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Clerk of the Superior Court
By Eddie De La Torre, Deputy Clerk

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

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11 DANTE ANGOTTI, on behalf of the State of
California and all aggrieved employees,

12
13 Plaintiff,

14 vs.

15 AZUL HOSPITALITY GROUP, LLC; AZUL
16 HOSPITALITY MANAGEMENT, LLC;
AZUL HOSPITALITY, LLC; AZUL
17 HOSPITALITY – BROADWAY, LLC;
AZUL HOSPITALITY – GLENDALE, LLC;
18 AZUL HOSPITALITY – NORTH BAY,
LLC; AZUL HOSPITALITY – PASO
19 ROBLES, LLC; AZUL HOSPITALITY –
20 PH, LLC; AZUL HOSPITALITY – RB, LLC;
AZUL HOSPITALITY – SACRAMENTO,
21 LLC; AZUL HOSPITALITY – SRSB, LLC;
AZUL HOSPITALITY – GASLAMP, LLC;
22 and DOES 1 through 20, inclusive,

23 Defendants.
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Case No. 37-2020-00019008-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

1. **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004 (LABOR CODE § 2698
ET SEQ.)**

1 Plaintiff DANTE ANGOTTI (“Plaintiff”) on behalf of the State of California and as an
2 “aggrieved employee” acting as a private attorney general under the Labor Code Private
3 Attorneys General Act of 2004 (“PAGA,” Labor Code § 2698 *et seq.*) brings this representative
4 action against Defendants AZUL HOSPITALITY GROUP, LLC.; AZUL HOSPITALITY
5 MANAGEMENT, LLC; AZUL HOSPITALITY, LLC; AZUL HOSPITALITY –
6 BROADWAY, LLC; AZUL HOSPITALITY – GLENDALE, LLC; AZUL HOSPITALITY –
7 NORTH BAY, LLC; AZUL HOSPITALITY – PASO ROBLES, LLC; AZUL HOSPITALITY
8 – PH, LLC; AZUL HOSPITALITY – RB, LLC; AZUL HOSPITALITY – SACRAMENTO,
9 LLC; AZUL HOSPITALITY – SRSB, LLC; AZUL HOSPITALITY – GASLAMP, LLC; and
10 DOES 1 through 20 (collectively referred to herein as a joint employer and integrated
11 enterprise, “AZUL” or “Defendant”) and alleges on information and belief as follows:

12 **NATURE OF ACTION**

13 1. This is a civil enforcement action brought under Labor Code § 2698 *et seq.*
14 Plaintiff seeks to recover civil penalties for each violation of the Labor Code committed by
15 AZUL.

16 2. “Notwithstanding any other provision of law, any provision of this code that
17 provides for a civil penalty to be assessed and collected by the Labor and Workforce
18 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
19 employees, for a violation of this code, may, as an alternative, be recovered through a civil
20 action brought by an aggrieved employee on behalf of himself or herself and other current or
21 former employees pursuant to the procedures specified in Section 2699.3.” (Labor Code
22 § 2699(a)).

23 3. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and
24 on behalf of the State of California and all other current and former non-exempt employees of
25 AZUL who work or worked within the State of California within the one-year period prior to
26 the date on which Plaintiff provided written notice to the Labor and Workforce Development
27 Agency (“LWDA”) and AZUL under Labor Code § 2699.3 and continuing through the present.

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1 4. Plaintiff worked during this period and is an “aggrieved employee” because
2 Plaintiff was employed by AZUL and suffered one or more of the Labor Code violations
3 committed by AZUL which are alleged in this Representative Action Complaint.

4 5. On March 31, 2020, Plaintiff gave written notice by online filing with the
5 LWDA and by certified mail to all of the AZUL defendants of the specific provisions of the
6 Labor Code alleged to have been violated, including the facts and theories to support the alleged
7 violations. Plaintiff paid the requisite filing fee to the LWDA.

8 6. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, the
9 AZUL defendants did not give written notice by certified mail to Plaintiff providing a
10 description of any actions taken to cure the alleged violations.

11 7. Now that at least 65 days have passed from Plaintiff notifying the AZUL
12 defendants of these violations, without any notice of cure from them or notice from the LWDA
13 of its intent to investigate the alleged allegations and issue the appropriate citations to
14 Defendant, Plaintiff exhausted all prerequisites and commences this civil action under Labor
15 Code § 2699.

JURISDICTION

17 8. Jurisdiction of this action is proper in this Court under Article VI, § 10 of the
18 California Constitution. The civil penalties sought in this action exceed the minimum
19 jurisdictional limits of this Court. All of Plaintiff’s claims arise under California law.

VENUE

21 9. Venue as to each defendant is proper in this judicial district under Code of Civil
22 Procedure §§ 395 and 395.5 because AZUL conducts substantial business in this county,
23 employed Plaintiff in this county, and committed at least some of the alleged violations in this
24 county.

AGGRIEVED EMPLOYEES

26 10. Plaintiff DANTE ANGOTTI worked for AZUL in San Diego County until he
27 was laid off due to COVID-19 in March 2020. AZUL classified Plaintiff as an hourly, non-
28 exempt employee. Plaintiff worked as a server.

1 11. The State of California, via the LWDA, is the real party in interest in this action.

2 12. The “aggrieved employees” in this action are all current and former non-exempt
3 employees of AZUL who work or worked within the State of California and who experienced
4 one or more of the Labor Code violations committed by AZUL during the period from March
5 31, 2019 continuing through the present.

6 13. Unless otherwise stated, all allegations in this Representative Action Complaint
7 occurred during the period from March 31, 2019 through the present (the “PAGA Period”).

8 **AZUL DEFENDANTS**

9 14. Defendants AZUL HOSPITALITY GROUP, LLC; AZUL HOSPITALITY
10 MANAGEMENT, LLC; AZUL HOSPITALITY, LLC; AZUL HOSPITALITY –
11 BROADWAY, LLC; AZUL HOSPITALITY – GLENDALE, LLC; AZUL HOSPITALITY –
12 NORTH BAY, LLC; AZUL HOSPITALITY – PASO ROBLES, LLC; AZUL HOSPITALITY
13 – PH, LLC; AZUL HOSPITALITY – RB, LLC; AZUL HOSPITALITY – SACRAMENTO,
14 LLC; AZUL HOSPITALITY – SRSB, LLC; AZUL HOSPITALITY – GASLAMP, LLC are
15 each respectively California domestic limited liability companies that do business throughout
16 California.

17 15. AZUL’s corporate headquarters where employment decisions are made by
18 management and where payroll and employee recordkeeping functions are performed is in San
19 Diego County.

20 16. AZUL represents that it is a high-end luxury hotel and resort management
21 company. AZUL’s website states that “AZUL has a robust infrastructure of industry
22 professionals with extensive experience and expertise in all aspects of hotel management.
23 AZUL management will maximize property revenues, including each business outlet in the
24 hotel or resort. Top-line emphasis is paired with rigorous cost controls and best-in-class service
25 standards, to ensure the strongest possible bottom line.” (AZUL Hospitality Group | San Diego,
26 California, <https://azulhospitalitygroup.com> [June 3, 2020]).

27 17. AZUL is structured such that each of its luxury hospitality properties is a
28 separate limited liability company, but are run by common management under common

1 employment policies and control from a central location. AZUL's properties include AZUL
2 HOSPITALITY – BROADWAY, LLC, AZUL HOSPITALITY – GLENDALE, LLC, AZUL
3 HOSPITALITY – NORTH BAY, LLC, AZUL HOSPITALITY – PASO ROBLES, LLC,
4 AZUL HOSPITALITY – PH, LLC, AZUL HOSPITALITY – RB, LLC, AZUL
5 HOSPITALITY – SACRAMENTO, LLC; AZUL HOSPITALITY – SRSB, LLC, AZUL
6 HOSPITALITY – GASLAMP, LLC. Plaintiff is informed, believes and alleges that each of the
7 foregoing entities represents a separate property where aggrieved employees work, though
8 AZUL itself constitutes a single employer under California law.

9 18. Plaintiff alleges on information and belief that AZUL HOSPITALITY GROUP,
10 LLC., AZUL HOSPITALITY MANAGEMENT, LLC and/or AZUL HOSPITALITY, LLC are
11 joint employers of Plaintiff and the aggrieved employees and part of a common integrated
12 enterprise with each other and with the other AZUL defendants. Plaintiff alleges that these
13 entities, in particular, are responsible for hiring and firing aggrieved employees, supervising and
14 controlling their hours, schedules and conditions of employment, determining their rate of pay
15 and method of payment, maintaining employment records, and otherwise engaging, suffering or
16 permitting to the aggrieved employees to work at each of the properties mentioned in the
17 preceding paragraph.

18 19. Although the aggrieved employees work at different properties throughout
19 California under the AZUL portfolio of properties, AZUL operates as a joint employer and as a
20 single and common integrated enterprise. AZUL, through its management and human resources
21 team, operates as a single unit with respect to employment and personnel decisions to maximize
22 internal efficiency and reduce redundancy within the AZUL organization. Numerous written
23 employment policies, notices, and correspondence evidence the interrelation of operations and
24 the common management and control AZUL maintains over its individual properties.

25 20. AZUL's interrelation of operations, common management, centralized control
26 over labor relations, and common ownership and financial control render AZUL a joint
27 employer and integrated enterprise with respect to Plaintiff and the other aggrieved employees.
28 The following facts are illustrative of AZUL integrated operations and employment of the

1 aggrieved employees, such that it is jointly and severally liable for civil penalties under the
2 PAGA:

3 21. Plaintiff worked at an AZUL hotel in downtown San Diego. Plaintiff's wage
4 statements list AZUL HOSPITALITY- BROADWAY, LLC as the employer.

5 22. The Labor Code § 2810.5 "Notice to Employee" that AZUL provided to Plaintiff
6 and, on information and belief, other aggrieved employees, upon hire list the following AZUL
7 defendants as the employer:

8 a. The "Legal Name of Hiring Employer" is AZUL HOSPITALITY, LLC;
9 AZUL HOSPITALITY – BROADWAY, LLC; AZUL HOSPITALITY –
10 GASLAMP, LLC; AZUL HOSPITALITY – GLENDALE, LLC; AZUL
11 HOSPITALITY – NORTH BAY, LLC; AZUL HOSPITALITY – PH, LLC;
12 AZUL HOSPITALITY – RB, LLC; AZUL HOSPITALITY- SRSB, LLC.

13 b. The "Physical Address of Hiring Employer's Main Office" is 800 W Ivy
14 Street, San Diego, CA 92101, which is the corporate headquarters for AZUL.

15 c. The "Hiring Employer's Telephone Number" is for the corporate
16 headquarters for all AZUL defendants.

17 d. The Notice is signed and acknowledged by the Corporate Director of Human
18 Resources for all AZUL defendants.

19 23. The "Mutual Agreement to Arbitrate Claims," which AZUL required aggrieved
20 employees like Plaintiff to sign and which prevents them from pursuing a wage claim in civil
21 court on a class-wide basis, lists "Azul Hospitality Group" as the "Employer" and "Company"
22 to whom Plaintiff is bound to arbitrate all employment-related claims against: "Differences may
23 arise between the Employer and Employee during or following Employee's employment with
24 the Company." AZUL's arbitration agreement, applicable to Plaintiff and, on information and
25 belief, other aggrieved employees, is drafted as applying to all disputes between AZUL and the
26 employee-signatory, including "owners, directors, officers, employees, agents, related and
27 affiliated entities. The employer-signatory for AZUL on the arbitration agreement is the
28 Corporate & Staff Services Manager for all AZUL defendants.

1 24. AZUL maintains a common “AZUL HOSPITALITY” employee handbook,
2 which provides company-wide employment policies, procedures and practices that apply to
3 Plaintiff and other aggrieved employees at various properties. In addition to including AZUL’s
4 company-wide philosophies, policies, rules, benefits, pay and paycheck practices, performance
5 review and disciplinary regulations, and leave entitlements, the AZUL handbook includes a
6 statement from the Chief Executive Officer and Chief Operating Officer welcoming all
7 aggrieved employee staff members to the AZUL team.

8 25. AZUL’s “Meal Period Waiver Request” document applies to Plaintiff and all
9 AZUL aggrieved employees on a company-wide basis and is also signed by the Corporate &
10 Staff Services Manager for all AZUL defendants on the waiver form provided to Plaintiff.

11 26. AZUL’s application form for new hires used for aggrieved employees, including
12 Plaintiff, seeks applicant certification for AZUL HOSPITALITY, LLC to make the hiring
13 decision for Plaintiff and other aggrieved employees by conducting background checks,
14 examining references, conducting pre-hire drug and alcohol testing, among other actions
15 relating to AZUL’s employment, and hiring and firing of Plaintiff and other aggrieved
16 employees.

17 27. Plaintiff alleges that AZUL’s payroll systems are coded in the same way for all
18 aggrieved employees, such that the payroll violations alleged in this Representative Action
19 Complaint occurred for all aggrieved employees of AZUL regardless of the property the
20 aggrieved employee worked at (e.g., AZUL HOSPITALITY – BROADWAY, LLC, AZUL
21 HOSPITALITY – GASLAMP, LLC, et al.). AZUL maintained a centralized human resource
22 department at its corporate headquarters with personnel who oversaw and controlled the day to
23 day operations of the organization, including the payroll policies and practices that applied to
24 Plaintiff and other aggrieved employees who worked throughout California. AZUL issued the
25 same uniform and formatted wage statements and payment mechanisms for all non-exempt,
26 hourly employees in California, irrespective of their location or position. AZUL maintained
27 common payroll and time records using common software and data entry systems. AZUL
28 utilized the same methods and formulas when calculating and paying wages due to Plaintiff

1 and other aggrieved employees in California. AZUL maintained common policies with respect
2 to the payment of wages and meal and rest period premiums for its workforce. AZUL
3 developed and implemented the respective company-wide employment policies and practices
4 and maintained employment records at the corporate headquarters.

5 28. Dozens of other employment policies and practices reflect AZUL's common
6 employment of Plaintiff and the aggrieved employees. AZUL acts directly and indirectly in a
7 joint and single interest in relation to its employment and management of the aggrieved
8 employees.

9 29. Indeed, all defendants in this action are employers or joint employers and part of
10 a common integrated enterprise in their capacity and operation of AZUL, as each defendant
11 exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved
12 employees, suffers and permits them to work, and engages the workforce creating a common
13 law employment relationship. Additionally, all defendants have common ownership, common
14 management, interrelationship of operations, and centralized control over labor relations and are
15 therefore part of a common integrated enterprise.

16 30. Plaintiff further alleges that each defendant acted in all respects pertinent to this
17 action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in a
18 common integrated enterprise, or in some other capacity on behalf of the employers of Plaintiff
19 and the aggrieved employees, such that the acts and omissions of each defendant are legally
20 attributable to all others rendering each of them liable for the violations and civil penalties plead
21 in this action.

22 31. The true names and capacities, whether individual, corporate, associate, or
23 otherwise, of the parties sued as Defendants DOES 1 through 20, inclusive, are unknown to
24 Plaintiff, who sues them by such fictitious names under Code of Civil Procedure § 474. On
25 information and belief, Plaintiff alleges Defendants DOES are legally responsible in some
26 manner for the acts and omissions alleged herein. Plaintiff will seek leave to amend this
27 Complaint to reflect the true names and capacities of DOE Defendants when they become
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1 known. All references to Defendant in this Representative Action Complaint mean and refer to
2 Defendant DOES 1 through 20, inclusive.

3 **GENERAL ALLEGATIONS**

4 32. ***Overtime (Regular Rate of Pay) Violations.*** Defendant violated Labor Code
5 §§ 204, 510, 558, 1194, and 1198 and the IWC Wage Orders by failing to timely pay wages
6 owed at the lawful regular rate of pay for all overtime hours worked by Plaintiff and the
7 aggrieved employees. In pay periods when Plaintiff and other aggrieved employees worked
8 overtime and were paid a portion of mandatory service charges (i.e., automatic 18 percent
9 customer charge), Defendant did not factor this sum into their regular rate of pay for purposes
10 of overtime calculation and payment. Plaintiff's wage statement with the pay date of
11 12/20/2019 provides one example of Defendant's regular rate violation that applies to other
12 aggrieved employees. Plaintiff was paid overtime at a rate of \$18.00 per hour, which was one
13 and one-half times his straight time hourly rate of \$12.00. In this pay period, Plaintiff also
14 earned Banquet Tips, Charge Tips, and Service Charges. Plaintiff alleges that some of these
15 sums were not gratuities which may be excluded from the regular rate of pay under California
16 law, but rather automatic charges of 15 to 18 percent of the customer bill, which Defendant
17 pays to aggrieved employees as additional compensation. Defendant's policy is to charge
18 customers mandatory service charges for banquets or large groups, for events, for vouchers,
19 among other reasons, and then pay a portion of that automatic charge as additional
20 remuneration to the aggrieved employees. However, unlike gratuities, these amounts must be
21 factored into the regular rate of pay when aggrieved employees earn overtime, such that the
22 overtime rate for Plaintiff would be higher than a one and one-half time multiple of the straight
23 time hourly rate for Plaintiff and aggrieved employees. As a result of this company-wide
24 practice, Defendant failed to pay Plaintiff and the other aggrieved employees all wages owed at
25 the lawful rate on regularly scheduled paydays in Labor Code §§ 204, 510, 558, 1194, and
26 1198.

27 33. ***Unlawful Gratuity Practices.*** Defendant violated Labor Code §§ 351 and 353
28 by maintaining an unlawful tip pooling policy that applied to all aggrieved employees who

1 earned such tips, gratuities and mandatory service charges. Plaintiff alleges that the tips and
2 gratuities owed under this section were untimely paid, miscalculated and shorted, and included
3 unlawful deductions. Plaintiff alleges that managers and/or the employer entity shared in the
4 earnings under the pooling policy and that the pooling policy was unlawful because employees
5 not on the particular shift or in the line of service also shared in the tips, to the loss of the
6 employee who earned those tips. Furthermore, Defendant's policy constitutes an illegal taking
7 of gratuities under the arrangement because Defendant prohibited Plaintiff and other employees
8 from accepting voluntary tips when the customer also paid a mandatory service charge (i.e.,
9 charged pursuant to a voucher payment). Specifically, Plaintiff alleges that Defendant shorted
10 pay for Plaintiff and other aggrieved employees where a customer paid with a hotel voucher
11 (triggering the automatic service charge) and then left an additional tip. Plaintiff alleges that in
12 such cases the tips of employees were reduced or withheld under the vague and/or unwritten
13 policy of Defendant. Defendant failed to maintain an unambiguous written tip or tip pooling
14 policy, in further violation of these sections. Because Defendant failed to provide Plaintiff and
15 other aggrieved employees records of such remuneration earned upon request, Plaintiff cannot
16 fully calculate Defendant's underpayments at this time. Plaintiff alleges that Defendant failed
17 to keep accurate records of the gratuities (and failed to make the records open to inspection) in
18 violation of Labor Code § 353.

19 34. ***Meal Period Violations.*** Defendant violated Labor Code §§ 226.7 and 512 and
20 the IWC Wage Orders by failing to provide compliant meal periods or pay meal period
21 premiums in lieu thereof. For a portion of the PAGA Period for Plaintiff and for some or all of
22 the PAGA Period for other aggrieved employees, Defendant did not maintain a lawful meal
23 period waiver that allowed for Defendant and the aggrieved employees to waive meal periods
24 for shifts of less than six hours in length. During such times, Defendant required Plaintiff and
25 other aggrieved employees to work shifts of five hours or more, but did not provide a timely,
26 uninterrupted 30-minute meal period or a payment of a meal period premium in lieu thereof for
27 those shifts in excess of five hours (with no meal period waiver in effect). Additionally, on
28 days in which Plaintiff and other aggrieved employees did not receive an uninterrupted 30-

1 minute meal period within the first five hours of their shift, Defendant failed to pay a
2 corresponding meal period premium at one hour their regular rate of compensation. Plaintiff
3 alleges, on information and belief, that this practice extends to second meal periods for shifts in
4 excess of 10 hours in a workday, as Defendant had a policy and frequent practice of not paying
5 meal period premiums when due to the aggrieved employees. Additionally, throughout the
6 entire PAGA Period, on occasions when Defendant did pay meal period premiums, Defendant
7 paid them at the respective straight time hourly rate rather than the “regular rate of
8 compensation” applicable to each aggrieved employee. Plaintiff and the aggrieved employees
9 experienced missed, short, interrupted, and late meal periods. Defendant’s handbook states that
10 a “Meal Period Penalty is applied when ... Employee does not clock out for lunch by the end of
11 the 5th or 10th hour where applicable” yet Defendant did not follow this policy and pay such
12 premiums during the PAGA Period and when meal period waivers were not in effect.
13 Defendant also failed to pay all meal period premiums for all non-compliant first or second
14 meal periods (i.e., missed, short, and interrupted meal periods).

15 35. ***Rest Period Violations.*** Defendant violated Labor Code § 226.7 and the IWC
16 Wage Orders by failing to authorize and permit compliant rest periods for every 4 hours worked
17 or major fraction thereof or pay rest period premiums in lieu thereof. Additionally, on days in
18 which Plaintiff and other aggrieved employees did not receive at least one 10-minute rest period
19 for each four-hour period worked (or major fraction thereof), Defendant failed to pay a
20 corresponding rest period premium at one hour their regular rate of compensation. Unlike meal
21 period premiums, Defendant never paid rest period premiums to Plaintiff or, on information and
22 belief, other aggrieved employees despite substantial work performed during rest periods due to
23 business demands and understaffing. Defendant’s employee handbook does not include a
24 written policy stating that rest period premiums will be paid for non-compliant rest periods.

25 36. ***Failure to Timely Pay Wages.*** Defendant violated Labor Code § 204 and the
26 IWC Wage Orders by failing to pay all wages earned at least twice each calendar month on
27 days designated in advance as the regular paydays. Defendant committed a series of Labor
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1 Code violations which resulted in underpayment of wages, overtime and premiums to Plaintiff
2 and the aggrieved employees. As a result, Defendant has failed to timely pay those wages.

3 37. ***Failure to Pay All Wages Upon Separation.*** Defendant violated Labor Code
4 § 201, 202 and 203 by failing to timely pay all wages and premiums owed to the aggrieved
5 employees who terminated their employment during the PAGA Period on their final day of
6 employment (for those who were terminated or quit by giving at least 72 hours' prior notice) or
7 within 72 hours thereof (for who quit without giving notice), as applicable. Defendant failed to
8 pay waiting time penalties when owed based on its failure to pay all wages upon termination.
9 Wages were owed and unpaid for the aggrieved employees upon termination of employment
10 due to Defendant's policies and practices of failing to pay all wages owed at the lawful rate

11 38. ***Wage Statement Violations.*** Defendant violated Labor Code § 226 and the IWC
12 Wage Orders by failing to accurately state the gross wages earned, total hours worked, net
13 wages earned, and all hourly rates in effect and the total number of hours worked at each rate of
14 pay each pay period for Plaintiff and the other aggrieved employees. The wage statements
15 issued to Plaintiff and the aggrieved employees were inaccurate because Defendant did not pay
16 overtime at the regular rate of pay, rendering the overtime rate stated on the wage statement
17 incorrect along with the gross and net wages. As discussed above, Defendant also
18 mischaracterized tips, gratuities and service charges by failing to lawfully distinguish between
19 "Banquet Tips," "Charge Tips," "Service Charges," "Gratuities" and other forms of
20 remuneration on the wage statements for Plaintiff and other aggrieved employees – at some
21 point Defendant simply characterized all additional forms of remuneration together on a
22 common line item, despite some of the forms of pay being discretionary and some being non-
23 discretionary and required to be included in the regular rate of pay/compensation. Plaintiff and
24 other aggrieved employees were injured as a result of these wage statements because they failed
25 to provide the information necessary for Plaintiff and other aggrieved employees to discern
26 what amounts they were paid and whether the payments were correct. Coupled with
27 Defendant's failure to maintain and provide adequate records of tips, gratuities and service
28 charges earned by each employee, Plaintiff and other aggrieved employees were effectively

1 deprived of the ability to discern their wages earned and paid from the wage statements alone.
2 As a result, Defendant provided wage statements that contain an inaccurate hourly rate for
3 overtime (i.e., not based on the regular rate), mischaracterizes wages (i.e., gratuities, service
4 charges, tips) such that they are included in the incorrect line item (affecting the regular rate).
5 Due to the underpayments, the gross and net wages earned each pay period are inaccurate. The
6 wage statements provided to Plaintiff and other aggrieved employees do not accurately itemize
7 all applicable hourly rates in effect during the pay period and the corresponding number of
8 hours worked at each hourly rate. As a result, Plaintiff and other aggrieved employees cannot
9 promptly and easily determine from the wage statement alone the wages paid or earned without
10 reference to other documents or information. These wage statement violations are significant
11 because they sowed confusion among Plaintiff and other aggrieved employees with respect to
12 what amounts were owed and paid, at what regular and overtime rates, and how those amounts
13 were calculated. Additionally, the wage statements do not list all meal and rest period
14 premiums owed or paid. These violations affect all aggrieved employees.

15 39. ***Failure to Maintain Accurate Payroll Records.*** Because of the violations set
16 forth in this Representative Action Complaint, including Defendant's failure to accurately
17 maintain records and record and pay for all hours worked at the appropriate rates, Defendant
18 violated Labor Code § 1174 and the IWC Wage Orders, including section 7 of Wage Order No.
19 5, by failing to maintain accurate payroll records showing daily hours worked and the wages
20 paid to each employee. As a result, Defendant is liable for a civil penalty of \$500 per employee
21 to Plaintiff and each aggrieved employee under Labor Code § 1174.5. As discussed above,
22 Defendant further failed to maintain accurate records and make those records available for
23 inspection, as required by Labor Code §§ 350 to 356 (dealing with gratuities).

24 40. ***Attorneys Fees and Costs.*** Plaintiff was compelled to retain the services of
25 counsel to file this court action to protect Plaintiff's interests and those of the other aggrieved
26 employees and to assess and collect civil penalties owed by Defendant. Plaintiff has thereby
27 incurred attorneys' fees and costs, which Plaintiff is entitled to receive on all cause of action
28 under Labor Code § 2699(g) and Code of Civil Procedure § 1021.5.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

41. Plaintiff incorporates in this cause of action all paragraphs outside this section with the same force and effect as if fully set forth herein.

42. Defendant committed Labor Code violations against Plaintiff and the other aggrieved employees. Plaintiff brings this representative action as an individual and on behalf of the State of California and all other aggrieved employees of Defendant to recover civil penalties under Labor Code § 2699(a) and (f) for the following Labor Code violations committed against Plaintiff and other aggrieved employees during the PAGA Period:

- a. Failing to pay all earned overtime compensation for all overtime hours worked at the lawful regular rate of pay in violation of Labor Code §§ 510, 1194 and 1198;
- b. Failure to maintain lawful gratuity practices and maintain accurate records of such gratuities in violation of Labor Code § 351 and 353;
- c. Failing to provide all statutorily-compliant meal periods or payment of meal period premiums in violation of Labor Code §§ 226.7 and 512;
- d. Failing to authorize and permit all statutorily-compliant rest periods or payment of rest period premiums in violation of Labor Code §§ 226.7 and 516;
- e. Failing to timely pay all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- f. Failing to timely pay all final wages due to upon separation of employment or waiting time penalties in violation of Labor Code §§ 201, 202 and 203;
- g. Failing to furnish complete, accurate itemized wage statements each pay period in violation of Labor Code § 226;
- h. Failure to maintain accurate records in violation of Labor Code § 1174;

43. For these violations, Plaintiff seeks to recover the following civil penalties:

- a. Civil penalties recoverable under Labor Code § 2699(a);

- 1 b. Civil penalties under Labor Code § 2699(f)(2), for all provisions of the Labor
2 Code for which a civil penalty is not specifically provided (including those
3 sections identified in Labor Code § 2699.5), in the amount of \$100 for each
4 aggrieved employee per pay period for all initial violations plus \$200 for each
5 aggrieved employee per pay period for all subsequent violations;
- 6 c. Civil penalties under Labor Code § 226.3 in the amount of \$250 per employee
7 per violation for an initial citation and \$1,000 per employee for each subsequent
8 violation;
- 9 d. Civil penalties under Labor Code § 558(a)(1), (2) for all violations in the amount
10 of \$50 for each underpaid employee per pay period for all initial violations plus
11 \$100 for each underpaid employee per pay period for all subsequent violations;
- 12 e. Civil penalties under Labor Code § 1197.1 for each wage violation in the amount
13 of \$100 for each underpaid employee per pay period for all initial violations and
14 \$250 for each underpaid employee per pay period for all subsequent violations;
- 15 f. Civil penalties under Labor Code § 1174.5 for each recordkeeping violation in
16 the amount of \$500 per employee;

17 44. Plaintiff exclusively seeks to recover civil penalties as a private attorney general
18 under the PAGA and does not seek to recover underpaid wages or other damages in this action.

19 45. Plaintiff further seeks to recover attorneys' fees and costs under Labor Code
20 § 2699(g) and Code of Civil Procedure § 1021.5.

21 **PRAYER FOR RELIEF**

22 Plaintiff, on behalf of the State of California and all aggrieved employees as a private
23 attorney general, seeks the following relief against Defendants:

- 24 a. An award of all recoverable civil penalties;
- 25 b. Attorneys' fees and costs of suit; and
- 26 c. Such other relief as the Court may deem just and proper.

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1 Dated: June 5, 2020

FERRARO EMPLOYMENT LAW, INC.

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3 NICHOLAS J. FERRARO, ESQ.
4 Attorney for Plaintiff DANTE ANGOTTI

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