Elliot J. Siegel (Bar No. 286798)
Elliot@KingSiegel.com
Julian Burns King (Bar No. 298617)
Julian@KingSiegel.com
Lawrence W. Beall (Bar No. 343117)
Lawrence@KingSiegel.com
KING & SIEGEL LLP
724 South Spring Street, Suite 201
Los Angeles, California 90014
tel: (213) 465-4802
fax: (213) 465-4803

Attorneys for Plaintiff and the Putative Class

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
7/11/2024 6:02 PM
By: Preston Frye , Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

Ronald Beardsley, individually and on behalf of all similarly situated individuals,

Plaintiff,

vs.

Alisal Properties d/b/a Alisal Ranch, a California Corporation; **James Hiland Jackson**, an individual; and **Does 1-100**;

Defendants.

CASE NO. 24CV03864

CLASS ACTION COMPLAINT FOR:

1) Failure to Pay Minimum Wages;
2) Failure to Pay Overtime Wages;
3) Failure to Provide Meal Periods or Premium Pay in Lieu Thereof;
4) Failure to Provide Rest Periods or Premium Pay in Lieu Thereof;
5) Failure to Reimburse Necessary Business Expenses;
6) Violation of Sick Leave Laws;
7) Failure to Provide and Maintain Accurate Records;
8) Unlawful Deductions From Gratuities Earned
9) Conversion
10) Failure to Pay Wages When Due During Employment and at Separation; and
11) Violation of California's Unfair Competition Law

Jury Trial Requested

Plaintiff Ronald Beardsley ("Plaintiff"), on behalf of himself and all other similarly situated current and former employees ("Class Members"), by and through his counsel of record, alleges as follows against Alisal Properties d/b/a Alisal Ranch, James Hiland Jackson, and DOES 1-100 (collectively, "Defendants"):

PARTIES

1. Plaintiff **Ronald Beardsley** is a resident of Solvang, California, County of Santa Barbara. Plaintiff was as an hourly, non-exempt employee of Defendants from approximately November 2003 to June 24, 2024. Plaintiff Ronald Beardsley was subject to the policies and practices described in this Complaint at all times during his employment with Defendants.

2. Defendant **Alisal Properties d/b/a Alisal Ranch** ("Alisal Ranch") is a California Corporation and is in the hotel and resort business. On information and belief, Alisal Properties d/b/a Alisal Ranch has employed at least 100 hourly, non-exempt employees in a variety of capacities through the four years leading to this Complaint within the state of California. Alisal Properties d/b/a Alisal Ranch is a California stock corporation with its principal place of business at 1054 Alisal Road, Solvang, California 93463.

3. Defendant **James Hiland Jackson** is the Chief Financial Officer of Alisal Ranch, and on information and belief is a resident of the County of Santa Barbara. Upon information and belief, he violated or caused to be violated the regulations and statutes described in greater detail below. Since James Hiland Jackson is a managing agent, director, and/or officer of Alisal Ranch, and because he violated or caused to be violated the statutes at issue in this action, he is personally liable for the Labor Code violations complained of herein per Labor Code § 558.1.

4. Plaintiff is not currently aware of the names and true identities of defendants Does 1-100. Plaintiff reserves the right to amend this complaint to allege their true names and capacities when this information is available. Each Doe defendant is responsible for the damages alleged pursuant to each of the causes of action asserted, either through its own conduct, or vicariously through the conduct of others. Further references in this

complaint to any named Defendants includes the fictitiously named defendants.

5. At all times alleged herein, each Defendant was an agent, servant, joint employer, employee, partner, and/or joint venture of every other Defendant and was acting within the scope of the Defendants' relationship. Moreover, the conduct of every Defendant was ratified by each Defendant.

VENUE AND JURISDICTION

6. The court has jurisdiction over all causes of action in this complaint pursuant to Article VI, § 10 of the California Constitution. No federal question is at issue; Plaintiff relies solely on California statutes and law, including the Labor Code and Business & Professions Code. Because Defendants conduct substantial business in Santa Barbara County, Defendants are within the jurisdiction of the court for service of process. Moreover, Business & Professions Code § 17204 provides that any person acting on their own behalf may bring an action in any court of competent jurisdiction.

7. Venue as to Defendants is proper in this Superior Court pursuant to California Code of Civil Procedure § 395. Defendant Alisal Properties d/b/a Alisal Ranch's principal place of business is located in Solvang, California in the County of Santa Barbara. A substantial amount of the unlawful acts alleged have directly affected Plaintiff, and similarly situated employees, in Santa Barbara County, where Plaintiff was employed by Defendants and earned wages at issue in this action. Accordingly, this Court maintains appropriate jurisdiction over this dispute.

CLASS ACTION ALLEGATIONS

8. As a matter of uniform and systemic policy, Defendants failed to authorize and/or permit non-exempt employees the right to take timely, compliant, uninterrupted, and/or duty-free meal and rest breaks pursuant to Labor Code § 226.7 based on, at least, the following uniform policies and practices.

9. *First*, Defendants implemented a policy and practice that expressly required Plaintiff and Class Members to remain on-duty during meal and rest breaks whereby Class Members were required to monitor their radios and/or cellphones to listen for and respond

to calls and messages from Defendants regardless of whether they were on a meal or rest period. These policies prohibited employees from using meal and rest periods in a manner of their choosing, free from their employer's dominion and control.

10. *Second*, Defendants, in fact, interrupted Plaintiff and Class Members during their meal and rest periods to discuss work-related matters and/or instruct them on pending tasks.

11. *Third,* Defendants also cut breaks short and/or prohibited employees from taking breaks when workloads were high and/or when locations were understaffed.

12. *Fourth,* Class Members were not permitted to leave the premises during their breaks as a matter of Defendant's scheduling and operational practices.

13. In failing to authorize and/or permit timely and/or uninterrupted meal and rest periods, Defendants have also implemented a uniform policy of denying compensation in lieu of meal and rest periods to its non-exempt employees. Defendants denied compensation in lieu of meal and rest periods, including premium wages owed, notwithstanding their actual knowledge that such employees were uniformly denied compliant meal and rest periods.

14. Additionally, Defendants routinely required Plaintiff and Class Members to perform extra duties off-the-clock without compensation in addition to their regularly scheduled shift by forcing Plaintiff and Class Members to clock out for meal breaks or after their shift ended but continue working to answer, respond to, or assist guests, or otherwise act at Defendants' direction.

15. By requiring employees to work during their meal periods but preventing them from recording that time, Plaintiff and Class Members were forced to work off the clock and deprived of owed straight time wages.[1] Additionally, as Class Members worked shifts of at least 8 hours, or weeks of at least 40 hours, some of this time was required to

---

[1] When Class Members combined work time for recorded hours and off-the-clock hours at times exceeding ten (10) hours, they were entitled to a second meal period, yet Defendants failed to provide a second meal period because it did not count the off the clock time for purposes of provision of meal periods.

be paid at overtime rates, but was not done so.

16. Furthermore, as part of its operational policies and practices, Defendants required Plaintiff and other Class Members to be on-call so that someone was always available in case of emergencies, and to ensure speedy interactions with tenants. Defendants controlled Plaintiff and other Class Members during on-call time and required that they remain available to respond to calls and be able to arrive at assigned properties within a specific time frame. They were also not permitted to consume alcohol while on-call, go to parties, or leave the area where the resort was located. However, Defendants did not properly compensate Plaintiff and other Class Members for all compensable time spent on-call but only for time when Plaintiff and other Class Members engaged in specific services. These policies and practices resulted in the Class being deprived of at least minimum wage for all hours worked, and being deprived of earned overtime wages.

17. Defendants implemented a policy and practice of failing to compensate Plaintiff and Class Members for overtime wages, sick pay, meal break premiums, and/or rest break premiums at their regular rate of pay.

18. On information and belief, Defendants implemented a policy and practice of making unlawful deductions from the gratuities earned by Plaintiff and Class Members, which deprived Plaintiff and Class Members of minimum wages and gratuities earned. On information and belief, Defendants collected from customers gratuities that were legally the property of Plaintiff and Class Members but failed to pay Plaintiff and Class Members the entirety of the gratuity, or all that portion properly belonging to a given Class Member, and instead retains for itself a portion of the gratuity owed to non-managerial employees.

19. More specifically, Defendants automatically impose a daily 22% service fee on all bookings for its guests that it refers to as a "ranch fee." When informing guests of the imposition of this "ranch fee," Defendants clearly indicated to guests that it was designed to compensate *Class Members* by "*fund[ing] additional compensation to employees who provide service to our guests and eliminat[ing] the need for tipping*."

20. Defendant's service charge, which is an amount due over the cost of food,

drink, and lodging, is purposefully "depicted to customers as intended for the service staff, and which reasonably appear to be for the service staff" as gratuities. *O'Grady v. Merch. Exch. Prods., Inc.*, 41 Cal.App.5th 771, 789-90 (Cal. Ct. App. 2019). As such, Defendant's customers *perceive* the 22% "ranch fee" as a gratuity, and *intend* the "ranch fee" to be a gratuity to compensate Class Members who provide services—and not kept by Defendants to enhance their bottom line. These "ranch fees" were therefore the property of Class Members and were to be paid to Class Members, with no amounts allowed to be retained by Defendants or their managerial staff. *See* Labor Code §§ 350, 351.

21. Finally, Plaintiff and Class Members were not reimbursed for necessary business expenditures, such as using their cellular phones to discharge their duties.

22. Accordingly, Plaintiff brings this action on behalf of himself and as a class action on behalf of the following defined Class:

23. **<u>Non-Exempt Employee Class</u>:**

All non-exempt, hourly employees who worked at least one 3.5-hour shift for Defendants in the State of California from the period four years prior to the filing of the Action and the date of trial ("Class").

24. Common methods of proof exist for determining these issues on a class-wide basis, including but not limited to, Defendants' employment records, payroll records, timesheets, policies, and disciplinary records.

25. **<u>Numerosity.</u>** Plaintiff is informed and believes that, during the class period, at least 100 Class Members have been employed as non-exempt employees by Defendants within the state of California. The number of Class Members is sufficiently numerous such that joinder of all members is impossible or impracticable.

26. **<u>Typicality.</u>** Plaintiff's claims are typical of all Class Members. Like all other Class Members, Plaintiff was subjected to the policies and practices set forth above. Plaintiff's job duties were typical of Class Members in all relevant respects.

27. **<u>Adequacy.</u>** There are no material conflicts between the claims of the representative Plaintiff and Class Members that would make class certification

inappropriate. Plaintiff understands his obligation to inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff is invested in redressing Defendants' illegal practices on behalf of all Class Members. Moreover, Plaintiff retained competent counsel experienced in both class action and employment litigation. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement, and will vigorously assert the claims of all Class Members. Plaintiff incurred, and will continue to incur, costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

28. **Existence and Predominance of Common Issues.** Common questions of law and fact exist as to all Class Members and predominate over issues affecting individual Class Members, including, but not limited to:

a. Whether Defendants have a common policy and/or practice of failing to accurately record non-exempt employees' time;

b. Whether Defendants have a common policy and/or practice of failing to accurately compensate non-exempt employees for all time worked;

c. Whether Defendants unlawfully required Plaintiff and Class Members to remain under Defendants' control and direction while off-the-clock;

d. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and Class Members at a minimum wage for all hours worked;

e. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and Class Members required overtime wages;

f. Whether Defendants have a common policy and/or practice of depriving Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;

g. Whether Defendants unlawfully and/or willfully deprived Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;

h. Whether Defendants paid Plaintiff and Class Members all required premium wages for non-compliant meal and/or rest periods;

i. Whether Defendants have a common policy and/or practice of failing to reimburse employees for necessary business expenditures;

j. Whether Defendants have a common policy and/or practice of failing to compensate employees at their regular rate of pay for overtime wages earned;

k. Whether Defendants have a common policy and/or practice of failing to compensate employees at their regular rate of pay for sick pay;

l. Whether Defendants have a common policy and/or practice of failing to compensate employees at their regular rate of pay for meal break period premium payments;

m. Whether Defendants have a common policy and/or practice of failing to compensate employees at their regular rate of pay for rest period premium payments;

n. Whether Defendants have a common policy and/or practice of failing to maintain accurate payroll records in the State of California;

o. Whether Defendants unlawfully and/or willfully failed to maintain accurate payroll records in the State of California;

p. Whether Defendants have a policy and/or practice of failing to provide accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class Members;

q. Whether Defendants unlawfully and/or willfully failed to provide accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class Members;

r. Whether Defendants have a policy and/or practice of failing to timely pay wages during employment in violation of Labor Code §§ 204, 210.

s. Whether Defendants have a policy and/or practice of failing to pay

Plaintiff and Class Members final wages owed upon termination;

t. Whether Defendants unlawfully and/or willfully failed to promptly pay compensation due to Plaintiff and Class Members upon termination of employment in violation of Labor Code §§ 201, 202, and 203;

u. Whether Plaintiff and Class Members sustained damages as a result of any of the aforementioned violations, and, if so, the proper measure of those damages, including interest, penalties, costs, attorneys' fees, and equitable relief;

v. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, by violating the above provisions of law; and

w. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, by treating Plaintiff and Class Members unfairly by depriving them of meal and/or rest periods, failing to provide them with compensation in lieu of meal and/or rest periods, failing to pay all regular and overtime wages earned, failing to pay wages upon termination, failing to furnish accurate and timely itemized wage statements upon payment of wages, and failing to pay all compensation due upon discharge.

x. Whether Defendants collected gratuities earned by Plaintiff and Class Members.

y. Whether Defendants made any unlawful deductions from gratuities earned by Plaintiff and Class Members.

z. Whether Defendants failed to inform Plaintiff and Class Members of any deductions made from the gratuities earned by Plaintiff and Class Members.

29. **Superiority.** A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are small compared to the burden and expense of individual

prosecution of the complex and expensive litigation necessary to address Defendants' conduct. Even if Class Members themselves could afford individual litigation, the court system would be overwhelmed by individual lawsuits if all Class Members sought redress. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties; it allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and it provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Plaintiff contemplates providing individual notice to members of the Class through Defendants' records.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198

Failure to Pay Minimum Wages for All Hours Worked

(Plaintiff and Class Against Defendants)

30. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

31. California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that payment of a wage less than the minimum wage as set by statute, commission, or by the general prevailing rate is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(L) (defining "Hours Worked").

32. Defendants failed to compensate Plaintiff and the Class for all hours worked because Defendants had a policy and/or practice whereby they required and/or pressured Class Members to work off-the-clock while on-call. Defendants also required Plaintiff and

Class Members to perform work off-the-clock or remain on-call or on-duty during putative meal periods, but did not compensate them for this time worked.

33. Furthermore, Defendants' policy and practice of making unlawful deductions from or withholding gratuities due to Plaintiff and Class Members further deprived Plaintiff and Class Members of minimum wages for all hours worked.

34. Defendants' failure to pay Plaintiff and Class Members minimum wages for all hours worked violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

35. Pursuant to California Labor Code section 1194.2, Plaintiff and Class Members are entitled to recover the amount of underpaid wages, plus liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon, applicable civil penalties, and reasonable attorney's fees and costs.

SECOND CAUSE OF ACTION

California Labor Code §§ 510 and 1198

Failure to Pay Overtime Wages

(Plaintiff and Class Against Defendants)

36. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

37. California Labor Code sections 510, 1198, and Industrial Wage Order No. 5 provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis. Specifically, Industrial Wage Order No. 5 provides that Defendants were required to pay Plaintiff and Class Members working more than eight hours in a day or more than forty hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight hours in a day or more than forty hours in a workweek.

38. Throughout the Class Period, Plaintiff and Class Members were not paid overtime premiums for all of the hours they worked in excess of eight hours in a day, in

excess of twelve hours in a day, in excess of eight hours on the seventh consecutive day of work in a workweek, and/or in excess of 40 hours in a week because all hours worked were not recorded as compensable time as a direct consequence of Defendants' policies and practices.

39. Defendants required Plaintiff and Class Members to perform extra duties or remain on-call or on-duty while off-the-clock without compensation in addition to their regularly scheduled shifts. Class Members worked shifts of at least 8 hours, or weeks of at least 40 hours, or for days of work without one day's rest in seven, some of this time was required to be paid at overtime rates, but was not done so. By requiring employees to work off-the-clock but preventing them from recording that time, Plaintiff and Class Members were deprived of owed overtime wages.

40. Defendants knew or should have known that their policies and practices forced Plaintiff and Class Members to work in excess of eight hours per workday and/or 40 hours per workweek without being compensated for all hours worked. Because Plaintiff and Class Members worked shifts of more than eight hours a day or forty hours a week on the clock, some of this work qualified for overtime premium pay. Therefore, Plaintiff and Class Members were not paid overtime wages at the correct rate of pay for all of the overtime hours worked.

41. Upon information and belief, Defendants also failed to correctly calculate the regular rate of pay for overtime for Class Members by failing to include all required remuneration, including gratuities withheld from Class Members.

42. Defendants implemented a policy and practice of failing to compensate Plaintiff and Class Members for overtime payments based on their regular rate of pay.

43. Pursuant to Labor Code section 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees, and applicable civil penalties.

THIRD CAUSE OF ACTION

California Labor Code §§ 226.7, 512(a), and 1198

Failure to Provide Meal Periods or Premium Pay in Lieu Thereof

(Plaintiff and Class Against Defendants)

44. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

45. Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five hours per day without providing the employee with a meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-104 (2012). An employee is also entitled to a second meal period for shifts in which the employee works in excess of ten hours.

46. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC, including Industrial Wage Order No. 5. "An off-duty meal period, therefore, is one in which the employee is relieved of all duty during the 30-minute meal period . . . an employer's obligation is to provide an off-duty meal period: an uninterrupted 30–minute period during which the employee is relieved of all duty." *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035 (2012). The employee must also be "free to leave the premises." *Id.* at 1036.

47. Defendants also failed to relieve Plaintiff and Class Members from all duty when on their meal period by requiring Plaintiff and Class Members to comply with an unlawful and systematic policy and practice whereby Defendants required Plaintiff and Class Members to remain on-call or on-duty during all meal periods. Additionally, Defendants pressured Plaintiff and Class Members to prioritize completing assigned work by working through their meal periods, skipping them, or by interrupting their meal

periods, or by taking them late. Numerous Class Members, including Plaintiff, were required to take late meal periods, skip them, interrupt them, or remain on duty due to the combination of Defendants' scheduling practices and policies.

48. Defendants failed to provide Plaintiff and the Class compliant meal breaks or meal break premium payments in lieu thereof because Defendants had a policy and/or practice of requiring employees to clock out for meal breaks but continue working.

49. By requiring employees to work off-the-clock but preventing them from recording that time, Plaintiff and Class Members worked in excess of 10 hours in a day. However, their hours were recorded as less than 10 hours in a day, and they were not provided a second meal break they were entitled to, nor meal period premium payments in lieu thereof.

50. Upon information and belief, Defendants also failed to correctly calculate the regular rate of pay for meal period premium payments for Class Members by failing to include all required remuneration, including gratuities withheld from Class Members.

51. Defendants did not pay Plaintiff and Class Members all meal period premium wages when meal periods were missed, interrupted by work, and taken late, in violation of Wage Order No. 5 and Labor Code sections 226.7 and 512(a).

52. Defendants' conduct violates Wage Order No. 5 and Labor Code sections 512(a), 226.7, and 1198. Plaintiff and Class Members are entitled to one additional hour of pay at their regular rate of compensation for each workday that a compliant meal period was not provided, and interest thereon, along with applicable civil penalties.

FOURTH CAUSE OF ACTION

California Labor Code §§ 226.7 and 1198

Failure to Provide Rest Periods or Premium Pay in Lieu Thereof

(Plaintiff and Class Against Defendants)

53. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

54. At all times relevant to this complaint, Defendants knew it was obligated to

provide compliant rest breaks to its non-exempt employees pursuant to Labor Code § 226.7.

55. Labor Code § 226.7 provides:

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

(b) If any employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the 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.

56. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any rest or meal period mandated by an applicable order of the IWC, including Wage Order No. 5. Employers must authorize and permit employees to be relieved of all duty during their rest and meal periods: "A rest period, in short, must be a period of rest."[2] *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d 823, 834 (2016).

57. Employees must also be free to leave the employer's premises during their rest period. *See id.* at 270 ("In the context of a 10-minute break that employers must provide during the work period, a broad and intrusive degree of control exists when an employer requires employees to remain on call and respond during breaks. An employee on call cannot take a brief walk—five minutes out, five minutes back—if at the farthest extent of the walk he or she is not in a position to respond. Employees similarly cannot use their 10 minutes to take care of other personal matters that require truly uninterrupted time."); *see also* Department of Industrial Relations, "Rest Periods," *available at*

---

[2] Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; *see also* Department of Industrial Relations, "Rest Periods/Lactation Accommodations," *available at https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm* ("Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.").

https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm ("Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.").

58. Defendants failed to relieve Plaintiff and Class Members from all duty when on their rest period by requiring Plaintiff and Class Members to comply with an unlawful and systematic policy and practice that interfered with their ability to take compliant rest periods whereby they required Plaintiff and Class Members to remain on-call throughout rest periods. Additionally, Defendants pressured Plaintiff and Class Members to prioritize completing assigned work by working through their rest periods, skipping them, or by interrupting their rest periods, or by taking them late.

59. Upon information and belief, Defendants also failed to correctly calculate the regular rate of pay for rest period premium payments for Class Members by failing to include all required remuneration, including gratuities withheld from Class Members.

60. As a direct and proximate result of Defendants willful and unlawful conduct, Plaintiff and Class Members have sustained damages, including lost compensation resulting from missed or non-compliant rest periods, in an amount to be established at trial.

61. Pursuant to Wage Order No. 5 and Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover from Defendants an additional hour of pay at their regular rates of pay for each shift that a compliant rest period was not provided. Defendant was aware that its actions were a violation of applicable law but consistently refused to pay premium pay as required by law.

FIFTH CAUSE OF ACTION

California Labor Code § 2802

Failure to Reimburse Necessary Business Expenses

(Plaintiff and Class Against Defendants)

62. Plaintiff repeats and incorporates by reference every allegation in this complaint as if fully set forth herein.

63. Labor Code section 2802 provides that "[a]n employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer." Lab. Code § 2802.

64. Defendants failed to reimburse Plaintiff and Class Members for all business-related expenses that were necessary to perform their job, including requiring Plaintiff and the Class to use their personal cell phones for Defendants' business. *See Cochran v. Schwan's Home Services, Inc.*, 228 Cal. App. 4th 1137 (2014).

65. By unlawfully failing to pay Plaintiff and Class Members, Defendants are liable for the costs Plaintiff and Class Members incurred plus attorneys' fees and costs. Lab. Code § 2802.

SIXTH CAUSE OF ACTION

Lab. Code §§ 233 and 245, et seq.

Violation of California's Sick Leave Laws

(Plaintiff and Class Against Defendants)

66. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in this paragraph, all the allegations of this Complaint.

67. Under California Labor Code § 246, employers are required to provide non-exempt employees with a certain amount of paid sick leave on an annual basis. As of January 1, 2024, the amount of required leave increased to 40 hours or five days of paid sick leave per year.

68. Labor Code § 246(l)(1-2) provides that: "(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

69. Defendants failed to comply with these mandates. As a matter of policy and practice, Defendants failed to pay sick leave compensation to Plaintiff and Class Members at their regular rate of pay during the relevant time period by failing to include all required remuneration in calculating the regular rate, including gratuities withheld from Class Members.

70. Accordingly, Plaintiff and Class Members were unlawfully denied wages for paid sick time owed under Labor Code § 246.

71. By unlawfully failing to pay Plaintiff and Class Members, Defendants are liable for the costs Plaintiff and Class Members incurred plus attorneys' fees and costs. Lab. Code § 2802.

SEVENTH CAUSE OF ACTION

California Labor Code §§ 226(a)/(f)/(h), 226.3, 353, and 1174(d)

Failure to Provide and Maintain Accurate Records

(Plaintiff and Class Against Defendants)

72. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

73. Labor Code § 226 requires employers to furnish employees with an accurate, itemized statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by the employee (for hourly-paid, non-exempt employees); (3) net wages earned; and (4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

74. Labor Code § 353 provides that "[e]very employer shall keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Such records shall be open to inspection at all reasonable hours by the department."

75. At all times relevant to this complaint, Defendants failure to pay premium wages for missed meal and rest periods and minimum and/or overtime wages for work-off-the-clock, and/or gratuities earned and any deductions taken from them rendered Class

Members' wage statements inaccurate by failing to accurately reflect Plaintiff's and Class Member's time worked, as well as gross and net wages earned.

76. Injury. Defendants knowingly and intentionally failed to comply with Labor Code §§ 226, 353, causing injury and damages to Plaintiff and Class Members. Plaintiff and all those similarly situated were injured by these failures because, among other things, they were confused about whether they were paid properly and/or they were misinformed about how much compensation was owed.

77. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a result of not being provided with an accurate itemized wage statement is entitled to recover the greater of all actual damages suffered or fifty ($50) dollars for the initial violation and one hundred ($100) dollars for each subsequent violation, up to $4,000. Pursuant to Labor Code §§ 226(e) and (g), Plaintiff and all others similarly situated are entitled to injunctive relief to ensure Defendants' compliance with Labor Code § 226, as well as attorney's fees and costs of suit.

78. Additionally, Defendants' actions in regard to Labor Code § 248.2(d)(2)(A) constitute violations of Labor Code sections 233 and 245, *et seq*. As a result, Plaintiff and the Class are accordingly entitled to all applicable civil penalties, and reasonable attorney's fees and costs in an amount subject to proof at trial. Lab. Code §§ 233 and 245, *et seq*.

EIGHTH CAUSE OF ACTION

California Labor Code §§ 221, 351

Unlawful Deductions From Gratuities Earned

(Plaintiff and Class Against Defendants)

79. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

80. Labor Code § 221 provides that "[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

81. Labor Code § 350 provides that, "Gratuity includes any tip, gratuity, money,

or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron." (internal quotation marks omitted).

82. Labor Code § 351 provides that "[n]o employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due to an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for."

83. "The Legislature expressly declares that the purpose of this article is to prevent fraud upon the public in connection with the practice of tipping and declares that this article is passed for a public reason and can not be contravened by a private agreement." Cal. Lab. Code § 356 "The purpose of section 351 is to prevent employers from using any gratuity-related practice which reduces an employee's wages, or appropriates monies belonging to employees, practices which are condemned as a fraud upon the public." *O'Grady v. Merch. Exch. Prods., Inc.*, 41 Cal.App.5th 771, 778 (Cal. Ct. App. 2019).

84. It is customary in the hospitality industry to treat sums designated as "service charges" as gratuities for employees. It is further customary in the hospitality industry that the standard amount of gratuities depends in part on the quality of the establishment and its service, with a larger percentage of gratuities provided at four-star and five-star establishments. A larger percentage of gratuities is also customary at resorts, because more service is provided than at ordinary hotels. Charging patrons mandatory gratuities at a fixed percentage is both customary and commonplace in the hospitality industry when a higher amount of service is offered—such as with large parties, private events, hotels with a four- or five-star rating, and at resorts. Within California, a gratuity rate of at least 22-25% is customary at a four-star resort, such as Defendant's Alisal Ranch resort.

85. Defendants automatically impose a daily 22% service fee on all bookings for

its guests that it refers to as a "ranch fee." When informing guests of the imposition of this "ranch fee," Defendants clearly indicated to guests that it was designed to compensate *Class Members* by "*fund[ing] additional compensation to employees who provide service to our guests and eliminat[ing] the need for tipping*."

86. Defendant's service charge, which is an amount due over the cost of food, drink, and lodging, is purposefully "depicted to customers as intended for the service staff, and which reasonably appear to be for the service staff" as gratuities. *O'Grady v. Merch. Exch. Prods., Inc.*, 41 Cal.App.5th 771, 789-90 (Cal. Ct. App. 2019). As such, Defendant's customers *perceive* the 22% "ranch fee" as a gratuity, and *intend* the "ranch fee" to be a gratuity to compensate Class Members who provide services—and not kept by Defendants to enhance their bottom line.[3]

87. However, upon information and belief, Defendants collected this "ranch fee" but failed to tender it in its entirety, or tender that portion that was legally owed, to Class Members who were part of the chain of service and intended to be compensated by customers through this forced gratuity.

88. Section 351 is designed to "'to ensure that employees, not employers, receive the full benefit of gratuities that patrons intend for the sole benefit of those employees who serve them" and "[t]hat purpose would not be served by allowing employers to take money intended for employees simply by saying the customer has paid a 'service charge'" as Defendants are doing here. *Id.*, at 790.

89. Plaintiff is informed and believes that Defendants withheld or deducted from Plaintiff and Class Members portions of their earned tip wages, including but not limited to the gratuities Defendants characterized as a "ranch fee," that were owed and due to them and took deductions to which they did not agree to and were in violation of Labor Code §§ 221 and 351 by withholding such earned tip wages. *Sciborski v. Pacific Bell Directory*, 205

[3] That the "ranch fee" is imposed on customers is of no moment; the "language [of Section 351] does not preclude the possibility that the payment may not be entirely voluntary in the mind of the patron." *O'Grady v. Merch. Exch. Prods., Inc.*, 41 Cal.App.5th 771, 790 (Cal. Ct. App. 2019).

Cal. App. 4th 1152, 1168 (2012) ("An employer is not entitled to require its employees to consent to unlawful deductions from their wages.").

90. By unlawfully withholding earned tip wages from Plaintiff and Class Members, Defendants are liable for these withheld tip wages, plus interest, costs, and attorneys' fees.

NINTH CAUSE OF ACTION

Conversion

(Plaintiff and Class Against Defendants)

91. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

92. Labor Code § 350 provides that, "Gratuity includes any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron." (internal quotation marks omitted).

93. Labor Code § 351 provides that "[n]o employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due to an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for."

94. Conversion is the wrongful exercise of dominion over the property of another. *Farmers Ins. Exchange v. Zerrin*, 53 Cal. App. 4th 445, 451(1997). The elements of a conversion are (1) plaintiff's ownership or right to possession of the property at the time of the conversion; (2) defendants' conversion by a wrongful act or disposition of property rights; and (3) damages. *Id.*

95. Conversion can involve not just physical taking, but also withholding or assumption or control over property, including withholding of money. *See id.,* 451-52 ("It

is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use. Money can be the subject of an action for conversion if a specific sum capable of identification is involved.").

96. California Courts have held that claims for tips that are unlawfully retained by an employer may be brought under the theory of conversion. *See, e.g.*, *O'Grady v. Merch. Exch. Prods., Inc.*, 41 Cal.App.5th 771, 788-89 (Cal. Ct. App. 2019) ("The gravamen of plaintiff's claim rests upon conduct or a practice that our Supreme Court has noted may be tantamount to conversion.").

97. Plaintiff is informed and believes that Defendants withheld or deducted from Plaintiff and Class Members portions of their earned tip wages, including but not limited to the gratuities Defendants characterized as a "ranch fee," that were owed and due to them and took deductions to which they did not agree to–thereby converting to their own use property in the form of a specifically identifiable sum of money that belonged to Plaintiff and Class Members.

98. California Civil Code § 3336 provides that the measure of damages for a claim of conversion is the value of the property converted plus interest, as well as "[a] fair compensation for the time and money properly expended in pursuit of the property."

99. Plaintiff and Class Members are owed the value of the converted tips, as well as their legal fees and costs incurred in recovering that property.

<u>TENTH CAUSE OF ACTION</u>

California Labor Code §§ 201, 202, 203, 204, 210

Failure to Pay Wages When Due

(Plaintiff and Class Against Defendants)

100. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

101. Labor Code § 201 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[4] 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 quitting.

102. Defendants do not include definite periods of service in their contracts of employment for Class Members employed at their California properties. Plaintiff's contract of employment did not include a definite term.

103. Labor Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with § 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 from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

104. Labor Code § 204 provides that all wages, other than those mentioned in Section 201 and 202, are due and payable twice during each calendar month, on days designated in advance by the employer as regular paydays.

105. Labor Code § 351 provides that "[p]ayment of gratuities made by patrons

---

[4] Labor Code § 200 defines "wages" as "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." "Labor" is defined as "labor, work, or service . . . if the labor to be paid for is performed personally by the person demanding payment." Additionally, in *Naranjo v. Spectrum Security Services, Inc.,* 13 Cal. 5th 93 (2022), the California Supreme Court recently held that failure to pay premiums for violating the California Labor Code's meal and rest break provisions constitutes "wages" for purposes of waiting time penalties.

using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment."

106. Failure to Timely Pay Wages Due. As set forth above, Defendants failed to timely pay the minimum wages, overtime wages, gratuities, and meal and rest period premiums resulting from its deficient timekeeping and meal and rest period policies upon its regularly scheduled paydays.

107. Relief. Defendants' failure to pay Plaintiff and those Class Members wages on their regularly scheduled pay dates subjects Defends to civil penalties in the amount of $100 per employee per initial violation and $200 per employee for every subsequent violation of Labor Code § 204 pursuant to Labor Code § 210.

108. Failure to Pay Upon Termination. Plaintiff and many Class Members have left Defendants' employ during the Class Period. As discussed above, Defendants knowingly failed to pay Plaintiff and Class Members all earned wages upon termination. Instead, Defendants willfully and intentionally refused to pay the earned rest and/or meal period premiums, gratuities, and earned minimum wages as alleged herein to Plaintiff and Class Members in violation of Labor Code §§ 201 and 202.

109. Relief. Defendants' failure to pay Plaintiff and those Class Members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employment, violates Labor Code §§ 201 and 202. Plaintiff and Class Members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a 30-day maximum penalty under Labor Code § 203.

ELEVENTH CAUSE OF ACTION

California Business and Professions Code §§ 17200, et seq.

Violation of California's Unfair Competition Law

(Plaintiff and Class Against Defendants)

1. Plaintiff repeats and incorporates by reference every allegation in this complaint as if fully set forth herein.

2. Defendants are each a "person" as defined by California Business & Professions Code § 17201, as it is a natural person, corporation, firm, partnership, joint stock company, and/or association.

3. Unlawful Business Practices. Defendants' knowing violations of the Labor Code and IWC Wage Order No. 5 constitute an unlawful business practice as set forth in Business & Professions Code § 17200, *et seq*.

4. Defendant's knowing violations of Labor Code §§ 221 and 331 by withholding at least some portion of tips earned by Plaintiff and Class Members constitutes an unlawful business practice as set forth in Business & Professions Code § 17200, *et seq*.

5. Defendants' failure to abide by the laws discussed herein provide Defendants an unfair advantage over their competitors at the expense of their workers. Instead, Defendants cut corners in the name of higher profits and at the expense of employee well-being. Defendants' action thereby constitutes an unfair, fraudulent, and/or unlawful business practice under Business & Professions Code § 17200, *et seq*.

6. Relief. Plaintiff brings this cause of action seeking equitable and injunctive relief to stop Defendants' willful and ongoing misconduct, and to seek restitution of the amounts Defendants acquired through the unfair, unlawful, and fraudulent business practices described herein. In addition, Plaintiff seeks an award of costs and attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

DEMAND FOR JURY TRIAL

Pursuant to California Code of Civil Procedure § 631, Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays judgment as follows:

A. For an Order:

a. Certifying the Class;

b. Appointing Plaintiff as representative of the Class;

c. Appointing Plaintiff's counsel as Class Counsel;

B. For actual and liquidated damages according to proof at trial;

C. For statutory and civil penalties and special damages, according to proof at trial;

D. For pre- and post-judgment interest on monetary damages;

E. For preliminary and permanent injunctive relief;

F. For reasonable attorney's fees and costs and expert fees and costs as allowed by law; and

G. For such other relief as this Court deems just and proper.

Dated: July 11, 2024

Respectfully submitted,

KING & SIEGEL LLP

By: Elliot J. Siegel

Elliot J. Siegel, Esq.
Lawrence W. Beall, Esq.
Attorneys for Plaintiff and the Putative Class