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7

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Superior Court of California,  
County of San Diego

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

11 TREVOR MORTON, a representative  
aggrieved employee,  
12

13 Plaintiffs,

14 vs.

15 ASSOCIATED MICROBREWRIES, LTD.,  
A California Limited Partnership d/b/a Karl  
16 Strauss Brewing Company; ASSOCIATED  
17 MICROBREWRIES, INC.,  
A California Corporation d/b/a Karl Strauss  
18 Brewing Company; and DOES 1 through 10,  
inclusive,  
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20 Defendants.  
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Case No. 37-2020-00016542-CU-OE-CTL

**REPRESENTATIVE ACTION  
COMPLAINT:**

1. Civil Penalties for Failure to Pay All Wages
2. Civil Penalties for Failure to Pay Overtime Wages
3. Civil Penalties for Unlawful Tip Pooling Practices
4. Civil Penalties for Failure to Provide Meal Periods and Pay Meal Period Premiums
5. Civil Penalties for Failure to Authorize and Permit Rest Periods and Pay Rest Period Premiums
6. Civil Penalties for Failure to Reimburse Business Expenses
7. Civil Penalties for Failure to Timely Pay Wages Owed
8. Civil Penalties for Failure to Pay Wages Upon Separation
9. Civil Penalties for Failure to Provide Accurate Itemized Wage Statements
10. Civil Penalties for Failure to Maintain Accurate Payroll Records

1 Plaintiff TREVOR MORTON (“Plaintiff”), as a representative aggrieved employee,  
2 hereby brings this Representative Action Complaint as the State of California’s designated  
3 proxy, on behalf of all current and former aggrieved employees of Defendants ASSOCIATED  
4 MICROBREWRIES, LTD., A CALIFORNIA LIMITED PARTNERSHIP and  
5 ASSOCIATED MICROBREWRIES, INC. (collectively, “Defendants”). Defendants do  
6 business as Karl Strauss Brewing Company. On information and belief, Plaintiff alleges as  
7 follows:

### 8 **JURISDICTION AND VENUE**

9 1. This is an enforcement action for civil penalties under the Private Attorneys  
10 General Act of 2004, codified as California Labor Code sections 2698 *et seq.* Plaintiff is an  
11 aggrieved employee who pursues civil penalties on behalf of the State of California against  
12 Defendants.

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

16 3. Venue as to each defendant is proper in this judicial district under Code of Civil  
17 Procedure sections 395 and 395.5 because Defendants reside in this county, maintain a principal  
18 place of business in this county, conduct substantial business in this county, employed Plaintiff  
19 in this county, and committed at least some of the alleged violations in this county.

### 20 **ADMINISTRATIVE EXHAUSTION**

21 4. On January 10, 2020, Plaintiff gave written notice by online filing with the  
22 Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of  
23 the specific provisions of the Labor Code alleged to have been violated, including the facts and  
24 theories to support the alleged violations. Plaintiff paid the requisite \$75 filing fee.

25 5. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,  
26 Defendants did not give written notice by certified mail to Plaintiff providing a description of  
27 any actions taken to cure the violations.

1 6. Now that 65 days have passed from Plaintiff notifying Defendants of these  
2 violations, without any notice of cure from Defendants or notice from the LWDA of its intent to  
3 investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff  
4 has exhausted all administrative prerequisites to file this civil action under Labor Code  
5 section 2699.

6 7. Plaintiff has standing as an aggrieved employee of Defendants to pursue civil  
7 penalties against Defendants because Defendants employed Plaintiff during the one-year period  
8 immediately preceding the date on which Plaintiff first gave written notice of the alleged  
9 violations to the LWDA and Defendants (the "PAGA Period") and because Plaintiff  
10 experienced one or more of the Labor Code violations alleged in this Representative Action  
11 Complaint during the PAGA Period. The PAGA Period is ongoing.

### **THE PARTIES**

12  
13 8. Plaintiff TREVOR MORTON is a California resident who resides in San Diego  
14 County. Plaintiff worked for Defendants at the Karl Strauss location in Sorrento Valley as a  
15 Server Assistant from October 2017 to January 2020. Defendant classified Plaintiff as an  
16 hourly, non-exempt employee.

17 9. The State of California, through the Labor and Workforce Development Agency,  
18 is the real party in interest in this action. Plaintiff serves as the PAGA representative to recover  
19 civil penalties on the State's behalf. Of the civil penalties recovered, 75 percent goes to the  
20 LWDA, leaving the remaining 25 percent for the "aggrieved employees."

21 10. The "aggrieved employees" in this action are all current and former non-exempt  
22 employees of Defendants who were subject to one or more of the violations alleged in this  
23 Representative Action Complaint during the PAGA Period.

24 11. Defendant ASSOCIATED MICROBREWRIES, LTD., is a California  
25 partnership that does business throughout California as Karl Strauss Brewing Company  
26 (hereinafter, "AML").  
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1           12. Defendant ASSOCATED MICROBREWERIES, INC. is a California  
2 corporation that does business throughout California as Karl Strauss Brewing Company  
3 (hereinafter "AMI").

4           13. Defendants AML and AMI are joint employers and part of a common integrated  
5 enterprise in their capacity as Karl Strauss Brewing Company because Defendants exercise  
6 control over the wages, hours, and working conditions of Plaintiff and the aggrieved employees,  
7 suffer and permit them to work, and engage the workforce creating a common law employment  
8 relationship. Additionally, Defendants have common ownership, common management,  
9 interrelationship of operations, and centralized control over labor relations.

10           14. According to Defendants' "Policies and Procedures Manual" (i.e., the employee  
11 handbook) in effect during the PAGA Period, Defendants AML and AMI were formed together  
12 in 1988 and have done business collectively as Karl Strauss Brewing Company. Defendants'  
13 represent that "AMI is a general partner of AML and employs the operative and management  
14 personnel. AML employs the non-management personnel." On information and belief,  
15 Defendant AML employs non-exempt employees and AMI employs exempt employees. All  
16 non-exempt employees of AML and AMI, if any, are aggrieved employees in this action.  
17 Defendants AML and AMI are jointly liable for civil penalties to the aggrieved employees.

18           15. The true names and capacities, whether individual, corporate, associate, or  
19 otherwise, of Defendants sued as DOES 1 through 10, inclusive, are unknown to Plaintiff, who  
20 sues Defendants by such fictitious names under Code of Civil Procedure section 474. On  
21 information and belief, Plaintiff alleges each DOE Defendant is legally responsible in some  
22 manner for civil penalties. Plaintiff will seek leave to amend this Complaint to reflect the true  
23 names and capacities of DOE Defendants when they become known.

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

3 **GENERAL ALLEGATIONS**

4 17. Defendants operate collectively as Karl Strauss Brewing Company, San Diego's  
5 oldest brewing company.

6 18. Defendants employ aggrieved employees throughout California, including at the  
7 following locations: Tasting Room & Beer Garden, Downtown San Diego, La Jolla, Sorrento  
8 Mesa, Carlsbad, 4S Ranch, Temecula, Anaheim, Downtown Los Angeles, Costa Mesa,  
9 Universal City Walk and at Brewery Weddings. Plaintiff alleges that current and former  
10 employees at these locations experienced Labor Code violations and that Defendants are liable  
11 accordingly.

12 19. Plaintiff worked as an hourly, non-exempt "Server Assistant" at Defendant's  
13 Sorrento Mesa location. Defendants employ many other hourly, non-exempt employees who  
14 are also aggrieved employees in this action.

15 ***Off-the-Clock Trainings and Reimbursements***

16 20. Defendants required Plaintiff and other aggrieved employees work off-the-clock  
17 without compensation. Defendants required Plaintiff and other aggrieved employees complete  
18 electronic trainings from home or before their shift using their personal cell phones or home  
19 computers, along with their own internet connection and data. The electronic trainings occurred  
20 approximately once per month.

21 21. Plaintiff and other aggrieved employees had to complete training modules that  
22 required them to watch a video and then score 100 percent on a quiz to satisfy the training  
23 requirement. Plaintiff and other aggrieved employees were required to repeat the videos and  
24 quizzes until they obtained the 100 percent accuracy score. These violations are evident from  
25 Defendants' records and training completion records. Defendants did not allow the requisite  
26 time to complete these trainings during paid work hours. Instead, Defendants required Plaintiff  
27 and other aggrieved employees to complete the required trainings on their personal,  
28 uncompensated hours using their personal devices and Internet connection without

1 compensation and without reimbursement for their use of personal communications devices for  
2 required work-related trainings.

3 22. Plaintiff and other aggrieved employees were not paid at the lawful minimum,  
4 regular, and overtime rates for these hours worked.

5 23. Plaintiffs and other aggrieved employees were not reimbursed for their use of  
6 their cell phones, home computers and Internet that they used based on Defendants' mandated  
7 training requirements.

8 ***Meetings Off-the-Clock and During "Meal Periods"***

9 24. Additionally, Defendants required Plaintiff and other aggrieved employees to  
10 attend and participate in "Salt Shaker" meetings before their shift started. Supervisors  
11 coordinated the "Salt Shaker" meetings before the scheduled shift. For Servers, the "Salt  
12 Shaker" meetings (and similar meetings under different names, such as general personnel  
13 meetings) were held during uncompensated meal periods. Defendants routinely required  
14 Servers and other staff to clock out for their 30-minute meal period *at the start of the scheduled*  
15 *shift* in order to use that uncompensated time to meet for "Salt Shaker" meetings. In other  
16 words, Servers were required to show up at the start of their scheduled shift, but remain off the  
17 clock for a fictional "meal period" where they were required to participate in the "Salt Shaker"  
18 meetings without pay.

19 25. In all cases, these mandatory meetings constituted compensable hours worked,  
20 but Defendants maintained a uniform policy of engaging the workforce for these meetings  
21 before the aggrieved employees clocked in and during meal periods where employees were  
22 supposed to be free from the direction and control of their employer.

23 ***Post-Shift Work Off-the-Clock***

24 26. Moreover, on many occasions Plaintiff and other aggrieved employees were  
25 scheduled to the end of the business day and were required to clean the restaurant off-the-clock,  
26 after their scheduled shift, without compensation at the appropriate regular, minimum or  
27 overtime rate.

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*Meal & Rest Period Violations*

1  
2 27. Plaintiff and other aggrieved employees were required to work through or  
3 receive untimely or interrupted meal and rest periods virtually every shift. On those occasions,  
4 they were not paid a meal or rest period premium. Defendants did not schedule, provide or  
5 permit timely meal or rest periods and would reprimand employees who were unavailable  
6 during their shift if they made an attempt to take meal or rest periods. Defendants required  
7 aggrieved employees to work through meal and rest periods (without payment of the required  
8 premium) due to understaffing, to meet customer demands, and to save on labor costs.

9 28. Defendants maintained a uniform policy and practice of not authorizing or  
10 permitting timely, uninterrupted rest periods of at least 10 minutes where Plaintiff and other  
11 aggrieved employees could take a break free and clear of Defendants' control. Defendants did  
12 not pay the required rest period premiums on such occasions.

13 29. Defendants failed to provide timely, off-duty 30-minute meal periods to Plaintiff  
14 and other aggrieved employees within the first five hours of work and second off-duty 30-  
15 minute meal periods to the extent they worked shifts of 10 hours or more.

16 30. Defendants did not maintain a valid lawful written meal period waiver for shifts  
17 of 6 hours or less, yet failed to pay Plaintiff and other aggrieved employees a meal period  
18 premium for shifts in excess of 5 hours. Meal periods were routinely missed, short, interrupted  
19 and untimely (i.e., late). Defendants records reflect hours worked in excess of 5 hours per  
20 workday without a meal period being recorded. On such occasions, Defendants failed to pay a  
21 meal period premium to Plaintiff and other aggrieved employees.

22 31. For many of the aggrieved employees, it was Defendants policy and practice to  
23 schedule working "meal periods" at the start of the shift where aggrieved employees were  
24 required to attend meetings or otherwise be under Defendants' control, yet Defendants did not  
25 pay aggrieved employees for this time at their hourly rate, nor did they provide a meal period  
26 premium.

27 32. Defendants' unlawful policy is demonstrated by a November 24, 2019 "Salt  
28 Shakers" meeting notice that states "We have a mandate to be 100% free of Break Violations.

1 This means: 1. If you would like a 10 min break tell a manager! We will get you one in a  
2 reasonable amount of time based on business volume. 2. If you have worked 5 hours you will  
3 be required to take a 30 [minute] unpaid meal break. 3. Scheduling changes are coming to  
4 facilitate these required breaks. 4. If you do work over 6 hours without taking a break[:] a. We  
5 will not adjust your time. b. You will not work off the clock. c. You will receive a final written  
6 warning.”

7 33. Plaintiff and aggrieved employees were required to work through rest periods;  
8 supervisors failed to authorize or permit rest periods; Defendants did not pay premiums if  
9 employees worked 5 hours or more without a meal period; Defendants were aware that changes  
10 were necessary to comply with the law (though none were implemented); Defendants treated  
11 the missed meal and rest periods as a disciplinary issue rather than a matter relating to employee  
12 compensation, but did not reprimand employees who regularly worked more than 5 hours per  
13 day without receiving a meal period unless they complained by asking for payment or a meal  
14 period premium.

#### 15 *Adjustments to Employee Time Records*

16 34. Defendants adjusted internal time records to avoid payment of hours in excess of  
17 scheduled hours, to avoid payment of hours at overtime rates, and to avoid paying meal period  
18 premiums. On information and belief, Plaintiff alleges that this is a systemic practice that is  
19 evidenced on some occasions by time records showing asterisks (\*) next to daily time entries  
20 indicating the manual adjustment by human resources and/or supervisory level employees.

#### 21 *Overtime Violations*

22 35. In addition to underpayment of overtime based on hours worked, Defendants  
23 failed to accurately calculate and pay Plaintiff and other aggrieved employees at the lawful  
24 “regular rate of pay” for purposes of overtime. Defendants improperly calculated the regular  
25 rate of pay by failing to include mandatory service charges and non-discretionary bonuses,  
26 awards, incentives, and other forms of benefits and remuneration in the computation of the  
27 regular rate of pay for purposes of overtime pay to Plaintiff and the aggrieved employees. For  
28 example, wage statements show Plaintiff earned “Tips,” “Group Sls Sc,” and “Award” in



1 various pay periods, but those amounts were not properly and accurately included in the regular  
2 rate of pay for Plaintiff or other aggrieved employees for the purpose of paying overtime. The  
3 “Award” line item is a non-discretionary bonus that was required to be included in the regular  
4 rate of pay. The “Group Sls Sc” was a mandatory service charge based on a standard policy  
5 (i.e., automatic 18 percent charge on certain customer bills such as large groups, banquets, etc.)  
6 that was also not included in the regular rate of pay in violation of California law. As a result,  
7 Plaintiff and aggrieved employees were underpaid and deprived of overtime compensation at  
8 the lawful rate.

9 ***Unlawful Tip Payment Practices***

10 36. Defendants enforced a mandatory tip pool. Defendants unlawfully allowed  
11 employees to share in the mandatory tip pool who were not considered to be in the line of  
12 service (e.g., cooks). Defendants routinely changed the tip pooling percentage attributed to  
13 Plaintiff and other aggrieved employees without notice, depriving them of earned gratuities and  
14 mandatory services charges.

15 ***Untimely Payment of Wages Each Pay Period/Upon Separation***

16 37. Based on the foregoing violations, Defendants routinely underpaid Plaintiff and  
17 other aggrieved employees or otherwise failed to pay at the lawful rate for all hours worked,  
18 mandatory service charges, and premiums owed when required to each pay period. As a result,  
19 Defendants are separately liable for not paying the full amount owed to Plaintiff and other  
20 aggrieved employees each payday.

21 38. Additionally, based on the foregoing violations, Plaintiff and other aggrieved  
22 employees who separate from employment during the PAGA Period were not paid all wages  
23 owed on their last day of employment or within 72 hours thereof.

24 ***Wage Statement Violations***

25 39. Defendants failed to issue accurate itemized wage statements to Plaintiff and  
26 other aggrieved employees each pay period. Plaintiff and other aggrieved employees were not  
27 furnished with complete and accurate wage statements that show all of the information required  
28 by Labor Code section 226, including, but not limited to, gross and net wages earned, total

1 hours worked, and all hourly rates in effect and the corresponding number of hours worked at  
2 each pay rate during the pay period.

3 40. First, because of the Labor Code violations set forth in this Complaint—  
4 including the off-the-clock hours worked and Defendants' failure to include all required forms  
5 of remuneration in the regular rate of pay for the purpose of paying overtime, Defendants have  
6 inaccurately stated, each pay period, gross wages earned, total hours worked, net wages earned,  
7 and all applicable hourly rates in effect and the corresponding number of hours worked at each  
8 hourly rate on each wage statement. Second, Defendants have further violated Labor Code  
9 section 226 by failing to include all gross and net wages earned on each wage statement in each  
10 pay period when Plaintiff or aggrieved employees were not paid at the proper overtime rate  
11 each time when Defendants' miscalculated the regular rate of pay. Third, Defendants did not  
12 include all meal or rest period premiums earned on the itemized wage statements. Fourth,  
13 Defendants did not accurately state the total hours worked by Plaintiff or other aggrieved  
14 employees each pay period.

15 ***Failure to Maintain Accurate Time Records***

16 41. As discussed above, Defendants failed to maintain accurate records of all hours  
17 worked and wages paid at the appropriate rate. Additionally, Defendants denied Plaintiff and,  
18 on information and belief, other aggrieved employees the opportunity to inspect or obtain  
19 employment records. Despite Plaintiff's requests to obtain his time records and records of his  
20 meal and rest periods, hours worked, gratuities and mandatory services charges, Defendants  
21 failed to provide those or make them available for inspection within the statutorily-proscribed  
22 time periods.

23 ***Attorneys' Fees and Costs***

24 42. Plaintiff was compelled to retain the services of counsel to file this court action  
25 to protect his interests and the interests of other aggrieved employees, and to assess and collect  
26 the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs,  
27 which he is entitled to receive on all causes of action under Labor Code section 2699(g).  
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**FIRST CAUSE OF ACTION**

**CIVIL PENALTIES FOR FAILURE TO PAY ALL WAGES**

**(AGAINST ALL DEFENDANTS)**

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

6 44. Labor Code section 2699(a) provides: “Notwithstanding any other provision of  
7 law, any provision of this code that provides for a civil penalty to be assessed and collected by  
8 the Labor and Workforce Development Agency or any of its departments, divisions,  
9 commissions, boards, agencies, or employees, for a violation of this code, may, as an  
10 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of  
11 himself or herself and other current or former employees pursuant to the procedures specified in  
12 Section 2699.3”

13 45. For purposes of this action, Plaintiff, as a representative of the State of  
14 California, will seek to invoke Labor Code section 1195.5 which states: “The Division of Labor  
15 Standards Enforcement shall determine, upon request, whether the wages of employees, which  
16 exceed the minimum wages fixed by the commission, have been correctly computed and paid.  
17 For this purpose, the division may examine the books, reports, contracts, payrolls and other  
18 documents of the employer relative to the employment of employees. The division shall  
19 enforce the payment of any sums found, upon examination, to be due and unpaid to the  
20 employees.”

21 46. As set forth in this Representative Action Complaint, during the PAGA Period  
22 Defendants violated and are liable pursuant to Labor Code sections 201 through 204b, 210, 510,  
23 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, IWC Wage Order 5, and the local minimum  
24 wage ordinances, including but not limited to the San Diego Municipal Code § 39.0101 for  
25 failing to timely pay Plaintiff and the other aggrieved employees all wages for all hours worked  
26 at the lawful rates.

27 47. During all or a substantial part of the PAGA Period, Defendants failed to pay  
28 minimum wages for work hours. Defendants also failed to pay all regular and overtime wages

1 to employees who were forced to complete work off the clock. Defendants further failed to pay  
2 all overtime wages owed as a result of failing to include certain remuneration in the regular rate  
3 of pay.

4 48. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties  
5 and other recoverable amounts under the foregoing sections of the Labor Code, in addition to  
6 under Labor Code section 2699(f), which provides a civil penalty of \$100 per employee per pay  
7 period for each initial violation and \$200 per employee per pay period for all subsequent  
8 violations.

9 49. Plaintiff and aggrieved employees further seek to recover civil penalties under  
10 Labor Code section 558, which provides a civil penalty of \$50 per employee per pay period for  
11 each initial violation and \$100 per employee per pay period for all subsequent violations.

12 50. Plaintiff and aggrieved employees further seek to recover civil penalties under  
13 Labor Code section 1197.1, which provides a civil penalty of \$100 per employee per pay period  
14 for each initial violation and \$250 per employee per pay period for all subsequent violations.

## 15 **SECOND CAUSE OF ACTION**

### 16 **CIVIL PENALTIES FOR FAILURE TO PAY OVERTIME WAGES**

#### 17 **(AGAINST ALL DEFENDANTS)**

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

20 52. As set forth in this Representative Action Complaint, during the PAGA Period  
21 Defendants violated and are liable pursuant to Labor Code sections 510 and 1194, and IWC  
22 Wage Order 5 for failing to timely pay Plaintiff and the other aggrieved employees all overtime  
23 wages at the lawful regular rate (including the regular rate) for all overtime hours worked.  
24 Specifically, Defendants failed to pay Plaintiff and aggrieved employees for work in excess of  
25 eight hours per day and forty hours per week at one- and one-half times the regular rate of pay.  
26 Defendants' violations also arise from the failure to pay employees for all hours worked  
27 (including work performed off the clock) and from Defendants' failure to properly calculate the  
28 regular rate of pay.

1           53.     Plaintiff and aggrieved employees seek to recover all recoverable civil penalties  
2 and other recoverable amounts under the foregoing sections of the Labor Code, in addition to  
3 under Labor Code section 2699(f), which provides a civil penalty of \$100 per employee per pay  
4 period for each initial violation and \$200 per employee per pay period for all subsequent  
5 violations.

6           54.     Plaintiff and aggrieved employees further seek to recover civil penalties under  
7 Labor Code section 558, which provides a civil penalty of \$50 per employee per pay period for  
8 each initial violation and \$100 per employee per pay period for all subsequent violations.

9                                       **THIRD CAUSE OF ACTION**

10                                   **CIVIL PENALTIES FOR UNLAWFUL TIP POOLING PRACTICES**

11                                       **(AGAINST ALL DEFENDANTS)**

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

14           56.     As set forth in this Representative Action Complaint, during the PAGA Period  
15 Defendants violated and are liable pursuant to Labor Code sections 350 to 356 by allowing  
16 employees outside the line of service to share in the mandatory tip pool.

17           57.     Plaintiff and aggrieved employees seek to recover all recoverable civil penalties  
18 and other recoverable amounts under the foregoing sections of the Labor Code, in addition to  
19 under Labor Code section 2699(f), which provides a civil penalty of \$100 per employee per pay  
20 period for each initial violation and \$200 per employee per pay period for all subsequent  
21 violations.

22                                       **FOURTH CAUSE OF ACTION**

23                                   **CIVIL PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS**

24                                       **AND PAY MEAL PERIOD PREMIUMS**

25                                       **(AGAINST ALL DEFENDANTS)**

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

28           59.     As set forth in this Representative Action Complaint, during the PAGA Period

1 Defendants violated and are liable pursuant to Labor Code sections 226.7 and 512, and IWC  
2 Wage Order 5 for failing to provide compliant meal periods and for failing to pay meal period  
3 premiums when owed.

4 60. Labor Code section 512 and the IWC Wage Orders prohibit an employer from  
5 employing any person for a work period of more than 5 hours per day without providing the  
6 employee with a meal period of not less than 30 minutes (commencing before the employee's  
7 fifth hour of work), except that if the total work period per day is no more than 6 hours, the  
8 meal period may be waived by mutual consent of the employer and employee. A second meal  
9 period of not less than 30 minutes is required if an employee works more than 10 hours per day  
10 and must begin before the employee's tenth hour of work, except if the total hours worked is no  
11 more than 12 hours, the second meal period may be waived by mutual consent of the employer  
12 and employee, but only if the first meal period was not waived. For all meal periods, an  
13 employer must relieve an employee of all duties during meal periods.

14 61. The applicable IWC Wage Orders state that "[u]nless the employee is relieved of  
15 all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal  
16 period and counted as time worked."

17 62. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer  
18 from requiring any employee to work during a meal period mandated by any California statute,  
19 regulation, standard or order. If an employer fails to provide an employee with a meal period in  
20 accordance with state law, Labor Code section 226.7(c) and the IWC Wage Orders require that  
21 the employer pay the employee one additional hour of pay at the employee's regular rate of  
22 compensation for each workday that the meal period is noncompliant.

23 63. Defendants violated 226.7 and 512, and IWC Wage Order 5 for failing to  
24 provide compliant meal periods and for failing to pay meal period premiums when owed.

25 64. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties  
26 and other recoverable amounts under the foregoing sections of the Labor Code, in addition to  
27 under Labor Code section 2699(f), which provides a civil penalty of \$100 per employee per pay  
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1 period for each initial violation and \$200 per employee per pay period for all subsequent  
2 violations.

3 **FIFTH CAUSE OF ACTION**

4 **CIVIL PENALTIES FOR FAILURE TO AUTHORIZE AND PERMIT**

5 **REST PERIODS AND PAY REST PERIOD PREMIUMS**

6 **(AGAINST ALL DEFENDANTS)**

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

9 66. As set forth in this Representative Action Complaint, during the PAGA Period  
10 Defendants violated and are liable pursuant to Labor Code sections 226.7 and IWC Wage  
11 Order 5 for failing to provide compliant rest periods and for failing to pay rest period premiums  
12 when owed.

13 67. Labor Code section 516 authorizes the IWC to adopt or amend protections  
14 relating to meal and rest periods. The IWC Wage Orders require employers to authorize and  
15 permit all employees to take 10-minute duty-free rest periods for each four hours worked (or  
16 major fraction thereof).

17 68. If an employer fails to provide an employee with a rest period in accordance with  
18 state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay  
19 the employee one additional hour of pay at the employee's regular rate of compensation for  
20 each workday that the rest period is noncompliant.

21 69. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties  
22 and other recoverable amounts under the foregoing sections of the Labor Code, in addition to  
23 under Labor Code section 2699(f), which provides a civil penalty of \$100 per employee per pay  
24 period for each initial violation and \$200 per employee per pay period for all subsequent  
25 violations.

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**SIXTH CAUSE OF ACTION**

**CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS EXPENSES  
(AGAINST ALL DEFENDANTS)**

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

71. As set forth in this Representative Action Complaint, during the PAGA Period Defendants violated and are liable pursuant to Labor Code sections 2800, 2802 and 2804 and IWC Wage Order 5 for failing to reimburse all necessary expenditures or losses incurred by Plaintiff and aggrieved employees in direct discharge of their employment obligations.

72. Labor Code section 2802 provides that an “employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

73. Defendants willfully violated Labor Code 2802 by failing to reimburse reasonable and necessary business-related expenses incurred pay Plaintiff and the aggrieved employees, including expenses incurred for using their cell phones, computers, data, and internet to complete mandatory trainings.

74. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties and other recoverable amounts under the foregoing sections of the Labor Code, in addition to under Labor Code section 2699(f), which provides a civil penalty of \$100 per employee per pay period for each initial violation and \$200 per employee per pay period for all subsequent violations.

**SEVENTH CAUSE OF ACTION**

**CIVIL PENALTIES FOR FAILURE TO TIMELY PAY WAGES OWED  
(AGAINST ALL DEFENDANTS)**

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



1 76. As set forth in this Representative Action Complaint, during the PAGA Period  
2 Defendants violated and are liable pursuant to Labor Code sections 204, and IWC Wage  
3 Order 5 for failing to pay all wages and other forms of remuneration owed each pay period.

4 77. Labor Code section 204 provides strict timing requirements under which an  
5 employer must pay current employees all wages earned.

6 78. Defendants failed to pay Plaintiff and other aggrieved employees all wages,  
7 gratuities, and service charges under the timing requirements of Labor Code section 204.

8 79. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties  
9 and other recoverable amounts under the foregoing sections of the Labor Code, in addition to  
10 under Labor Code section 2699(f), which provides a civil penalty of \$100 per employee per pay  
11 period for each initial violation and \$200 per employee per pay period for all subsequent  
12 violations.

13 **EIGHTH CAUSE OF ACTION**

14 **CIVIL PENALTIES FOR FAILURE TO PAY WAGES**

15 **OWED UPON SEPARATION OF EMPLOYMENT**

16 **(AGAINST ALL DEFENDANTS)**

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

19 81. As set forth in this Representative Action Complaint, during the PAGA Period  
20 Defendants violated and are liable pursuant to Labor Code sections 201 through 203.

21 82. Labor Code sections 201-202 provide strict timing requirements under which an  
22 employer must pay an employee at the time of separation of employment.

23 83. Labor Code section 203 provides, in pertinent part: "If an employer willfully  
24 fails to pay, without abatement or reduction. . . any wages of an employee who is discharged or  
25 who quits, the wages of the employee shall continue as a penalty from the due date thereof at  
26 the same rate until paid or until an action therefore is commenced; but the wages shall not  
27 continue for more than 30 days. . . ."

28

1 84. Defendants failed to pay Plaintiff and other aggrieved employees waiting time  
2 penalties due to them based on Defendants' failure to pay all final wages in a timely manner, as  
3 required by Labor Code sections 201-203.

4 85. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties  
5 and other recoverable amounts under the foregoing sections of the Labor Code, in addition to  
6 under Labor Code section 2699(f), which provides a civil penalty of \$100 per employee per pay  
7 period for each initial violation and \$200 per employee per pay period for all subsequent  
8 violations.

9 86. Plaintiff and aggrieved employees further seek to recover civil penalties under  
10 Labor Code section 558, which provides a civil penalty of \$50 per employee per pay period for  
11 each initial violation and \$100 per employee per pay period for all subsequent violations.

12 **NINTH CAUSE OF ACTION**

13 **CIVIL PENALTIES FOR FAILURE TO PROVIDE**

14 **ACCURATE ITEMIZED WAGE STATEMENTS**

15 **(AGAINST ALL DEFENDANTS)**

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

18 88. As set forth in this Representative Action Complaint, during the PAGA Period  
19 Defendants violated and are liable pursuant to Labor Code section 226(a) for failing to issue  
20 accurate itemized wage statements each pay period. Defendants violated Labor Code sections  
21 226(a) (1), (2), (4) (5) and (9) by failing to include gross wages, all hours worked at the  
22 appropriate applicable hourly rate, all meal and rest period premiums required by the Labor  
23 Code, all deductions, net wages earned, and all applicable hourly rates on each wage statement  
24 provided to Plaintiff and other aggrieved employees.

25 89. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties  
26 and other recoverable amounts under the foregoing sections of the Labor Code, in addition to  
27 under Labor Code section 2699(f), which provides a civil penalty of \$100 per employee per pay  
28 period for each initial violation and \$200 per employee per pay period for all subsequent

1 violations.

2 90. Plaintiff and aggrieved employees further seek to recover civil penalties under  
3 Labor Code section 226.3, which provides a civil penalty of \$250 per employee per pay period  
4 for the initial violation and \$1,000 per employee per pay period for all subsequent violations.

5 **TENTH CAUSE OF ACTION**

6 **CIVIL PENALTIES FOR FAILURE TO MAINTAIN**

7 **ACCURATE PAYROLL RECORDS**

8 **(AGAINST ALL DEFENDANTS)**

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

11 92. As set forth in this Representative Action Complaint, during the PAGA Period  
12 Defendants violated and are liable pursuant to Labor Code section 1174.

13 93. Labor Code section 1174 requires employers maintain accurate wage and wage  
14 statement records, including accurate records of all hours worked and wages paid at the  
15 appropriate rate. Defendants failed to maintain accurate wage and wage statement records,  
16 including accurate records of all hours worked and wages paid at the appropriate rate

17 94. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties  
18 and other recoverable amounts under the foregoing sections of the Labor Code, in addition to  
19 under Labor Code section 2699(f), which provides a civil penalty of \$100 per employee per pay  
20 period for each initial violation and \$200 per employee per pay period for all subsequent  
21 violations.

22 95. Plaintiff and aggrieved employees further seek to recover civil penalties under  
23 Labor Code section 1174.5, which provides a civil penalty of \$500 per employee.

24 **PRAYER FOR RELIEF**

25 Plaintiff, on his behalf and on behalf of the aggrieved employees requests that this Court  
26 make the following orders:

27 A. That this action be maintained as a representative action under PAGA, and  
28 Plaintiff and his counsel be provided with all enforcement capability as if the action were

1 brought directly by the State of California;

2 B. For recovery of civil penalties and all other recoverable amounts under PAGA;

3 C. For reasonable attorneys' fees and costs pursuant to statute, including Labor

4 Code sections 226, 1194, 2802, and 2699(g), and Code of Civil Procedure section 1021.5;

5 D. For pre and post-judgment interest;

6 E. For such other relief the Court deems just and proper.

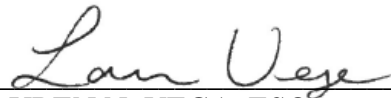
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8 Dated: March 16, 2020

FERRARO EMPLOYMENT LAW, INC.

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LAUREN N. VEGA, ESQ.

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NICHOLAS J. FERRARO, ESQ.

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Attorneys for Plaintiff Trevor Morton

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