226(a) requires that employers, including Defendants, furnish their employees with each wage payment an accurate and itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

63. Further, Labor Code section 226.2(a)(2) provides that wage statements must also include the total hours of compensable rest and recovery periods, the rate of compensation and the gross wages paid for such periods during the pay period and the total hours of other non-productive time, the rate of compensation and the gross wages paid for that time during the pay period.

64. Labor Code section 226(e), in part, permits employees suffering injury to collect the greater of all actual damages or the amount specified in Labor Code section 226 per violation.

65. Labor Code section 226(e)(2)(B) states, in pertinent part:

an employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

66. Labor Code section 226(h) states, “[a]n employee may also bring an action for

1 injunctive relief to ensure compliance with this section, and is entitled to an award of costs and
2 reasonable attorney's fees.”

3 67. As a result of Defendants’ conduct during the applicable statutory period, Defendants
4 knowingly and intentionally failed to furnish Plaintiff with an accurate itemized wage statement with
5 each wage payment as required by Labor Code section 226(a).

6 68. Defendants’ failure to provide accurate wage statements deprived Plaintiff of his ability
7 to promptly and easily understand and question the calculation and rate of pay and hours used to
8 calculate the wages paid by Defendants. Plaintiff, therefore, had no way to dispute any error in the
9 payment or calculation of their wages, all of which resulted in an unjustified economic enrichment to
10 Defendants, and Plaintiff suffered actual damages as a result.

11 69. Defendants’ failure to furnish accurate itemized wage statements constitutes an injury
12 as defined under Labor Code section 226(e)(2)(B). Therefore, Plaintiff and members of the class have
13 suffered an injury for purposes of Labor Code section 226 and are entitled to recover the greater of all
14 actual damages or the amount specified in section 226 per violation.

15 70. Defendants’ violation of Labor Code section 226 serves as a predicate for PAGA, and
16 Defendants are liable to the state and Aggrieved Employees for civil penalties according to proof.

17 71. Plaintiff seeks to recover all available remedies including, but not limited to damages,
18 penalties, attorney's fees, costs, and injunctive relief to the fullest extent permitted by law.

19 **SEVENTH CAUSE OF ACTION**

20 **California’s Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.***

21 **Plaintiff Against all Defendants**

22 72. Plaintiff realleges and incorporates herein by reference each and every allegation and
23 statement contained in the prior paragraphs, as though fully set forth herein.

24 73. Section 17200 of the California Business and Professions Code (the “UCL”) prohibits
25 any unlawful, unfair, or fraudulent business practices.

26 74. Through its action alleged herein, Defendants have engaged in unfair competition
27 within the meaning of the UCL by failing to compensate Plaintiff all wages owed, failing to pay
28 overtime premiums, and failing to pay rest and meal period premiums. These acts, (among others

1 alleged herein) constitute unlawful, unfair, and/or fraudulent business practices under the UCL.

2 75. Plaintiff has standing to assert this claim because they have suffered injury in fact and
3 have lost money as a result of Defendants' conduct.

4 76. Plaintiff seeks restitutionary disgorgement from Defendants as well as injunctive and
5 declaratory relief.

6 **EIGHTH CAUSE OF ACTION**

7 **California Private Attorney General Act, Labor Code sections 2698, et seq.**

8 Plaintiff, on Behalf of the State and Aggrieved Employees, Against All Defendants

9 77. Plaintiff re-alleges and incorporates the above allegations above as if fully stated
10 herein.

11 78. Plaintiff brings this cause of action on behalf the State of California with respect to the
12 labor law violations he and all other current or former non-exempt employees experienced during the
13 relevant time-period as alleged in this complaint.

14 79. Defendants violated the Labor Code by failing to compensate Plaintiff and other current
15 and former employees for all hours worked, during unpaid meal periods in violation of the state's
16 minimum wage and overtime laws. Defendants also failed to pay meal period and rest break premium
17 wages at the statutory or required rates of pay, failed to maintain accurate time and payroll records,
18 failed to pay all tips owed, and maintaining policies and practices described in this complaint. As
19 such, Defendants have violated the Plaintiff's rights and, on information and belief, the rights of other
20 current or former employees who worked for Defendants as non-exempt employees.

21 80. PAGA permits an individual to recover civil penalties on behalf of themselves and
22 other current or former employees for violations of the Labor Code. Labor Code section 2699(a).

23 81. Defendants are liable for civil penalties under PAGA for the Wage Order and Labor
24 Code violations described in this complaint. Plaintiff alleges that Defendants violated: sections 201-
25 202, 256 and 1197.1 subjecting Defendants to liability for waiting time penalties based on willful
26 (section 203) failure to pay all wages owed timely upon separation from employment; sections 200,
27 204, 204b, and 210 by failing to pay all wages owed weekly, semi-monthly or when due; sections 221,
28 223 for secretly paying less than the statutory or contractual rate; sections 510, 511 and 1198 for

1 failing to pay overtime; sections 558 and 1197.1 for penalties for violation of the minimum wage and
2 failure to pay all overtime; sections 1174 and 1174.5 for failing to maintain required payroll records;
3 and sections 1194, 1194.2 , 1197 and 1197.1 for failure to pay minimum wage or paying less than the
4 applicable state or local law.

5 82. Defendants are liable for civil penalties for failure to maintain accurate records—
6 showing when an employee begins and ends each work period, as well as total hours worked in the
7 payroll period and applicable rates of pay—pursuant to Labor Code sections 1174.5 and 2698 et seq.

8 83. Defendants are liable for civil penalties for failure to compensate for all hours worked,
9 pursuant to Labor Code sections 200, 204, 204b, 210, 223, 510, 511, 558, 1194, 1194.2, 1197, 1197.1,
10 1198, and 2698 et seq.

11 84. Defendants are liable for civil penalties for failure to compensate for all overtime
12 premium wages pursuant to Labor Code sections 200, 204, 204b, 210, 223, 510, 511, 558, 1194,
13 1194.2, 1197, 1197.1, 1198, and 2698 et seq.

14 85. Defendants are liable for civil penalties for failure to pay Plaintiff and the PAGA
15 Workforce for all gratuities earned pursuant to Labor Code Sections §§ 350, 351.

16 86. PAGA permits an individual to recover civil penalties on behalf of himself, the State,
17 and all other current or former employees for violations of the Labor Code. Labor Code § 2699(a).

18 87. Plaintiff has complied with Labor Code section 2699.3 by giving written notice to
19 Defendants and the LWDA of the alleged Labor Code and Wage Order violations, and the facts and
20 theories supporting those violations.

21 88. Wherefore, Plaintiff seeks civil penalties for himself, the State of California, the PAGA
22 Workforce, as well as attorney's fees, costs and interest, in amounts subject to proof at trial.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff demands a trial by jury on all claims so triable.

25 **PRAYER FOR RELIEF**

26 Wherefore, Plaintiff prays for the following forms of relief:

27 1. For penalties pursuant to all provisions of the Labor Code referenced herein which
28 provide for penalties as a result of the conduct alleged herein, including waiting time penalties

1 pursuant to Labor Code section 203;

2 2. For costs of suit incurred herein and attorneys' fees pursuant to the statutes cited herein,
3 including Labor Code section 1194 and California Code of Civil Procedure section 1021.5;

4 3. For compensatory damages and wages pursuant to Labor Code sections 1194, 223,
5 1197, 204, 210;

6 4. For liquidated damages pursuant to Labor Code section 1194.2;

7 5. For overtime compensation and overtime premiums pursuant to Labor Code sections
8 510 and 1194;

9 6. For all gratuities earned pursuant to Labor Code sections 350 and 351;

10 7. For restitution of all monies due to Plaintiff from the unlawful business practices of
11 Defendants, pursuant to the UCL;

12 8. For injunctive and declaratory relief under the UCL;

13 9. For an award of civil penalties payable to Plaintiff, the State of California, and other
14 current or former employees under PAGA for each violation of the Labor Code and Wage Order
15 described in this complaint, including but not limited to penalties under Labor Code sections 200, 204,
16 204b, 210, 223, 226.7, 256, 350, 351, 510, 512, 558, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
17 2699(a), 2699(f), and other provisions described in this complaint.

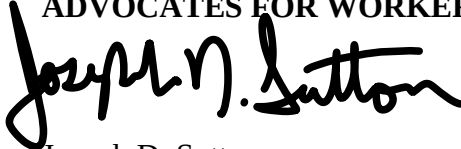
18 10. For an award of attorneys' fees and costs pursuant to Labor Code section 2699(g).

19 11. For pre-judgment and post-judgment interest as provided by law, pursuant to Labor
20 Code section 218.6;

21 12. For such other and further relief as this Court deems just and proper.

22
23 Respectfully submitted.

24 Dated: February 20, 2024

25 **ADVOCATES FOR WORKER RIGHTS LLP**
26 
27 Joseph D. Sutton
Attorneys for Plaintiffs