

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

BLUESTONE LANE HOLDINGS, LLC, a Delaware limited liability company; BLUESTONE LANE NY LLC, a New York limited liability company; and DOES 1 through 50, Inclusive;

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

GABRIELLE BOYD, an individual, on behalf of herself, and on behalf of all persons similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

660-20-585787

The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco Superior Court
400 McAllister Street
San Francisco, California 94102

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq., 3990 Old Town Avenue, Ste C204 San Diego, California 92110 Telephone: (619) 255-9047

BY FAX
KALENE APOLONIO Deputy
(Adjunto)

DATE: **AUG 05 2020**
(Fecha)

CLERK OF THE COURT
(Secretario)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

1 JEAN-CLAUDE LAPUYADE (SBN 248676)
2 JLAPUYAD@JCL-LAWFIRM.COM

3 **JCL LAW FIRM, APC**
4 3990 OLD TOWN AVENUE, SUITE C204
5 SAN DIEGO, CA 92110
6 TEL: (619) 599-8292
7 FAX: (619) 599-8291

8 SHANI O. ZAKAY (SBN 277924)
9 **ZAKAY LAW GROUP, APLC**
10 5850 OBERLIN DRIVE, SUITE 230A
11 SAN DIEGO, CA 92121
12 TEL: (619) 255-9047
13 FAX: (619) 404-9203

14 ATTORNEYS FOR PLAINTIFF

15 **SUPERIOR COURT OF CALIFORNIA**
16 **COUNTY OF SAN FRANCISCO**

17 GABRIELLE BOYD, an individual, on behalf
18 of herself, and on behalf of all persons similarly
19 situated,

20 Plaintiffs,

21 vs.

22 BLUESTONE LANE HOLDINGS, LLC, a
23 Delaware limited liability company;
24 BLUESTONE LANE NY LLC, a New York
25 limited liability company; and DOES 1 through
26 50, Inclusive;

27 DEFENDANTS.

28 Case No. **CGC-20-585787**

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203; and
8. FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351

DEMAND FOR JURY TRIAL

**ENDORSED
FILED**
San Francisco County Superior Court

JUL 28 2020

CLERK OF THE COURT
BY: KALENE APOLONIO
Deputy Clerk

BY FAX

1
2 Plaintiff GABRIELLE BOYD (“PLAINTIFF”) an individual, on behalf of herself and all other
3 similarly situated current and former employees alleges on information and belief, except for her own
4 acts and knowledge which are based on personal knowledge, the following:

5 **THE PARTIES**

6 1. Defendant BLUESTONE LANE HOLDINGS, LLC (“Defendant BLH”) is a Delaware
7 limited liability company that at all relevant times mentioned herein conducted and continues to
8 conduct substantial business in the state of California, owns, operates and/or manages Bluestone Lane,
9 a chain of coffee shops throughout California. Defendant BLUESTONE LANE NY LLC (“Defendant
10 BLN”) is a New York limited liability company that at all relevant times mentioned herein conducted
11 and continues to conduct substantial business in the state of California, owns, operates and/or manages
12 Bluestone Lane, a chain of coffee shops throughout California.

13 2. Defendant BLH and Defendant BLN were the joint employers of PLAINTIFF as
14 evidenced by the contracts signed and by the company the PLAINTIFF performed work for
15 respectively, and are therefore jointly responsible as employers for the conduct alleged herein and
16 collectively referred to herein as “DEFENDANTS”.

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

26 4. The agents, servants and/or employees of the DEFENDANTS and each of them acting on
27 behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent,
28

1 servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged
2 herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the
3 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
4 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
5 proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

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

11 6. PLAINTIFF was employed by DEFENDANTS at a San Francisco location, as a non-
12 exempt employee, paid on an hourly basis and entitled to certain non-discretionary incentive
13 compensation, overtime pay and legally compliant meal and rest periods from November 2018 to
14 March 2020.

15 7. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all current and
16 former non-exempt California employees who worked for Defendant BLH and/or Defendant BLN (the
17 "CALIFORNIA CLASS") at any time between April 6, 2016 on a date determined by the Court (the
18 "CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
19 members is under five million dollars (\$5,000,000.00).

20 8. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
21 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
22 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which
23 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
24 periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of
25 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission
26 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in
27 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to
28

1 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and
2 226.3.

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

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

10 **JURISDICTION AND VENUE**

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

15 12. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
16 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
17 and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities
18 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful
19 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

20 **THE CONDUCT**

21 13. In violation of the applicable sections of the California Labor Code and the requirements
22 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
23 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
24 complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other members of
25 the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other
26 members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the
27 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other
28 things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time

1 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
2 purposefully avoid the accurate and full payment for all time worked as required by California law
3 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
4 comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
5 CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

6 **A. Meal Period Violations**

7 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
8 required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning
9 the time during which an employee is subject to the control of an employer, including all the time the
10 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,
11 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS members to work without paying
12 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
13 PLAINTIFF's demanding work requirements and DEFENDANTS' under staffing, DEFENDANTS
14 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-
15 duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked
16 out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where
17 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA
18 CLASS members forfeited minimum wage and overtime wages by regularly working without their time
19 being accurately recorded and without compensation at the applicable minimum wage and overtime
20 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
21 CLASS members for all time worked is evidenced by DEFENDANTS' business records.

22 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
23 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA
24 CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and
25 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS
26 members were required from time to time to perform work as ordered by DEFENDANTS for more
27 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from
28 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-

1 duty meal period for some workdays in which these employees were required by DEFENDANTS to
2 work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFF
3 and the members of the CALIFORNIA CLASS does not qualify for limited and narrowly construed
4 “on-duty” meal period exception. PLAINTIFF and other members of the CALIFORNIA CLASS
5 therefore forfeited meal breaks without additional compensation and in accordance with
6 DEFENDANTS’ strict corporate policy and practice. DEFENDANTS failed to maintain adequate
7 staffing levels while increasing the production levels for each employee at the busy airports they
8 provided services for.

9 16. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in place an
10 immutable timekeeping system to accurately record and pay PLAINTIFF and other CALIFORNIA
11 CLASS Members for the actual time these employees worked each day, including overtime hours. As
12 a result DEFENDANTS were able to and did in fact unlawfully, and unilaterally alter the time recorded
13 in DEFENDANTS’ timekeeping system for PLAINTIFF and the members of the CALIFORNIA
14 CLASS in order to avoid paying these employees the applicable overtime compensation for overtime
15 worked and to avoid paying these employees for missed meal breaks. As a result, PLAINTIFF and
16 other CALIFORNIA CLASS Members, from time to time, forfeited time worked by working without
17 their time being accurately recorded and without compensation at the applicable overtime rates.

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

25 **B. Rest Period Violations**

26 18. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
27 CLASS members were also required from time to time to work in excess of four (4) hours without
28 being provided ten (10) minute rest periods as a result of their rigorous work schedule and

1 DEFENDANTS' inadequate staffing . Further, for the same reasons these employees were denied their
2 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
3 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
4 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
5 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and
6 other CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As
7 a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and
8 other CALIFORNIA CLASS members were from time to time denied their proper rest periods by
9 DEFENDANTS and DEFENDANTS' managers.

10 **C. Overtime Regular Rate Violation**

11 19. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to
12 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for
13 their overtime hours worked. As a result, PLAINTIFF and the other CALIFORNIA CLASS members
14 forfeited wages due them for working overtime without compensation at the correct overtime rates.
15 DEFENDANTS' uniform policy and practice to not pay the CALIFORNIA CLASS members the
16 correct overtime rate for all overtime worked in accordance with applicable law is evidenced by
17 DEFENDANTS' business records.

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

22 21. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members'
23 compensation was DEFENDANTS' flat-sum non-discretionary incentive program that paid
24 PLAINTIFF and other CLASS MEMBERS flat-sum incentive wages based on their performance for
25 DEFENDANTS. The flat-sum non-discretionary bonus program provided all employees paid on an
26 hourly basis with flat-sum bonus compensation when the employees met the various performance goals
27 set by DEFENDANTS. These flat-sum incentive payments are identified as "SLSBNS" in the wage
28 statements issued by DEFENDANTS to PLAINTIFF and the other CALIFORNIA CLASS members.

1 22. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
2 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime and earned this flat-
3 sum non-discretionary bonus, DEFENDANTS failed to accurately include the flat-sum non-
4 discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all
5 hours worked rather than just all non-overtime hours worked. Management and supervisors described
6 the incentive/bonus program to potential and new employees as part of the compensation package. As
7 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS
8 members must be included in the "regular rate of pay." The failure to do so has resulted in a systematic
9 underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS members
10 by DEFENDANTS.

11 23. In violation of the applicable sections of the California Labor Code and the requirements
12 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
13 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
14 other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime worked. This
15 uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the
16 correct overtime compensation as required by California law which allowed DEFENDANTS to
17 illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent
18 equitable tolling operates to toll claims by the CALIFORNIA CLASS members against
19 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

20 **D. Wage Statement Violations**

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

1 25. From time to time during the CLASS PERIOD, when PLAINTIFF and other
2 CALIFORNIA CLASS members missed meal and rest breaks, or were paid overtime in the same pay
3 period where they earned a non-discretionary incentive award, DEFENDANTS also failed to provide
4 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage
5 statements which failed to show, among other things, all applicable hourly rates in effect during the
6 pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for
7 penalty payments or missed meal and rest periods.

8 26. For instance, for the pay period between April 29, 2019 and May 5, 2019, PLAINTIFF
9 received remuneration from DEFENDANTS described as “Back Pay” in the gross amount of \$29.42.
10 DEFENDANTS violated California Labor Code Section 226 by failing to list the applicable hourly rate
11 and the corresponding number of hours worked at the applicable hourly rate for this line item of
12 remuneration described as “Back Pay”. PLAINTIFF, and all those similarly situated members of the
13 CALIFORNIA CLASS, suffered damage as a result of DEFENDANTS’ aforementioned violation
14 because she could not promptly and easily determine from the wage statement alone the applicable
15 hourly rate and the corresponding number of hours worked at the applicable hourly rate for this line
16 item of remuneration described as “Back Pay”.

17 27. In addition, From time to time during the CLASS PERIOD, DEFENDANTS violated
18 California Labor Code Section 226 by failing to list the correct legal name of PLAINTIFF’s employer.

19 28. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
20 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
21 DEFENDANTS’ violations are knowing and intentional, were not isolated or due to an unintentional
22 payroll error due to clerical or inadvertent mistake.

23 **E. Tip Pooling**

24 29. During the CALIFORNIA CLASS period, pursuant to DEFENDANTS’ company
25 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to forfeit
26 gratuities left for them by customers to DEFENDANTS’ agents who provided no service to the
27 customers that resulted in the gratuity. DEFENDANTS routinely added gratuity tips and service
28 charges to its food and beverage bills. These gratuities and service charges reasonably appear to be

1 gratuities for the service staff. It is typical and customary in the hospitality industry that establishments
2 impose gratuity charges on the food and beverage bill. Thus, when customers paid these charges, it is
3 reasonable for them to have believed they were gratuities to be paid to the service staff. Indeed,
4 because many of these charges are depicted to customers, and the custom in the food and beverage
5 industry that gratuities are paid for food and beverage service, customers paid these charges reasonably
6 believing they were remitted to the service staff. However, DEFENDANTS have not remitted the
7 total proceeds of these gratuities to the non-managerial employees who serve the food and beverages.
8 Instead, DEFENDANTS have a policy and practice of using a portion of these gratuities to pay
9 managers or other non-service employees. As a result, PLAINTIFF and CALIFORNIA CLASS
10 Members have not received the total proceeds of the gratuities, to which they are entitled to under
11 California law

12 30. DEFENDANTS are generally in the business of owning and operating coffee shops.
13 During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members
14 were in the “chain of service” and earned gratuities based on their service for their customers. However,
15 PLAINTIFF and CALIFORNIA CLASS Members were forced to forfeit portions of their gratuities,
16 which said gratuities were kept by DEFENDANTS’ employees who were not in the chain of service
17 from which the gratuity resulted. PLAINTIFF and other CALIFORNIA CLASS Members contend that
18 any gratuities kept by DEFENDANTS’ non-service employees were illegal and in violation of
19 California law because PLAINTIFF and other CALIFORNIA CLASS Members provided the service
20 for to whom the gratuity should have been paid.

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

1 policies and practices;

2 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
3 CALIFORNIA CLASS members accurate premium payments for missed
4 meal and rest periods;

5 d. Whether DEFENDANTS failed to pay PLAINTIFF and the
6 CALIFORNIA CLASS members accurate overtime wages.

7 e. Whether DEFENDANTS failed to pay PLAINTIFF and the
8 CALIFORNIA CLASS members at least minimum wage for all hours
9 worked.

10 f. Whether DEFENDANTS issued legally compliant wage statements;

11 g. Whether DEFENDANTS engaged in unlawful tip pooling practices;

12 h. Whether DEFENDANTS committed an act of unfair competition by
13 systematically failing to record and pay PLAINTIFF and the other members
14 of the CALIFORNIA CLASS for all time worked;

15 i. Whether DEFENDANTS committed an act of unfair competition by
16 systematically failing to record all meal and rest breaks missed by
17 PLAINTIFF and other CALIFORNIA CLASS members, even though
18 DEFENDANTS enjoyed the benefit of this work, required employees to
19 perform this work and permits or suffers to permit this work;

20 j. Whether DEFENDANTS committed an act of unfair competition in
21 violation of the UCL, by failing to provide the PLAINTIFF and the other
22 members of the CALIFORNIA CLASS with the legally required meal and
23 rest periods; and,

24 37. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result
25 of DEFENDANTS' conduct and actions alleged herein.

26 38. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same
27 interests as the other members of the class.

28 39. PLAINTIFF will fairly and adequately represent and protect the interests of the

1 CALIFORNIA CLASS members.

2 40. PLAINTIFF retained able class counsel with extensive experience in class action
3 litigation.

4 41. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests
5 of the other CALIFORNIA CLASS members.

6 42. There is a strong community of interest among PLAINTIFF and the members of the
7 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient
8 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

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

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

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

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

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

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

3 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

5 46. 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 Complaint.

7 47. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
8 17021.

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

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

20 Cal. Bus. & Prof. Code § 17203.

21 49. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
22 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
23 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
24 “UCL”), by engaging and continuing to engage in business practices which violates California law,
25 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
26 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 351, 510, 512,
27 1194, 1197, 1197.1, 1198 & 2802, for which this Court should issue declaratory and other equitable
28 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct

1 held to constitute unfair competition, including restitution of wages wrongfully withheld.

2 50. By the conduct alleged herein, DEFENDANTS' practices were unlawful and unfair in that
3 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
4 substantially injurious to employees, and were without valid justification or utility for which this Court
5 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
6 Professions Code, including restitution of wages wrongfully withheld.

7 51. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent
8 in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the legally mandated
9 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,
10 overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic
11 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
12 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
13 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
14 restitution of wages wrongfully withheld.

15 52. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
16 deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the other members of
17 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

18 53. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
19 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*,
20 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
21 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
22 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
23 Labor Code.

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

28 55. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA

1 CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not
2 timely provided as required by law.

3 56. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
4 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
5 calculated overtime and missed meal and rest periods premiums.

6 57. By and through the unlawful and unfair business practices described herein,
7 DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the other
8 members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has
9 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
10 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
11 compete against competitors who comply with the law.

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

17 59. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,
18 seek such relief as may be necessary to restore to them the money and property which DEFENDANTS
19 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been
20 deprived, by means of the above described unlawful and unfair business practices, including earned but
21 unpaid wages for all overtime worked.

22 60. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
23 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
24 that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and
25 unfair business practices in the future.

26 61. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
27 and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result

1 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
2 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
3 harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair
4 business practices.

5 **SECOND CAUSE OF ACTION**

6 **For Failure to Pay Overtime Compensation**

7 **[Cal. Lab. Code §§ 510, *et seq.*]**

8 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

9 62. 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 Complaint.

11 63. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period between
12 April 6, 2016 and the present (“LABOR CLASS PERIOD”) bring a claim for DEFENDANTS’ willful
13 and intentional violations of the California Labor Code and the Industrial Welfare Commission
14 requirements for DEFENDANTS’ failure to pay these employees for all overtime worked, including,
15 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or
16 forty (40) hours in any workweek.

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

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

22 66. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages, including
23 overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198
24 further states that the employment of an employee for longer hours than those fixed by the Industrial
25 Welfare Commission is unlawful.

26 67. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
27 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they
28 worked or were not accurately compensated for all overtime hours worked.

1 68. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
3 uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other
4 CALIFORNIA CLASS members and denied accurate compensation to PLAINTIFF and the other
5 members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed
6 in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours
7 in any workweek.

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

14 70. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
15 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for
16 all overtime worked.

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

24 72. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the
25 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure
26 to pay all earned wages.

27 73. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
28 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum

1 hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF
2 and the other members of the CALIFORNIA CLASS were required to work, and did in fact work,
3 overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime
4 rate as evidenced by DEFENDANTS' business records and witnessed by employees.

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

10 75. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
11 the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS
12 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
13 employees for their labor as a matter of uniform company policy, practice and procedure, and
14 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
15 members of the CALIFORNIA CLASS for overtime worked.

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

23 77. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
24 recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as
25 well as the assessment of any statutory penalties against DEFENDANTS, 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 employment,
28 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals

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

5 **THIRD CAUSE OF ACTION**

6 **For Failure to Pay Minimum Wages**

7 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

8 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

9 78. 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 Complaint.

11 79. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
12 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
13 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
14 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the
15 LABOR CLASS PERIOD.

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

18 81. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
19 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
20 minimum so fixed is unlawful.

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

23 83. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
24 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
25 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
26 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
27 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
28 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members

1 of the CALIFORNIA CLASS.

2 84. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
3 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
4 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
5 of the CALIFORNIA CLASS in regard to minimum wage pay.

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

11 86. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
12 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum
13 wage compensation for their time worked for DEFENDANTS.

14 87. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure
16 to pay all earned wages.

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

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

28 90. In performing the acts and practices herein alleged in violation of California labor laws,

1 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
2 them with the requisite compensation, DEFENDANTS acted and continues to act intentionally,
3 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
4 with a conscious and utter disregard for their legal rights, or the consequences to them, and with the
5 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
6 in order to increase company profits at the expense of these employees.

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

17 **FOURTH CAUSE OF ACTION**

18 **For Failure to Provide Required Meal Periods**

19 **[Cal. Lab. Code §§ 226.7 & 512]**

20 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

23 93. During the LABOR CLASS PERIOD, from time to time, DEFENDANTS failed to
24 provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA
25 CLASS members as required by the applicable Wage Order and Labor Code. The nature of the work
26 performed by PLAINTIFF and CALIFORNIA CLASS members did not prevent these employees from
27 being relieved of all of their duties for the legally required off-duty meal periods. As a result of their
28 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were from time to

1 time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally,
2 DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS members with legally
3 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business
4 records from time to time. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA
5 CLASS members with a second off-duty meal period in some workdays in which these employees were
6 required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members
7 of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
8 accordance with DEFENDANTS' strict corporate policy and practice.

9 94. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable IWC
10 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not
11 provided a meal period, in accordance with the applicable Wage Order, one additional hour of
12 compensation at each employee's regular rate of compensation for each workday that a meal period was
13 not provided.

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

17 **FIFTH CAUSE OF ACTION**

18 **For Failure to Provide Required Rest Periods**

19 **[Cal. Lab. Code §§ 226.7 & 512]**

20 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

23 97. During the LABOR CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
24 members were from time to time required to work in excess of four (4) hours without being provided
25 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
26 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period
27 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
28 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more

1 from time to time. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with
2 one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
3 CALIFORNIA CLASS members were periodically denied their proper rest periods by DEFENDANTS
4 and DEFENDANTS' managers.

5 98. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC
6 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not
7 provided a rest period, in accordance with the applicable Wage Order, one additional hour of
8 compensation at each employee's regular rate of compensation for each workday that rest period was
9 not provided.

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

13 **SIXTH CAUSE OF ACTION**

14 **For Failure to Provide Accurate Itemized Statements**

15 **[Cal. Lab. Code §§ 226 and 226.2]**

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

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

1 of the employee may be aggregated and shown as one item;

2 5. Net wages earned;

3 6. The inclusive dates of the period for which the employee is paid,

4 7. The name of the employee and his or her social security number,
5 except that by January 1, 2008, only the last four digits of his or her social
6 security number or an employee identification number other than a social
7 security number may be shown on the itemized statement,

8 8. The name and address of the legal entity that is the employer, and

9 9. All applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the employee.

11 102. During the LABOR CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF
12 and the other members of the CALIFORNIA CLASS with complete and accurate wage statements
13 which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages
14 earned, (3) gross wages earned and (7) all applicable hourly rates in effect during the pay period and
15 the corresponding number of hours worked at each hourly rate by the employee in violation of
16 California Labor Code Section 226.

17 103. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §
18 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA
19 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for
20 the overtime worked and the amount of employment taxes which were not properly paid to state and
21 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other
22 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)
23 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
24 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and
25 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
26 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
27 member of the CALIFORNIA CLASS herein.

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

3 **(Cal Lab. Code §§201, 202, 203)**

4 **((By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS))**

5 104. 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 Complaint.

7 105. Cal. Lab. Code § 200 provides that:

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

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

18 107. Cal. Lab. Code § 202 provides, in relevant part, that:

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

1 the date of payment for purposes of the requirement to provide
2 payment within 72 hours of the notice of quitting.

3 108. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members'
4 employment contract.

5 109. Cal. Lab. Code § 203 provides:

6 If an employer willfully fails to pay, without abatement or reduction,
7 in accordance with Sections 201, 201.5, 202, and 205.5, any wages
8 of an employee who is discharged or who quits, the wages of the
9 employee shall continue as a penalty from the due date thereof at the
10 same rate until paid or until an action therefor is commenced; but
11 the wages shall not continue for more than 30 days.

12 110. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated
13 and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest
14 breaks, as required by law.

15 111. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members
16 of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand up to thirty days of pay as
17 penalty for not paying all wages due at time of termination for all employees who terminated
18 employment during the LABOR CLASS PERIOD, and demands an accounting and payment of all
19 wages due, plus interest and statutory costs as allowed by law.

20 **EIGHTH CAUSE OF ACTION**

21 **FAILURE TO PAY STATUTORY GRATUITIES**

22 **(Cal. Lab. Code § 351 et seq.)**

23 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
24 **Defendants)**

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

27 113. DEFENDANTS' conduct, as set forth above, in failing to remit to non-
28 managerial service employees the total proceeds of gratuities added to banquet customers' bills

1 constitutes a violation of California Labor Code Section 351. This violation is enforceable pursuant to
2 the California Unfair Competition Law, Cal. Bus. And Prof. Code 17200 et seq. DEFENDANTS'
3 conduct constitutes unlawful, unfair, and/or fraudulent business acts or practices, in that DEFENDANTS
4 have violated California Labor Code Section 351 in not remitting to the non-managerial service
5 employees the total gratuities that were charged to customers.

6 114. As a proximate result of the aforementioned violations, PLAINTIFF and
7 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, including
8 the loss of gratuities to which they were entitled and seek all wages earned and due, interest, penalties,
9 expenses and costs of suit.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
12 severally, as follows:

13 1. On behalf of the CALIFORNIA CLASS:

14 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as
15 a class action pursuant to Cal. Code of Civ. Proc. § 382;

16 B) An order temporarily, preliminarily and permanently enjoining and restraining
17 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

18 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
19 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

20 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for
21 restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other
22 members of the CALIFORNIA CLASS.

23 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes
24 of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. §
25 382;

26 1. Compensatory damages, according to proof at trial, including compensatory
27 damages for minimum wages, gratuities, and overtime compensation due PLAINTIFF
28

1 and the other members of the CALIFORNIA CLASS, during the applicable
2 CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;

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

8 3. Meal and rest period compensation pursuant to California Labor Code Section
9 226.7, 512 and the applicable IWC Wage Order;

10 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
11 1197; and,

12 2. On all claims:

13 A) An award of interest, including prejudgment interest at the legal rate;

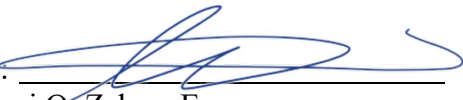
14 B) Such other and further relief as the Court deems just and equitable; and,

15 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,

16 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

17
18 Dated: July 27, 2020

19 Respectfully Submitted,
20 ZAKAY LAW GROUP, A.P.C.


21 By: 
22 Shani O. Zakay, Esq.
23 Attorneys for PLAINTIFF
24
25
26
27
28

1 **DEMAND FOR JURY TRIAL**

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

3
4 Dated: July 27, 2020

5 Respectfully Submitted,
6 ZAKAY LAW GROUP, A.P.C.

7 By: 
8 Shani O. Zakay, Esq.
9 Attorneys for PLAINTIFF
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28