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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

JESUS GARCIA, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

LAND AND SEA RESTAURANTS LLC dba
EPIC ROASTHOUSE and WATERBAR, a
California limited liability company; and DOES
1-50, Inclusive,

Defendant.

Case No: CGC-23-608448

FIRST AMENDED COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

11/22/2023
Clerk of the Court

BY: WILLIAM TRUPEK
Deputy Clerk

- 1 7) FAILURE TO PROVIDE WAGES WHEN
2 DUE IN VIOLATION OF CAL. LAB.
3 CODE §§ 201, 202 AND 203;
4 8) FAILURE TO REIMBURSE EMPLOYEES
5 FOR REQUIRED EXPENSES IN
6 VIOLATION OF CAL. LAB. CODE § 2802;
7 9) FAILURE TO PROVIDE GRATUITIES IN
8 VIOLATION OF CAL. LAB. CODE § 351.
9 10) VIOLATION OF THE PRIVATE
10 ATTORNEYS GENERAL ACT LABOR
11 CODE §§ 2698 ET SEQ.

12 **DEMAND FOR A JURY TRIAL**

13 PLAINTIFF JESUS GARCIA (“PLAINTIFF”), an individual, on behalf of himself and all
14 other similarly situated current and former employees, allege on information and belief, except for
15 his own acts and knowledge which are based on personal knowledge, the following:

16 **PRELIMINARY ALLEGATIONS**

17 1. Defendant LAND AND SEA RESTAURANTS LLC dba EPIC ROASTHOUSE
18 and WATERBAR (“DEFENDANT” and/or “DEFENDANTS”) is a California limited liability
19 company that at all relevant times mentioned herein conducted and continues to conduct
20 substantial and regular business throughout California.

21 2. DEFENDANT operates restaurants throughout the state of California, including
22 the county of San Francisco, where PLAINTIFF worked.

23 3. PLAINTIFF was employed by DEFENDANT in California from May of 2023 to
24 August of 2023 as a non-exempt employee, paid on an hourly basis, and entitled to the legally
25 required meal and rest periods and payment of minimum and overtime wages due for all time
26 worked.

27 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
28 defined as all persons who are or previously were employed by DEFENDANT in California and
classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
beginning four (4) years prior to the filing of this Action and ending on the date as determined by

1 the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the
2 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

3 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
4 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
5 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
6 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
7 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained
8 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
9 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
10 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
11 other members of the CALIFORNIA CLASS who have been economically injured by
12 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
13 relief.

14 6. The true names and capacities, whether individual, corporate, subsidiary,
15 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
16 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
17 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this First
18 Amended Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
19 they are ascertained. PLAINTIFF is informed and believes, and based upon that information and
20 belief alleges, that the DEFENDANTS named in this First Amended Complaint, including DOES
21 1 through 50, inclusive, are responsible in some manner for one or more of the events and
22 happenings that proximately caused the injuries and damages hereinafter alleged.

23 7. The agents, servants and/or employees of the Defendants and each of them acting
24 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
25 agent, servant and/or employee of the Defendants, and personally participated in the conduct
26 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
27 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
28 Defendants are jointly and severally liable to PLAINTIFF and the other members of the

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendants' agents, servants and/or employees.

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

9 9. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of
10 PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person,
11 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
12 employee a wage less than the minimum fixed by California state law, and as such, are subject to
13 civil penalties for each underpaid employee.

14 10. DEFENDANT's uniform policies and practices alleged herein were unlawful,
15 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
16 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

17 11. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
18 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
19 other members of the CALIFORNIA CLASS who has been economically injured by
20 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
21 relief.

22 **JURISDICTION AND VENUE**

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

27 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs

1 the CALIFORNIA CLASS across California, including in this County, and committed the
2 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

3 **THE CONDUCT**

4 14. In violation of the applicable sections of the California Labor Code and the
5 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a
6 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
7 failed to provide legally compliant meal and rest periods, failed to accurately compensate
8 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
9 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
10 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
11 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
12 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
13 premiums at the regular rate, and failed to issue to PLAINTIFF and the members of the
14 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
15 applicable hourly rates in effect during the pay periods and the corresponding amount of time
16 worked at each hourly rate. DEFENDANT’s uniform policies and practices are intended to
17 purposefully avoid the accurate and full payment for all time worked as required by California
18 law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
19 who comply with the law. To the extent equitable tolling operates to toll claims by the
20 CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
21 accordingly.

22 **A. Meal Period Violations**

23 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. From time to time during the CLASS
27 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
28 without paying them for all the time they were under DEFENDANT’s control. Specifically,

1 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
2 PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
3 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
4 Members forfeited minimum wage and overtime compensation by regularly working without their
5 time being accurately recorded and without compensation at the applicable minimum wage and
6 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
7 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
8 records.

9 16. From time to time during the CLASS PERIOD, as a result of their rigorous work
10 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
11 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
12 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
13 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
14 more than five (5) hours during some shifts without receiving a meal break. Further,
15 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
16 off-duty meal period for some workdays in which these employees are required by DEFENDANT
17 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
18 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed "on-
19 duty" meal period exception. When they were provided with meal periods, PLAINTIFF and other
20 CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on
21 duty and on call. DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS
22 Members with legally required meal breaks is evidenced by DEFENDANT's business records.
23 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks
24 without additional compensation and in accordance with DEFENDANT's strict corporate policy
25 and practice.

26 **B. Rest Period Violations**

27 17. From time to time during the CLASS PERIOD, PLAINTIFF and other
28 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without

1 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
2 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
3 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
4 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
5 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
6 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
7 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
8 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.
9 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
10 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's
11 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
12 time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

13 **C. Unreimbursed Business Expenses**

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

25 19. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
26 Members as a business expense, were required by DEFENDANTS to use their own personal cell
27 phones as a result of and in furtherance of their job duties as employees for DEFENDANTS but
28 were not reimbursed or indemnified by DEFENDANTS for the costs associated with the use of

1 their own personal cell phones for DEFENDANTS' benefit. Specifically, PLAINTIFF and other
2 CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cellular
3 phones to conduct work related business. As a result, in the course of their employment with
4 DEFENDANT the PLAINTIFF and other members of the CALIFORNIA CLASS incurred
5 unreimbursed business expenses which included, but were not limited to, costs related to the use
6 of their own personal cell phones all on behalf of and for the benefit of DEFENDANTS.

7 **D. Wage Statement Violations**

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

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

24 22. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
25 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
26 Cal. Lab. Code § 226.

27 23. As a result, DEFENDANT issued PLAINTIFF and other members of the
28 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,

1 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional
2 payroll error due to clerical or inadvertent mistake.

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

4 24. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
5 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
6 for all hours worked.

7 25. During the CLASS PERIOD, from time-to-time DEFENDANT required
8 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
9 work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to
10 work while off-the-clock.

11 26. DEFENDANT directed and directly benefited from the undercompensated off-the-
12 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

13 27. DEFENDANT controlled the work schedules, duties, and protocols, applications,
14 assignments, and employment conditions of PLAINTIFF and the other members of the
15 CALIFORNIA CLASS.

16 28. DEFENDANT was able to track the amount of time PLAINTIFF and the other
17 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
18 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
19 wages earned and owed for all the work they performed.

20 29. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
21 exempt employees, subject to the requirements of the California Labor Code.

22 30. DEFENDANT's policies and practices deprived PLAINTIFF and the other
23 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
24 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
25 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
26 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime
27 pay.

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1 31. DEFENDANT knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

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

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

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

20 34. State law provides that employees must be paid overtime at one-and-one-half times
21 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
22 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
23 employee's performance.

24 35. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
25 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
26 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
27 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
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1 paid on an hourly basis with bonus compensation when the employees met the various
2 performance goals set by DEFENDANTS.

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

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

G. Violations for Untimely Payment of Wages

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

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

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

H. Unlawful Deductions

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

I. Timekeeping Manipulation

42. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an immutable timekeeping system to accurately record and pay PLAINTIFF and other members of the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the

1 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
2 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
3 unilaterally alter the time recorded in DEFENDANT'S timekeeping system for PLAINTIFF and
4 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
5 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
6 missed rest breaks.

7 43. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
8 time-to-time, forfeited time worked by working without their time being accurately recorded and
9 without compensation at the applicable pay rates.

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

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

23 **J. Unlawful Rounding Practices**

24 46. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
25 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
26 CALIFORNIA CLASS Members for the actual time these employees worked each day,
27 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
28 policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being

1 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
2 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
3 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
4 these employees for all their time worked, including the applicable overtime compensation for
5 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
6 time to time, forfeited compensation for their time worked by working without their time being
7 accurately recorded and without compensation at the applicable overtime rates.

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

14 **K. Sick Pay Violations**

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

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

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1 **L. Tip Pooling**

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

18 51. DEFENDANTS are generally in the business of owning and operating a restaurant.
19 During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
20 Members were in the "chain of service" and earned gratuities based on their service for their
21 customers. However, PLAINTIFF and CALIFORNIA CLASS Members were forced to forfeit
22 portions of their gratuities, which said gratuities were kept by DEFENDANTS' employees who
23 were not in the chain of service from which the gratuity resulted. PLAINTIFF and other
24 CALIFORNIA CLASS Members contend that any gratuities kept by DEFENDANTS' non-
25 service employees were illegal and in violation of California law because PLAINTIFF and other
26 CALIFORNIA CLASS Members provided the service for to whom the gratuity should have been
27 paid.

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

9 53. Although tip pooling is not expressly prohibited by the Labor Code, employees
10 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
11 By distributing tips to employees who were not in the “chain of service,” DEFENDANTS have
12 violated and continue to violate the legal requirements for handling pooled tips.

13 54. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
14 off duty meal and rest breaks and were not fully relieved of duty for his rest and meal periods.
15 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
16 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
17 provide PLAINTIFF with a second off-duty meal period each workday in which they were
18 required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided
19 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
20 rest break. DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what
21 was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest
22 breaks without additional compensation and in accordance with DEFENDANT’S strict corporate
23 policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that
24 failed to comply with Cal. Lab. Code § 226. To date, DEFENDANT has not fully paid
25 PLAINTIFF the minimum, overtime and double time compensation still owed to him or any
26 penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for
27 PLAINTIFF individually does not exceed the sum or value of \$75,000.

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CLASS ACTION ALLEGATIONS

55. PLAINTIFF brings this Class Action on behalf of himself, and a California class defined as all persons who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Action and ending on the date as determined by the Court (the "CLASS PERIOD").

56. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failed compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

57. The members of the class are so numerous that joinder of all class members is impractical.

58. Common questions of law and fact regarding DEFENDANT's conduct, including but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

- a. Whether DEFENDANT maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANT maintained legally compliant rest period policies and practices;
- c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;

- d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANT issued legally compliant wage statements;
- h. Whether DEFENDANT committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- i. Whether DEFENDANT committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF 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;
- j. Whether DEFENDANT committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

59. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANT's conduct and actions alleged herein.

60. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and PLAINTIFF have the same interests as the other members of the class.

61. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

62. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

63. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the interest of the other CALIFORNIA CLASS Members.

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

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

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

- 16 a. Inconsistent or varying adjudications with respect to individual members of the
17 CALIFORNIA CLASS which would establish incompatible standards of conduct
18 for the parties opposing the CALIFORNIA CLASS; and/or,
19 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
20 which would as a practical matter be dispositive of the interests of the other
21 members not party to the adjudication or substantially impair or impeded their
22 ability to protect their interests.

23 67. Class treatment provides manageable judicial treatment calculated to bring an
24 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
25 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 PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

10 70. 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 71. 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, and 1198,
25 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
26 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
27 unfair competition, including restitution of wages wrongfully withheld.

28 72. 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 73. By the conduct alleged herein, DEFENDANT's practices were deceptive and
4 fraudulent in that DEFENDANT's 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, and failed to pay minimum and overtime wages owed, due to a systematic business
7 practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
8 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
9 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
10 including restitution of wages wrongfully withheld.

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

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

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

24 77. PLAINTIFF further demands on behalf of and on behalf of each CALIFORNIA
25 CLASS member, one (1) hour of pay for each workday in which a rest period was not timely
26 provided as required by law.

27 78. By and through the unlawful and unfair business practices described herein,
28 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the

1 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
2 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
3 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
4 to unfairly compete against competitors who comply with the law.

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

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

15 81. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
16 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
17 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
18 engaging in any unlawful and unfair business practices in the future.

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

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1 90. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately calculated the correct time worked and consequently underpaid the actual time
3 worked by PLAINTIFF 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 91. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
9 minimum wage compensation for their time worked for DEFENDANT.

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

13 93. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
14 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
15 time they worked, PLAINTIFF 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 94. DEFENDANT knew or should have known that PLAINTIFF and the other
19 members of the CALIFORNIA CLASS were under-compensated for their time worked.
20 DEFENDANT 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 DEFENDANT perpetrated this systematic scheme by refusing to pay
23 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
24 for their time worked.

25 95. 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, DEFENDANT acted and continues to act
28 intentionally, oppressively, and maliciously toward PLAINTIFF 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 96. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
6 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
7 assessment of any statutory penalties against DEFENDANT, 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, DEFENDANT's 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. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
14 faith. Further, PLAINTIFF 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 PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

20 97. PLAINTIFF, 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 First
22 Amended Complaint.

23 98. PLAINTIFF 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.

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1 99. 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.

3 100. 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.

6 101. 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.

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

13 103. DEFENDANT's 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 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
17 PLAINTIFF 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.

20 104. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
22 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT 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.

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

1 106. 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 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
4 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 First Amended
6 Complaint. Rather, PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA
7 CLASS based on DEFENDANT's violations of non-negotiable, non-waivable rights provided
8 by the State of California.

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

12 108. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
13 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 PLAINTIFF 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 DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business
18 records and witnessed by employees.

19 109. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
20 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
21 amount of overtime they worked, PLAINTIFF 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.

24 110. DEFENDANT knew or should have known that PLAINTIFF and the other
25 members of the CALIFORNIA CLASS were undercompensated for their time worked.
26 DEFENDANT 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 DEFENDANT perpetrated this systematic scheme by refusing to pay

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

3 111. 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 PLAINTIFF 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.

11 112. Therefore, PLAINTIFF 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 DEFENDANT, 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. DEFENDANT's conduct as alleged herein was willful,
19 intentional, and not in good faith. Further, PLAINTIFF 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 PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

25 113. PLAINTIFF 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 First
27 Amended Complaint.

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1 114. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
2 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
3 required by the applicable Wage Order and Labor Code. The nature of the work performed by
4 PLAINTIFF 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, PLAINTIFF 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 PLAINTIFF 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 PLAINTIFF 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 PLAINTIFF 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.

16 115. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
17 IWC Wage Order by failing to compensate PLAINTIFF 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.

21 116. As a proximate result of the aforementioned violations, PLAINTIFF 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.
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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 PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

8 118. From time to time, PLAINTIFF 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 PLAINTIFF 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, PLAINTIFF 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 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the
19 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
20 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
21 periods is evidenced by DEFENDANT's business records.

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

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120. As a proximate result of the aforementioned violations, PLAINTIFF 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 Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

121. PLAINTIFF, 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 First Amended Complaint.

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

- a. Gross wages earned,
- b. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and

- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

124. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

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

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code § 203)**

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

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

8 127. Cal. Lab. Code § 200 provides that:

9 As used in this article:

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

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

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

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

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

131. 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
the same rate until paid or until an action therefor is commenced; but the wages shall not
continue for more than 30 days.

1 132. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
2 terminated, and DEFENDANT has not tendered payment of wages to these employees who
3 missed meal and rest breaks, as required by law.

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

9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

11 **(Cal. Lab. Code §§ 2802)**

12 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all Defendants**

13 134. PLAINTIFF, 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 First
15 Amended Complaint.

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

17 An employer shall indemnify his or her employee for all necessary expenditures or
18 losses incurred by the employee in direct consequence of the discharge of his or her
19 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.

20 136. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
21 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for
22 required expenses incurred in the discharge of their job duties for DEFENDANT'S benefit.
23 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for
24 expenses which included, but were not limited to, costs related to using their own personal cell
25 phones all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other
26 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cellular
27 phones for work-related business. DEFENDANT'S uniform policy, practice and procedure was
28 to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting

1 from using their own personal cell phones for DEFENDANT within the course and scope of their
2 employment for DEFENDANT. These expenses were necessary to complete their principal job
3 duties. DEFENDANT are estopped by DEFENDANT'S conduct to assert any waiver of this
4 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
5 CALIFORNIA members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
6 CALIFORNIA CLASS members for these expenses as an employer is required to do under the
7 laws and regulations of California.

8 137. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
9 by them and the CALIFORNIA CLASS members in the discharge of their job duties for
10 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory
11 rate and costs under Cal. Lab. Code § 2802.

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO PAY STATUTORY GRATUITIES**

14 **(Cal. Lab. Code § 351 et seq.)**

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

17 138. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First
19 Amended Complaint.

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

27 140. As a proximate result of the aforementioned violations, PLAINTIFF and
28 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,

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

3 **TENTH CAUSE OF ACTION**

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

5 **(Cal. Lab. Code §§2698 et seq.)**

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

7 141. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
8 herein, the prior paragraphs of this First Amended Complaint.

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

18 143. PLAINTIFF, and such persons that may be added from time to time who satisfy
19 the requirements and exhaust the administrative procedures under the Private Attorney General
20 Act, bring this Representative Action on behalf of the State of California with respect to himself
21 and all non-exempt employees who worked for DEFENDANT in California during the time
22 period of August 29, 2022 until the present (the "AGGRIEVED EMPLOYEES").

23 144. On August 29, 2023, PLAINTIFF gave written notice by certified mail to the
24 Labor and Workforce Development Agency (the "Agency") and the employer of the specific
25 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
26 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
27 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
28 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under

1 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
2 AGGRIEVED EMPLOYEES as herein defined.

3 145. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANTS (a) failed to pay PLAINTIFF and AGGRIEVED
5 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and
6 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to pay PLAINTIFF
7 and AGGRIEVED EMPLOYEES at the correct regular rate of pay, (d) failed to pay PLAINTIFF
8 and AGGRIEVED EMPLOYEES for all time worked, and (e) failed to timely pay wages, all in
9 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
10 limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3,
11 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804,
12 and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a
13 result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the
14 Labor Code Private Attorney General Act of 2004 as the representative of the State of California
15 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and
18 severally, as follows:

19 1. On behalf of the CALIFORNIA CLASS:

- 20 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
21 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 22 b. An order temporarily, preliminarily and permanently enjoining and restraining
23 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 24 c. An order requiring DEFENDANTS to pay all overtime wages and all sums
25 unlawfully withheld from compensation due to PLAINTIFF and the other members
26 of the CALIFORNIA CLASS; and
- 27 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
28 for restitution of the sums incidental to DEFENDANT's violations due to

1 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2 2. On behalf of the CALIFORNIA CLASS:

3 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
4 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
5 pursuant to Cal. Code of Civ. Proc. § 382;

6 b. Compensatory damages, according to proof at trial, including compensatory
7 damages for overtime compensation due to PLAINTIFF and the other members of
8 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
9 thereon at the statutory rate;

10 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
11 the applicable IWC Wage Order;

12 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
13 which a violation occurs and one hundred dollars (\$100) per each member of the
14 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
15 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
16 violation of Cal. Lab. Code § 226

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

20 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
21 CLASS incurred in the course of their job duties, plus interest, and costs of suit.

22 3. On behalf of the State of California and with respect to all AGGRIEVED
23 EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
24 General Act of 2004.

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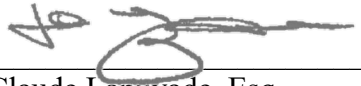
1 4. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
- 5 including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.
- 6

7 DATED: November 22, 2023

JCL LAW FIRM, APC

8

9 By: 

10 Jean-Claude Lapuyade, Esq.
11 Attorney for PLAINTIFF
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DEMAND FOR A JURY TRIAL

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

DATED: November 22, 2023

JCL LAW FIRM, APC

By: _____



Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

EXHIBIT 1

August 29, 2023

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

LAND AND SEA RESTAURANTS LLC
dba EPIC ROASTHOUSE and WATERBAR

c/o Patrick E. Kuleto
3420 Scenic Drive
Napa, CA 94558

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0880 7032 27

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, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff JESUS GARCIA ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant LAND AND SEA RESTAURANTS LLC dba EPIC ROASTHOUSE and WATERBAR ("Defendant"). Plaintiff was employed by Defendant from May of 2023 to August of 2023, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him 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, 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 is therefore actionable under California Labor Code section 2699.3.

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

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This

information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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—Plaintiff reserves 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, Defendant is on notice that Plaintiff continues his 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 Plaintiff to proceed with the Complaint against Defendant 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 Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'Jean-Claude Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

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Attorneys for PLAINTIFF

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

08/17/2023
Clerk of the Court
BY: DAEJA ROGERS
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA **CGC-23-608448**

IN AND FOR THE COUNTY OF SAN FRANCISCO

JESUS GARCIA, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

LAND AND SEA RESTAURANTS LLC dba
EPIC ROASTHOUSE and WATERBAR, 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 PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN
3 VIOLATION OF CAL. LAB. CODE § 226;
4 7) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO REIMBURSE EMPLOYEES
8 FOR REQUIRED EXPENSES IN
9 VIOLATION OF CAL. LAB. CODE § 2802;
10 9) FAILURE TO PROVIDE GRATUITIES IN
11 VIOLATION OF CAL. LAB. CODE § 351.

12 **DEMAND FOR A JURY TRIAL**

13 PLAINTIFF JESUS GARCIA (“PLAINTIFF”), an individual, on behalf of himself and all
14 other similarly situated current and former employees, allege on information and belief, except for
15 his own acts and knowledge which are based on personal knowledge, the following:

16 **PRELIMINARY ALLEGATIONS**

17 1. Defendant LAND AND SEA RESTAURANTS LLC dba EPIC ROASTHOUSE
18 and WATERBAR (“DEFENDANT” and/or “DEFENDANTS”) is a California limited liability
19 company that at all relevant times mentioned herein conducted and continues to conduct
20 substantial and regular business throughout California.

21 2. DEFENDANT operates restaurants throughout the state of California, including
22 the county of San Francisco, where PLAINTIFF worked.

23 3. PLAINTIFF was employed by DEFENDANT in California from May of 2023 to
24 August of 2023 as a non-exempt employee, paid on an hourly basis, and entitled to the legally
25 required meal and rest periods and payment of minimum and overtime wages due for all time
26 worked.

27 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
28 defined as all persons who are or previously were employed by DEFENDANT in California and
classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
beginning four (4) years prior to the filing of this Complaint and ending on the date as determined

1 by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the
2 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

3 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
4 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
5 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
6 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
7 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained
8 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
9 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
10 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
11 other members of the CALIFORNIA CLASS who have been economically injured by
12 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
13 relief.

14 6. The true names and capacities, whether individual, corporate, subsidiary,
15 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
16 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
17 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
18 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
19 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
20 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
21 inclusive, are responsible in some manner for one or more of the events and happenings that
22 proximately caused the injuries and damages hereinafter alleged.

23 7. The agents, servants and/or employees of the Defendants and each of them acting
24 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
25 agent, servant and/or employee of the Defendants, and personally participated in the conduct
26 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
27 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
28 Defendants are jointly and severally liable to PLAINTIFF and the other members of the

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendants' agents, servants and/or employees.

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

9 9. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of
10 PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person,
11 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
12 employee a wage less than the minimum fixed by California state law, and as such, are subject to
13 civil penalties for each underpaid employee.

14 10. DEFENDANT's uniform policies and practices alleged herein were unlawful,
15 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
16 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

17 11. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
18 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
19 other members of the CALIFORNIA CLASS who has been economically injured by
20 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
21 relief.

22 **JURISDICTION AND VENUE**

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

27 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs

1 the CALIFORNIA CLASS across California, including in this County, and committed the
2 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

3 **THE CONDUCT**

4 14. In violation of the applicable sections of the California Labor Code and the
5 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a
6 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
7 failed to provide legally compliant meal and rest periods, failed to accurately compensate
8 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
9 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
10 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
11 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
12 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
13 premiums at the regular rate, and failed to issue to PLAINTIFF and the members of the
14 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
15 applicable hourly rates in effect during the pay periods and the corresponding amount of time
16 worked at each hourly rate. DEFENDANT’s uniform policies and practices are intended to
17 purposefully avoid the accurate and full payment for all time worked as required by California
18 law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
19 who comply with the law. To the extent equitable tolling operates to toll claims by the
20 CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
21 accordingly.

22 **A. Meal Period Violations**

23 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. From time to time during the CLASS
27 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
28 without paying them for all the time they were under DEFENDANT’s control. Specifically,

1 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
2 PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
3 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
4 Members forfeited minimum wage and overtime compensation by regularly working without their
5 time being accurately recorded and without compensation at the applicable minimum wage and
6 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
7 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
8 records.

9 16. From time to time during the CLASS PERIOD, as a result of their rigorous work
10 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
11 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
12 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
13 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
14 more than five (5) hours during some shifts without receiving a meal break. Further,
15 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
16 off-duty meal period for some workdays in which these employees are required by DEFENDANT
17 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
18 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed "on-
19 duty" meal period exception. When they were provided with meal periods, PLAINTIFF and other
20 CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on
21 duty and on call. DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS
22 Members with legally required meal breaks is evidenced by DEFENDANT's business records.
23 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks
24 without additional compensation and in accordance with DEFENDANT's strict corporate policy
25 and practice.

26 **B. Rest Period Violations**

27 17. From time to time during the CLASS PERIOD, PLAINTIFF and other
28 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without

1 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
2 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
3 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
4 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
5 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
6 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
7 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
8 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.
9 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
10 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's
11 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
12 time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

13 **C. Unreimbursed Business Expenses**

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

25 19. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
26 Members as a business expense, were required by DEFENDANTS to use their own personal cell
27 phones as a result of and in furtherance of their job duties as employees for DEFENDANTS but
28 were not reimbursed or indemnified by DEFENDANTS for the costs associated with the use of

1 their own personal cell phones for DEFENDANTS' benefit. Specifically, PLAINTIFF and other
2 CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cellular
3 phones to conduct work related business. As a result, in the course of their employment with
4 DEFENDANT the PLAINTIFF and other members of the CALIFORNIA CLASS incurred
5 unreimbursed business expenses which included, but were not limited to, costs related to the use
6 of their own personal cell phones all on behalf of and for the benefit of DEFENDANTS.

7 **D. Wage Statement Violations**

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

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

24 22. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
25 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
26 Cal. Lab. Code § 226.

27 23. As a result, DEFENDANT issued PLAINTIFF and other members of the
28 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,

1 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional
2 payroll error due to clerical or inadvertent mistake.

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

4 24. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
5 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
6 for all hours worked.

7 25. During the CLASS PERIOD, from time-to-time DEFENDANT required
8 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
9 work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to
10 work while off-the-clock.

11 26. DEFENDANT directed and directly benefited from the undercompensated off-the-
12 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

13 27. DEFENDANT controlled the work schedules, duties, and protocols, applications,
14 assignments, and employment conditions of PLAINTIFF and the other members of the
15 CALIFORNIA CLASS.

16 28. DEFENDANT was able to track the amount of time PLAINTIFF and the other
17 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
18 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
19 wages earned and owed for all the work they performed.

20 29. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
21 exempt employees, subject to the requirements of the California Labor Code.

22 30. DEFENDANT's policies and practices deprived PLAINTIFF and the other
23 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
24 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
25 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
26 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime
27 pay.

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1 31. DEFENDANT knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

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

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

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

20 34. State law provides that employees must be paid overtime at one-and-one-half times
21 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
22 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
23 employee's performance.

24 35. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
25 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
26 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
27 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
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1 paid on an hourly basis with bonus compensation when the employees met the various
2 performance goals set by DEFENDANTS.

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

21 37. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
23 matter of company policy, practice, and procedure, intentionally and knowingly failed to
24 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
25 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
26 sick pay as required by California law which allowed DEFENDANT to illegally profit and gain
27 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
28

operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

G. Violations for Untimely Payment of Wages

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

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

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

H. Unlawful Deductions

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

I. Timekeeping Manipulation

42. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an immutable timekeeping system to accurately record and pay PLAINTIFF and other members of the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the

CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANT'S timekeeping system for PLAINTIFF and other members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest breaks.

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

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

45. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for all hours worked at DEFENDANT'S direction, control and benefit for the time the timekeeping system was inoperable. DEFENDANT'S uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANT'S business records.

J. Unlawful Rounding Practices

46. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual time these employees worked each day, including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being

1 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
2 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
3 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
4 these employees for all their time worked, including the applicable overtime compensation for
5 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
6 time to time, forfeited compensation for their time worked by working without their time being
7 accurately recorded and without compensation at the applicable overtime rates.

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

14 **K. Sick Pay Violations**

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

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

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1 **L. Tip Pooling**

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

18 51. DEFENDANTS are generally in the business of owning and operating a restaurant.
19 During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
20 Members were in the "chain of service" and earned gratuities based on their service for their
21 customers. However, PLAINTIFF and CALIFORNIA CLASS Members were forced to forfeit
22 portions of their gratuities, which said gratuities were kept by DEFENDANTS' employees who
23 were not in the chain of service from which the gratuity resulted. PLAINTIFF and other
24 CALIFORNIA CLASS Members contend that any gratuities kept by DEFENDANTS' non-
25 service employees were illegal and in violation of California law because PLAINTIFF and other
26 CALIFORNIA CLASS Members provided the service for to whom the gratuity should have been
27 paid.

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

9 53. Although tip pooling is not expressly prohibited by the Labor Code, employees
10 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
11 By distributing tips to employees who were not in the “chain of service,” DEFENDANTS have
12 violated and continue to violate the legal requirements for handling pooled tips.

13 54. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
14 off duty meal and rest breaks and were not fully relieved of duty for his rest and meal periods.
15 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
16 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
17 provide PLAINTIFF with a second off-duty meal period each workday in which they were
18 required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided
19 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
20 rest break. DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what
21 was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest
22 breaks without additional compensation and in accordance with DEFENDANT’S strict corporate
23 policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that
24 failed to comply with Cal. Lab. Code § 226. To date, DEFENDANT has not fully paid
25 PLAINTIFF the minimum, overtime and double time compensation still owed to him or any
26 penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for
27 PLAINTIFF individually does not exceed the sum or value of \$75,000.

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CLASS ACTION ALLEGATIONS

55. PLAINTIFF brings this Class Action on behalf of himself, and a California class defined as all persons who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD").

56. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failed compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

57. The members of the class are so numerous that joinder of all class members is impractical.

58. Common questions of law and fact regarding DEFENDANT's conduct, including but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

- a. Whether DEFENDANT maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANT maintained legally compliant rest period policies and practices;
- c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;

- d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANT issued legally compliant wage statements;
- h. Whether DEFENDANT committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- i. Whether DEFENDANT committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF 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;
- j. Whether DEFENDANT committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

59. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANT's conduct and actions alleged herein.

60. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and PLAINTIFF have the same interests as the other members of the class.

61. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

62. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

63. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the interest of the other CALIFORNIA CLASS Members.

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

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

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

- 16 a. Inconsistent or varying adjudications with respect to individual members of the
17 CALIFORNIA CLASS which would establish incompatible standards of conduct
18 for the parties opposing the CALIFORNIA CLASS; and/or,
19 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
20 which would as a practical matter be dispositive of the interests of the other
21 members not party to the adjudication or substantially impair or impeded their
22 ability to protect their interests.

23 67. Class treatment provides manageable judicial treatment calculated to bring an
24 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
25 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 PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

10 70. 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
defined in this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by means of such
unfair competition. (Cal. Bus. & Prof. Code § 17203).

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

25 72. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
26 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
27 or substantially injurious to employees, and were without valid justification or utility for which
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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 73. By the conduct alleged herein, DEFENDANT's practices were deceptive and
4 fraudulent in that DEFENDANT's 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, and failed to pay minimum and overtime wages owed, due to a systematic business
7 practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
8 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
9 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
10 including restitution of wages wrongfully withheld.

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

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

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

24 77. PLAINTIFF further demands on behalf of and on behalf of each CALIFORNIA
25 CLASS member, one (1) hour of pay for each workday in which a rest period was not timely
26 provided as required by law.

27 78. By and through the unlawful and unfair business practices described herein,
28 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the

1 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
2 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
3 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
4 to unfairly compete against competitors who comply with the law.

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

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

15 81. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
16 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
17 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
18 engaging in any unlawful and unfair business practices in the future.

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

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1 90. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately calculated the correct time worked and consequently underpaid the actual time
3 worked by PLAINTIFF 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 91. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
9 minimum wage compensation for their time worked for DEFENDANT.

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

13 93. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
14 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
15 time they worked, PLAINTIFF 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 94. DEFENDANT knew or should have known that PLAINTIFF and the other
19 members of the CALIFORNIA CLASS were under-compensated for their time worked.
20 DEFENDANT 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 DEFENDANT perpetrated this systematic scheme by refusing to pay
23 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
24 for their time worked.

25 95. 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, DEFENDANT acted and continues to act
28 intentionally, oppressively, and maliciously toward PLAINTIFF 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 96. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
6 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
7 assessment of any statutory penalties against DEFENDANT, 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, DEFENDANT's 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. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
14 faith. Further, PLAINTIFF 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 PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

20 97. PLAINTIFF, 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 98. PLAINTIFF 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.

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1 99. 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.

3 100. 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.

6 101. 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.

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

13 103. DEFENDANT's 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 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
17 PLAINTIFF 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.

20 104. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
22 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT 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.

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

1 106. 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 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
4 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 PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS based on
7 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of
8 California.

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

12 108. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
13 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 PLAINTIFF 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 DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business
18 records and witnessed by employees.

19 109. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
20 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
21 amount of overtime they worked, PLAINTIFF 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.

24 110. DEFENDANT knew or should have known that PLAINTIFF and the other
25 members of the CALIFORNIA CLASS were undercompensated for their time worked.
26 DEFENDANT 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 DEFENDANT perpetrated this systematic scheme by refusing to pay

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

3 111. 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 PLAINTIFF 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.

11 112. Therefore, PLAINTIFF 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 DEFENDANT, 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. DEFENDANT's conduct as alleged herein was willful,
19 intentional, and not in good faith. Further, PLAINTIFF 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 PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

25 113. PLAINTIFF 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.

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1 114. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
2 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
3 required by the applicable Wage Order and Labor Code. The nature of the work performed by
4 PLAINTIFF 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, PLAINTIFF 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 PLAINTIFF 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 PLAINTIFF 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 PLAINTIFF 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.

16 115. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
17 IWC Wage Order by failing to compensate PLAINTIFF 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.

21 116. As a proximate result of the aforementioned violations, PLAINTIFF 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.
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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 PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

8 118. From time to time, PLAINTIFF 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 PLAINTIFF 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, PLAINTIFF 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 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the
19 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
20 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
21 periods is evidenced by DEFENDANT's business records.

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

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120. As a proximate result of the aforementioned violations, PLAINTIFF 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 Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

121. PLAINTIFF, 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.

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

- a. Gross wages earned,
- b. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and

- 1 i. all applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate by the employee.

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

12 124. In addition to the foregoing, DEFENDANTS failed to provide itemized wage
13 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
14 requirements of California Labor Code Section 226.

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

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code § 203)**

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

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

8 127. Cal. Lab. Code § 200 provides that:

9 As used in this article:

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

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

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

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

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

131. 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
the same rate until paid or until an action therefor is commenced; but the wages shall not
continue for more than 30 days.

1 132. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
2 terminated, and DEFENDANT has not tendered payment of wages to these employees who
3 missed meal and rest breaks, as required by law.

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

9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

11 **(Cal. Lab. Code §§ 2802)**

12 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all Defendants)**

13 134. PLAINTIFF, 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.

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

17 An employer shall indemnify his or her employee for all necessary expenditures or
18 losses incurred by the employee in direct consequence of the discharge of his or her
19 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.

20 136. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
21 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for
22 required expenses incurred in the discharge of their job duties for DEFENDANT'S benefit.
23 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for
24 expenses which included, but were not limited to, costs related to using their own personal cell
25 phones all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other
26 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cellular
27 phones for work-related business. DEFENDANT'S uniform policy, practice and procedure was
28 to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting

1 from using their own personal cell phones for DEFENDANT within the course and scope of their
2 employment for DEFENDANT. These expenses were necessary to complete their principal job
3 duties. DEFENDANT are estopped by DEFENDANT'S conduct to assert any waiver of this
4 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
5 CALIFORNIA members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
6 CALIFORNIA CLASS members for these expenses as an employer is required to do under the
7 laws and regulations of California.

8 137. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
9 by them and the CALIFORNIA CLASS members in the discharge of their job duties for
10 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory
11 rate and costs under Cal. Lab. Code § 2802.

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO PAY STATUTORY GRATUITIES**

14 **(Cal. Lab. Code § 351 et seq.)**

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

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

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

27 140. As a proximate result of the aforementioned violations, PLAINTIFF and
28 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,

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

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and
5 severally, as follows:

6 1. On behalf of the CALIFORNIA CLASS:

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

17 2. On behalf of the CALIFORNIA CLASS:

- 18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
19 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
20 pursuant to Cal. Code of Civ. Proc. § 382;
21 b. Compensatory damages, according to proof at trial, including compensatory
22 damages for overtime compensation due to PLAINTIFF and the other members of
23 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
24 thereon at the statutory rate;
25 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
26 the applicable IWC Wage Order;
27 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
28 which a violation occurs and one hundred dollars (\$100) per each member of the

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

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 PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On all claims:

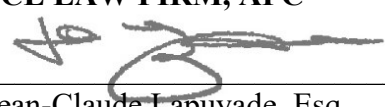
a. An award of interest, including prejudgment interest at the legal rate;

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: August 17, 2023

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

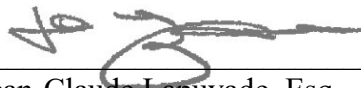
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DEMAND FOR A JURY TRIAL

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

DATED: August 17, 2023

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

EXHIBIT