

February 8, 2024

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

**GREENLEAF KITCHEN & COCKTAILS, LLC, d/b/a GREENLEAF GOURMET
CHOPHOUSE**

c/o Jonathan Rollo
1888 Century Park East Suite 110
Los Angeles, CA 90067

Via Certified U.S. Mail with Return Receipt.

G 7 VENICE, LLC

c/o Jonathan Rollo
1888 Century Park East Suite 110
Los Angeles, CA 90067

Via Certified U.S. Mail with Return Receipt.

GREENLEAF RESTAURANT MANAGEMENT, LLC

c/o Jonathan Rollo
1888 Century Park East Suite 110
Los Angeles, CA 90067

Via Certified U.S. Mail with Return Receipt.

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s) and California Regulations, and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiffs Anthony Scaringe and Benjamin Bryan (“Plaintiffs”), and other aggrieved employees in a proposed lawsuit against Defendant Greenleaf Kitchen & Cocktails, Defendant G 7 Venice, and Defendant Greenleaf Restaurant Management (“Defendants”). Plaintiff Scaringe was employed by Defendant in California from June 2023 to September 2023 and Plaintiff Bryan was employed by Defendant in California from February 2023 to October 2023, as non-exempt employees, paid on an hourly basis and entitled to payment of all wages and the legally required breaks, among other things. Defendants, however, unlawfully failed to record and pay Plaintiffs and other aggrieved employees for all of their time worked, failed to pay employees at the correct regular rate of pay, when applicable, failed to reimburse employees for necessary business expenditures and for all of their meal and rest breaks. Further, Defendants

failed to timely pay Plaintiffs and other aggrieved employees for earned wages and failed to provide Plaintiffs and other aggrieved employees with compliant meal and rest breaks.

As a consequence of the aforementioned violations, Plaintiffs further contend that Defendants failed to provide accurate wage statements to them and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s) and California Regulations, and is therefore actionable under California Labor Code section 2699.3.

Plaintiffs seek to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendants in California during the relevant claim period.

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

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiffs reserve any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiffs continues their investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiffs to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiffs and all aggrieved California employees.

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

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JCL', with a stylized flourish extending to the right.

Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

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Attorneys for PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ANTHONY SCARINGE, an individual, and
BENJAMIN BRYAN, an individual, on behalf
of themselves, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

GREENLEAF KITCHEN & COCKTAILS,
LLC, a California limited liability company,
d/b/a GREENLEAF GOURMET
CHOPHOUSE; G 7 VENICE, LLC, a
California limited liability company;
GREENLEAF RESTAURANT
MANAGEMENT, LLC, a California limited
liability company; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §17200 *et*
seq;
- 2) FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§
1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF CAL.
LAB. CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;

- 1 6) FAILURE TO REIMBURSE EMPLOYEES
2 FOR REQUIRED EXPENSES IN
3 VIOLATION OF CAL. LAB. CODE § 2802;
4 7) FAILURE TO PROVIDE ACCURATE
5 ITEMIZED STATEMENTS IN
6 VIOLATION OF CAL. LAB. CODE § 226;
7 8) FAILURE TO PROVIDE WAGES WHEN
8 DUE IN VIOLATION OF CAL. LAB.
9 CODE §§ 201, 202 AND 203.
10 9) FAILURE TO PROVIDE GRATUITIES IN
11 VIOLATION OF CAL. LAB. CODE §351

12 **DEMAND FOR A JURY TRIAL**

13 PLAINTIFF ANTHONY SCARINGE and BENJAMIN BRYAN (“PLAINTIFFS”),
14 individuals, on behalf of themselves and all other similarly situated current and former employees,
15 allege on information and belief, except for their own acts and knowledge which are based on
16 personal knowledge, the following:

17 **PRELIMINARY ALLEGATIONS**

18 1. Defendant GREENLEAF KITCHEN & COCKTAILS, LLC., d/b/a GREENLEAF
19 GOURMET CHOPHOUSE (“Defendant Greenleaf Kitchen & Cocktails”) is a California limited
20 liability company that at all relevant times mentioned herein conducted and continues to conduct
21 substantial and regular business throughout California.

22 2. Defendant G 7 VENICE, LLC., (“Defendant G 7 Venice”) is a California limited
23 liability company that at all relevant times mentioned herein conducted and continues to conduct
24 substantial and regular business throughout California.

25 3. Defendant GREENLEAF RESTAURANT MANAGEMENT, LLC., (“Defendant
26 Greenleaf Restaurant Management”) is a California limited liability company that at all relevant
27 times mentioned herein conducted and continues to conduct substantial and regular business
28 throughout California.

1 Defendant Greenleaf Kitchen & Cocktails, Defendant G 7 Venice, and Defendant
Greenleaf Restaurant Management were the joint employers of PLAINTIFFS as evidenced by the
documents issued to PLAINTIFFS and by the company PLAINTIFFS performed work for

1 respectively and are therefore jointly responsible as employers for the conduct alleged herein as
2 “DEFENDANTS” and/or “DEFENDANT.”

3 5. DEFENDANTS own and operate restaurants throughout the state of California,
4 including the county of Los Angeles, where PLAINTIFFS worked.

5 6. PLAINTIFF SCARINGE was employed by DEFENDANTS in California from
6 June 2023 to September 2023 and PLAINTIFF BRYAN was employed by DEFENDANTS in
7 California from February 2023 to October 2023. Both PLAINTIFFS were employed by
8 DEFENDANTS as non-exempt employees, paid on an hourly basis, and entitled to the legally
9 required meal and rest periods and payment of minimum and overtime wages due for all time
10 worked.

11 7. PLAINTIFFS brings this Class Action on behalf of themselves and a California
12 class, defined as all persons who are or previously were employed by Defendant Greenleaf
13 Kitchen & Cocktails and/or Defendant G 7 Venice and/or Defendant Greenleaf Restaurant
14 Management in California and classified as non-exempt employees (the “CALIFORNIA
15 CLASS”) at any time during the period beginning four years prior to the filing of this Complaint
16 and ending on the date as determined by the Court (the “CLASS PERIOD”). The amount in
17 controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million
18 dollars (\$5,000,000.00).

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

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

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

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

20 11. DEFENDANTS were PLAINTIFFS'S employers or persons acting on behalf of
21 PLAINTIFFS'S employer, within the meaning of California Labor Code § 558, who violated or
22 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
23 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
24 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
25 at all relevant times.

26 12. DEFENDANTS were PLAINTIFFS'S employers or persons acting on behalf of
27 PLAINTIFFS'S employer either individually or as an officer, agent, or employee of another
28 person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to

1 any employee a wage less than the minimum fixed by California state law, and as such, are subject
2 to civil penalties for each underpaid employee.

3 13. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
4 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain
5 wages due to PLAINTIFFS and other members of the CALIFORNIA CLASS.

6 14. PLAINTIFFS and other members of the CALIFORNIA CLASS seek an injunction
7 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFFS and
8 other members of the CALIFORNIA CLASS who have been economically injured by
9 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
10 relief.

11 **JURISDICTION AND VENUE**

12 15. This Court has jurisdiction over this Action pursuant to California Code of Civil
13 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
14 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees
15 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

16 16. Venue is proper in this Court pursuant to California Code of Civil Procedure,
17 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ
18 the CALIFORNIA CLASS across California, including in this County, and committed the
19 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

20 **THE CONDUCT**

21 17. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
23 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
24 failed to provide legally compliant meal and rest periods, failed to accurately compensate
25 PLAINTIFFS and the other members of the CALIFORNIA CLASS for missed meal and rest
26 periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
27 time worked, failed to compensate PLAINTIFFS for off-the-clock work, failed to pay
28 PLAINTIFFS and the other members of the CALIFORNIA CLASS overtime at the correct rate

1 of pay, failed to compensate PLAINTIFFS and other members of the CALIFORNIA CLASS meal
2 rest premiums at the correct rate, failed to reimburse PLAINTIFFS and other CALIFORNIA
3 CLASS Members for necessary business expenses, failed to provide PLAINTIFFS and other
4 CALIFORNIA CLASS Members for all gratuities, and failed to issue to PLAINTIFFS and the
5 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among
6 other things, all applicable hourly rates in effect during the pay periods and the corresponding
7 amount of time worked at each hourly rate, and other requirements of Labor Code §226(a)(1-9).
8 DEFENDANT's uniform policies and practices are intended to purposefully avoid the accurate
9 and full payment for all time worked and all tips earned as required by California law which
10 allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
11 comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
12 CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

13 **A. Meal Period Violations**

14 18. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
15 were required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time
16 worked, meaning the time during which an employee is subject to the control of an employer,
17 including all the time the employee is suffered or permitted to work. From time to time during
18 the CLASS PERIOD, DEFENDANTS required PLAINTIFFS and CALIFORNIA CLASS
19 Members to work without paying them for all the time they were under DEFENDANT's control.
20 Specifically, DEFENDANT required PLAINTIFFS to work while clocked out during what was
21 supposed to be PLAINTIFFS's off-duty meal break. Indeed, there were many days where
22 PLAINTIFFS did not even receive a partial lunch. As a result, the PLAINTIFFS and other
23 CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by
24 regularly working without their time being accurately recorded and without compensation at the
25 applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not
26 to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced
27 by DEFENDANT's business records.

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1 19. From time to time during the CLASS PERIOD, as a result of their rigorous work
2 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFFS and other
3 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minutes off duty
4 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and other
5 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS for
6 more than five (5) hours during some shifts without receiving a meal break. Further,
7 DEFENDANTS failed to provide PLAINTIFFS and CALIFORNIA CLASS Members with a
8 second off-duty meal period for some workdays in which these employees are required by
9 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
10 PLAINTIFFS and other CALIFORNIA CLASS Members does not qualify for the limited and
11 narrowly construed "on-duty" meal period exception. When they were provided with meal
12 periods, PLAINTIFFS and other CALIFORNIA CLASS Members were, from time to time,
13 required to remain on duty and on call. Further, DEFENDANTS from time to time required
14 PLAINTIFFS and other CALIFORNIA CLASS Members to maintain cordless communication
15 devices in order to receive and respond to work-related communications during what was
16 supposed to be their off-duty meal breaks. DEFENDANTS' failure to provide PLAINTIFFS and
17 the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
18 DEFENDANTS' business records. PLAINTIFFS and other members of the CALIFORNIA
19 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
20 DEFENDANTS' strict corporate policy and practice.

21 **B. Rest Period Violations**

22 20. From time to time during the CLASS PERIOD, PLAINTIFFS and other
23 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
24 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
25 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
26 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
27 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
28 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and

1 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
2 time to time. When they were provided with rest breaks, PLAINTIFFS and other CALIFORNIA
3 CLASS Members were, from time to time, required to remain on duty and/or on call. Further,
4 DEFENDANTS from time to time required PLAINTIFFS and other CALIFORNIA CLASS
5 Members to maintain cordless communication devices in order to receive and respond to work-
6 related communications during what was supposed to be their off-duty rest breaks. PLAINTIFFS
7 and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu*
8 thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing,
9 PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time denied their
10 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

11 **C. Unreimbursed Business Expenses**

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

23 22. In the course of their employment, DEFENDANTS required PLAINTIFFS and
24 other CALIFORNIA CLASS Members to use their personal cell phones and vehicles as a result
25 of and in furtherance of their job duties, including but not limited to receiving and/or responding
26 to work-related communications and performing work-related duties/errands. However,
27 DEFENDANTS unlawfully failed to reimburse PLAINTIFFS and other CALIFORNIA CLASS
28 Members for the use of their personal cell phones. As a result, in the course of their employment

1 with DEFENDANT, the PLAINTIFFS and other CALIFORNIA CLASS Members incurred
2 unreimbursed business expenses that included, but were not limited to, costs related to the use of
3 their personal cell phones.

4 **D. Wage Statement Violations**

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

13 24. From time to time during the CLASS PERIOD, when PLAINTIFFS and other
14 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
15 missed meal and rest period premiums, or were not paid for all hours worked, or all tips earned,
16 DEFENDANTS also failed to provide PLAINTIFFS and other CALIFORNIA CLASS Members
17 with complete and accurate wage statements which failed to show, among other things, all
18 deductions, the total hours worked and all applicable hourly rates in effect during the pay period
19 and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty
20 payments or missed meal and rest periods.

21 25. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
22 PLAINTIFFS and the CALIFORNIA CLASS Members with wage statements that comply with
23 Cal. Lab. Code § 226.

24 26. As a result, DEFENDANT issued PLAINTIFFS and other members of the
25 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
26 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional
27 payroll error due to clerical or inadvertent mistake.

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

27. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to fail to accurately pay PLAINTIFFS and other members of the CALIFORNIA CLASS for all hours worked.

28. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFFS and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift work, including but not limited to, opening and closing keyholder duties and assisting DEFENDANT'S customers. This resulted in PLAINTIFFS and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

29. DEFENDANTS directed and directly benefited from the undercompensated off-the-clock work performed by PLAINTIFFS and the other CALIFORNIA CLASS Members.

30. DEFENDANTS controlled the work schedules, duties, and protocols, applications, assignments, and employment conditions of PLAINTIFFS and the other members of the CALIFORNIA CLASS.

31. DEFENDANTS were able to track the amount of time PLAINTIFFS and the other members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFFS and the other members of the CALIFORNIA CLASS all wages earned and owed for all the work they performed.

32. PLAINTIFFS and the other members of the CALIFORNIA CLASS were non-exempt employees, subject to the requirements of the California Labor Code.

33. DEFENDANTS' policies and practices deprived PLAINTIFFS and the other CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed for the off-the-clock work activities. Because PLAINTIFFS and the other members of the CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

34. DEFENDANTS knew or should have known that PLAINTIFFS and the other members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

1 35. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
2 forfeited wages due to them for all hours worked at DEFENDANTS direction, control, and benefit
3 for the time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to
4 not pay PLAINTIFFS and the members of the CALIFORNIA CLASS wages for all hours worked
5 in accordance with applicable law is evidenced by DEFENDANTS' business records.

6 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
7 **and Redeemed Sick Pay**

8 36. From time to time during the CLASS PERIOD, DEFENDANT failed and
9 continues to fail to accurately calculate and pay PLAINTIFFS and the other CALIFORNIA
10 CLASS Members for their overtime and double time hours worked, meal and rest period
11 premiums, and redeemed sick pay. As a result, PLAINTIFFS and the other CALIFORNIA
12 CLASS Members forfeited wages due to them for working overtime without compensation at the
13 correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay
14 rates. DEFENDANTS' uniform policy and practice not to pay the CALIFORNIA CLASS
15 Members at the correct rate for all overtime and double time worked, meal and rest period
16 premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS'
17 business records.

18 37. State law provides that employees must be paid overtime at one-and-one-half times
19 their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS Members were
20 compensated at an hourly rate plus incentive/Bonus pay.

21 38. The second component of PLAINTIFFS'S and other CALIFORNIA CLASS
22 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
23 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
24 performance for DEFENDANTS and/or referral of employees. The non-discretionary bonus
25 program provided all employees paid on an hourly basis with bonus compensation when the
26 employees met the various performance or referral goals set by DEFENDANTS.

27 39. However, from time to time, when calculating the regular rate of pay in those pay
28 periods where PLAINTIFFS and other CALIFORNIA CLASS Members worked overtime,

1 double time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned
2 non-discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary
3 bonus compensation as part of the employee's "regular rate of pay" and/or calculated all hours
4 worked rather than just all non-overtime hours worked. Management and supervisors described
5 the incentive/bonus program to potential and new employees as part of the compensation package.
6 As a matter of law, the incentive compensation received by PLAINTIFFS and other
7 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure to do
8 so has resulted in a systematic underpayment of overtime and double time compensation, meal
9 and rest period premium payments, and redeemed sick pay to PLAINTIFFS and other
10 CALIFORNIA CLASS Members by DEFENDANTS. Specifically, California Labor Code
11 Section 246 mandates that paid sick time for non-exempt employees shall be calculated in the
12 same manner as the regular rate of pay for the workweek in which the non-exempt employee uses
13 paid sick time, whether or not the employee actually works overtime in that workweek.
14 DEFENDANTS' conduct, as articulated herein, by failing to include the incentive compensation
15 as part of the "regular rate of pay" for purposes of sick pay compensation was in violation of Cal.
16 Lab. Code § 246 the underpayment of which is recoverable under Cal. Lab. Code Sections 201,
17 202, 203, and/or 204.

18 40. In violation of the applicable sections of the California Labor Code and the
19 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
20 matter of company policy, practice, and procedure, intentionally and knowingly failed to
21 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS at the correct
22 rate of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
23 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
24 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
25 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANTS, the
26 CLASS PERIOD should be adjusted accordingly.

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1 **G. Violations for Untimely Payment of Wages**

2 41. Pursuant to California Labor Code section 204, PLAINTIFFS and the
3 CALIFORNIA CLASS members were entitled to timely payment of wages during their
4 employment. PLAINTIFFS and the CALIFORNIA CLASS members, from time to time, did not
5 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
6 meal period premium wages, and rest period premium wages within permissible time period.

7 42. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
8 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to
9 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become
10 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
11 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
12 wages at the time of quitting.” PLAINTIFFS and the CALIFORNIA CLASS Members were, from
13 time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or
14 at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

15 43. As such, PLAINTIFFS demands up to thirty days of pay as penalty for not timely
16 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose
17 employment ended during the CLASS PERIOD.

18 **H. Unlawful Deductions**

19 44. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFFS
20 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
21 so or notice to PLAINTIFFS and the CALIFORNIA CLASS Members. As a result,
22 DEFENDANT violated Labor Code § 221.

23 **I. Timekeeping Manipulation**

24 45. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
25 immutable timekeeping system to accurately record and pay PLAINTIFFS and other members
26 of the CALIFORNIA CLASS for the actual time PLAINTIFFS and other members of the
27 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
28 and rest breaks. As a result, DEFENDANTS were able to and did in fact, unlawfully, and

1 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS
2 and other members of the CALIFORNIA CLASS in order to avoid paying these employees for
3 all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks
4 and missed rest breaks.

5 46. As a result, PLAINTIFFS and other members of the CALIFORNIA CLASS, from
6 time-to-time, forfeited time worked by working without their time being accurately recorded and
7 without compensation at the applicable pay rates.

8 47. The mutability of the timekeeping system also allowed DEFENDANTS to alter
9 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
10 timekeeping system so as to create the appearance that PLAINTIFFS and other members of the
11 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
12 were not at all times provided an off-duty meal break. This practice is a direct result of
13 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
14 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

15 48. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
16 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control and
17 benefit for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy
18 and practice to not pay PLAINTIFFS and the members of the CALIFORNIA CLASS wages for
19 all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
20 records.

21 **J. Unlawful Rounding Practices**

22 49. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
23 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
24 CALIFORNIA CLASS Members for the actual time these employees worked each day,
25 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
26 policy and practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
27 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
28 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping

1 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
2 these employees for all their time worked, including the applicable overtime compensation for
3 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
4 time to time, forfeited compensation for their time worked by working without their time being
5 accurately recorded and without compensation at the applicable overtime rates.

6 50. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
7 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'
8 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful
9 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
10 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
11 receiving an off-duty meal break.

12 **K. Sick Pay Violations**

13 51. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after
14 July 1, 2015, works in California for the same employer for 30 or more days within a year from
15 the commencement of employment is entitled to paid sick days as specified in this section."
16 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From
17 time to time, DEFENDANTS failed to have a policy or practice in place that provided
18 PLAINTIFFS and other members of the CALIFORNIA CLASS with sick days and/or paid sick
19 leave.

20 52. California Labor Code Section 246(i) requires an employer to furnish its
21 employees with written wage statements setting forth the amount of paid sick leave available.
22 From time to time, DEFENDANTS violated Cal. Lab. Code § 246 by failing to furnish
23 PLAINTIFFS and other members of the CALIFORNIA CLASS with wage statements setting
24 forth the amount of paid sick leave available.

25 **L. Tips and Tip Pooling**

26 53. During the California Class period, pursuant to DEFENDANTS' company policies
27 and practices, PLAINTIFFS and other CALIFORNIA CLASS members were forced to forfeit
28 gratuities left for them by customers to DEFENDANTS' agents who provided no service to the

1 customers that resulted in the gratuity. DEFENDANTS routinely added gratuity tips and service
2 charges to its food and beverage bills. These gratuities and service charges reasonably appear to
3 be gratuities for the service staff. It is typical and customary in the hospitality industry that
4 establishments impose gratuity charges on the food and beverage bill. Thus, when customers
5 paid these charges, it is reasonable for them to have believed they were gratuities to be paid to the
6 service staff. Indeed, because many of these charges are depicted to customers, and the custom
7 in the food and beverage industry is that gratuities are paid for food and beverage service,
8 customers paid these charges reasonably believing they were remitted to the service staff.
9 However, DEFENDANTS have not remitted the total proceeds of these gratuities to the non-
10 managerial employees who serve the food and beverages. Instead, DEFENDANTS have a policy
11 and practice of using a portion of these gratuities to pay managers or other non-service employees.
12 As a result, PLAINTIFFS and CALIFORNIA CLASS Members have not received the total
13 proceeds of the gratuities, to which they are entitled to under California law. Aside from the
14 conduct alleged herein, DEFENDANTS also failed to provide and/or kept a portion of gratuities
15 earned by PLAINTIFFS and the California CLASS in violation of Labor Code §351.

16 54. DEFENDANTS are generally in the business of owning and operating restaurants.
17 During the California CLASS PERIOD, PLAINTIFFS and other CALIFORNIA CLASS
18 Members were in the “chain of service” and earned gratuities based on their service for their
19 customers. However, PLAINTIFFs and the CALIFORNIA CLASS members were forced to
20 forfeit portions of their gratuities, which said gratuities were kept by DEFENDANTS’ employees
21 who were not in the chain of service from which the gratuity resulted. PLAINTIFF and other
22 CALIFORNIA CLASS members contend that any gratuities kept by DFENDANTS’ non-service
23 employees were illegal and in violation of California law because PLAINTIFFS and other
24 CALIFORNIA CLASS Members provided the service for to whom the gratuity should have been
25 paid.

26 55. California Labor Code §351 establishes the requirements for an employer
27 regarding the payment of gratuities. Specifically, gratuities are the sole property of the
28 employees. California Labor Code §351 expressly prohibits employers and their agents from

collecting, taking, or receiving any portion of a gratuity. California Labor Code §350(e) defines the term gratuity as including any money that has been paid or given 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 such patron. Labor code §353 requires employers to keep accurate records of all gratuities they receive, directly or indirectly.

56. Specifically, as to PLAINTIFFS, PLAINTIFFS were from time to time unable to take off duty meal and rest breaks and were not fully relieved of duty for his rest and meal periods. PLAINTIFFS were required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break. When DEFENDANT provided PLAINTIFFS with a rest break, they required PLAINTIFFS to remain on-duty and on-call for the rest break. DEFENDANT's policy caused PLAINTIFFS to remain on-call and on-duty during what was supposed to be their off-duty meal periods. PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policies and practices. Moreover, DEFENDANTS also provided PLAINTIFFS with paystubs that failed to comply with Cal. Lab. Code § 226(a)(1)-(9). Further, DEFENDANTS also failed to reimburse PLAINTIFFS for required business expenses related to the use of their personal cell phone and vehicle, on behalf of and in furtherance of his employment with DEFENDANTS. DEFENDANTS further failed to pay and/or improperly withheld tips from PLAINTIFFS. To date, DEFENDANTS have not fully paid PLAINTIFFS the minimum, overtime and double time compensation still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFFS individually does not exceed the sum or value of \$75,000.

CLASS ACTION ALLEGATIONS

57. PLAINTIFFS bring this Class Action on behalf of themselves, and a California class defined as all persons who are or previously were employed by Defendant Greenleaf Kitchen & Cocktails and/or Defendant G 7 Venice and/or Defendant Greenleaf Restaurant Management in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four years prior to the filing of this Complaint

1 and ending on the date as determined by the Court (the “CLASS PERIOD”).

2 58. PLAINTIFFS and the other CALIFORNIA CLASS Members have uniformly
3 been deprived of wages and penalties from unpaid wages earned and due, including but not
4 limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period
5 premiums, illegal meal and rest period policies, failed to reimburse for business expenses, failed
6 compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure
7 to maintain required records, and interest, statutory and civil penalties, attorney’s fees, costs, and
8 expenses.

9 59. The members of the class are so numerous that joinder of all class members is
10 impractical.

11 60. Common questions of law and fact regarding DEFENDANTS’ conduct, including
12 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to
13 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
14 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
15 provide legally compliant meal and rest periods, failed to reimburse for business expenses,
16 failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid
17 at least minimum wage and overtime, exist as to all members of the class and predominate over
18 any questions affecting solely any individual members of the class. Among the questions of law
19 and fact common to the class are:

- 20 a. Whether DEFENDANT maintained legally compliant meal period policies and
21 practices;
- 22 b. Whether DEFENDANT maintained legally compliant rest period policies and
23 practices;
- 24 c. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA
25 CLASS Members accurate premium payments for missed meal and rest periods;
- 26 d. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA
27 CLASS Members accurate overtime wages;

- e. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether DEFENDANT failed to compensate PLAINTIFFS and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANT issued legally compliant wage statements;
- h. Whether DEFENDANT engaged in unlawful tip pooling practices and/or failed to pay all earned tips to PLAINTIFFS and other members of the CALIFORNIA CLASS;
- i. Whether DEFENDANT committed an act of unfair competition by systematically failing to record and pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time worked;
- j. Whether DEFENDANT committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- k. Whether DEFENDANT committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFFS and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

61. PLAINTIFFS are members of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANT’s conduct and actions alleged herein.

62. PLAINTIFFS’S claims are typical of the claims of the CALIFORNIA CLASS, and PLAINTIFFS have the same interests as the other members of the class.

63. PLAINTIFFS will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

64. PLAINTIFFS retained able class counsel with extensive experience in class action litigation.

1 65. Further, PLAINTIFFS'S interests are coincident with, and not antagonistic to, the
2 interest of the other CALIFORNIA CLASS Members.

3 66. There is a strong community of interest among PLAINTIFFS and the members of
4 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
5 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
6 sustained.

7 67. The questions of law and fact common to the CALIFORNIA CLASS Members
8 predominate over any questions affecting only individual members, including legal and factual
9 issues relating to liability and damages.

10 68. A class action is superior to other available methods for the fair and efficient
11 adjudication of this controversy because joinder of all class members is impractical. Moreover,
12 since the damages suffered by individual members of the class may be relatively small, the
13 expense and burden of individual litigation makes it practically impossible for the members of
14 the class individually to redress the wrongs done to them. Without class certification and
15 determination of declaratory, injunctive, statutory, and other legal questions within the class
16 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS
17 will create the risk of:

18 a. Inconsistent or varying adjudications with respect to individual members of the
19 CALIFORNIA CLASS which would establish incompatible standards of conduct
20 for the parties opposing the CALIFORNIA CLASS; and/or,

21 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
22 which would as a practical matter be dispositive of the interests of the other
23 members not party to the adjudication or substantially impair or impeded their
24 ability to protect their interests.

25 69. Class treatment provides manageable judicial treatment calculated to bring an
26 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
27 the conduct of DEFENDANT.

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

4 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANTS)**

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

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

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

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

21 73. By the conduct alleged herein, DEFENDANT has engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
25 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
26 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
27 constitute unfair competition, including restitution of wages wrongfully withheld.

28 74. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
or substantially injurious to employees, and were without valid justification or utility for which

1 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
2 Business & Professions Code, including restitution of wages wrongfully withheld.

3 75. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
4 fraudulent in that DEFENDANTS' uniform policy and practice failed to provide the legally
5 mandated meal and rest periods and the required amount of compensation for missed meal and
6 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
7 necessary business expenses incurred, due to a systematic business practice that cannot be
8 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
9 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
10 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
11 restitution of wages wrongfully withheld.

12 76. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
13 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFFS and
14 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
15 DEFENDANT.

16 77. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
17 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
18 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members as
19 required by Cal. Lab. Code §§ 226.7 and 512.

20 78. Therefore, PLAINTIFFS demands on behalf of themselves and on behalf of each
21 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
22 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
23 each workday in which a second off-duty meal period was not timely provided for each ten (10)
24 hours of work.

25 79. PLAINTIFFS further demand on behalf of themselves and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
27 was not timely provided as required by law.
28

1 80. By and through the unlawful and unfair business practices described herein,
2 DEFENDANTS have obtained valuable property, money and services from PLAINTIFFS and
3 the other members of the CALIFORNIA CLASS, including earned wages for all time worked,
4 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
5 detriment of these employees and to the benefit of DEFENDANTS so as to allow
6 DEFENDANTS to unfairly compete against competitors who comply with the law.

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

12 82. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
13 to, and do, seek such relief as may be necessary to restore to them the money and property which
14 DEFENDANTS have acquired, or of which PLAINTIFFS and the other members of the
15 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
16 unfair business practices, including earned but unpaid wages for all time worked.

17 83. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
18 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
19 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
20 engaging in any unlawful and unfair business practices in the future.

21 84. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
22 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
23 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As
24 a result of the unlawful and unfair business practices described herein, PLAINTIFFS and the
25 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
26 irreparable legal and economic harm unless DEFENDANTS are restrained from continuing to
27 engage in these unlawful and unfair business practices.

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1 92. In committing these violations of the California Labor Code, DEFENDANTS
2 inaccurately calculated the correct time worked and consequently underpaid the actual time
3 worked by PLAINTIFFS and other members of the CALIFORNIA CLASS. DEFENDANTS
4 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
5 violation of the California Labor Code, the Industrial Welfare Commission requirements and
6 other applicable laws and regulations.

7 93. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
8 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive the correct
9 minimum wage compensation for their time worked for DEFENDANTS.

10 94. During the CLASS PERIOD, PLAINTIFFS and the other members of the
11 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
12 failure to pay all earned wages.

13 95. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
14 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true
15 time they worked, PLAINTIFFS and the other members of the CALIFORNIA CLASS have
16 suffered and will continue to suffer an economic injury in amounts which are presently unknown
17 to them, and which will be ascertained according to proof at trial.

18 96. DEFENDANTS knew or should have known that PLAINTIFFS and the other
19 members of the CALIFORNIA CLASS were under-compensated for their time worked.
20 DEFENDANTS systematically elected, either through intentional malfeasance or gross
21 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
22 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
23 PLAINTIFFS and the other members of the CALIFORNIA CLASS the correct minimum wages
24 for their time worked.

25 97. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
27 and provide them with the requisite compensation, DEFENDANTS acted and continues to act
28 intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the

1 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
2 consequences to them, and with the despicable intent of depriving them of their property and
3 legal rights, and otherwise causing them injury in order to increase company profits at the
4 expense of these employees.

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

19 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against ALL DEFENDANTS)**

20 99. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
22 Complaint.

23 100. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim
24 for DEFENDANT's willful and intentional violations of the California Labor Code and the
25 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
26 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
27 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.
28

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

3 102. Cal. Lab. Code § 510 provides that employees in California shall not be employed
4 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless
5 they receive additional compensation beyond their regular wages in amounts specified by law.

6 103. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
7 including minimum and overtime compensation and interest thereon, together with the costs of
8 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
9 than those fixed by the Industrial Welfare Commission is unlawful.

10 104. During the CLASS PERIOD, PLAINTIFFS and CALIFORNIA CLASS Members
11 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
12 they worked, including overtime work.

13 105. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
15 implementing a uniform policy and practice that failed to accurately record overtime worked by
16 PLAINTIFFS and other CALIFORNIA CLASS Members and denied accurate compensation to
17 PLAINTIFFS and the other members of the CALIFORNIA CLASS for overtime worked,
18 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
19 (12) hours in a workday, and/or forty (40) hours in any workweek.

20 106. In committing these violations of the California Labor Code, DEFENDANTS
21 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
22 PLAINTIFFS and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
23 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
24 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
25 regulations.

26 107. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
27 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive the correct
28 overtime compensation for their time worked for DEFENDANTS.

1 108. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
2 from the overtime requirements of the law. None of these exemptions are applicable to
3 PLAINTIFFS and the other members of the CALIFORNIA CLASS. Further, PLAINTIFFS and
4 the other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
5 agreement that would preclude the causes of action contained herein this Complaint. Rather,
6 PLAINTIFFS bring this Action on behalf of themselves, and the CALIFORNIA CLASS based
7 on DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
8 California.

9 109. During the CLASS PERIOD, PLAINTIFFS and the other members of the
10 CALIFORNIA CLASS were paid less for overtime worked than they were entitled to,
11 constituting a failure to pay all earned wages.

12 110. DEFENDANTS failed to accurately pay PLAINTIFFS and the other members of
13 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
14 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
15 though PLAINTIFFS and the other members of the CALIFORNIA CLASS were regularly
16 required to work, and did in fact work overtime, and did in fact work overtime as to which
17 DEFENDANTS failed to accurately record and pay as evidenced by DEFENDANTS' business
18 records and witnessed by employees.

19 111. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
20 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true
21 amount of overtime they worked, PLAINTIFFS and the other members of the CALIFORNIA
22 CLASS have suffered and will continue to suffer an economic injury in amounts which are
23 presently unknown to them, and which will be ascertained according to proof at trial.

24 112. DEFENDANTS knew or should have known that PLAINTIFFS and the other
25 members of the CALIFORNIA CLASS were undercompensated for their time worked.
26 DEFENDANTS systematically elected, either through intentional malfeasance or gross
27 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
28 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay

1 PLAINTIFFS and the other members of the CALIFORNIA CLASS the correct overtime wages
2 for their overtime worked.

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

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

21 **FOURTH CAUSE OF ACTION**

22 **Failure To Provide Required Meal Periods**

23 **(Cal. Lab. Code §§ 226.7 & 512)**

24 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANTS)**

25 115. PLAINTIFFS and the other members of the CALIFORNIA CLASS, reallege and
26 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
27 Complaint.
28

1 116. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
2 required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA CLASS Members
3 as required by the applicable Wage Order and Labor Code. The nature of the work performed by
4 PLAINTIFFS and CALIFORNIA CLASS Members did not prevent these employees from being
5 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
6 rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were often
7 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
8 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA CLASS Members with
9 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
10 DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFFS and
11 CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which
12 these employees were required by DEFENDANT to work ten (10) hours of work. As a result,
13 PLAINTIFFS and other members of the CALIFORNIA CLASS forfeited meal breaks without
14 additional compensation and in accordance with DEFENDANT's strict corporate policy and
15 practice.

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

21 118. As a proximate result of the aforementioned violations, PLAINTIFFS and
22 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
23 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

24 ///

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1 **FIFTH CAUSE OF ACTION**

2 **Failure To Provide Required Rest Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

4 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANTS)**

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

8 120. From time to time, PLAINTIFFS and other CALIFORNIA CLASS Members were
9 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
10 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
11 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
12 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
13 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
14 PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided with one-hour
15 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFFS and other
16 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
17 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate
18 PLAINTIFFS and other CALIFORNIA CLASS Members for their rest periods as required by
19 the applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
20 PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid rest
21 periods is evidenced by DEFENDANT's business records.

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

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

SIXTH CAUSE OF ACTION

Failure To Reimburse Employees For Required Expenses

(Cal. Lab. Code §§ 2802)

(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANTS)

123. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

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

125. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA CLASS members for expenses which included, but were not limited to, their personal cell phones and vehicles as a result of and in furtherance of their job duties, including but not limited to receiving and/or responding to work-related communications and performing work-related duties/errands. Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFFS and the CALIFORNIA CLASS members for expenses resulting from using their personal cell phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any

1 waiver of this expectation. Although these expenses were necessary expenses incurred by
2 PLAINTIFFS and the CALIFORNIA CLASS members, DEFENDANT failed to indemnify and
3 reimburse PLAINTIFFS and the CALIFORNIA CLASS members for these expenses as an
4 employer is required to do under the laws and regulations of California.

5 126. PLAINTIFFS therefore demands reimbursement for expenditures or losses
6 incurred by them and the CALIFORNIA CLASS members in the discharge of their job duties
7 for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
8 statutory rate and costs under Cal. Lab. Code § 2802.

9 **SEVENTH CAUSE OF ACTION**

10 **Failure To Provide Accurate Itemized Statements**

11 **(Cal. Lab. Code § 226)**

12 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANTS)**

13 127. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
14 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
15 Complaint.

16 128. Cal. Labor Code § 226 provides that an employer must furnish employees with an
17 “accurate itemized” statement in writing showing:

- 18 a. Gross wages earned,
- 19 b. (2) total hours worked by the employee, except for any employee whose
20 compensation is solely based on a salary and who is exempt from payment of
21 overtime under subdivision (a) of Section 515 or any applicable order of the
22 Industrial Welfare Commission,
- 23 c. the number of piece-rate units earned and any applicable piece rate if the employee
24 is paid on a piece-rate basis,
- 25 d. all deductions, provided that all deductions made on written orders of the employee
26 may be aggregated and shown as one item,
- 27 e. net wages earned,
- 28 f. the inclusive dates of the period for which the employee is paid,

- 1 g. the name of the employee and his or her social security number, except that by
2 January 1, 2008, only the last four digits of his or her social security number of an
3 employee identification number other than social security number may be shown
4 on the itemized statement,
- 5 h. the name and address of the legal entity that is the employer, and
- 6 i. all applicable hourly rates in effect during the pay period and the corresponding
7 number of hours worked at each hourly rate by the employee.

8 129. When DEFENDANT did not accurately record PLAINTIFFS'S and other
9 CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed
10 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated
11 Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFFS and other
12 CALIFORNIA CLASS Members with complete and accurate wage statements which failed to
13 show, among other things, all deductions, the accurate gross wages earned, net wages earned,
14 the total hours worked and all applicable hourly rates in effect during the pay period and the
15 corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty
16 payments or missed meal and rest periods.

17 130. In addition to the foregoing, DEFENDANTS failed to provide itemized wage
18 statements to PLAINTIFFS and members of the CALIFORNIA CLASS that complied with the
19 requirements of California Labor Code Section 226.

20 131. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
21 § 226, causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA
22 CLASS. These damages include, but are not limited to, costs expended calculating the correct
23 wages for all missed meal and rest breaks and the amount of employment taxes which were not
24 properly paid to state and federal tax authorities. These damages are difficult to estimate.
25 Therefore, PLAINTIFFS and the other members of the CALIFORNIA CLASS may elect to
26 recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
27 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
28 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but

1 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective
2 member of the CALIFORNIA CLASS herein).

3 **EIGHTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code § 203)**

6 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANTS)**

7 132. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
8 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
9 Complaint.

10 133. Cal. Lab. Code § 200 provides that:

11 As used in this article:

- 12 (d) "Wages" includes all amounts for labor performed by employees of every
13 description, whether the amount is fixed or ascertained by the standard of time,
14 task, piece, Commission basis, or other method of calculation.
15 (e) "Labor" includes labor, work, or service whether rendered or performed under
16 contract, subcontract, partnership, station plan, or other agreement if the to be
17 paid for is performed personally by the person demanding payment.

18 134. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
19 an employee, the wages earned and unpaid at the time of discharge are due and payable
20 immediately."

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

22 If an employee not having a written contract for a definite period quits his or her
23 employment, his or her wages shall become due and payable not later than 72 hours
24 thereafter, unless the employee has given 72 hours previous notice of his or her intention
25 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
26 Notwithstanding any other provision of law, an employee who quits without providing a
27 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
28 designates a mailing address. The date of the mailing shall constitute the date of payment
for purposes of the requirement to provide payment within 72 hours of the notice of
quitting.

136. There was no definite term in PLAINTIFFS'S or any CALIFORNIA CLASS
Members' employment contract.

137. Cal. Lab. Code § 203 provides:

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

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

3 138. The employment of PLAINTIFFS and many CALIFORNIA CLASS Members
4 terminated, and DEFENDANT has not tendered payment of wages to these employees who
5 missed meal and rest breaks, as required by law.

6 139. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
7 members of the CALIFORNIA CLASS whose employment has, PLAINTIFFS demand up to
8 thirty (30) days of pay as penalty for not paying all wages due at time of termination for all
9 employees who terminated employment during the CLASS PERIOD and demands an accounting
10 and payment of all wages due, plus interest and statutory costs as allowed by law.

11 **NINTH CAUSE OF ACTION**

12 **Failure To Pay Statutory Gratuities**

13 **(Cal. Lab. Code § 351 et. seq.)**

14 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all DEFENDANTS)**

15 140. PLAINTIFFS and the other members of the California Class reallege and
16 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
17 Complaint.

18 141. DEFENDANTS' conduct, as set forth above, in failing to remit to non-managerial
19 service employees the total proceeds of gratuities added to customers' bills constitutes a violation
20 of California Labor Code Sections 351 et. seq. This Violation is enforceable pursuant to the
21 California Unfair Competition law, Cal Bus. And Prof. Code 17200 et seq. DEFENDANTS'
22 conduct constitutes unlawful, unfair and/or fraudulent business acts or practices, in that
23 DFENDANTS have violated California Labor Code section 351 in not remitting to the non-
24 managerial service employees the total gratuities that were charged to customers.

25 142. As a proximate result of the aforementioned violations, PLAINTIFFS and the
26 CALIFORNIA CLASS members have been damaged in an amount according to proof at trial,
27 including the loss of gratuities to which they were entitled and seek all wages earned and due,
28 interest, penalties, expenses and costs of suit.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFFS pray for a judgment against each DEFENDANT, jointly
3 and severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

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

15 2. On behalf of the CALIFORNIA CLASS:

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
17 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
18 pursuant to Cal. Code of Civ. Proc. § 382;
19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation due to PLAINTIFFS and the other members
21 of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
22 thereon at the statutory rate;
23 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
24 the applicable IWC Wage Order;
25 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
26 which a violation occurs and one hundred dollars (\$100) per each member of the
27 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
28 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for

violation of Cal. Lab. Code § 226

e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

f. The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of sui

3. On all claims:

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

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

c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

Dated: February 8, 2024

JCL LAW FIRM, APC
ZAKAY LAW GROUP, APLC

By: 

Monnett De La Torre, Esq.
Jean-Claude Lapuyade, Esq.
Andrea Amaya, Esq.
Shani O. Zakay, Esq.

Attorneys for Plaintiff

DEMAND FOR A JURY TRIAL

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

Dated: February 8, 2024

JCL LAW FIRM, APC
ZAKAY LAW GROUP, APLC

By: 

Monnett De La Torre, Esq.
Jean-Claude Lapuyade, Esq.
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