

1 Jenna L Miara (SBN 305703)
jmiara@bettzedek.org
2 Sebastian Sanchez (SBN 313099)
ssanchez@bettzedek.org
3 Kelsey R Chapple (SBN 313928)
kchapple@bettzedek.org
4 BET TZEDEK LEGAL SERVICES
3250 Wilshire Blvd. 13th Floor
5 Los Angeles, CA 90010
Telephone: (323) 939-0506
6 Facsimile: (213) 471-4568

7 Matthew K Handley (to apply for admission *pro hac vice*)
mhandley@hfajustice.com
8 HANDLEY FARAH & ANDERSON PLLC
777 6th Street, NW
9 Eleventh Floor
Washington, DC 20001

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11 *Attorneys for Plaintiffs*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES**
14 **(UNLIMITED JURISDICTION)**

15 WALTERIO LOPEZ and RIJEL LINDA EGGAN
16 TAVELLA, individually and on behalf of all
aggrieved employees and the general public,

17 Plaintiffs,

18 v.

19 CANON GARDEN, INC., a California Corporation
20 dba CAFFE ROMA; SANDRO SCIANDRI, an
individual; AGOSTINO SCIANDRI, an individual;
21 MICHELE RIVIELLO, an individual; and
22 DAVIDE GILIBERTI, an individual; and DOES 1
through 50, inclusive,

23 Defendants.
24

Case No.:

CLASS ACTION COMPLAINT

**FOR DAMAGES, RESTITUTION, AND
CIVIL PENALTIES FOR:**

1. **Conversion**
2. **Failure to Provide Meal Periods and
Failure to Authorize and Permit Rest
Breaks (Lab. Code §§ 226.7, 512)**
3. **Failure to Provide Accurate Itemized Wage
Statements (Lab. Code § 226)**
4. **Failure to Pay All Wages Due Upon
Discharge or Quit (Lab. Code §§ 201-203)**
5. **Unfair Competition (Bus. & Profs. Code §§
17200, *et seq.*)**
6. **Civil Penalties Pursuant to Private
Attorney General Act (Lab. Code §§ 2698
et seq.)**

DEMAND FOR A JURY TRIAL

UNLIMITED CIVIL CASE

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1 Plaintiffs WALTERIO LOPEZ and RIJEL LINDA EGGAN TAVELLA on their own behalf, on
2 behalf of all similarly situated aggrieved employees of Defendants, and on behalf of the general public,
3 allege as follows:

4 INTRODUCTION

5 1. Plaintiffs are former employees of Caffe Roma, a well-known Beverly Hills restaurant.
6 This California class action arises from Defendants' scheme to pool tips to pay managerial staff and to
7 deny legally mandated meal and rest periods. Under Caffe Roma's mandatory "tip pooling policy"
8 Defendants required tipped employees to contribute up to 40% of their collected tips, a portion of which
9 was then paid to managerial staff. Defendants thereby obtain an illegal "tip credit" against wages they
10 owe and cause tipped employees to lose a portion of their tips.

11 2. Plaintiffs bring this action to recover their stolen tips, premium wages, interest, liquidated
12 damages, and penalties based on the Defendants' violations of their rights under California labor law,
13 including the California Labor Code and Industrial Welfare Commission Wage Order 5-2001 ("Wage
14 Order 5").

15 3. Plaintiffs allege that Defendants' actions not only violate numerous provisions of the
16 California Labor Code, but also constitute unfair business practices under California's Unfair
17 Competition Law, Bus. & Profs. Code §§ 17200, *et seq.* (hereinafter "UCL"). Plaintiffs assert that
18 Defendants' violations of state labor laws are unlawful acts which have afforded Defendants an unfair
19 competitive advantage over restaurants that comply with California wage and hour laws. Thus, Plaintiffs
20 seek restitution, disgorgement, and other equitable relief to remedy Defendants' illegal and unfair
21 business practices.

22 4. Plaintiffs allege that Defendants' actions are business-wide practices with respect to
23 current and former employees of Caffe Roma. As such, Plaintiff LOPEZ also brings an action under the
24 California Private Attorneys General Act (PAGA) on behalf of all aggrieved employees and the general
25 public for penalties arising from Defendants' numerous violations of the California Labor Code.

26 PARTIES

27 5. Plaintiff WALTERIO LOPEZ is an individual who currently resides in Los Angeles County
28 and at all times relevant to this action resided in Los Angeles County. Plaintiff LOPEZ was employed

1 by Defendants in Los Angeles County from approximately August 17, 2017 through July 1, 2018 as a
2 busser. Plaintiff LOPEZ worked for Defendants at Caffè Roma, located at 350 N Canon Dr, Beverly
3 Hills, CA 90210, in Los Angeles County. During his employment with Defendants, Plaintiff LOPEZ
4 was paid by the hour and received tips from customers. Plaintiff LOPEZ's most recent pay rate was
5 \$11.00 per hour. As a busser, Plaintiff LOPEZ was subject to CAFFÈ ROMA's company-wide policy
6 of denying mandatory meal and rest periods. As a busser, Plaintiff LOPEZ was also subject to CAFFÈ
7 ROMA's mandatory, company-wide, "tip-pooling policy" in that he was a recipient of a portion of the
8 pooled tips.

9 6. Plaintiff RIJEL LINDA EGGAN TAVELLA is an individual who currently resides in Los
10 Angeles County and at all times relevant to this action resided in Los Angeles County. Plaintiff
11 TAVELLA was employed by Defendants in Los Angeles County from, on or around May 10, 2017
12 through, on or around October 18, 2017 as a server. Plaintiff TAVELLA worked for Defendants at Caffè
13 Roma, located at 350 N Canon Dr, Beverly Hills, CA 90210, in Los Angeles County. During her
14 employment with Defendants, Plaintiff TAVELLA was paid by the hour and received tips from
15 customers. Plaintiff TAVELLA's most recent pay rate was \$10.50 per hour. As a server, Plaintiff
16 TAVELLA was subject to CAFFÈ ROMA's mandatory, company-wide, "tip-pooling policy" as both a
17 contributor to the tip pool and a recipient of a portion of the pooled tips. As a server, Plaintiff TAVELLA
18 was also subject to CAFFÈ ROMA's company-wide policy of denying mandatory meal and rest periods.

19 7. Defendant CANON GARDEN, INC., doing business as CAFFÈ ROMA (hereinafter "CAFFÈ
20 ROMA"), is a Corporation organized and existing under the laws of the state of California, and at all
21 times relevant to this action was doing business in Los Angeles County. The registered California address
22 for CAFFÈ ROMA is 350 N Canon Dr, Beverly Hills, CA 90210, and its agent for service of process is
23 MICHELE RIVIELLO with an agent address at 350 N Canon Dr., Beverly Hills, 90210.

24 8. Defendant CANON GARDEN, INC. was doing business as CAFFÈ ROMA at all times
25 relevant to this action in Los Angeles County.

26 9. Even though Defendant CANON GARDEN, INC. regularly transacts business in the State of
27 California for profit under the fictitious business name of Caffè Roma, and on information and belief has
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1 done so for at least five (5) years, it has failed and refused to file a fictitious business name statement for
2 Caffè Roma, all in violation of Business & Professions Code §§ 17902 and 17910.

3 10. Plaintiffs are informed and believe and thereon allege that Defendants SANDRO
4 SCIANDRI, AGOSTINO SCIANDRI, MICHELE RIVIELLO, and DAVIDE GILIBERTI, were owners,
5 managers or major interest holders of Defendant CAFFÈ ROMA during the period of the complaint.
6 Plaintiffs further allege that these Defendants, acting on behalf of CAFFÈ ROMA, are responsible for
7 the occurrences and violations herein alleged and that the resulting damages were proximately caused by
8 these Defendants' conduct.

9 11. The true names or capacities, whether individual, partner, or corporate, of the
10 Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiffs, who therefore
11 sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs will seek
12 leave from this Court to amend this Complaint when such true names and capacities are discovered.
13 Plaintiffs are informed and believe, and thereon alleges, that each of said fictitious Defendants, whether
14 individual, partners, agents, or corporate, was responsible in some manner for the acts and omissions
15 alleged herein, and proximately caused Plaintiffs and the Classes to be subject to the unlawful
16 employment practices, wrongs, injuries and damages complained of herein.

17 12. Plaintiffs are informed and believe, and on that basis allege, that at all times mentioned in
18 this Complaint, each and every Defendant was the agent or employee of each and every other
19 Defendant, and in doing the acts alleged, was acting within the course and scope of such agency or
20 employment, with the consent, provision, and authorization of each of the remaining Defendants. All
21 actions of each Defendant were ratified and approved by every other Defendant.

22 13. Plaintiffs are informed and believe, and on that basis allege, that at all times mentioned in
23 this Complaint, each and every Defendant entered into a conspiracy and agreement with every other
24 Defendant, or later joined that conspiracy and ratified the acts and conduct of other defendants who had
25 entered the conspiracy. Plaintiffs are further informed and believe, and on that basis allege, that at all
26 times mentioned in this Complaint, all Defendants knowingly and willfully entered into that conspiracy.
27 All Defendants' acts and failures to act as alleged in this Complaint were perpetrated in furtherance of
28 the conspiracy.

1 **JURISDICTION AND VENUE**

2 14. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 395(a) and
3 395.5. Defendants and Plaintiffs are all residents of the State of California. Defendants maintain their
4 business in Los Angeles County. Defendants also employed Plaintiffs in Los Angeles County and the
5 alleged unlawful acts occurred in Los Angeles County. As a result, Defendants' obligations to Plaintiffs
6 and the violations of law alleged herein arose in Los Angeles County within the jurisdiction of this Court.

7 15. This case falls within the Court's unlimited jurisdiction because the amount in controversy
8 exceeds \$25,000.

9 **CLASS DEFINITION**

10 16. The Class consists of current and former CAFFE ROMA employees, who at any time
11 during the period commencing on the date that is within four years prior to the filing of this Complaint
12 and through the time this action proceeds to final judgment or settlement (the "Class Period") held the
13 position of "Server," "Busser" or "Bartender" including any of Defendants' job positions with
14 substantially similar titles and duties (the "Class").

15 17. Plaintiffs bring this class action for compensatory damages, punitive damages, injunctive
16 relief, disgorgement, restitution, and to recover, among other things, penalties for failure to provide
17 required meal and rest breaks, to maintain accurate records and to provide accurate itemized wage
18 statements, and interest, attorneys' fees, costs, and expenses.

19 18. Plaintiffs reserve the right to redefine the above Class, name additional class
20 representatives, and/or to establish subclasses and subclass representatives as appropriate based on
21 discovery and specific theories of liability.

22 19. To the extent equitable tolling operates to toll claims by the Class against Defendants, the
23 Class Period should be adjusted accordingly.

24 **FACTUAL ALLEGATIONS**

25 20. Plaintiffs and the Class were employed by Defendants pursuant to oral contracts of
26 employment to perform the work of servers, bussers and bartenders at Caffe Roma. Plaintiffs and the
27 Class were all paid by the hour.

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1 21. Plaintiff TAVELLA and the other members of the Class who were servers and bartenders,
2 regularly received tips from customers as part of their work. Defendants did and continue to maintain a
3 mandatory policy requiring servers and bartenders to contribute up to forty (40) percent of collected tips
4 to a tip-pool. Defendants distributed, and continue to distribute, a portion of the employee tip pool to
5 managerial personnel. Defendants failed to provide Plaintiffs and other class members with a proper
6 accounting showing all other individuals who received shares of their earned tips.

7 22. Plaintiffs and the Class were entitled to, but denied, the portion of the tips taken and
8 distributed to managerial personnel, and continue to be so entitled and denied.

9 23. During the Class Period, Plaintiffs and members of the Class regularly worked, and continue
10 to regularly work, more than five hours during their shifts without being provided the legally mandated
11 30-minute meal period relieving them of all duty. During the Class Period, Plaintiffs and other members
12 of the Class worked, and continue to work, more than ten hours during their shifts without being provided
13 the legally required second 30-minute meal period relieving them of all duty. When Defendants failed
14 to provide the required meal periods, they also failed to pay such employees one hour of pay as premium
15 wages, and such failures continue.

16 24. During the Class Period, Plaintiffs and the Class regularly worked, and continue to regularly
17 work, more than four hours during their shifts without being provided the legally mandated 10-minute
18 rest period. When Defendants failed to provide the required rest periods, they also failed to pay such
19 employees one hour of pay as premium wages, and such failures continue.

20 25. Plaintiff TAVELLA ended her employment with CAFFE ROMA on or around October 18,
21 2017. Plaintiff LOPEZ ended his employment with CAFFE ROMA on July 3, 2018. Upon the
22 termination of Plaintiffs' employment, Defendants failed to pay the premium wages owed to them. On
23 information and belief, Defendants also failed to make such payments for all other members of the Class
24 who are former employees of Defendants.

25 26. On information and belief, Plaintiffs and Class members were unsophisticated in matters of
26 employment law, of modest means, and lacked education, rendering them vulnerable due to their lack of
27 means and sophistication.

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1 27. On information and belief, Defendants SANDRO SCIANDRI, AGOSTINO SCIANDRI,
2 RIVIELLO, and GILIBERTI personally participated in the labor violations alleged herein. Defendants
3 SANDRO SCIANDRI and AGOSTINO SCIANDRI directed their managers and supervisors including
4 Defendants RIVIELLO and GILIBERTI to distribute portions of the tip pool to managerial personnel.
5 They failed to create or implement policies or procedures for hourly employees to receive lawful meal or
6 rest periods, or premium pay in lieu thereof. Labor Code § 558.1 provides that an “owner, director,
7 officer or managing agent of the employer” may be “held liable as the employer” for violating or causing
8 to be violated “any provision regulating minimum wages or hours and days of work in any order of the
9 Industrial Welfare Commission,” or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802. Defendants
10 SANDRO SCIANDRI, AGOSTINO SCIANDRI, RIVIELLO, and GILIBERTI may be held liable for
11 the labor violations alleged herein pursuant to Labor Code § 558.1.

12 28. During the Class Period, Defendants failed, and continue to fail, to provide properly itemized
13 wage statements to Plaintiffs and, on information and belief, the Class. The wage statements provided
14 by Defendants to Plaintiffs, and on information and belief, the Class, failed to provide include the name
15 of the legal entity that is the employer, and such failure continues.

16 29. During the Class Period, each Defendant directly or indirectly or through an agent or other
17 person, engaged, suffered or permitted Plaintiffs and the Class to work.

18 30. During the Class Period, each Defendant directly or indirectly or through an agent or other
19 person exercised control over the wages, hours or working conditions of Plaintiffs and the Class.

20 **CLASS ACTION ALLEGATIONS**

21 31. This class action meets the statutory prerequisites for the maintenance of
22 a class action as set forth in Code of Civil Procedure § 382.

23 **NUMEROSITY**

24 32. There is an ascertainable and sufficiently numerous class. On information and belief, there
25 are over 40 class members who can be readily identified by CAFFE ROMA’s own records, the Class is
26 ascertainable and so numerous that the joinder of all such persons is impracticable and the disposition of
27 their claims will benefit the parties and the Court.

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1 COMMONALITY

2 33. There is a well-defined community of interest. Each class member has been damaged by the
3 same conduct, in the same way: they have paid out monies pursuant to CAFFE ROMA’s unlawful and
4 unreasonable “tip-pooling” scheme, and they have been denied meal and rest breaks mandated by
5 California law.

6 34. Nearly all factual, legal, statutory, declaratory and injunctive relief issues raised herein are
7 common to the Class, will apply uniformly to the Class, and, as a practical matter, will be dispositive of
8 interests of the other members not party to the adjudication.

9 35. There are common questions of law and fact that predominate across the Class, including:
10 (1) whether CAFFE ROMA’s tip pooling policy is lawful; (2) the operation and effect of CAFFE
11 ROMA’s tip pooling policy; (3) whether Defendants converted Class members’ tips; (4) whether
12 Defendants denied members of the Class meal and rest breaks; (5) whether Defendants failed to provide
13 accurate wage statements; (6) whether Defendants’ conduct as described herein is unlawful,
14 unreasonable, unfair, and/or deceptive; (7) whether Class members have sustained damages; (8) the
15 proper measure of their damages; and (9) whether Defendants’ conduct warrants punitive damages.

16 PREDOMINANCE

17 36. Issues subject to generalized proof and applicable to the Class as a whole predominate over
18 those issues that are subject to only individualized proof, if any.

19 37. The common questions of law and fact described above are the most significant questions
20 for the Class, the resolution of which will resolve the claims other than calculating damages for each
21 class member.

22 TYPICALITY AND ADEQUACY

23 38. Plaintiffs’ claims are typical of the claims of the Class. Plaintiffs understand the claims and
24 are able to represent the interests of the Class, and their interests are aligned with that of the Class. The
25 interests of Plaintiffs are not antagonistic to the Class.

26 39. Plaintiffs have chosen attorneys who are experienced in wage and hour claims, class action
27 claims, and complex litigation.

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1 40. Counsel and the Class representative will adequately and diligently pursue the interests of
2 the Class.

3 SUPERIORITY

4 41. A class action is the superior method of resolving this dispute. Plaintiffs allege a common
5 course of wrongful conduct by CAFFE ROMA, making the case particularly well suited to certification.

6 42. Given the modest value of individual damages, it is not economically feasible to obtain relief
7 within the traditional framework of a multiplicity of small individual suits for damages. Aggrieved
8 persons will be without any effective redress unless they may employ the class-action device.

9 FIRST CAUSE OF ACTION

10 **(By All Plaintiffs on behalf of themselves and the Class Against All Defendants for Conversion)**

11 43. Plaintiffs incorporate by reference the above paragraphs of this Complaint as though fully
12 set forth at this place.

13 44. California Labor Code § 351 prohibits employers or agents of employers from taking any
14 tip paid, given to, or left for an employee.

15 45. At all times mentioned herein, Plaintiffs and the Class had an ownership interest in and the
16 lawful right to immediately possess their tips, which constituted their property.

17 46. During the Class Period, by operation of Defendants' unlawful tip-pooling scheme in
18 violation of Labor Code § 351 and common law, Defendants substantially interfered with the rights of
19 Plaintiffs and the Class to receive and possess their tips. Instead, Defendants wrongfully assumed actual
20 control or ownership of the tips, and kept them for themselves, thereby harming Plaintiff and the Class.

21 47. In taking the tips of the Class, Defendants had the intention and purpose to exercise
22 ownership over them and to prevent Plaintiff and the Class from taking possession of their own tips.

23 48. Defendants were aware that Plaintiffs and the Class were unsophisticated with the law, and
24 not likely to appreciate, understand, and/or comprehend that Defendants were wrongfully converting
25 their tips.

26 49. Plaintiffs and the Class could not have reasonably prevented the conversion. At all times
27 mentioned herein, Defendants were aware that Plaintiffs and the Class were in a relatively disadvantaged
28 situation economically as compared to Defendants. Defendants preyed on Plaintiffs and the Class

1 because Plaintiffs and the Class were unsophisticated and economically disadvantaged. Taking
2 advantage of the lack of sophistication of Plaintiffs and the Class, Defendants concealed facts regarding
3 the rights of the Plaintiffs and the Class to receive and possess all of their tips, preventing them from
4 discovering the conversion thereof. It was only in early 2018 that Plaintiffs discovered potential
5 wrongdoing, which was later confirmed.

6 50. At all times mentioned herein, Defendants knew they could take advantage of the rights of
7 Plaintiffs and the Class because they knew they could prey on their relatively disadvantaged and
8 unsophisticated CAFFE ROMA employees.

9 51. As a direct, proximate and foreseeable result of the Defendants' conduct, as set forth above,
10 pursuant to Civil Code § 3336, Plaintiffs and the Class have been damaged and are entitled to and seek
11 to recover an amount equal to the value of tips at the time of the conversion, with interest. On information
12 and belief, the amount of tips recoverable by each Plaintiff and the Class is information that is
13 presumptively within the knowledge and exclusive control of the Defendants, and will be ascertainable
14 through discovery procedures.

15 52. Plaintiffs and the Class are also entitled to compensation for the time and money expended
16 in recovering the unlawfully converted tips.

17 53. The conduct of Defendants, as set forth above, was malicious, oppressive and fraudulent,
18 and constitutes an intentional scheme to defraud Plaintiffs and the Class, with the intention of causing
19 injury to them by depriving them of the payment of tips they were entitled to, which were necessary for
20 Plaintiff and the Class to pay for necessities of life for themselves and their families, and was carried
21 out by Defendants with a willful and conscious disregard of the rights of Plaintiff and the Class. The
22 actions of Defendants constitute despicable conduct that subjected Plaintiff and the Class to cruel and
23 unjust hardship in conscious disregard of their rights. The above conduct justifies an award of punitive
24 damages against Defendants in an amount to be proven at trial.

25 **SECOND CAUSE OF ACTION**

26 **(By All Plaintiffs on behalf of themselves and the Class Against All Defendants for Failure to**
27 **Provide Meal Periods and Failure to Authorize and Permit Rest Periods, Labor Code §§ 226.7,**
28 **512; Wage Order 5 §§ 11, 12)**

1 54. Plaintiffs incorporate by reference the above paragraphs of this Complaint as though fully
2 set forth at this place.

3 55. Labor Code §§ 226.7 and 512 and Industrial Welfare Commission Wage Order 5-2001
4 (“Wage Order 5”) §§ 11 and 12 require employers to permit their employees to take specified paid rest
5 breaks and unpaid meal periods, and provide statutory damages in the form of wages to be paid by
6 employers who violate these provisions.

7 56. Labor Code § 512 states that “an employer may not employ an employee for a work period
8 of more than five hours per day without providing the employee with a meal period of not less than 30
9 minutes.” Wage Order 5 § 11 also provides that employees are entitled to a meal period of at least 30
10 minutes for every five hours worked.

11 57. Wage Order 5 § 12 provides that employees are entitled to a rest period of at least ten minutes
12 for every four hours worked or major fraction thereof.

13 58. Wage Order 5 §§ 11(B) and 12(B) and Labor Code § 226.7 require an employer to pay one
14 hour’s wage to an employee for each meal period and for each rest period the employer fails to provide
15 in accordance with the law.

16 59. Defendants failed to provide Plaintiffs and other members of the Class with meal periods in
17 accordance with California law, causing Plaintiffs and the Class to work more than five hour work periods
18 without at least one thirty minute meal period, and causing Plaintiffs and other members of the Class to
19 work more than ten hour work periods without providing a second thirty minute meal period.

20 60. Defendants failed to authorize and permit Plaintiffs and the Class to take rest periods in
21 accordance with California law, causing Plaintiffs and the Class to work more than four hour work
22 periods without at least ten minute rest periods.

23 61. At all relevant times, Plaintiffs and the Class desired to take meal periods, but were prevented
24 from taking these breaks due to Defendants’ policies and practices.

25 62. At all relevant times, Plaintiffs and the Class desired to take rest periods, but were prevented
26 from taking these breaks due to Defendants’ policies and practices.

27 63. Defendants failed to keep accurate information with respect to each employee’s meal periods
28 in violation of Wage Order 5 § 7(A)(3).

1 64. As a result of the Defendants' practices, Plaintiffs and the Class are entitled to and seek to
2 recover premium compensation in an amount equal to one hour of additional wages at the applicable
3 contractual rate of pay for each work day on which Defendants failed to provide them with meal periods,
4 and Plaintiffs and the Class are entitled to one hour of additional wages for each work day on which
5 Defendants failed to provide them with rest periods, in amounts to be proven at trial.

6 **THIRD CAUSE OF ACTION**

7 **(By All Plaintiffs on behalf of themselves and the Class Against All Defendants for Failure to**
8 **Provide Accurate Itemized Wage Statements, Labor Code § 226(a) and (e), Wage Order 5 § 7)**

9 65. Plaintiffs incorporate by reference the above paragraphs of this Complaint as though fully
10 set forth at this place.

11 66. Under Labor Code § 226, for each pay period, employers must furnish each employee with
12 an accurate itemized statement reflecting the name and address of the legal entity that is the employer.
13 Wage Order 5 §7(B) similarly requires employers semimonthly or at the time of each payment of wages
14 to furnish to each employee an itemized statement in writing showing the correct name of the employer.

15 67. Defendants knowingly and intentionally failed to provide Plaintiffs and the Class with
16 accurate itemized wage statements that reflected the name of the legal entity that is the employer in
17 violation of Labor Code § 226(a)(8).

18 68. Pursuant to Labor Code § 226(e), Plaintiffs and the Class are each entitled to and seek to
19 recover \$50 for the first violation and \$100 for each subsequent violation, not to exceed \$4,000 per
20 employee. Pursuant to Labor Code § 226(e), Plaintiffs are entitled to and seek recover reasonable
21 attorneys' fees and costs.

22 **FOURTH CAUSE OF ACTION**

23 **(By All Plaintiffs on behalf of themselves and the Class Against All Defendants for Failure to Pay**
24 **All Wages Due Upon Discharge or Quit, Labor Code §§ 201-203)**

25 69. Plaintiffs incorporate by reference the above paragraphs of this Complaint as though fully
26 set forth at this place.

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1 70. Labor Code § 201 requires that an employer pay all wages earned and unpaid to an employee
2 immediately upon discharge of that employee. Labor Code § 202 requires that an employer pay all
3 wages earned and unpaid not later than 72 hours after an employee quits.

4 71. Labor Code § 203 authorizes an employee to recover penalties in an amount equal to the
5 former employee's daily wages for up to 30 days if an employer willfully fails to pay any wages due to
6 the employee at the time of discharge, or within 72 hours if the employee quits.

7 72. Plaintiffs and members of the Class who are former employees were denied the premium
8 wages owed to them. Defendants' failure was willful and intentional.

9 73. As a result of Defendants' willful failure to pay Plaintiffs and the Class all wages due in
10 accordance with Labor Code §§ 201 and 202, Plaintiffs and the Class are entitled to and seek to recover
11 waiting time penalties equal to thirty days' pay in amounts to be proven at trial.

12 **FIFTH CAUSE OF ACTION**

13 **(By All Plaintiffs on behalf of themselves and the Class Against All Defendants for Violation of**
14 **California Business and Professions Code §§ 17200 et seq.)**

15 74. Plaintiffs incorporate by reference the above paragraphs of this Complaint as though fully
16 set forth at this place.

17 75. The conduct alleged against Defendants in this complaint includes theft of tips, failing to
18 provide meal and rest breaks, failing to provide accurate itemized wage stubs, and failing to pay wages
19 owed upon discharge, all in violations of the sections of the Labor Code set forth above. These practices
20 are all unfair business practices under California Business and Professions Code §§ 17200 et seq. These
21 unfair business practices, by definition, constitute unfair competition in violation of California Business
22 and Professions Code §§ 17200 et seq.

23 76. Plaintiffs and the Class have been injured and lost money or property as a result of the
24 practices alleged in this complaint.

25 77. Defendants, by the acts and/or omissions alleged herein, have injured and are injuring the
26 interests of the general public in that other employers who have been or currently are employing
27 restaurant workers and attempting to do so in honest compliance with applicable wage and hour laws

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1 (including the laws violated by the Defendants) are at an unfair competitive disadvantage as a result of
2 the Defendants' conduct.

3 78. Plaintiffs and the Class are entitled to and seek restitution of their wages and the economic
4 value of benefits unlawfully denied them by the Defendants in amounts to be proven at trial.

5 79. Pursuant to Bus. & P. C. § 17203, Plaintiffs and the Class are entitled to and seek an order
6 and judgment permanently restraining and enjoining Defendants, and their agents and employees, from
7 directly or indirectly violating any of the above-mentioned provisions of the Labor Code.

8 **SIXTH CAUSE OF ACTION**

9 **(By Plaintiff LOPEZ on behalf of himself and all similarly situated aggrieved persons Against All**
10 **Defendants for Civil Penalties Under the Private Attorney General Act, Lab. Code §§ 2698 et seq.)**

11 80. Plaintiffs incorporate by reference the above paragraphs of this Complaint.

12 81. Plaintiff LOPEZ is an aggrieved employee as defined in Labor Code § 2699(a). He brings
13 this claim on behalf of himself and other current or former employees affected by the labor law violations
14 alleged in this complaint.

15 82. Defendants committed the following violations of the Labor Code against Plaintiff LOPEZ,
16 and, on information and belief, against other current or former employees while they were employed by
17 Defendants:

- 18 a. Defendants violated Labor Code §§ 201 and 202 by failing to pay Plaintiff LOPEZ, and
19 on information and belief, other former employees of Defendants, all wages due upon
20 discharge or within 72 hours of receipt of notice of employees' voluntary termination.
- 21 b. Defendants violated Labor Code §§ 226.7, 512, 1198, and 1199 by failing to provide
22 Plaintiff LOPEZ, and on information and belief, other current and former employees of
23 Defendants, all meal and rest periods in accordance with Wage Order 5.
- 24 c. Defendants violated Labor Code §§ 226(a) and 226.3 by failing to provide Plaintiff
25 LOPEZ, and on information and belief, other current and former employees of
26 Defendants, with accurate written itemized statements for each payment of wages.

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1 d. Defendants violated Labor Code § 351 by failing to provide Plaintiff LOPEZ, and on
2 information and belief, other current and former employees of Defendants, all tips due by
3 distributing tips to managerial personnel.

4 83. On April 25, 2019, Plaintiff LOPEZ sent notice to the Labor and Workforce Development
5 Agency (LWDA) of the specific violations and the facts and theories supporting those violations. On
6 June 13, 2019 Defendants received this notice. Over 65 days have passed since the date the notice was
7 received by Defendants and LWDA.

8 84. Pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698, *et*
9 *seq.*), Plaintiff LOPEZ, acting in the public interest as private attorneys general, seeks assessment and
10 collection of civil penalties for the violations listed above, including amounts sufficient to recover unpaid
11 regular and overtime wages due to Plaintiff LOPEZ and other current and former employees. Under
12 Labor Code § 2699(g)(1), Plaintiff LOPEZ is also entitled to recover reasonable attorneys' fees and costs.

13 85. Defendants SANDRO SCIANDRI, AGOSTINO SCIANDRI, RIVIELLO, and GILIBERTI
14 were "persons" acting on behalf of an employer who violated, or caused to be violated, multiple
15 provisions of the Labor Code with respect to Plaintiff and Class Members. Accordingly, these Defendants
16 may be held individually liable for civil penalties under PAGA.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs, on behalf of themselves and the Class and on behalf of the general public,
19 pray for judgment and the following specific relief against Defendants as follows:

- 20 1. An order certifying the proposed Class and appointing Plaintiffs and their counsel of
21 record to represent the proposed Class;
- 22 2. For compensatory and statutory damages in an amount according to proof;
- 23 3. For punitive damages in an amount according to proof;
- 24 4. For penalties in an amount according to proof;
- 25 5. For restitution and disgorgement of monies in an amount according to proof;
- 26 6. Pursuant to Bus. & P. C. § 17203, an order permanently enjoining and restraining
27 Defendants from continuing the unfair, deceptive, and unlawful business practices

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1 alleged herein, including, but not limited to an order permanently restraining and
2 enjoining Defendants, and their agents and employees from directly or indirectly:

- 3 A. Violating any provision of Labor Code § 351, including distributing tips to
4 managerial personnel;
- 5 B. Violating any provision of Labor Code §§ 226.7, 512, including failing to
6 provide the required meal or rest periods;
- 7 C. Violating any provision of Labor Code §§ 226(a) and (e), including failing to
8 furnish each employee with an accurate itemized statement reflecting the legal
9 name and address of the legal entity that is the employer;
- 10 D. Violating any provision of Labor Code §§ 201-203, including failing to pay
11 each employee all wages due upon discharge or within 72 hours of receipt of
12 notice of employees' voluntary termination.

- 13 7. For attorneys' fees, expenses, and costs of suit under California Labor Code §§ 226(e),
14 2699(g)(1), California Code of Civil Procedure § 1021.5, and under any other
15 applicable statute, and an amount according to proof;
- 16 8. For pre-judgment and post-judgement interest; and
- 17 9. Such other and further relief as the Court may deem just and proper.

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19 Date: August 20, 2019

BET TZEDEK LEGAL SERVICES, INC.

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21 _____
22 Jenna Miara
23 Attorney for Plaintiffs and Putative Class
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DEMAND FOR JURY TRIAL

1
2 Plaintiffs and all class members hereby demand a jury trial on all claims and causes of action
3 with respect to which they have such a right.
4

5 Date: August 20, 2019

BET TZEDEK LEGAL SERVICES, INC.

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9 Jenna Miara
10 Attorney for Plaintiffs and Putative Class
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