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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JASON MARELLO, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

SECOND STREET CORPORATION, dba
THE HUNTLEY HOTEL, a California
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: 24SMCV02395

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

- 1) VIOLATIONS OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ.

FILED

Superior Court of California
County of Los Angeles

01/08/2025

David W. Slayton, Executive Officer / Clerk of Court

By: D. Romero Deputy

1 PLAINTIFF JASON MARELLO (“PLAINTIFF”), an individual, in his representative
2 capacity and on behalf of himself, the State of California, and fellow current and former
3 AGGRIEVED EMPLOYEES, defined *supra*, against SECOND STREET CORPORATION dba
4 THE HUNTLEY HOTEL, a California Corporation (“DEFENDANT”) alleges on information and
5 belief, except for his own acts and knowledge which are based on personal knowledge, the
6 following:

7 **INTRODUCTION**

8 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys
9 General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of the LWDA
10 and other current and former aggrieved employees of DEFENDANT for engaging in a pattern
11 and practice of wage and hour violations under the California Labor Code.

12 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
13 decreased their employment-related costs by systematically violating California wage and hour
14 laws.

15 3. DEFENDANT’S systematic pattern of wage and hour and IWC Wage Order
16 violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 17 a. Failure to provide compliant meal and rest periods;
 - 18 b. Failure to allow employees to take duty-free meal and rest periods;
 - 19 c. Failure to pay all minimum, sick pay, regular and overtime wages;
 - 20 d. Failure to correctly calculate the regular rate of pay;
 - 21 e. Failure to pay within seven (7) days of the close of payroll;
 - 22 f. Failure to pay for all hours worked;
 - 23 g. Failure to maintain true and accurate records;
 - 24 h. Failure to reimburse for required business expenses;
 - 25 i. Failure to provide accurate itemized wage statements;
 - 26 j. Failure to timely pay wages due during, and upon termination of employment; and
 - 27 k. Failure to provide gratuities.
- 28

4. PLAINTIFF brings this representative action against DEFENDANT on behalf of the LWDA and all other aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

5. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

THE PARTIES

6. Defendant SECOND STREET CORPORATION dba THE HUNTLEY HOTEL (“Defendant”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

7. DEFENDANT was the employer of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for.

8. DEFENDANT owns and operates a hotel in the state of California, County of Los Angeles.

9. PLAINTIFF was employed by DEFENDANT in California from October of 2021 to August of 2023 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

10. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by Defendant in California and classified as non-exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of March 13, 2023 and the present (“PAGA Period”).

11. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code § 2699(c) because he was employed by DEFENDANT and suffered one or more of the alleged Labor Code violations committed by DEFENDANT.

12. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times were, employees of DEFENDANT, within the meanings set forth in the California Labor Code and the applicable Industrial Welfare Commission Wage Order.

13. Each of the fictitiously named defendants participated in the acts alleged in this Complaint. The true names and capacities of the Defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth the true names and capacities of these fictitiously named Defendants when their true names are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious Defendants have participated in the acts alleged in this Complaint.

14. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively “DEFENDANT”), were PLAINTIFF’S employers or persons acting on behalf of PLAINTIFF’S employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

JURISDICTION AND VENUE

16. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Court has jurisdiction over AGGRIEVED EMPLOYEES' claims for civil penalties under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

17. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times

maintained offices and facilities in this County and/or conducted substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against AGGRIEVED EMPLOYEES.

THE CONDUCT

18. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all time worked, failed to compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES overtime at the correct rate of pay, failed to compensate PLAINTIFF and AGGRIEVED EMPLOYEES meal rest premiums at the correct rate, failed to reimburse PLAINTIFF and AGGRIEVED EMPLOYEES for necessary business expenses, failed to pay gratuities owed, and failed to issue to PLAINTIFF and AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate, and other requirements of Labor Code §226(a)(1-9). DEFENDANT’s uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked and all tips earned as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

A. Meal Period Violations

19. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the PAGA PERIOD,

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

11 20. From time to time during the PAGA PERIOD, as a result of their rigorous work
12 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
13 AGGRIEVED EMPLOYEES are from time to time unable to take thirty (30) minutes off duty
14 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
15 AGGRIEVED EMPLOYEES are required to perform work as ordered by DEFENDANT for more
16 than five (5) hours during some shifts without receiving a meal break. The nature of the work
17 performed by PLAINTIFF and other AGGRIEVED EMPLOYEES does not qualify for the
18 limited and narrowly construed "on-duty" meal period exception. When they were provided with
19 meal periods, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time,
20 required to remain on duty and on call. Further, DEFENDANT from time to time required
21 PLAINTIFF and other AGGRIEVED EMPLOYEES to maintain cordless communication devices
22 in order to receive and respond to work-related communications during what was supposed to be
23 their off-duty meal breaks. DEFENDANT's failure to provide PLAINTIFF and the
24 AGGRIEVED EMPLOYEES with legally required meal breaks is evidenced by DEFENDANT's
25 business records. PLAINTIFF and AGGRIEVED EMPLOYEES therefore forfeit meal breaks
26 without additional compensation and in accordance with DEFENDANT's strict corporate policy
27 and practice.

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1 **B. Rest Period Violations**

2 21. From time to time during the PAGA PERIOD, PLAINTIFF and other
3 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being
4 provided ten (10) minute rest periods as a result of their rigorous work requirements and
5 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
6 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
7 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
8 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
9 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
10 time to time. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED
11 EMPLOYEES were, from time to time, required to remain on duty and/or on call. Further,
12 DEFENDANT from time to time required PLAINTIFF and other AGGRIEVED EMPLOYEES
13 to maintain cordless communication devices in order to receive and respond to work-related
14 communications during what was supposed to be their off-duty rest breaks. PLAINTIFF and other
15 AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu* thereof. As a
16 result of their rigorous work schedules and DEFENDANT's inadequate staffing, PLAINTIFF and
17 other AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
18 DEFENDANT and DEFENDANT's managers.

19 **C. Unreimbursed Business Expenses**

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

1 even though unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful."

3 23. In the course of their employment, DEFENDANT required PLAINTIFF and other
4 AGGRIEVED EMPLOYEES to use their personal cell phones as a result of and in furtherance of
5 their job duties, including but not limited to receiving and/or responding to work-related
6 communications and performing work-related duties. However, DEFENDANT unlawfully failed
7 to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for the use of their personal
8 cell phones. As a result, in the course of their employment with DEFENDANT, the PLAINTIFF
9 and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses that included,
10 but were not limited to, costs related to the use of their personal cell phones.

11 **D. Wage Statement Violations**

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

20 25. From time to time during the PAGA PERIOD, when PLAINTIFF and other
21 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
22 meal and rest period premiums, or were not paid for all hours worked, or all tips earned,
23 DEFENDANT also failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with
24 complete and accurate wage statements which failed to show, among other things, all deductions,
25 the total hours worked and all applicable hourly rates in effect during the pay period and the
26 corresponding amount of time worked at each hourly rate, correct rates of pay for penalty
27 payments or missed meal and rest periods.
28

1 26. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
2 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal.
3 Lab. Code § 226.

4 27. As a result, DEFENDANT issued PLAINTIFF and AGGRIEVED EMPLOYEES
5 with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's violations are
6 knowing and intentional, were not isolated due to an unintentional payroll error due to clerical or
7 inadvertent mistake.

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

9 28. During the PAGA PERIOD, from time-to-time DEFENDANT failed and continue
10 to fail to accurately pay PLAINTIFF and AGGRIEVED EMPLOYEES for all hours worked.

11 29. During the PAGA PERIOD, from time-to-time DEFENDANT required
12 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work, including
13 but not limited to, assisting DEFENDANT'S customers. This resulted in PLAINTIFF and
14 AGGRIEVED EMPLOYEES having to work while off-the-clock.

15 30. DEFENDANT directed and directly benefited from the undercompensated off-the-
16 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

17 31. DEFENDANT controlled the work schedules, duties, and protocols, applications,
18 assignments, and employment conditions of PLAINTIFF and AGGRIEVED EMPLOYEES

19 32. DEFENDANT was able to track the amount of time PLAINTIFF and
20 AGGRIEVED EMPLOYEES spent working; however, DEFENDANT failed to document, track,
21 or pay PLAINTIFF and AGGRIEVED EMPLOYEES all wages earned and owed for all the work
22 they performed.

23 33. PLAINTIFF and AGGRIEVED EMPLOYEES were non-exempt employees,
24 subject to the requirements of the California Labor Code.

25 34. DEFENDANT's policies and practices deprived PLAINTIFF and the other
26 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for
27 the off-the-clock work activities. Because PLAINTIFF and AGGRIEVED EMPLOYEES
28

1 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
2 DEFENDANT's policies and practices also deprived them of overtime pay.

3 35. DEFENDANT knew or should have known that PLAINTIFF and AGGRIEVED
4 EMPLOYEES off-the-clock work was compensable under the law.

5 36. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
6 them for all hours worked at DEFENDANTS direction, control, and benefit for the time spent
7 working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay
8 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
9 applicable law is evidenced by DEFENDANTS' business records.

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

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

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

25 39. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES'
26 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
27 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
28 DEFENDANT. The non-discretionary bonus program provided all employees paid on an hourly

1 basis with bonus compensation when the employees met the various performance goals set by
2 DEFENDANT.

3 40. However, from time to time, when calculating the regular rate of pay in those pay
4 periods where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double
5 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
6 discretionary bonuses, DEFENDANT 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 AGGRIEVED
11 EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted in
12 a systematic underpayment of overtime and double time compensation, meal, and rest period
13 premium payments, and redeemed sick pay to PLAINTIFF and other AGGRIEVED
14 EMPLOYEES by DEFENDANTS. Specifically, California Labor Code Section 246 mandates
15 that 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. DEFENDANT'S 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 41. 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 AGGRIEVED EMPLOYEES at the correct rate of pay for all
25 overtime and double time worked, meal and rest period premiums, and redeemed sick pay as
26 required by California law which allowed DEFENDANTS to illegally profit and gain an unfair
27 advantage over competitors who complied with the law. To the extent equitable tolling operates
28

1 to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD
2 should be adjusted accordingly.

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

4 42. Pursuant to California Labor Code section 204, PLAINTIFF and the
5 AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their employment.
6 PLAINTIFF and the AGGRIEVED EMPLOYEES, from time to time, did not receive payment
7 of all wages, including, but not limited to, overtime wages, minimum wages, meal period
8 premium wages, and rest period premium wages within permissible time period.

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

17 44. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
18 paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose
19 employment ended during the PAGA PERIOD.

20 **H. Unlawful Deductions**

21 45. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF
22 and AGGRIEVED EMPLOYEES’ pay without explanations and without authorization to do so
23 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANT
24 violated Labor Code § 221.

25 **I. Timekeeping Manipulation**

26 46. During the PAGA PERIOD, DEFENDANT, from time-to-time, did not have an
27 immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED
28 EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each

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

6 47. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time-to-time,
7 forfeited time worked by working without their time being accurately recorded and without
8 compensation at the applicable pay rates.

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

16 49. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
17 them for all hours worked at DEFENDANT's direction, control and benefit for the time the
18 timekeeping system was inoperable. DEFENDANT's uniform policy and practice to not pay
19 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
20 applicable law is evidenced by DEFENDANT's business records.

21 **J. Unlawful Rounding Practices**

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

1 and AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time
2 worked, including the applicable overtime compensation for overtime worked. As a result,
3 PLAINTIFF and other AGGRIEVED EMPLOYEES, from time to time, forfeited compensation
4 for their time worked by working without their time being accurately recorded and without
5 compensation at the applicable overtime rates.

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

12 **K. Sick Pay Violations**

13 52. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after
14 July 1, 2015, works in California for the same employer for 30 or more days within a year from
15 the commencement of employment is entitled to paid sick days as specified in this section."
16 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From
17 time to time, DEFENDANT failed to have a policy or practice in place that provided PLAINTIFF
18 and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave. As of January 1, 2024,
19 DEFENDANT failed to adhere to the law in that they failed to provide and allow employees to
20 use at least 40 hours or five days of paid sick leave per year.

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

26 **L. Tip Pooling**

27 54. During the AGGRIEVED EMPLOYEES PERIOD, pursuant to DEFENDANT'S
28 company policies and practices, PLAINTIFF and other AGGRIEVED EMPLOYEES were forced

1 to forfeit gratuities left for them by customers to DEFENDANT’S agents who provided no service
2 to the customers that resulted in the gratuity. DEFENDANT routinely added gratuity tips and
3 service charges to its food and beverage bills, which upon information and belief, served as
4 gratuities for the service staff. “Thus, depending upon how one chooses to read [labor code]
5 section 350 a mandatory service charge could be seen as either a sum paid by the customer ‘over
6 and above the actual amount due...for food [and] drink...sold...to the patron.’” *O’Grady v.*
7 *Merchant Exchange Productions, Inc.*, (2019) 41 Cal.App.5th 771, 780 (citing California Labor
8 Code § 350(e)). It is typical and customary in the hospitality industry that establishments impose
9 gratuity and/or service charges on the food and beverage bill. Thus, when customers paid these
10 charges, it is reasonable for them to have believed they were gratuities to be paid to the service
11 staff. Indeed, because many of these charges are depicted to customers, and the custom in the food
12 and beverage industry that gratuities are paid for food and beverage service, customers paid these
13 charges reasonably believing they were remitted to the service staff. However, DEFENDANTS
14 has not remitted the total proceeds of these gratuities to the non-managerial employees who serve
15 the food and beverages. Instead, DEFENDANT has a policy and practice of using a portion of
16 these gratuities to pay managers or other non-service employees. As a result, PLAINTIFF and
17 AGGRIEVED EMPLOYEES have not received the total proceeds of the gratuities, to which they
18 are entitled to under California law.

19 55. DEFENDANTS are generally in the business of owning and operating a hospitality
20 management company. During the AGGRIEVED EMPLOYEES PERIOD, PLAINTIFF and
21 AGGRIEVED EMPLOYEES were in the “chain of service” and earned gratuities based on their
22 service for their customers. However, PLAINTIFF and AGGRIEVED EMPLOYEES were forced
23 to forfeit portions of their gratuities, which said gratuities were kept by DEFENDANT’S
24 employees who were not in the chain of service from which the gratuity resulted. PLAINTIFF
25 and AGGRIEVED EMPLOYEES contend that any gratuities kept by DEFENDANT’S non-
26 service employees were illegal and in violation of California law because PLAINTIFF and
27 AGGRIEVED EMPLOYEES provided the service for to whom the gratuity should have been
28 paid.

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

57. Although tip pooling is not expressly prohibited by the Labor Code, employees who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.” By distributing tips to employees who were not in the “chain of service,” DEFENDANT has violated and continues to violate the legal requirements for handling pooled tips.

FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§2698 et seq.)

(Alleged by PLAINTIFF against DEFENDANT)

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

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

1 60. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, bring this Representative Action on behalf of the State of California with respect to himself
4 and all individuals who are or previously were employed by Defendant in California and
5 classified as non-exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of
6 March 13, 2023, and the present (“PAGA Period”).

7 61. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
8 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
9 meaning of Labor Code Section 2699(c).

10 62. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
11 like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil
12 action to recover civil penalties pursuant to the procedures specified in Labor Code Section
13 2699.3

14 63. PLAINTIFF complied with the procedures for bringing suit specified in Labor
15 Code Section 2699.3. By certified letter, return receipt requested, dated March 13, 2024,
16 PLAINTIFF gave written notice to the Labor and Workforce Development Agency (“LWDA”)
17 and to DEFENDANT of the specific provisions of the Labor Code alleged to have been violated,
18 including the facts and theories to support the alleged violations. See **Exhibit #1**.

19 64. As of the date of this complaint, more than sixty-five (65) days after serving the
20 LWDA with notice of DEFENDANT’S violations, the LWDA has not provided any notice by
21 certified mail of its intent to investigate the DEFENDANT’S alleged violations as mandated by
22 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
23 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

24 65. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
25 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of
26 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
27 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199,
28 2802 and 2804 in the following amounts:

- a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 2699(f)(2)];
- b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];
- c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];
- d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and hundred dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];
- e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE per violation in an initial citation and one thousand dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];
- f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].
- g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED

1 EMPLOYEE per pay period for the initial violation and two hundred dollars
2 fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent
3 violation [penalty per Labor Code Section].

4 66. For all provisions of the Labor Code for which civil penalty is not specifically
5 provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100)
6 for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred
7 dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent
8 violation. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of
9 reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant
10 to Labor Code Section 2699(g)(1).

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

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

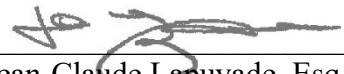
3 1. For reasonable attorney's fees and costs of suit to the extent permitted by law,
4 including pursuant to Labor Code § 2699, *et seq.*;

5 2. For civil penalties to the extent permitted bylaw pursuant to the Labor Code under
6 the Private Attorneys General Act; and

7 3. For such other relief as the Court deems just and proper.

8
9 Dated: January 8, 2025

JCL LAW FIRM, APC

10 By: 

11 Jean-Claude Lapuyade, Esq.
12 Attorney for PLAINTIFF
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EXHIBIT 1

March 13, 2024

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

SECOND STREET CORPORATION dba THE HUNTLEY HOTEL

c/o Helal M. El-Sherif

1111 2nd Street

Santa Monica, CA 90403

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0410 5646 18

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 224 226, 226.2, 226.3, 226.7, 227.3, 246, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s) and California Regulations, and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Jason Marelo ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Second Street Corporation dba The Huntley Hotel ("Defendant"). Plaintiff was employed by Defendant in California from October of 2021 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 breaks, among other things. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, failed to pay employees at the correct regular rate of pay, when applicable, failed to reimburse employees for necessary business expenditures and for all of their meal and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages and failed to provide Plaintiff and other aggrieved employees with compliant meal and rest breaks.

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, 224, 226, 226.2, 226.3, 226.7, 227.3, 246, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s) and California Regulations, and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked and/or are working for Defendants 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—Plaintiffs reserve any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, 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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JASON MARELLO, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

SECOND STREET CORPORATION, dba
THE HUNTLEY HOTEL, a California
corporation; 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;

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

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant SECOND STREET CORPORATION dba THE HUNTLEY HOTEL (“Defendant”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT owns and operates a hotel in the state of California, including the county of Los Angeles, where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANT in California from October of 2021 to August of 2023 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

4. 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 Second Street Corporation 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”). The amount in

1 controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million
2 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, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
14 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
15 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
16 applicable hourly rates in effect during the pay periods and the corresponding amount of time
17 worked at each hourly rate. DEFENDANT’s uniform policies and practices are intended to
18 purposefully avoid the accurate and full payment for all time worked and all tips earned as
19 required by California law which allows DEFENDANT to illegally profit and gain an unfair
20 advantage over competitors who comply with the law. To the extent equitable tolling operates to
21 toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be
22 adjusted accordingly.

23 **A. Meal Period Violations**

24 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. From time to time during the CLASS
28 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work

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

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

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1 **B. Rest Period Violations**

2 17. From time to time during the CLASS PERIOD, PLAINTIFF and other
3 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
4 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
5 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
6 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
7 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
8 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
9 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
10 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
11 CLASS Members were, from time to time, required to remain on duty and/or on call. Further,
12 DEFENDANTS from time to time required PLAINTIFF and other CALIFORNIA CLASS
13 Members to maintain cordless communication devices in order to receive and respond to work-
14 related communications during what was supposed to be their off-duty rest breaks. PLAINTIFF
15 and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu*
16 thereof. As a result of their rigorous work schedules and DEFENDANT's inadequate staffing,
17 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
18 proper rest periods by DEFENDANT and DEFENDANT's managers.

19 **C. Unreimbursed Business Expenses**

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

1 even though unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful."

3 19. In the course of their employment, DEFENDANT required PLAINTIFF and other
4 CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance
5 of their job duties, including but not limited to receiving and/or responding to work-related
6 communications and performing work-related duties. However, DEFENDANT unlawfully failed
7 to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the use of their personal
8 cell phones. As a result, in the course of their employment with DEFENDANT, the PLAINTIFF
9 and other CALIFORNIA CLASS Members incurred unreimbursed business expenses that
10 included, but were not limited to, costs related to the use of their personal cell phones.

11 **D. Wage Statement Violations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 35. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
4 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
5 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
6 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
7 paid on an hourly basis with bonus compensation when the employees met the various
8 performance goals set by DEFENDANTS.

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

27 37. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a

1 matter of company policy, practice, and procedure, intentionally and knowingly failed to
2 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
3 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
4 sick pay as required by California law which allowed DEFENDANT to illegally profit and gain
5 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
6 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANT, the
7 CLASS PERIOD should be adjusted accordingly.

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

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

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

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

25 **H. Unlawful Deductions**

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

3 **I. Timekeeping Manipulation**

4 42. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an
5 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
6 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
7 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
8 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
9 unilaterally alter the time recorded in DEFENDANT'S timekeeping system for PLAINTIFF and
10 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
11 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
12 missed rest breaks.

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

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

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

1 **J. Unlawful Rounding Practices**

2 46. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
3 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
4 CALIFORNIA CLASS Members for the actual time these employees worked each day,
5 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
6 policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
7 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
8 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
9 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
10 these employees for all their time worked, including the applicable overtime compensation for
11 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
12 time to time, forfeited compensation for their time worked by working without their time being
13 accurately recorded and without compensation at the applicable overtime rates.

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

20 **K. Sick Pay Violations**

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

27 49. California Labor Code Section 246(i) requires an employer to furnish its
28 employees with written wage statements setting forth the amount of paid sick leave available.

1 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF
2 and other members of the CALIFORNIA CLASS with wage statements setting forth the amount
3 of paid sick leave available.

4 **L. Tip Pooling**

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

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

1 CALIFORNIA CLASS Members provided the service for to whom the gratuity should have been
2 paid.

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

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

15 54. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
16 off duty meal and rest breaks and were not fully relieved of duty for his rest and meal periods.
17 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
18 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
19 provide PLAINTIFF with a second off-duty meal period each workday in which they were
20 required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided
21 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
22 rest break. DEFENDANT’s policy caused PLAINTIFF to remain on-call and on-duty during what
23 was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest
24 breaks without additional compensation and in accordance with DEFENDANT’S strict corporate
25 policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that
26 failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse
27 PLAINTIFF for required business expenses related to the use of his personal cell phone and home
28 internet on behalf of and in furtherance of his employment with DEFENDANT. DEFENDANTS

1 further failed to pay and/or improperly withheld tips from PLAINTIFFS. To date, DEFENDANT
2 has not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed
3 to him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy
4 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

5 **CLASS ACTION ALLEGATIONS**

6 55. PLAINTIFF brings this Class Action on behalf of himself, and a California class
7 defined as all persons who are or previously were employed by Defendant Second Street
8 Corporation in California and classified as non-exempt employees ("CALIFORNIA CLASS")
9 at any time during the period beginning four (4) years prior to the filing of this Complaint and
10 ending on the date as determined by the Court (the "CLASS PERIOD"). The amount in
11 controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million
12 dollars (\$5,000,000.00).

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

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

21 58. Common questions of law and fact regarding DEFENDANT's conduct, including
22 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to
23 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
24 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
25 provide legally compliant meal and rest periods, failed to reimburse for business expenses,
26 failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid
27 at least minimum wage and overtime, exist as to all members of the class and predominate over
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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 engaged in unlawful tip pooling practices and/or failed to pay all earned tips to PLAINTIFF and other members of the CALIFORNIA CLASS;
- i. 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;
- j. 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;

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1 k. Whether DEFENDANT committed an act of unfair competition in violation of the
2 UCL, by failing to provide the PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

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

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

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

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

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

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

- 1 a. Inconsistent or varying adjudications with respect to individual members of the
2 CALIFORNIA CLASS which would establish incompatible standards of conduct
3 for the parties opposing the CALIFORNIA CLASS; and/or,
4 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
5 which would as a practical matter be dispositive of the interests of the other
6 members not party to the adjudication or substantially impair or impeded their
7 ability to protect their interests.

8 67. Class treatment provides manageable judicial treatment calculated to bring an
9 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
10 the conduct of DEFENDANT.

11 **FIRST CAUSE OF ACTION**

12 **Unlawful Business Practices**

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

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

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

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

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

24 Any person who engages, has engaged, or proposes to engage in unfair competition may
25 be enjoined in any court of competent jurisdiction. The court may make such orders or
26 judgments, including the appointment of a receiver, as may be necessary to prevent the
27 use or employment by any person of any practice which constitutes unfair competition, as
28 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).

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1 71. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
4 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
5 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
6 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
7 constitute unfair competition, including restitution of wages wrongfully withheld.

8 72. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair
9 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
10 or substantially injurious to employees, and were without valid justification or utility for which
11 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
12 Business & Professions Code, including restitution of wages wrongfully withheld.

13 73. By the conduct alleged herein, DEFENDANT's practices were deceptive and
14 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
15 mandated meal and rest periods and the required amount of compensation for missed meal and
16 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
17 necessary business expenses incurred, due to a systematic business practice that cannot be
18 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
19 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
20 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
21 restitution of wages wrongfully withheld.

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

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

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

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

11 78. By and through the unlawful and unfair business practices described herein,
12 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
13 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
14 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
15 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
16 to unfairly compete against competitors who comply with the law.

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

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

27 81. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
2 engaging in any unlawful and unfair business practices in the future.

3 82. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
4 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
5 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
6 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
7 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable
8 legal and economic harm unless DEFENDANT is restrained from continuing to engage in these
9 unlawful and unfair business practices.

10 **SECOND CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

12 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

13 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

17 84. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
18 for DEFENDANT's willful and intentional violations of the California Labor Code and the
19 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate
20 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

23 86. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
24 commission is the minimum wage to be paid to employees, and the payment of a less wage than
25 the minimum so fixed is unlawful.

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

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1 88. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
2 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
3 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
4 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
5 CALIFORNIA CLASS.

6 89. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
7 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
8 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
9 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

10 90. In committing these violations of the California Labor Code, DEFENDANT
11 inaccurately calculated the correct time worked and consequently underpaid the actual time
12 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS
13 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
14 violation of the California Labor Code, the Industrial Welfare Commission requirements and
15 other applicable laws and regulations.

16 91. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
17 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
18 minimum wage compensation for their time worked for DEFENDANT.

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

22 93. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
23 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
24 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
25 suffered and will continue to suffer an economic injury in amounts which are presently unknown
26 to them, and which will be ascertained according to proof at trial.

27 94. DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were under-compensated for their time worked.

1 DEFENDANT systematically elected, either through intentional malfeasance or gross
2 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
3 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
4 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
5 for their time worked.

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

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

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1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

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

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

5 97. 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 98. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
9 for DEFENDANT's willful and intentional violations of the California Labor Code and the
10 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
11 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
12 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

22 102. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
23 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
24 they worked, including overtime work.

25 103. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
27 implementing a uniform policy and practice that failed to accurately record overtime worked by
28 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to

1 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
2 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
3 (12) hours in a workday, and/or forty (40) hours in any workweek.

4 104. In committing these violations of the California Labor Code, DEFENDANT
5 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
6 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
7 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
8 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
9 regulations.

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

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

21 107. During the CLASS PERIOD, PLAINTIFF and the other members of the
22 CALIFORNIA CLASS were paid less for overtime worked than they were entitled to,
23 constituting a failure to pay all earned wages.

24 108. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
25 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
26 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
27 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly
28 required to work, and did in fact work overtime, and did in fact work overtime as to which

1 DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business
2 records and witnessed by employees.

3 109. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
4 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
5 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA
6 CLASS have suffered and will continue to suffer an economic injury in amounts which are
7 presently unknown to them, and which will be ascertained according to proof at trial.

8 110. DEFENDANT knew or should have known that PLAINTIFF and the other
9 members of the CALIFORNIA CLASS were undercompensated for their time worked.
10 DEFENDANT systematically elected, either through intentional malfeasance or gross
11 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
12 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
13 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages
14 for their overtime worked.

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

23 112. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
24 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
25 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
26 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
27 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
28 employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and

1 therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code §
2 203, which penalties are sought herein. DEFENDANT's conduct as alleged herein was willful,
3 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
4 Members are entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

9 113. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and
10 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
11 Complaint.

12 114. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
13 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
14 required by the applicable Wage Order and Labor Code. The nature of the work performed by
15 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
16 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
17 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often
18 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
19 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
20 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
21 DEFENDANT's business records. As a result, PLAINTIFF and other members of the
22 CALIFORNIA CLASS forfeited meal breaks without additional compensation and in
23 accordance with DEFENDANT's strict corporate policy and practice.

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

116. 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.

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

117. 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.

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

119. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that
2 rest period was not provided.

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Reimburse Employees For Required Expenses**

8 **(Cal. Lab. Code §§ 2802)**

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

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

13 122. Cal. Lab. Code § 2802 provides, in relevant part, that:
14 An employer shall indemnify his or her employee for all necessary expenditures or
15 losses incurred by the employee in direct consequence of the discharge of his or her
16 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.

17 123. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
18 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
19 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
20 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
21 members for expenses which included, but were not limited to, their personal cell phones as a
22 result of and in furtherance of their job duties, including but not limited to receiving and/or
23 responding to work-related communications and performing work-related duties. Specifically,
24 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to
25 use their personal cell phones to execute their essential job duties on behalf of DEFENDANT.
26 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and
27 the CALIFORNIA CLASS members for expenses resulting from using their personal cell phones
28 for DEFENDANT within the course and scope of their employment for DEFENDANT. These

1 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
2 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
3 necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,
4 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
5 members for these expenses as an employer is required to do under the laws and regulations of
6 California.

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

11 **SEVENTH CAUSE OF ACTION**

12 **Failure To Provide Accurate Itemized Statements**

13 **(Cal. Lab. Code § 226)**

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

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

18 126. Cal. Labor Code § 226 provides that an employer must furnish employees with an
19 "accurate itemized" statement in writing showing:

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

127. 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.

128. 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.

129. 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

1 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
2 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
3 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
4 member of the CALIFORNIA CLASS herein).

5 **EIGHTH CAUSE OF ACTION**

6 **Failure To Pay Wages When Due**

7 **(Cal. Lab. Code § 203)**

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

9 130. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
10 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
11 Complaint.

12 131. Cal. Lab. Code § 200 provides that:

13 As used in this article:

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

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

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

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

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

1 135. Cal. Lab. Code § 203 provides:

2 If an employer willfully fails to pay, without abatement or reduction, in accordance with
3 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
4 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.

5 136. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
6 terminated, and DEFENDANT has not tendered payment of wages to these employees who
7 missed meal and rest breaks, as required by law.

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

13 **NINTH CAUSE OF ACTION**

14 **Failure To Pay Statutory Gratuities**

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

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

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

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

27 3. As a proximate result of the aforementioned violations, PLAINTIFFS and the
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 prays 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 sui

3. On all claims:

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

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

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

DATED: March 13, 2024

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay

Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: March 13, 2024

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay

Attorney for PLAINTIFF