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10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ORANGE**
13

14 NICOLE WHEAT, an individual,
15 Plaintiff,
16 v.

CLASS ACTION

Case No: 30-2021-01210986-CU-OE-CXC
Hon. James J. DiCesare (For All Purposes)
Dept. C-16

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

17 MARIO MAROVIC, an individual; LOUNGE
18 GROUP, INC., a California corporation, THE
19 BALBOA, LLC, a California limited liability
20 company; MALARKEY’S IRISH PUB, INC., a
21 California corporation; ORANGE PLAZA
22 SQUARE, LLC, a California limited liability
23 company; THE STAG BAR, INC., a California
24 corporation; MULDOON’S PUB, LLC, a
25 California limited liability company;
26 OCEANFRONT DELI, INC., a California
27 corporation; BLACKIE’S BY THE SEA, LLC, a
28 California limited liability company; ORANGE
CIRCLE LOUNGE, INC., a California
corporation; NEWPORT TACO, LLC, a
California limited liability company;
PENINSULA RESTAURANT GROUP, INC., a
California corporation; NEWPORT
OCEANFRONT, LLC, a California limited
liability company; COLD BREW, LLC, a
California limited liability company;
MARINER’S RESTAURANT, LLC, a California
limited liability company; 100 NORTH, LLC, a
California limited liability company;
FULLERTON LOUNGE, INC., a California

1. **Failure to Pay Minimum Wages**
[CAL. LAB. CODE §§ 1182,
1182.12, 1194, 1194.2, and
11.97]
2. **Failure To Pay Overtime and
Double Time Compensation**
[CAL. LAB. CODE §§ 510, 1194,
11988 CAL. CODE REGS. §
11050(3)(A)(1), *et. seq.*]
3. **Failure To Provide Meal
Periods** [CAL. LAB CODE §§
226.7, 512, 8 CAL. CODE REGS. §
11050(11)]
4. **Failure To Provide Rest Periods**
[CAL. LAB CODE §§ 226.7, 512, 8
CAL. CODE REGS. § 11050(12)]

1 Corporation; HELMSMAN ALE HOUSE, a
2 business entity, form unknown; MALARKY'S
3 IRISH PUB, a business entity, form unknown;
4 STAG BAR, a business entity, form unknown;
5 DORY DELI, a business entity, form unknown;
6 MULDOON'S IRISH PUB, a business entity,
7 form unknown; WILD GOOSE TAVERN, a
8 business entity, form unknown; PLAYA MESA,
9 a business entity, form unknown; THE
10 COUNTRY CLUB, a business entity, form
11 unknown; BLACKIE'S BY THE SEA, a business
12 entity, form unknown; THE DISTRICT
13 LOUNGE OLD TOWN ORANGE, a business
14 entity, form unknown; MATADOR CANTINA, a
15 business entity, form unknown; 2J'S LOUNGE, a
16 business entity, form unknown; SUPER PANGA
17 TAQUERIA, a business entity, form unknown;
18 and DOES 1 through 50, inclusive,

Defendants.

5. **Failure to Indemnify** [CAL. LAB. CODE § 2802; 8 CAL. CODE REGS. § 11050(9)(B)]
6. **Failure To Provide Accurate Itemized Wage Statements** [CAL. LAB. CODE § 226]
7. **Waiting Time Penalties** [CAL. LAB. CODE § 203]
8. **Unfair Competition and Unlawful Business Practices** [CAL. BUS. & PROF. CODE § 17200, *et. seq.*]
9. **Failure to Furnish Employee File and Payroll Records** [CAL. LAB. CODE §§ 226(b), 226(c), 226(f), 1198.5, 1198.5(a), 1198.5(b), and 1198.5(k)]
10. **Penalties Pursuant to the Private Attorney General Act ("PAGA")** [CAL. LAB. CODE § 2699, *et. seq.*], and
11. **Declaratory Relief**

DEMAND FOR JURY TRIAL

18 COMES NOW, Plaintiff NICOLE WHEAT ("Plaintiff"), and submits this unverified
19 First Amended FAC ("FAC") as follows:

I.

INTRODUCTION

22 1. Plaintiff brings this action on behalf of herself, and all similarly situated
23 individuals for (a) Failure to Pay Minimum Wages; (b) Failure To Pay Overtime and Double
24 Time Compensation; (c) Failure To Provide Meal Periods; (d) Failure To Provide Rest
25 Periods; (e) Failure to Indemnify; (f) Failure To Provide Accurate Itemized Wage Statements;
26 (g) Waiting Time Penalties; (h) Unfair Competition and Unlawful Business Practices; (i)
27 Failure to Furnish Employee File and Payroll Records (j) Penalties pursuant to the Private
28 Attorney General Act ("PAGA"), and (k) Declaratory Relief.

1 that Defendant MARIO MAROVIC is, and at all times herein mentioned was:

- 2 a. An individual conducting business in the County of Orange, State of California;
- 3 b. A principal, owner, shareholder, member, operator, and/or manager of the other
- 4 Defendants named in this action, including DOES 1 through 50;
- 5 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
- 6 46, who:
 - 7 i. Failed to pay at least minimum wages for all hours worked;
 - 8 ii. Failed to pay overtime and double time compensation for hours worked in
 - 9 excess of 8 hours in a workday and/or over forty hours in a workweek;
 - 10 iii. Failed to provide uninterrupted rest periods and meal periods;
 - 11 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - 12 v. Failed to provide employees with accurate itemized wage statements; and
 - 13 vi. Failed to pay employees all wages due upon termination of their employment
 - 14 relationship.

15 7. Plaintiff is informed and believes, and based upon that information and belief alleges,
16 that Defendant LOUNGE GROUP, INC. is, and at all times herein mentioned was:

- 17 a. A California corporation conducting business in the County of Orange, State of
- 18 California;
- 19 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 20 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
- 21 46, which:
 - 22 i. Failed to pay at least minimum wages for all hours worked;
 - 23 ii. Failed to pay overtime and double time compensation for hours worked in
 - 24 excess of 8 hours in a workday and/or over forty hours in a workweek;
 - 25 iii. Failed to provide uninterrupted rest periods and meal periods;
 - 26 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - 27 v. Failed to provide employees with accurate itemized wage statements; and
 - 28 vi. Failed to pay employees all wages due upon termination of their employment

1 relationship.

2 8. Plaintiff is informed and believes, and based upon that information and belief alleges,
3 that Defendant THE BALBOA, LLC is, and at all times herein mentioned was:

- 4 a. A California limited liability company conducting business in the County of
5 Orange, State of California;
- 6 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 7 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
8 46, which:
 - 9 i. Failed to pay at least minimum wages for all hours worked;
 - 10 ii. Failed to pay overtime and double time compensation for hours worked in
11 excess of 8 hours in a workday and/or over forty hours in a workweek;
 - 12 iii. Failed to provide uninterrupted rest periods and meal periods;
 - 13 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - 14 v. Failed to provide employees with accurate itemized wage statements; and
 - 15 vi. Failed to pay employees all wages due upon termination of their employment
16 relationship.

17 9. Plaintiff is informed and believes, and based upon that information and belief alleges,
18 that Defendant MALARKEY'S IRISH PUB, INC. is, and at all times herein mentioned was:

- 19 a. A California corporation conducting business in the County of Orange, State of
20 California;
- 21 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 22 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
23 46, which:
 - 24 i. Failed to pay at least minimum wages for all hours worked;
 - 25 ii. Failed to pay overtime and double time compensation for hours worked in
26 excess of 8 hours in a workday and/or over forty hours in a workweek;
 - 27 iii. Failed to provide uninterrupted rest periods and meal periods;
 - 28 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;

- v. Failed to provide employees with accurate itemized wage statements; and
- vi. Failed to pay employees all wages due upon termination of their employment relationship.

10. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant ORANGE PLAZA SQUARE, LLC is, and at all times herein mentioned was:

- a. A California limited liability company conducting business in the County of Orange, State of California;
- b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- c. The former dual employer of Plaintiff and of the Class, as defined in paragraph 46, which:
 - i. Failed to pay at least minimum wages for all hours worked;
 - ii. Failed to pay overtime and double time compensation for hours worked in excess of 8 hours in a workday and/or over forty hours in a workweek;
 - iii. Failed to provide uninterrupted rest periods and meal periods;
 - iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - v. Failed to provide employees with accurate itemized wage statements; and
 - vi. Failed to pay employees all wages due upon termination of their employment relationship.

11. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant THE STAG BAR, INC. is, and at all times herein mentioned was:

- a. A California corporation conducting business in the County of Orange, State of California;
- b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- c. The former dual employer of Plaintiff and of the Class, as defined in paragraph 46, which:
 - i. Failed to pay at least minimum wages for all hours worked;
 - ii. Failed to pay overtime and double time compensation for hours worked in excess of 8 hours in a workday and/or over forty hours in a workweek;

- 1 iii. Failed to provide uninterrupted rest periods and meal periods;
- 2 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
- 3 v. Failed to provide employees with accurate itemized wage statements; and
- 4 vi. Failed to pay employees all wages due upon termination of their employment
- 5 relationship.

6 12. Plaintiff is informed and believes, and based upon that information and belief alleges,
7 that Defendant MULDOON'S PUB, LLC is, and at all times herein mentioned was:

- 8 a. A California limited liability company conducting business in the County of
- 9 Orange, State of California;
- 10 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 11 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
- 12 46, which:
 - 13 i. Failed to pay at least minimum wages for all hours worked;
 - 14 ii. Failed to pay overtime and double time compensation for hours worked in
 - 15 excess of 8 hours in a workday and/or over forty hours in a workweek;
 - 16 iii. Failed to provide uninterrupted rest periods and meal periods;
 - 17 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - 18 v. Failed to provide employees with accurate itemized wage statements; and
 - 19 vi. Failed to pay employees all wages due upon termination of their employment
 - 20 relationship.

21 13. Plaintiff is informed and believes, and based upon that information and belief alleges,
22 that Defendant OCEANFRONT DELI, INC. is, and at all times herein mentioned was:

- 23 a. A California corporation conducting business in the County of Orange, State of
- 24 California;
- 25 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 26 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
- 27 46, which:
 - 28 i. Failed to pay at least minimum wages for all hours worked;

- 1 ii. Failed to pay overtime and double time compensation for hours worked in
- 2 excess of 8 hours in a workday and/or over forty hours in a workweek;
- 3 iii. Failed to provide uninterrupted rest periods and meal periods;
- 4 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
- 5 v. Failed to provide Plaintiff with accurate itemized wage statements; and
- 6 vi. Failed to pay Plaintiff all wages due upon termination of their employment
- 7 relationship.

8 14. Plaintiff is informed and believes, and based upon that information and belief alleges,
9 that Defendant BLACKIE’S BY THE SEA, LLC is, and at all times herein mentioned was:

- 10 a. A California limited liability company conducting business in the County of
- 11 Orange, State of California;
- 12 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 13 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
- 14 46, which:
 - 15 i. Failed to pay at least minimum wages for all hours worked;
 - 16 ii. Failed to pay overtime and double time compensation for hours worked in
 - 17 excess of 8 hours in a workday and/or over forty hours in a workweek;
 - 18 iii. Failed to provide uninterrupted rest periods and meal periods;
 - 19 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - 20 v. Failed to provide employees with accurate itemized wage statements; and
 - 21 vi. Failed to pay employees all wages due upon termination of their employment
 - 22 relationship.

23 15. Plaintiff is informed and believes, and based upon that information and belief alleges,
24 that Defendant ORANGE CIRCLE LOUNGE, INC. is, and at all times herein mentioned was:

- 25 a. A California corporation conducting business in the County of Orange, State of
- 26 California;
- 27 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 28 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph

1 46, which:

- 2 i. Failed to pay at least minimum wages for all hours worked;
- 3 ii. Failed to pay overtime and double time compensation for hours worked in
- 4 excess of 8 hours in a workday and/or over forty hours in a workweek;
- 5 iii. Failed to provide uninterrupted rest periods and meal periods;
- 6 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
- 7 v. Failed to provide employees with accurate itemized wage statements; and
- 8 vi. Failed to pay employees all wages due upon termination of their employment
- 9 relationship.

10 16. Plaintiff is informed and believes, and based upon that information and belief alleges,
11 that Defendant NEWPORT TACO, LLC is, and at all times herein mentioned was:

- 12 a. A California limited liability company conducting business in the County of
- 13 Orange, State of California;
- 14 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 15 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
- 16 46, which:

- 17 i. Failed to pay at least minimum wages for all hours worked;
- 18 ii. Failed to pay overtime and double time compensation for hours worked in
- 19 excess of 8 hours in a workday and/or over forty hours in a workweek;
- 20 iii. Failed to provide uninterrupted rest periods and meal periods;
- 21 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
- 22 v. Failed to provide employees with accurate itemized wage statements; and
- 23 vi. Failed to pay employees all wages due upon termination of their employment
- 24 relationship.

25 17. Plaintiff is informed and believes, and based upon that information and belief alleges,
26 that Defendant PENINSULA RESTAURANT GROUP, INC. is, and at all times herein mentioned
27 was:

- 28 a. A California corporation conducting business in the County of Orange, State of

1 California;

2 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;

3 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
4 46, which:

5 i. Failed to pay at least minimum wages for all hours worked;

6 ii. Failed to pay overtime and double time compensation for hours worked in
7 excess of 8 hours in a workday and/or over forty hours in a workweek;

8 iii. Failed to provide uninterrupted rest periods and meal periods;

9 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;

10 v. Failed to provide employees with accurate itemized wage statements; and

11 vi. Failed to pay employees all wages due upon termination of their employment
12 relationship.

13 18. Plaintiff is informed and believes, and based upon that information and belief alleges,
14 that Defendant NEWPORT OCEANFRONT, LLC is, and at all times herein mentioned was:

15 a. A California limited liability company conducting business in the County of
16 Orange, State of California;

17 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;

18 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
19 46, which:

20 i. Failed to pay at least minimum wages for all hours worked;

21 ii. Failed to pay overtime and double time compensation for hours worked in
22 excess of 8 hours in a workday and/or over forty hours in a workweek;

23 iii. Failed to provide uninterrupted rest periods and meal periods;

24 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;

25 v. Failed to provide employees with accurate itemized wage statements; and

26 vi. Failed to pay employees all wages due upon termination of their employment
27 relationship.

28 19. Plaintiff is informed and believes, and based upon that information and belief alleges,

1 that Defendant COLD BREW, LLC is, and at all times herein mentioned was:

- 2 a. A California limited liability company conducting business in the County of
- 3 Orange, State of California;
- 4 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 5 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
- 6 46, which:
 - 7 i. Failed to pay at least minimum wages for all hours worked;
 - 8 ii. Failed to pay overtime and double time compensation for hours worked in
 - 9 excess of 8 hours in a workday and/or over forty hours in a workweek;
 - 10 iii. Failed to provide uninterrupted rest periods and meal periods;
 - 11 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - 12 v. Failed to provide employees with accurate itemized wage statements; and
 - 13 vi. Failed to pay employees all wages due upon termination of their employment
 - 14 relationship.

15 20. Plaintiff is informed and believes, and based upon that information and belief alleges,
16 that Defendant MARINER'S RESTAURANT, LLC is, and at all times herein mentioned was:

- 17 a. A California limited liability company conducting business in the County of
- 18 Orange, State of California;
- 19 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 20 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
- 21 46, which:
 - 22 i. Failed to pay at least minimum wages for all hours worked;
 - 23 ii. Failed to pay overtime and double time compensation for hours worked in
 - 24 excess of 8 hours in a workday and/or over forty hours in a workweek;
 - 25 iii. Failed to provide uninterrupted rest periods and meal periods;
 - 26 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - 27 v. Failed to provide employees with accurate itemized wage statements; and
 - 28 vi. Failed to pay employees all wages due upon termination of their employment

1 relationship.

2 21. Plaintiff is informed and believes, and based upon that information and belief alleges,
3 that Defendant 100 NORTH, LLC is, and at all times herein mentioned was:

- 4 a. A California limited liability company conducting business in the County of
5 Orange, State of California;
- 6 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 7 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
8 46, which:
- 9 i. Failed to pay at least minimum wages for all hours worked;
- 10 ii. Failed to pay overtime and double time compensation for hours worked in
11 excess of 8 hours in a workday and/or over forty hours in a workweek;
- 12 iii. Failed to provide uninterrupted rest periods and meal periods;
- 13 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
- 14 v. Failed to provide employees with accurate itemized wage statements; and
- 15 vi. Failed to pay employees all wages due upon termination of their employment
16 relationship.

17 22. Plaintiff is informed and believes, and based upon that information and belief alleges,
18 that Defendant FULLERTON LOUNGE, INC. is, and at all times herein mentioned was:

- 19 a. A California corporation conducting business in the County of Orange, State of
20 California;
- 21 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 22 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
23 46, which:
- 24 i. Failed to pay at least minimum wages for all hours worked;
- 25 ii. Failed to pay overtime and double time compensation for hours worked in
26 excess of 8 hours in a workday and/or over forty hours in a workweek;
- 27 iii. Failed to provide uninterrupted rest periods and meal periods;
- 28 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;

- v. Failed to provide employees with accurate itemized wage statements; and
- vi. Failed to pay employees all wages due upon termination of their employment relationship.

23. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant HELMSMAN ALE HOUSE is, and at all times herein mentioned was:

- a. A business entity, form unknown, conducting business in the County of Orange, State of California;
- b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- c. The former dual employer of Plaintiff and of the Class, as defined in paragraph 46, which:
 - i. Failed to pay at least minimum wages for all hours worked;
 - ii. Failed to pay overtime and double time compensation for hours worked in excess of 8 hours in a workday and/or over forty hours in a workweek;
 - iii. Failed to provide uninterrupted rest periods and meal periods;
 - iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - v. Failed to provide employees with accurate itemized wage statements; and
 - vi. Failed to pay employees all wages due upon termination of their employment relationship.

24. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant MALARKY'S IRISH PUB is, and at all times herein mentioned was:

- a. A business entity, form unknown, conducting business in the County of Orange, State of California;
- b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- c. The former dual employer of Plaintiff and of the Class, as defined in paragraph 46, which:
 - i. Failed to pay at least minimum wages for all hours worked;
 - ii. Failed to pay overtime and double time compensation for hours worked in excess of 8 hours in a workday and/or over forty hours in a workweek;

- 1 iii. Failed to provide uninterrupted rest periods and meal periods;
- 2 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
- 3 v. Failed to provide employees with accurate itemized wage statements; and
- 4 vi. Failed to pay employees all wages due upon termination of their employment
- 5 relationship.

6 25. Plaintiff is informed and believes, and based upon that information and belief alleges,
7 that Defendant STAG BAR is, and at all times herein mentioned was:

- 8 a. A business entity, form unknown, conducting business in the County of Orange,
- 9 State of California;
- 10 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 11 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
- 12 46, which:
 - 13 i. Failed to pay at least minimum wages for all hours worked;
 - 14 ii. Failed to pay overtime and double time compensation for hours worked in
 - 15 excess of 8 hours in a workday and/or over forty hours in a workweek;
 - 16 iii. Failed to provide uninterrupted rest periods and meal periods;
 - 17 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - 18 v. Failed to provide employees with accurate itemized wage statements; and
 - 19 vi. Failed to pay employees all wages due upon termination of their employment
 - 20 relationship.

21 26. Plaintiff is informed and believes, and based upon that information and belief alleges,
22 that Defendant DORY DELI is, and at all times herein mentioned was:

- 23 a. A business entity, form unknown, conducting business in the County of Orange,
- 24 State of California;
- 25 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 26 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
- 27 46, which:
 - 28 i. Failed to pay at least minimum wages for all hours worked;

- 1 ii. Failed to pay overtime and double time compensation for hours worked in
- 2 excess of 8 hours in a workday and/or over forty hours in a workweek;
- 3 iii. Failed to provide uninterrupted rest periods and meal periods;
- 4 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
- 5 v. Failed to provide employees with accurate itemized wage statements; and
- 6 vi. Failed to pay employees all wages due upon termination of their employment
- 7 relationship.

8 27. Plaintiff is informed and believes, and based upon that information and belief alleges,
9 that Defendant MULDOON'S IRISH PUB is, and at all times herein mentioned was:

- 10 a. A business entity, form unknown, conducting business in the County of Orange,
- 11 State of California;
- 12 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 13 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
- 14 46, which:
 - 15 i. Failed to pay at least minimum wages for all hours worked;
 - 16 ii. Failed to pay overtime and double time compensation for hours worked in
 - 17 excess of 8 hours in a workday and/or over forty hours in a workweek;
 - 18 iii. Failed to provide uninterrupted rest periods and meal periods;
 - 19 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - 20 v. Failed to provide employees with accurate itemized wage statements; and
 - 21 vi. Failed to pay employees all wages due upon termination of their employment
 - 22 relationship.

23 28. Plaintiff is informed and believes, and based upon that information and belief alleges,
24 that Defendant WILD GOOSE TAVERN is, and at all times herein mentioned was:

- 25 a. A business entity, form unknown, conducting business in the County of Orange,
- 26 State of California;
- 27 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 28 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph

1 46, which:

- 2 i. Failed to pay at least minimum wages for all hours worked;
- 3 ii. Failed to pay overtime and double time compensation for hours worked in
- 4 excess of 8 hours in a workday and/or over forty hours in a workweek;
- 5 iii. Failed to provide uninterrupted rest periods and meal periods;
- 6 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
- 7 v. Failed to provide employees with accurate itemized wage statements; and
- 8 vi. Failed to pay employees all wages due upon termination of their employment
- 9 relationship.

10 29. Plaintiff is informed and believes, and based upon that information and belief alleges,
11 that Defendant PLAYA MESA is, and at all times herein mentioned was:

- 12 a. A business entity, form unknown, conducting business in the County of Orange,
- 13 State of California;
- 14 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 15 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
- 16 46, which:

- 17 i. Failed to pay at least minimum wages for all hours worked;
- 18 ii. Failed to pay overtime and double time compensation for hours worked in
- 19 excess of 8 hours in a workday and/or over forty hours in a workweek;
- 20 iii. Failed to provide uninterrupted rest periods and meal periods;
- 21 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
- 22 v. Failed to provide employees with accurate itemized wage statements; and
- 23 vi. Failed to pay employees all wages due upon termination of their employment
- 24 relationship.

25 30. Plaintiff is informed and believes, and based upon that information and belief alleges,
26 that Defendant THE COUNTRY CLUB is, and at all times herein mentioned was:

- 27 a. A business entity, form unknown, conducting business in the County of Orange,
- 28 State of California;

- b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- c. The former dual employer of Plaintiff and of the Class, as defined in paragraph 46, which:
 - i. Failed to pay at least minimum wages for all hours worked;
 - ii. Failed to pay overtime and double time compensation for hours worked in excess of 8 hours in a workday and/or over forty hours in a workweek;
 - iii. Failed to provide uninterrupted rest periods and meal periods;
 - iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - v. Failed to provide employees with accurate itemized wage statements; and
 - vi. Failed to pay employees all wages due upon termination of their employment relationship.

31. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant BLACKIE’S BY THE SEA is, and at all times herein mentioned was:

- a. A business entity, form unknown, conducting business in the County of Orange, State of California;
- b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- c. The former dual employer of Plaintiff and of the Class, as defined in paragraph 46, which:
 - i. Failed to pay at least minimum wages for all hours worked;
 - ii. Failed to pay overtime and double time compensation for hours worked in excess of 8 hours in a workday and/or over forty hours in a workweek;
 - iii. Failed to provide uninterrupted rest periods and meal periods;
 - iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - v. Failed to provide employees with accurate itemized wage statements; and
 - vi. Failed to pay employees all wages due upon termination of their employment relationship.

32. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant BLACKIE’S BY THE SEA is, and at all times herein mentioned was:

- a. A business entity, form unknown, conducting business in the County of Orange, State of California;
- b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- c. The former dual employer of Plaintiff and of the Class, as defined in paragraph 46, which:
 - i. Failed to pay at least minimum wages for all hours worked;
 - ii. Failed to pay overtime and double time compensation for hours worked in excess of 8 hours in a workday and/or over forty hours in a workweek;
 - iii. Failed to provide uninterrupted rest periods and meal periods;
 - iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - v. Failed to provide employees with accurate itemized wage statements; and
 - vi. Failed to pay employees all wages due upon termination of their employment relationship.

33. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant THE DISTRICT LOUNGE OLD TOWN ORANGE is, and at all times herein mentioned was:

- a. A business entity, form unknown, conducting business in the County of Orange, State of California;
- b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- c. The former dual employer of Plaintiff and of the Class, as defined in paragraph 46, which:
 - i. Failed to pay at least minimum wages for all hours worked;
 - ii. Failed to pay overtime and double time compensation for hours worked in excess of 8 hours in a workday and/or over forty hours in a workweek;
 - iii. Failed to provide uninterrupted rest periods and meal periods;
 - iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - v. Failed to provide employees with accurate itemized wage statements; and
 - vi. Failed to pay employees all wages due upon termination of their employment

1 relationship.

2 34. Plaintiff is informed and believes, and based upon that information and belief alleges,
3 that Defendant MATADOR CANTINA is, and at all times herein mentioned was:

- 4 a. A business entity, form unknown, conducting business in the County of Orange,
5 State of California;
- 6 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 7 c. The former employer of Plaintiff and of the Class, as defined in paragraph 46,
8 which:
 - 9 i. Failed to pay at least minimum wages for all hours worked;
 - 10 ii. Failed to pay overtime and double time compensation for hours worked in
11 excess of 8 hours in a workday and/or over forty hours in a workweek;
 - 12 iii. Failed to provide uninterrupted rest periods and meal periods;
 - 13 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - 14 v. Failed to provide employees with accurate itemized wage statements; and
 - 15 vi. Failed to pay employees all wages due upon termination of their employment
16 relationship.

17 35. Plaintiff is informed and believes, and based upon that information and belief alleges,
18 that Defendant 2J'S LOUNGE is, and at all times herein mentioned was:

- 19 a. A business entity, form unknown, conducting business in the County of Orange,
20 State of California;
- 21 b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- 22 c. The former dual employer of Plaintiff and of the Class, as defined in paragraph
23 46, which:
 - 24 i. Failed to pay at least minimum wages for all hours worked;
 - 25 ii. Failed to pay overtime and double time compensation for hours worked in
26 excess of 8 hours in a workday and/or over forty hours in a workweek;
 - 27 iii. Failed to provide uninterrupted rest periods and meal periods;
 - 28 iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;

- v. Failed to provide employees with accurate itemized wage statements; and
- vi. Failed to pay employees all wages due upon termination of their employment relationship.

36. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant SUPER PANGA TAQUERIA is, and at all times herein mentioned was:

- a. A business entity, form unknown, conducting business in the County of Orange, State of California;
- b. Owned, operated, and/or managed by Defendant MARIO MAROVIC;
- c. The former dual employer of Plaintiff and of the Class, as defined in paragraph 46, which:
 - i. Failed to pay at least minimum wages for all hours worked;
 - ii. Failed to pay overtime and double time compensation for hours worked in excess of 8 hours in a workday and/or over forty hours in a workweek;
 - iii. Failed to provide uninterrupted rest periods and meal periods;
 - iv. Failed to indemnify or reimburse its employees for all out-of-pocket expenses;
 - v. Failed to provide employees with accurate itemized wage statements; and
 - vi. Failed to pay employees all wages due upon termination of their employment relationship.

37. The true names and capacities, whether individual, corporate, partnership, associate, or otherwise of defendants DOES 1 through 50, inclusive, are unknown to the Plaintiff who therefore sues these defendants by such fictitious names pursuant to section 474 of the California Code of Civil Procedure. Plaintiff will seek leave to amend this FAC to allege that the defendants named herein, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

38. Plaintiff is informed and believes, and based upon that information and belief alleges, that the defendants named in this FAC, including DOES 1 through 50, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the other defendants and

1 that each defendant was acting within the course of scope of his, her, or its authority as the agent,
2 servant and/or employee of each of the other defendants. Consequently, all of the defendants are
3 jointly and severally liable to the Plaintiff and the putative Class for the damages sustained as a
4 proximate result of their conduct.

5 39. Plaintiff is ignorant of the business entity structures as to Defendants HELMSMAN
6 ALE HOUSE, MALARKY'S IRISH PUB, STAG BAR, DORY DELI, MULDOON'S IRISH PUB,
7 WILD GOOSE TAVERN, PLAYA MESA, THE COUNTRY CLUB, BLACKIE'S BY THE SEA,
8 THE DISTRICT LOUNGE OLD TOWN ORANGE, MATADOR CANTINA, 2J'S LOUNGE, and
9 SUPER PANGA TAQUERIA, but on information and belief alleges that Defendants LOUNGE
10 GROUP, INC., THE BALBOA, LLC, MALARKEY'S IRISH PUB, INC., ORANGE PLAZA
11 SQUARE, LLC, THE STAG BAR, INC., MULDOON'S PUB, LLC, OCEANFRONT DELI, INC.,
12 BLACKIE'S BY THE SEA, LLC, ORANGE CIRCLE LOUNGE, INC., NEWPORT TACO, LLC,
13 PENINSULA RESTAURANT GROUP, INC., NEWPORT OCEANFRONT, LLC, COLD BREW,
14 LLC, MARINER'S RESTAURANT, LLC, 100 NORTH, LLC, and FULLERTON LOUNGE, INC.,
15 either individual or collectively, are DBAs of Defendants HELMSMAN ALE HOUSE,
16 MALARKY'S IRISH PUB, STAG BAR, DORY DELI, MULDOON'S IRISH PUB, WILD
17 GOOSE TAVERN, PLAYA MESA, THE COUNTRY CLUB, BLACKIE'S BY THE SEA, THE
18 DISTRICT LOUNGE OLD TOWN ORANGE, MATADOR CANTINA, 2J'S LOUNGE, and
19 SUPER PANGA TAQUERIA.

20 40. All Defendants, including DOES 1 through 50, are "employers" as defined by the
21 Industrial Welfare Commission because they satisfy one or more of the following three disjunctive
22 elements: "(a) to exercise control over the wages, hours or working conditions, or (b) to suffer or
23 permit to work, or (c) to engage, thereby creating a common law employment relationship." (*See*
24 *Martinez v. Combs* (2010) 49 Cal.4th 35, 64; *see also*, INDUSTRIAL WAGE ORDER No. 5-2001,
25 paragraph (2) (codified under 8 CAL. CODE REGS. § 11050(2).)

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1 41. To the extent that any of the Defendants, including DOES 1 through 50, are natural
2 persons who are an owner, director, officer, or managing agent of any of the corporate or limited
3 liability company defendants named herein, section 558.1(a) of the California Labor Code provides
4 that:

5 Any employer or other person acting on behalf of an employer, who violates or
6 causes to be violated, any provision regulating minimum wage or hours and days in
7 any order of the Industrial Welfare Commission, or violates or causes to be violated
8 Sections 203, 226, 226.7, 1193.6, 1194, or 2902, may be held liable as the employer
9 for such violation.

10 42. All named Defendants, including DOES 1 through 50, are collectively
11 referred to herein as the “Defendants.”

12 **C. Alter Ego Allegations.**

13 43. Plaintiff is informed and believes, and based upon that information and belief
14 alleges, that:

- 15 a. Defendants LOUNGE GROUP, INC., THE BALBOA, LLC, MALARKEY’S
16 IRISH PUB, INC., ORANGE PLAZA SQUARE, LLC, THE STAG BAR,
17 INC., MULDOON’S PUB, LLC, OCEANFRONT DELI, INC., BLACKIE’S
18 BY THE SEA, LLC, ORANGE CIRCLE LOUNGE, INC., NEWPORT
19 TACO, LLC, PENINSULA RESTAURANT GROUP, INC., NEWPORT
20 OCEANFRONT, LLC, COLD BREW, LLC, MARINER’S RESTAURANT,
21 LLC, 100 NORTH, LLC, FULLERTON LOUNGE, INC., HELMSMAN
22 ALE HOUSE, MALARKY’S IRISH PUB, STAG BAR, DORY DELI,
23 MULDOON’S IRISH PUB, WILD GOOSE TAVERN, PLAYA MESA, THE
24 COUNTRY CLUB, BLACKIE’S BY THE SEA, THE DISTRICT LOUNGE
25 OLD TOWN ORANGE, MATADOR CANTINA, 2J’S LOUNGE, SUPER
26 PANGA TAQUERIA, are, and all relevant times were, mere shells without
27 capital, assets, stock, shareholders, or members and who were alter egos of
28 Defendant MARIO MAROVIC, of one another including DOES 1
through 50;

- 1 b. There is, and at all relevant times was, a unity of interest and/or ownership
2 between all of these Defendants so that any individuality or separateness
3 between them has ceased to exist;
- 4 c. These Defendants are nominally structured for the sole purpose of avoiding
5 responsibility from satisfying any debts or other obligations by Defendant
6 MARIO MAROVIC, including a monetary judgment that may be rendered in
7 this action; and
- 8 d. Defendants LOUNGE GROUP, INC., THE BALBOA, LLC, MALARKEY'S
9 IRISH PUB, INC., ORANGE PLAZA SQUARE, LLC, THE STAG BAR,
10 INC., MULDOON'S PUB, LLC, OCEANFRONT DELI, INC., BLACKIE'S
11 BY THE SEA, LLC, ORANGE CIRCLE LOUNGE, INC., NEWPORT
12 TACO, LLC, PENINSULA RESTAURANT GROUP, INC., NEWPORT
13 OCEANFRONT, LLC, COLD BREW, LLC, MARINER'S RESTAURANT,
14 LLC, 100 NORTH, LLC, FULLERTON LOUNGE, INC., HELMSMAN
15 ALE HOUSE, MALARKY'S IRISH PUB, STAG BAR, DORY DELI,
16 MULDOON'S IRISH PUB, WILD GOOSE TAVERN, PLAYA MESA, THE
17 COUNTRY CLUB, BLACKIE'S BY THE SEA, THE DISTRICT LOUNGE
18 OLD TOWN ORANGE, MATADOR CANTINA, 2J'S LOUNGE, SUPER
19 PANGA TAQUERIA are, and at all relevant times were, completely
20 controlled, dominated, managed, and operated by Defendant MARIO
21 MAROVIC so that these Defendants was mere shells, instrumentalities,
22 and/or conduits through which each of these Defendants conducted some or
23 all of their business.

24 44. Plaintiff is informed and believes, thereupon alleges, that Defendants LOUNGE
25 GROUP, INC., THE BALBOA, LLC, MALARKEY'S IRISH PUB, INC., ORANGE PLAZA
26 SQUARE, LLC, THE STAG BAR, INC., MULDOON'S PUB, LLC, OCEANFRONT DELI, INC.,
27 BLACKIE'S BY THE SEA, LLC, ORANGE CIRCLE LOUNGE, INC., NEWPORT TACO, LLC,
28 PENINSULA RESTAURANT GROUP, INC., NEWPORT OCEANFRONT, LLC, COLD BREW,

1 LLC, MARINER’S RESTAURANT, LLC, 100 NORTH, LLC, FULLERTON LOUNGE, INC.,
2 HELMSMAN ALE HOUSE, MALARKY’S IRISH PUB, STAG BAR, DORY DELI,
3 MULDOON’S IRISH PUB, WILD GOOSE TAVERN, PLAYA MESA, THE COUNTRY CLUB,
4 BLACKIE’S BY THE SEA, THE DISTRICT LOUNGE OLD TOWN ORANGE, MATADOR
5 CANTINA, 2J’S LOUNGE, SUPER PANGA TAQUERIA are, and at all relevant times were,
6 insolvent and/or otherwise unable to satisfy any debts or liabilities, including a monetary judgment
7 that may be rendered against then in this action.

8 45. Adherence to the fiction of the separate existence of Defendants LOUNGE GROUP,
9 INC., THE BALBOA, LLC, MALARKEY’S IRISH PUB, INC., ORANGE PLAZA SQUARE,
10 LLC, THE STAG BAR, INC., MULDOON’S PUB, LLC, OCEANFRONT DELI, INC.,
11 BLACKIE’S BY THE SEA, LLC, ORANGE CIRCLE LOUNGE, INC., NEWPORT TACO, LLC,
12 PENINSULA RESTAURANT GROUP, INC., NEWPORT OCEANFRONT, LLC, COLD BREW,
13 LLC, MARINER’S RESTAURANT, LLC, 100 NORTH, LLC, FULLERTON LOUNGE, INC.,
14 HELMSMAN ALE HOUSE, MALARKY’S IRISH PUB, STAG BAR, DORY DELI,
15 MULDOON’S IRISH PUB, WILD GOOSE TAVERN, PLAYA MESA, THE COUNTRY CLUB,
16 BLACKIE’S BY THE SEA, THE DISTRICT LOUNGE OLD TOWN ORANGE, MATADOR
17 CANTINA, 2J’S LOUNGE, SUPER PANGA TAQUERIA as entities distinct from Defendant
18 MARIO MAROVIC, would permit an abuse of the corporate privilege and sanction fraud or
19 promote injustice in that, among other things, it would enable each of these Defendants to avoid
20 liability and to defraud his, her, or its creditors, the effect of which would be to render each
21 Defendant financially unable to respond to a monetary judgment awarded against each or any of
22 them in this action.

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IV.

THE CLASS DEFINITION

46. The members of the class (the “Class”) consist of:

All current and former non-exempt employees who work or worked for Lounge Group, Inc., The Balboa, LLC, Malarkey’s Irish Pub, Inc., Orange Plaza Square, LLC, The Stag Bar, Inc., Muldoon’s Pub, LLC, Oceanfront Deli, Inc., Blackie’s By The Sea, LLC, Orange Circle Lounge, Inc., Newport Taco, LLC, Peninsula Restaurant Group, Inc., Newport Oceanfront, LLC, Cold Brew, LLC, Mariner’s Restaurant, LLC, 100 North, LLC, Fullerton Lounge, Inc., Helmsman Ale House, Malarky’s Irish Pub, Stag Bar, Dory Deli, Muldoon’s Irish Pub, Wild Goose Tavern, Playa Mesa, The Country Club, Blackie’s By The Sea, The District Lounge Old Town Orange, Matador Cantina, 2j’s Lounge, Super Panga Taqueria, and/or Mario Marovic during the time-period of July 15, 2017 to the present.

V.

THE CLASS ALLEGATIONS

47. The persons who comprise the Class are so numerous that joinder of all such persons is impracticable, and the disposition of their claims will benefit the parties and the Court. Plaintiff’s claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff will fairly and adequately protect the interests of the Class that she seeks to represent. Plaintiff does not have any interests that are antagonistic to the Class that she seeks to represent. Counsel for Plaintiff are experienced, qualified, and generally able to conduct complex class action litigation.

48. This Court should permit this action to be maintained as a class action pursuant to section 382 of the California Code of Civil Procedure because:

- a. The questions of law and fact common to the Class predominate over any question affecting only individual members;
- b. A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- c. The members of the Class are so numerous that it is impractical to bring all members of the Class before the Court;
- d. Plaintiff and the other Class members will not be able to obtain effective and economic legal redress unless this action is maintained as a class action;
- e. There is a community of interest in obtaining appropriate legal and equitable

1 relief for the legal and statutory violations and other improprieties, and in
2 obtaining adequate compensation for the damages and injuries that
3 Defendants' actions have inflicted upon the Class;

- 4 f. There is a community of interest in ensuring that the combined assets and
5 available insurance of Defendants is sufficient to adequately compensate the
6 members of the Class for the injuries sustained;
- 7 g. Without class certification, the prosecution of separate actions by individual
8 members of the Class would create a risk of:
- 9 i. Inconsistent or varying adjudications with respect to individual
10 members of the Class which would establish incompatible standards of
11 conduct for Defendants, and/or
- 12 ii. Adjudications with respect to the individual members which would, as
13 a practical matter, be dispositive of the interests of other members not
14 parties to the adjudications or would substantially impair or impede
15 their ability to protect their interests, including but not limited to the
16 potential for exhausting the funds available from those parties who are,
17 or may be, responsible defendants.
- 18 h. Defendants have acted or refused to act on grounds generally applicable to the
19 Class, thereby making final injunctive relief appropriate with respect to the
20 Class as a whole.

21 **VI.**

22 **FACTUAL ALLEGATIONS**

23 49. Plaintiff is informed and believes, and thereupon alleges, that within the four years
24 preceding the initiation of this action, Defendant MARIO MAROVIC has concocted and executed
25 an elaborate scheme in an effort to circumvent the protections afforded under both the California
26 Labor Code and applicable Industrial Wage Orders.

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1 50. The following unfair, unlawful, and fraudulent business practices instigate the matter
2 at bar:

- 3 a. Plaintiff is informed and believes, and thereupon alleges, that Defendant MARIO
4 MAROVIC owns and/or operates various restaurant/bar establishments through
5 the County of Orange including, without limitation, LOUNGE GROUP, INC.,
6 THE BALBOA, LLC, MALARKEY'S IRISH PUB, INC., ORANGE PLAZA
7 SQUARE, LLC, THE STAG BAR, INC., MULDOON'S PUB, LLC,
8 OCEANFRONT DELI, INC., BLACKIE'S BY THE SEA, LLC, ORANGE
9 CIRCLE LOUNGE, INC., NEWPORT TACO, LLC, PENINSULA
10 RESTAURANT GROUP, INC., NEWPORT OCEANFRONT, LLC, COLD
11 BREW, LLC, MARINER'S RESTAURANT, LLC, 100 NORTH, LLC,
12 HELMSMAN ALE HOUSE, MALARKY'S IRISH PUB, STAG BAR, DORY
13 DELI, MULDOON'S IRISH PUB, WILD GOOSE TAVERN, PLAYA MESA,
14 THE COUNTRY CLUB, BLACKIE'S BY THE SEA, THE DISTRICT
15 LOUNGE OLD TOWN ORANGE, MATADOR CANTINA, 2J'S LOUNGE,
16 SUPER PANGA TAQUERIA.
- 17 b. Based on information and belief, Defendant MARIO MAROVIC created
18 numerous business entity structures that employ non-exempt employees to work
19 at these various restaurant/bar establishments.
- 20 c. Plaintiff is informed and believes, and thereupon alleges, that as a condition of
21 employment, it was and still is the policy and practice of the Defendants, and all
22 of them, to require each non-exempt employee to sign a meal break waiver for
23 each entity and to require them to work no more than five (5) hours a day per
24 entity. Plaintiff is further informed and believes, and thereupon further alleges,
25 that at the conclusion of a 5-hour shift, each non-employee is then required to
26 travel to another restaurant/bar establishment that is operated under the name of a
27 separate business entity to work an additional five (5) hours. Thus, members of
28 the Class, including Plaintiff, work shifts exceeding eight (8) hours a day and/or

1 forty (40) hours a week without overtime or double time compensation, and
2 without being provided with statutorily required meal or rest breaks.

3 d. Since each non-exempt employee receives their payroll checks under the name of
4 each separate entity, Defendant MARIO MAROVIC makes it appear that each
5 non-exempt employee has worked no more than five (5) hours per day despite
6 these employees having in fact worked more than eight (8) hours per day.

7 e. Defendants also required Plaintiff and members of the Class to download a
8 mobile app onto their personal cellular phones called "Resturant365," which
9 allows Defendants to communicate work schedules with their employees, and it
10 also allows management and employees to communicate with and among one
11 another, among other features. Plaintiff is informed and believes that the
12 Defendants never indemnified or reimbursed the Plaintiff or members of the Class
13 for the personal cellular data they used when utilizing the Resturant365 app for
14 the benefit of the Defendants.

15 f. Finally, Plaintiff is informed and believes, and thereupon alleges, that Defendants
16 have engaged and continue to engage in the practice of understaffing each
17 restaurant/bar establishment thereby artificially creating a work environment to be
18 such that non-exempt employees, including Plaintiff and members of the Class,
19 could never take an uninterrupted meal or rest period. Under the guise of an
20 illegal and invalid meal break waiver, non-exempt employees, including Plaintiff
21 and members of the Class, were and are denied their right to meal periods as
22 mandated under the California Labor Code and applicable Wage Orders.

23 51. Based on the foregoing, Defendants, including DOES 1 through 50, required Plaintiff
24 and members of the Class to work shifts exceeding eight (8) hours a day and/or forty (40) hours a
25 week without proper minimum wage, overtime, and/or double compensation.

26 52. In addition, for every occurrence of rest and meal period violations, Defendants,
27 including DOES 1 through 50, failed to pay an hour premium payment to Plaintiff or members of the
28 Class.

1 was entered into for an unlawful object. Specifically, Plaintiff is informed and believes, and
2 thereupon alleges, that Defendants are aware that their business practices articulated in paragraphs
3 50(a) through 50(f) are unfair, unlawful, and fraudulent, and therefore Defendants require their
4 employees, including Plaintiff herein, to sign arbitration agreements with the intent to violate the
5 Labor Code and applicable Wage Orders to insulate themselves from liability for their wage
6 violations.

7 60. For the foregoing reasons, an actual controversy has arisen and now exists between
8 Plaintiff and Defendant THE STAG BAR, INC. concerning their respective rights and duties under
9 the purported Arbitration Agreement.

10 **IX.**

11 **FIRST CAUSE OF ACTION**

12 **Failure to Pay Minimum Wages**

13 **[CAL. LAB. CODE §§ 1182, 1182.12, 1194, 1194.2, and 1197]**

14 **(By Plaintiff and the Putative Class as Against All Defendants, Including DOES 1 through 50.)**

15 61. Plaintiff re-alleges and incorporates each and every allegation contained in each of
16 the preceding paragraphs in this FAC and which are fully set forth herein by reference.

17 62. California law requires the state minimum wage to be at least equal to the federal
18 minimum wage. CAL. LAB. CODE § 1182(b).

19 63. Notwithstanding section 1182(b) of the California Labor Code, the minimum wage
20 may be fixed by applicable state or local law, and the payment of a lower wage than the minimum so
21 fixed is unlawful. CAL. LAB. CODE § 1197.

22 64. On April 4, 2016, Govern Jerry Brown signed legislation adopting a six-step increase
23 to the state minimum wage:

24 For any employer who employees 26 or more employees, and minimum wage shall be
25 as follows: [¶]

26 (A) From January 1, 2017, to December 31, 2017, inclusive,-ten dollars and fifty cents
(\$10.50) per hour. [¶]

27 (B) From January 1, 2018, to December 31, 2018, inclusive,-eleven dollars (\$11) per
28 hour. [¶]

1 (C) From January 1, 2019, to December 31, 2019, inclusive,-twelve dollars (\$12) per
2 hour. [¶]

3 (D) From January 1, 2020, to December 31, 2020, inclusive,-thirteen dollars (\$13) per
4 hour. [¶]

5 (E) From January 1, 2021, to December 31, 2021, inclusive,-fourteen dollars (\$14) per
6 hour. [¶]

7 (F) From January 1, 2022, and until adjusted by subdivision (c)-fifteen dollars (\$15)
8 per hour.

9 CAL. LAB. CODE § 1182.12(1)(b), *et. seq.*

10 65. Plaintiff is informed and believes, and thereupon alleges, that within the four years
11 preceding the initiation of this action, Defendants, including DOES 1 through 50, both individually
12 and in the aggregate, employed 26 or more employees, including Plaintiff and members of the Class.

13 66. Plaintiffs and members of the Class were not compensated for all hours worked,
14 including the time spent traveling between restaurant/bar establishments, as alleged herein.

15 67. By virtue of Defendants’ unlawful failure to pay Plaintiff and members of the Class
16 their respective and applicable minimum wages, as alleged herein, Plaintiff and the Class have
17 suffered, and will continue to suffer, damages in amounts which are presently unknown, but which
18 exceed the jurisdictional limits of this Court, and which will be ascertained according to proof at
19 trial.

20 68. By virtue of Defendants’ unlawful failure to pay Plaintiff and members of the Class
21 their respective and applicable minimum wages, as alleged herein, Plaintiff and members of the
22 Class are entitled to recover the unpaid balance of the full amounts of minimum wages as applicable,
23 including interest thereon, reasonable attorneys’ fees, and costs of suit. CAL. LAB. CODE § 1194.

24 69. In addition, Plaintiff and the Class are “entitled to recover liquidated damages in an
25 amount equal to the wages unlawfully unpaid and interest thereon.” CAL. LAB. CODE § 1194.2.

26 70. Plaintiff and the Class are also entitled to seek and recover interest, penalties, and
27 reasonable attorneys’ fees and costs pursuant to CAL. LAB. CODE §§ 218.5 and 1194.

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1 X.

2 SECOND CAUSE OF ACTION

3 Failure To Pay Overtime and Double Time Compensation

4 [CAL. LAB. CODE §§ 510, 1194, 1198 and 8 CAL. CODE REGS. § 11050]

5 (By Plaintiff and the Putative Class as Against All Defendants, Including DOES 1 through 50.)

6 71. Plaintiff re-alleges and incorporates herein each and every allegation contained in
7 each of the preceding paragraphs in this FAC as fully set forth herein by reference.

8 72. CAL. LAB. CODE §§ 510, 1194 and 1198, and INDUSTRIAL WAGE ORDER No. 5-2001
9 (3)(A)(1)(a), which is codified under 8 CAL. CODE REGS. § 11050(3)(A)(1)(a), as amended, provide
10 that employees in California shall not be employed more than eight (8) hours in any workday or
11 more than forty (40) hours in any workweek, unless they receive additional compensation beyond
12 their regular wages in amounts specified by law. In addition, an employer must pay double the
13 employee's regular rate of pay for all hours worked in excess of twelfth (12) hours in any workday,
14 and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in
15 a workweek. 8 CAL. CODE REGS. § 11050(3)(A)(1)(b).

16 73. CAL. LAB. CODE §1194 provides that an employee who has not been paid overtime
17 compensation as required by section 1198 may recover the unpaid balance of the full amount of such
18 overtime compensation, together with costs of suit, penalties, interest thereon, and attorneys' fees in
19 a civil action.

20 74. Plaintiffs and members of the Class were not compensated for all hours worked,
21 including the time spent traveling between restaurant/bar establishments, as alleged herein. As a
22 result, Plaintiff and members of the Class worked more than eight (8) hours in a workday, and/or
23 more than forty (40) hours in a workweek as non-exempt employee of Defendants, including DOES
24 1 through 50, without receiving overtime or double time compensation.

25 75. At all times relevant hereto, Defendants, including DOES 1 through 50, failed to pay
26 Plaintiff or members of the Class overtime and double time compensation for the hours he worked in
27 excess of the maximum hours permissible by law as required by 8 CAL. CODE REGS. §11050 and
28 CAL. LAB. CODE §§510, 1194, and 1198.

1 the employee one additional hour of pay at the employee's regular rate of compensation
2 for each workday that the meal... period is not provided.

3 83. For every instance where in employer fails to provide an employee with an
4 uninterrupted meal period in accordance to Wage Order No. 5(11), the employer shall pay the
5 employee one hour of pay at the employee's regular rate of compensation for each workday that the
6 meal period is not provided. 8 CAL. CODE REGS. § 11050(11)(B); *see also* CAL. LAB. CODE §
7 226.7(c).

8 84. At all times relevant hereto, Plaintiff and members of the Class regularly worked
9 more than five-hour increments; however, at all times relevant hereto, Defendants, including DOES
10 1 through 50, failed to provide uninterrupted meal periods to Plaintiffs and members of the Class as
11 required by CAL. LAB. CODE §§ 226.7, 512 and 8 CAL. CODE REGS. § 11050(11), as further alleged
12 herein.

13 85. By virtue of requiring Plaintiff and the Class to work through meal periods free from
14 work duties, Defendants have intentionally and improperly denied statutorily mandated meal periods
15 in violation of CAL. LAB. CODE §§ 226.7, 512, and 8 CAL. CODE REGS. § 11050(11). Plaintiff and the
16 Class have suffered, and will continue to suffer, damages in the form of meal break premium
17 payments in an amount according to proof, along with interest pursuant to section 3287 of the
18 California Civil Code.

19 86. Plaintiff and the Class are also entitled to seek and recover costs pursuant to CAL.
20 CIV. CODE § 1032, *et. seq.*

21 XII.

22 FOURTH CAUSE OF ACTION

23 Failure To Provide Rest Periods

24 [CAL. LAB. CODE § 226.7; 8 CAL. CODE REGS. § 11050(12)]

25 (By Plaintiff and the Putative Class as Against All Defendants, Including DOES 1 through 50.)

26 87. Plaintiff re-alleges and incorporates herein each and every allegation contained in
27 each of the preceding paragraphs in this FAC as fully set forth herein by reference.

28 88. CAL. LAB. CODE § 226.7 provides, in relevant part, as follows:

(b) An employer shall not require an employee to work during a... rest... period

1 mandated pursuant to an applicable statute, or applicable regulation, standard, or order
2 of the Industrial Welfare Commission....

3 (d) A rest... period mandated pursuant to a state law, including, but not limited to, an
4 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
5 Commission[]..., shall be counted as hours worked, for which there shall be no
6 deduction from wages.

7 89. The California Labor Code also states, in relevant part:

8 If an employer fails to provide an employee a... rest... period in accordance with a
9 state law, including, but not limited to, an applicable statute or applicable regulation,
10 standard, or order of the Industrial Welfare Commission[]..., the employer shall pay
11 the employee one additional hour of pay at the employee's regular rate of compensation
12 for each workday that the... rest... period is not provided.

13 CAL. LAB. CODE § 227.7(c).

14 90. Industrial Wage Order No. 5(12)(A), which is codified under 8 CAL. CODE REGS. §§
15 11050(12)(A), requires employers to provide rest breaks that shall be counted as hours worked for
16 which there shall be no deduction of wages.

17 91. Subdivision (12)(A) of 8 CAL. CODE REGS. §11050 also requires that an employer
18 provide its employees with a 10-minute rest break for every four-hour increment of time worked, or
19 major fraction thereof. *See also, Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th
20 1004, 1029 (“[e]mployees are entitled to 10 minute rests for shifts from three and one-half to six
21 hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of
22 more than 10 hours up to 14 hours, and so on[]”).

23 92. CAL. LAB. CODE §226.7 and 8 CAL. CODE REGS. §11050(12)(B), further require that
24 for every workday in which it fails to provide a rest period during any four-hour increment, the
25 employer must pay the employee premium at a rate of an hour’s pay at the employee’s regular rate
26 of pay.

27 93. Plaintiff and members of the Class regularly worked four-hour increments and were
28 not provided with statutorily mandated rest breaks during their shifts. Plaintiff and members of the
Class were unable to avail themselves of such breaks for various reasons, including but not limited
to, the pressures from their workloads and from management.

94. At all times relevant hereto, Defendants also failed to provide Plaintiff and members

1 of the Class with change rooms or resting facilities, as mandated by 8 CAL. CODE REGS. §
2 11050(13).

3 95. By virtue of Defendants' unlawful failure to authorize, permit, and provide rest
4 periods as required by law, Plaintiff and members of the Class have suffered, and will continue to
5 suffer, damages in the form of rest break premium payments in an amount according to proof, along
6 with interest pursuant to section 3287 of the California Civil Code.

7 96. Plaintiff and the Class are also entitled to seek and recover costs pursuant to CAL.
8 CIV. CODE § 1032, *et. seq.*

9 **XIII.**

10 **FIFTH CAUSE OF ACTION**

11 **Failure To Indemnify**

12 **[CAL. LAB. CODE § 2802; 8 CAL. CODE REGS. § 11050((9)(B)]**

13 **(By Plaintiffs and the Putative Class as Against All Defendants, Including DOES 1 through 50)**

14 97. Plaintiff re-alleges and incorporates each and every allegation contained in each of
15 the preceding paragraphs in this FAC and which are fully set forth herein by reference.

16 98. Section 2802(a) of the California Labor Code provides that “[a]n employer shall
17 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
18 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
19 of the employer....”

20 99. In addition:

21 All awards made by a court or by the Division of Labor Standards Enforcement for
22 reimbursement of necessary expenditures under this section shall carry interest at the
23 same rate as judgments in civil actions. Interest shall accrue from the date on which the
employee incurred the necessary expenditure or loss.

24 *Id.* § 2802(b). Under this section the term “necessary expenditures or losses” includes attorneys’
25 fees. *Id.* § 2802(c).

26 100. Moreover, INDUSTRIAL WAGE ORDER No. 5-2001, which is codified under 8 CAL.
27 CODE REGS. § 11050, as amended, states in relevant part: “[w]hen the employer requires the use of
28 tools or equipment or they are necessary for the performance of a job, such tools and equipment shall

1 be provided and maintained by the employer....” 8 CAL. CODE REGS. § 11050(9)(B).

2 101. As alleged herein, Plaintiffs and the Class were required to travel between
3 restaurant/bar establishments. Despite this requirement imposed upon by the Defendants, including
4 DOES 1 through 50, Plaintiff and the members of the Class were not indemnified for using their
5 personal vehicles for the benefit of the Defendants.

6 102. As also alleged herein, Plaintiff and members of the Class were required to download
7 an app called “Restaurant360” onto their personal cellular phones. Plaintiff and members of the
8 Class, however, were never reimbursed for the personal cellular data they used when utilizing the
9 Restaurant360 app for the benefit of the Defendants herein.

10 103. As a proximate result of Defendants’ unlawful actions and omissions, Plaintiff and
11 the Class have been damaged in an amount according to proof at trial, and they seek reimbursement
12 of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b).

13 104. Additionally, Plaintiffs and the Class are entitled to all available statutory penalties
14 and an award of costs, expenses, and reasonable attorneys’ fees, including those provided in CAL.
15 LAB. CODE § 2802(c) and CAL. CIV. CODE § 1032, *et. seq.*

16 **XIV.**

17 **SIXTH CAUSE OF ACTION**

18 **Failure To Provide Accurate Itemized Wage Statements**

19 **[CAL. LAB. CODE § 226]**

20 **(By Plaintiff and the Putative Class as Against All Defendants, Including DOES 1 through 50.)**

21 105. Plaintiff re-alleges and incorporates herein each and every allegation contained in
22 each of the preceding paragraphs in this FAC as fully set forth herein by reference.

23 106. CAL. LAB. CODE § 226 provides that an employer shall provide its employees with
24 accurate wage statements as follows:

25 (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish
26 each of his or her employees, either as a detachable part of the check, draft, or voucher
27 paying the employee’s wages, or separately when wages are paid by personal check or
28 cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
total hours worked by the employee...[,] (3) the number of piece-rate units earned and
any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
provided that all deductions made on written orders of the employee may be aggregated
and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for

1 which the employee is paid, (7) the name of the employee and only the last four digits
2 of his or her social security number or an employee identification number other than a
3 social security number, (8) the name and address of the legal entity that is the
4 employer...[,] and (9) all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the employee and,
6 beginning July 1, 2013, if the employer is a temporary services employer as defined in
7 Section 201.3, the rate of pay and the total hours worked for each temporary services
8 assignment.

9
10 107. At all times relevant herein, Defendants, including DOES 1 through 50, violated CAL.
11 LAB. CODE § 226 in that Defendants failed to properly and accurately itemize the number of hours
12 worked by Plaintiff and the Class at their effective regular rates of pay, including the effective
13 overtime rates of pay.

14 108. By failing to pay Plaintiffs and members of the Class wages for all hours worked,
15 including overtime compensation, Defendants have violated the requirement that the total hours
16 worked, and all wages earned be included in the wage statements that must be provided to the
17 Plaintiff and the Class.

18 109. Defendants also failed to identify the true names of the employers on the wage
19 statements issued to Plaintiff and the Class by requiring them to work no more than five (5) hours
20 per day per restaurant/bar establishment, but then requiring them to travel to another restaurant/bar
21 establishment to work an additional five (5) hours, thus making it appear that each Class member
22 worked no-more than five hours per day despite having in fact worked more than (8) eight hours per
23 day.

24 110. Defendants willfully, knowingly, and intentionally failed to comply with CAL. LAB.
25 CODE § 226 by failing to pay minimum wages, overtime compensation for hours worked in excess of
26 forty, and by failing to provide meal breaks or paying the appropriate premium wages for missed
27 meal breaks, as required by law, thereby causing damages to Plaintiff and the Class by failing to
28 include all hours worked and wages earned in their wage statements. These damages, including but
not limited to costs expended calculating the true hours worked and the amount of employment taxes
that were not properly paid to state and federal tax authorities, are difficult to estimate. Therefore,
Plaintiff elects to recover penalties on behalf of themselves and on behalf of the Class pursuant to
CAL. LAB. CODE § 226 in an amount \$4,000 each, and reasonable attorney's fees and costs pursuant

1 to CAL. LAB. CODE § 226(g) and CAL. CODE CIV. PROC. § 1032, *et. seq.*

2 **XV.**

3 **SEVENTH CAUSE OF ACTION**

4 **Waiting Time Penalties**

5 **[CAL. LAB. CODE §§ 201, 202, and 203]**

6 **(By Plaintiff and the Putative Class as Against All Defendants, Including DOES 1 through 50.)**

7 111. Plaintiff re-alleges and incorporates herein each and every allegation contained in
8 each of the preceding paragraphs in this FAC as fully set forth herein by reference.

9 112. Sections 201 and 202 of the California Labor Code require employers to pay their
10 employees all wages due immediately upon discharge, or within seventy-two hours of resigning
11 without notice.

12 113. Section 203 of the California Labor Code provides that when an employer willfully
13 fails to make a timely payment of final wages pursuant to sections 201 and 202 of the California
14 Labor Code, the employer must, as a penalty, continue to pay the employee's wages at an
15 employee's daily rate, up to thirty days.

16 114. Defendants, including DOES 1 through 50, willfully, knowingly, and intentionally
17 failed to fully compensate all wages due to Plaintiff and the Class, including minimum wages,
18 overtime, double time, and meal and rest break premiums, as further alleged herein.

19 115. Since Plaintiff and the members of the Class have yet to be fully compensated for all
20 hours worked, they are entitled to waiting time penalties in the amount of their daily rate of pay up to
21 thirty days pursuant to section 203 of the California Labor Code, in an amount according to proof,
22 and costs pursuant to CAL. CODE CIV. PROC. § 1032, *et. seq.*

23 **XVI.**

24 **EIGHTH CAUSE OF ACTION**

25 **For Unlawful Business Practices**

26 **[CAL. BUS. & PROF. CODE § 17200 *et. seq.*]**

27 **(By Plaintiff and the Putative Class as Against All Defendants, Including DOES 1 through 50.)**

28 116. Plaintiff re-alleges and incorporates herein each and every allegation contained in

1 each of the preceding paragraphs in this FAC as fully set forth herein by reference.

2 117. Each Defendant named herein is considered a “person,” as that term is defined under
3 CAL. BUS. & PROF. CODE § 17021.

4 118. CAL. BUS. & PROF. CODE § 17200 defines unfair competition as any unlawful, unfair,
5 or fraudulent business act or practice.

6 119. Plaintiff and the members of the Class have suffered an injury-in-fact as a result of
7 Defendants’ conduct in violation of the Unfair Competition Law (CAL. BUS. & PROF. CODE § 17200
8 *et. seq.*). Specifically, Plaintiff and the Class have lost money and/or property as a result of
9 Defendants’ wrongful conduct. The injuries suffered by Plaintiff and the Class were directly related
10 to Defendants’ wrongful conduct.

11 120. At all times relevant hereto, by and through the conduct described herein, Defendants,
12 including DOES 1 through 50, have engaged in unfair, fraudulent and unlawful practices, in
13 violation of CAL. BUS. & PROF. CODE §§ 17200 *et. seq.*, and have thereby deprived Plaintiff and
14 members of the Class of fundamental rights and privileges guaranteed to all employees under the
15 California Labor Code.

16 121. All of the acts described herein as violations of, among other things, the California
17 Labor Code and applicable IWC Wage Orders, are unlawful and in violation of public policy, and
18 are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair, unlawful, and/or
19 fraudulent business practices in violation of CAL. BUS. & PROF. CODE §§ 17200 *et. seq.* Specifically,
20 Defendants’ unfair, unlawful, and/or fraudulent business practices include the following violations:

- 21 a. Failure to timely pay wages at the appropriate rate of pay in violation of CAL.
22 LAB. CODE §§ 204, 510, 511, 558, 1182, 1182.12, 1194., 1194.2, 1198, and 8
23 CAL. CODE REGS. § 11050(3), *et. seq.*;
- 24 b. Failure to provide meal periods as mandated by CAL. LAB. CODE §§ 226.7 and
25 512, and 8 CAL. CODE REGS. § 11050(11), *et. seq.*;
- 26 c. Failure to provide rest periods as mandated by CAL. LAB. CODE § 226.7, and 8
27 CAL. CODE REGS. § 11050(11), *et. seq.*;
- 28 d. Failure to indemnify employees pursuant to CAL. LAB. CODE § 2802 and 8 CAL.

1 CODE REGS. § 11050(9)(B);

2 e. Failure to provide prompt payment of wages to employees upon termination and
3 resignation in violation of CAL. LAB. CODE §§ 201, 202, and 203;

4 f. Failure to provide accurate itemized wage statements to employees in violation of
5 CAL. LAB. CODE §§ 226 and 226.3.

6 122. In addition, Defendants also failed to identify the true names of the employers on the
7 wage statements issued to Plaintiff and the Class by requiring them to work no more than five (5)
8 hours per day per restaurant/bar establishment, but then requiring them to travel to another
9 restaurant/bar establishment to work an additional five (5) hours, thus making it appear that each
10 Class member worked no-more than five hours per day despite having in fact worked more than (8)
11 eight hours per day.

12 123. By and through the unfair, fraudulent, and unlawful business practices described
13 herein, Defendants, including DOES 1 through 50, have obtained valuable property, money, and
14 services from Plaintiffs and the Class, and has deprived them of valuable rights and benefits
15 guaranteed by the law, all to their detriment.

16 124. Furthermore, Plaintiff is informed and believes, and thereupon alleges, that
17 Defendants have underreported to federal and state authorities the wages earned by Plaintiff and the
18 members of the Class, and therefore, have underpaid state and federal taxes, employer matching
19 funds, unemployment premiums, Social Security, Medicare and Workers' Compensation premiums.
20 This conduct is criminal in nature and subjects Defendants to sanctions, fines, and imprisonment,
21 and is actionable under CAL. BUS. & PROF. CODE §§ 1700, *et. seq.* and 17200 *et. seq.*

22 125. Plaintiff is informed and believes, and based upon that information and belief alleges,
23 that by requiring Plaintiff and the Class to work without minimum wage compensation, or work
24 overtime without receiving overtime compensation, and failing to provide meal and rest periods,
25 Defendants have engaged in business within the state of California to offer its services at a lower
26 price for the purpose of injuring competitors and/or destroying competition in violation of CAL. BUS.
27 & PROF. CODE § 17043.

28 126. Pursuant to CAL. BUS. & PROF. CODE §§ 17071 and 17075, Defendants' failure to pay

1 wages, overtime compensation, related benefits, and employment taxes, is admissible as evidence of
2 Defendants' intent to violate Chapter 4 of the Unfair Business Trade Act.

3 127. Defendants' practices are unlawful, unfair, deceptive, untrue, and misleading.

4 128. Plaintiff is entitled to seek, and does seek, such relief as may be necessary to restore
5 the money and property that Defendants have acquired, or of which Plaintiff and members of the
6 Class have been deprived of, by means of the above-described unfair and unlawful business
7 practices.

8 129. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
9 redress the injuries that they have suffered as a consequence of Defendants' unfair and unlawful
10 business practices. As such, Defendants should be required to disgorge the unpaid moneys owed to
11 Plaintiff and the Class.

12 130. Because Plaintiff seeks to enforce an important right affecting the public interest, *to*
13 *wit*, the lawful payment of wages as required by law, the disgorgement of ill-gotten gains, and the
14 restitution of unlawfully withheld wages, with interest thereon, Plaintiff requests an award of
15 attorneys' fees, pursuant to CAL. CODE CIV. PROC. § 1021.5, and costs pursuant to CAL. CODE CIV.
16 PROC. § 1032.

17 XVII.

18 NINTH CAUSE OF ACTION

19 Failure to Furnish Employee File and Payroll Records

20 [CAL. LAB. CODE §§ 226(b), 226(c) 226(f) 1198.5, 1198.5(a), 1198.5(b), and 1198.5(k)]

21 (By Plaintiff as Against All Defendants, Including DOES 1 through 50.)

22 131. Plaintiff re re-alleges and incorporates herein each and every allegation contained in
23 each of the preceding paragraphs in this FAC as fully set forth herein by reference.

24 132. CAL. LAB. CODE § 226(b) states, in relevant part, that “[a]n employer... shall afford
25 current and former employees the right to inspect or receive a copy of records pertaining to their
26 employment, upon reasonable request to the employer.” CAL. LAB. CODE § 1198.5(a) likewise
27 states, in relevant part, that “[e]very current and former employee... has the right to inspect and
28 receive a copy of the personnel records that the employer maintains relating to the employee's

1 performance or to any grievance concerning the employee.”

2 133. An employer’s failure to comply with an employee’s request pursuant to section
3 226(b) of the California Labor Code within 21 days entitles the employee to of \$750 from the
4 employer. CAL. LAB. CODE §§ 226(c) and (f).

5 134. An employer’s failure to comply with an employee’s request pursuant to section
6 1198.5 of the California Labor Code within 30 days entitles the employee to of \$750 from the
7 employer. CAL. LAB. CODE §§ 1198.5(b) and (k).

8 135. On April 20, 2021, Plaintiff sent a letter to Defendants at 3011 Newport Blvd.,
9 Newport Beach, CA 92662, 121 McFadden St., Newport Beach, CA 92663, and 2920 Newport
10 Blvd., Newport Beach, CA 92663, which, based on information and belief, are addresses commonly
11 shared among the Defendants, formally requesting her entire employee file, including payroll
12 records.

13 136. As of the filing of this action, Defendants have ignored Plaintiff’s request altogether.

14 137. By virtue of the foregoing, Plaintiff seeks penalties pursuant to sections 226(f) and
15 1198.5(b) of the California Labor Code, and injunctive relief to enforce Defendants’ compliance
16 along with an award for costs and reasonable attorneys’ fees, pursuant to sections 226(h) and
17 1198.5(l) of the California Labor Code.

18 **XVIII.**

19 **TENTH CAUSE OF ACTION**

20 **For Penalties Pursuant To Private Attorney General Act (“PAGA”)**

21 **[CAL. LAB. CODE §§ 2699, *et. seq.*]**

22 **(By Plaintiff and the Putative Class as Against All Defendants, Including DOES 1 through 50.)**

23 138. Plaintiff re re-alleges and incorporates herein each and every allegation contained in
24 each of the preceding paragraphs in this FAC as fully set forth herein by reference.

25 139. The California Private Attorney General Act of 2004, codified under sections 2698-
26 2699 of the California Labor Code, expressly establishes that any provision of the California Labor
27 code that provides for a civil penalty to be assessed and collected by the LWDA, or any of its
28 departments, divisions, commissions, boards agencies or employees for a violation of the California

1 Labor Code. Alternatively, the civil penalties may be recovered through a civil action brought by an
2 aggrieved employee on behalf of himself or herself, and other current or former employees.

3 140. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
4 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized
5 to exercise the same discretion, subject to the same limitations and conditions, to assess the civil
6 penalties.

7 141. Plaintiff and the other members of the Class are “aggrieved employees” as defined by
8 section 2699 of the California Labor Code in that they are all current or former employees of
9 Defendants, and one or more of the alleged violations were committed against them.

10 142. Plaintiff seeks civil penalties for Defendants’ violations of the following Labor Code
11 sections and Industrial Wage Orders:

- 12 a. Failure to timely pay wages at the appropriate rate of pay in violation of CAL.
13 LAB. CODE §§ 204, 510, 511, 558, 1194, 1198, and 8 CAL. CODE REGS. §
14 11050(3), *et. seq.*;
- 15 b. Failure to provide meal periods as mandated by CAL. LAB. CODE §§ 226.7 and
16 512, and 8 CAL. CODE REGS. § 11050(11), *et. seq.*;
- 17 c. Failure to provide rest periods as mandated by CAL. LAB. CODE § 226.7, and 8
18 CAL. CODE REGS. § 11050(11), *et. seq.*;
- 19 d. Failure to provide prompt payment of wages to employees upon termination and
20 resignation in violation of CAL. LAB. CODE §§ 201, 202, and 203;
- 21 e. Failure to provide accurate itemized wage statements to employees in
22 violation of CAL. LAB. CODE §§ 226 and 226.3.

23 143. On July 15, 2021, Plaintiff electronically submitted written notice to the Agency,
24 setting forth her contentions and claims on behalf of herself and on behalf of all those similarly
25 situated. Copies of this letter was also mailed to Defendants named herein on July 15, 2021, via
26 certified mail.

27 144. The Agency has failed to respond within the time prescribed under section 2699.3,
28 subd. (a)(2)(A), of the California Labor Code, thereby exhausting Plaintiff’s administrative

1 remedies. Plaintiff therefore amends the existing complaint herein, as a matter of right, to add a
2 PAGA cause of action. CAL. LAB. CODE § 2699.3(a)(2)(C).

3 145. Pursuant to section 2699 of the California Labor Code, Plaintiff, individually and on
4 behalf of all aggrieved employees, requests and is entitled to recover from the Defendants wage
5 compensation for uncompensated wages according to proof, interest, attorney's fees, and costs
6 pursuant to CAL. LABOR CODE § 218.5, as well as all civil penalties against Defendants, including
7 DOES1 through 50, including but not limited to:

- 8 a. Where penalties are not already specified in the applicable provision of the
9 California Labor Code, penalties under CAL. LABOR CODE § 2699 in the
10 amount of \$100 for each aggrieved employee per pay-period for the initial
11 violation, and \$200 for each aggrieved employee per pay period for each
12 subsequent violation (*see* CAL. LAB. CODE § 2699(f)(2));
- 13 b. Penalties under CAL. LAB. CODE § 226.3 for violations of CAL. LAB. CODE §
14 226, in addition to any other penalty provided by law, of two hundred fifty
15 dollars (\$250) per aggrieved employee for the first violation, and one
16 thousand dollars (\$1,000) per aggrieved employee for each subsequent
17 violation;
- 18 c. Penalties under Title 8 of the California Code of Regulations, as set forth in
19 the applicable Wage Order, in the amount of \$50 for each aggrieved employee
20 per pay period for an initial violation, and \$100 for each aggrieved employee
21 per pay period for each subsequent violation (*see* CAL. LAB. CODE § 558);
- 22 d. Penalties under CAL. LABOR CODE § 210 in addition to, and entirely
23 independent and apart from, any other penalty provided in the California
24 Labor Code, in the amount of \$100 for each aggrieved employee per pay
25 period for the initial violation, and \$200 for each aggrieved employee per pay
26 period for each subsequent violation or any willful or intentional violation,
27 plus 25% of the wages wrongfully withheld; and
- 28 e. Any and all additional penalties and sums as provided by the California Labor

Code, and/or other statutes.

146. In addition, Plaintiff seeks and is entitled to have 75% of all penalties recovered pursuant to §§ 2699, *et seq.*, allocated to the LWDA, and 25% to the aggrieved employees.

147. Further, Plaintiff seeks and is entitled to recover reasonable attorneys' fees and costs pursuant to sections 2699, 218.5, 210 and 212 of the California Labor Code, and any other applicable statute, including CAL. CODE CIV. PROC. § 1032, *et seq.*

XIX.

ELEVENTH CAUSE OF ACTION

For Declaratory Relief

[CAL. CODE CIV. PROC. §§ 1060, *et seq.*]

(By Plaintiff and the Putative Class as Against All Defendants, Including DOES 1 through 50.)

148. Plaintiff re re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

149. An actual controversy has arisen and now exists between Plaintiff, on the one hand, and Defendant THE STAG BAR, INC., on the other hand, concerning their respective rights and duties under the purported Arbitration Agreement.

150. Defendant THE STAG BAR, INC. contends that the Arbitration Agreement is valid and enforceable to compel this Action into arbitration, and to strike the class allegations.

151. Plaintiff contends that the purported Arbitration Agreement is invalid, void, and unenforceable because it was entered into for an unlawful object contrary to an express provision and/or policy of law. *See* CAL. CODE. CIV. PROC. §§ 1550, 1596, 1598, and 1667.

152. Specifically, Plaintiff is informed and believes, and thereupon alleges, that Defendants are aware that their business practices articulated in paragraphs 50(a) through 50(f) are unfair, unlawful, and fraudulent, and therefore Defendants require their employees, including Plaintiff herein, to sign arbitration agreements with the intent to violate the Labor Code and applicable Wage Orders in an effort to insulate themselves from liability, as further alleged herein.

153. A withholding of judicial consideration as to whether the Arbitration Agreement is

1 void or enforceable will result in a hardship on the Plaintiff and the Class she seeks to represent that
2 a judicial declaration is necessary, under the circumstances presented, so that Plaintiff and
3 Defendants may ascertain their respective rights and obligations under the Arbitration Agreement.

4 **XX.**

5 **PRAYER**

6 WHEREFORE, Plaintiff prays for judgment as follows:

7 **A. On The First Cause Of Action:**

- 8 1. For compensatory damages, including unpaid wages, and other losses in an amount
9 according to proof;
- 10 2. For liquidated damages pursuant to CAL. LAB. CODE § 1194.2;
- 11 3. For an award of interest, including prejudgment interest at the legal rate pursuant to
12 CAL. LAB. CODE §§ 218.6, 1194, and CAL. CIV. CODE § 3289, *et. seq.*; and
- 13 4. For reasonable attorneys' fees and costs of suit pursuant to CAL. LAB. CODE §§ 218.5,
14 1194, and CAL. CODE CIV. PROC. § 1032.

15 **B. On The Second Cause Of Action:**

- 16 5. For compensatory damages, including lost wages, and other losses, in an amount in
17 an amount according to proof;
- 18 6. For an award of interest, including prejudgment interest at the legal rate pursuant to
19 CAL. LAB. CODE §§ 218.6, 1194, and CAL. CIV. CODE § 3289, *et. seq.*; and
- 20 7. For reasonable attorneys' fees and costs of suit pursuant to CAL. LAB. CODE §§ 218.5,
21 1194, and CAL. CODE CIV. PROC. § 1032.

22 **C. On The Third And Fourth Causes Of Action:**

- 23 8. For unpaid premium payments in an amount according to proof;
- 24 9. For reasonable costs of suit pursuant to CAL. CODE CIV. PROC. § 1032; and
- 25 10. For an award of interest, including prejudgment interest at the legal rate pursuant to
26 CAL. CIV. CODE § 3287.

27 **D. On The Fifth Cause Of Action:**

- 28 11. For reimbursement of all necessary expenditures, plus interest thereon pursuant to

1 CAL. LAB. CODE § 2802(b); and

2 12. For costs and attorneys' fees pursuant to CAL. LAB. CODE § 2802(c) and CAL. CIV.
3 CODE § 1032, *et. seq.*

4 **E. On The Sixth Cause Of Action:**

5 13. For statutory penalties pursuant to CAL. LAB. CODE § 226;

6 14. For attorneys' fees and costs pursuant to CAL. LAB. CODE § 226(g) and CAL. CODE
7 CIV. PROC. § 1032, *et. seq.*

8 **F. On The Seventh Cause Of Action:**

9 15. For statutory penalties CAL. LAB. CODE § 203;

10 16. For costs of suit pursuant to CAL. CODE CIV. PROC. § 1032.

11 **G. On The Eighth Cause Of Action:**

12 17. That Defendants, including DOES 1 through 50, be ordered and enjoined to pay
13 restitution and penalties to Plaintiffs due to Defendants' unlawful and/or unfair activities, pursuant to
14 Business and Professions Code §§ 17200-05;

15 18. That Defendants, including DOES 1 through 50, further be enjoined to cease and
16 desist from unlawful and/or unfair activities in violation of Business and Professions Code § 17200,
17 *et. seq.*;

18 19. For costs of suit pursuant to CAL. CODE CIV. PROC. § 1032; and

19 20. For attorneys' fees pursuant to CAL. CODE CIV. PROC. § 1021.5.

20 **H. On The Ninth Cause Of Action:**

21 21. For penalties in the amount of \$1,500 pursuant to CAL. LAB. CODE §§ 226(f) and
22 1198.5(b);

23 22. For injunctive relief pursuant to CAL. LAB. CODE §§ 226(h) and 1198.5(l); and

24 23. For reasonable costs, including attorneys' fees, pursuant to CAL. LAB. CODE §§
25 226(h) and 1198.5(l).

26 **I. On the Tenth Cause of Action:**

27 24. Penalties pursuant to CAL. LABOR CODE § 2699(f)(2) in the amount of \$100 for each
28 aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee

1 per pay period for each subsequent violation;

2 25. Penalties under CAL. LAB. CODE § 226.3 for violations of CAL. LAB. CODE § 226, in
3 addition to any other penalty provided by law, of two hundred fifty dollars (\$250) per aggrieved
4 employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each
5 subsequent violation;

6 26. Penalties under Title 8 of the California Code of Regulations, as set forth in the
7 applicable Wage Order, in the amount of \$50 for each aggrieved employee per pay period for an
8 initial violation, and \$100 for each aggrieved employee per pay period for each subsequent violation
9 (*see* CAL. LAB. CODE § 558);

10 27. Penalties under CAL. LABOR CODE § 210 in the amount of \$100 for each aggrieved
11 employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay
12 period for each subsequent violation or any willful or intentional violation, plus 25% of the wages
13 wrongfully withheld;

14 28. Any and all additional penalties and sums as provided by the CAL. LABOR CODE
15 and/or other statutes; and

16 29. Reasonable attorney's fees and costs pursuant to sections 2699, 218.5, 210 and 212 of
17 the California Labor Code, and any other applicable statute.

18 **J. On the Eleventh Cause of Action:**

19 30. For a declaration of the parties' rights under the Arbitration Agreement at issue in
20 this FAC.

21 **K. On Causes Of Action One Through Eight:**

22 31. For an order granting class certification.

23 **L. On All Causes Of Action:**

24 32. For costs of suit pursuant to Cal. Code Civ. Proc. § 1032; and

25 33. For other and further relief as the Court deems just and proper.

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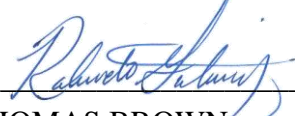
XXI.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all triable claims.

Dated: October 4, 2021

**BROWN WHITE & OSBORN LLP
LAW OFFICE OF RICHARD KIM, PC**

By:  _____
THOMAS BROWN
ROLANDO J. GUTIERREZ
RICHARD KIM

Attorneys for Plaintiff and the Putative Class