George A. Shohet SBN 112697
Sassan Masserat SBN 231104
LAW OFFICES OF GEORGE A. SHOHET
A PROFESSIONAL CORPORATION
245 Main Street, Suite 310
Venice, CA 90291-5216
Tel.: (310) 452-3176
Fax: (310) 452-2270

Attorneys for Plaintiffs Joaquin Hernandez, Lazaro Hernandez, Rene Rodriguez, Alfredo Victoria, and Jose Villalta

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles
OCT - 8 2014
Sherri R. Carter, Executive Officer/Clerk
By: Maria C. Concepcion, Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

JOAQUIN HERNANDEZ; LAZARO HERNANDEZ; RENE RODRIGUEZ; ALFREDO VICTORIA; and JOSE VILLALTA, individually and on behalf of all other persons similarly situated, Plaintiffs, vs. UNITED VALET PARKING, INC., a California corporation; ALFONSO LEON, an individual; MARTHA LEON, an individual; MARIANO PANTOJA, an individual; KENNY SABET, an individual; and DOES 1 through 25, inclusive, Defendants.	CASE NO.: BC529988 [Hon. Jane Johnson, Dept. 308] **CLASS ACTION** **FIRST AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE CALIFORNIA LABOR CODE, UNFAIR COMPETITION LAW AND COMMON LAW** Action Filed: December 10, 2013 Trial Date: None Set **JURY TRIAL DEMANDED**

Plaintiffs, individually and on behalf of all other persons similarly situated, by their undersigned attorneys, make the following allegations upon personal knowledge as to themselves and information and belief as to all other matters set forth herein. Plaintiffs' allegations based on personal knowledge are contained in paragraphs 5 through 9. Plaintiffs allege as follows:

NATURE OF ACTION

1. This is a class action brought on behalf of parking valets who must as a condition of continued employment pay over their tips to the defendants or defendants' agents. The practice violates Labor Code § 351 which mandates that tips belong to the person who receives them regardless of classification. The Class, as defined below, consists primarily of low-income, Hispanic men who do not speak or write English fluently.

2. Defendant United Valet Parking, Inc. ("United") provides parking services for commercial buildings, night clubs, hotels, high-end restaurants, retail businesses and special events. Throughout the Class Period, United has primarily used three "managers," named as defendants herein, to oversee the confiscation of the valets' tips. Dozens of Class members work for defendants on a daily basis. They wear United uniforms, which they are required to buy without reimbursement, are paid in cash, and receive no pay stubs or other wage documents.

3. United contracts with the restaurants and other businesses and controls the operation of its valet concessions. The defendant managers make it clear that strict compliance with the tip confiscation and other unlawful policies is required as a condition of employment. Class members who question the policies are terminated or threatened with termination.

4. Plaintiffs allege causes of action for violations of the Labor Code, certain Industrial Welfare Commission's Wage Orders, Business and Professions Code (§§ 17200, *et seq*.) and common law. They seek compensatory and punitive damages, restitution,

preliminary and permanent injunctive relief, attorney's fees, costs of suit and other remedies.

PARTIES

5. Plaintiff Joaquin Hernandez is and was at all times a resident of Los Angeles, California. Between in or about April 2009 and in or about July 2013, he was employed by the defendants. During that period, he worked as a valet at the following businesses, among other locations: Fig and Olive; Fogo de Chao; Katsuya; Picca; and Sotto.

6. Plaintiff Lazaro Hernandez is and was at all times a resident of Los Angeles, California. Between in or about February 2009 and in or about November 2012, he was employed by the defendants. During that period, he worked as a valet at the following businesses, among other locations: Fig and Olive; Fogo de Chao; Industry; Katsuya; Picca; and Sotto.

7. Plaintiff Rene Rodriguez is and was at all times a resident of Los Angeles, California. Between in or about February 2009 and in or about December 2012, he was employed by the defendants. During that period, he worked as a valet at the following businesses, among other locations: Ago; Area; Fig and Olive; Fogo de Chao; Industry; Katsuya; Lucques; Mastro's; Picca; Republic; Sotto; and STK.

8. Plaintiff Alfredo Victoria is and was at all times a resident of Los Angeles, California. Between in or about September 2005 and in or about December 2011, he was employed by the defendants. During that period, he worked as a valet at the following businesses, among other locations: Ago; Area; Fig and Olive; Fogo de Chao; Industry; Katsuya; Lucques; Mastro's; Picca; Republic; Sotto; and STK.

9. Plaintiff Jose Villalta is and was at all times a resident of Los Angeles, California. Between in or about November 2010 and in or about June 2013, he was an employee of the defendants. During that period, he worked as a valet at the following businesses, among other locations: Ago; Area; Fig and Olive; Fogo de Chao; Industry; Katsuya; Lucques; Mastro's; Picca; Republic; Sotto; and STK.

10. Defendant United is a California corporation headquartered in Culver City, California. It was incorporated in July 1989. Among other wrongdoing, United shared in the gratuities taken from Class members.

11. Defendant Alfonso Leon ("A. Leon") is a resident of Los Angeles County, California. During the Class Period, A. Leon was employed by or served as an independent contractor of United and had the authority to hire or discharge Class members and direct or control their acts. Among other wrongdoing, A. Leon kept a portion of the gratuities taken from Class members.

12. Defendant Martha Leon ("M. Leon") is a resident of Los Angeles County, California. During the Class Period, M. Leon was employed by or served as an independent contractor of United and had the authority to hire or discharge Class members and direct or control their acts. M. Leon is the sister of A. Leon. Among other wrongdoing, M. Leon kept a portion of the gratuities taken from Class members.

13. Defendant Mariano Pantoja ("Pantoja") is a resident of Los Angeles County, California. During the Class Period, Pantoja was employed by or served as an independent contractor of United and had the authority to hire or discharge Class members and direct or control their acts. Pantoja is the spouse of M. Leon. Among other wrongdoing, Pantoja kept a portion of the gratuities taken from Class members.

14. Defendant Kenny Sabet ("Sabet') is a resident of Los Angeles County, California. He is the founder and majority shareholder of United and serves as its President. During the Class Period, he had the authority to hire or discharge Class members, M. Leon, A. Leon, and Pantoja, and direct or control their acts. Among other wrongdoing, Sabet shared in the gratuities taken from Class members.

DOE DEFENDANT ALLEGATIONS

15. Plaintiffs are ignorant of the true names and capacities of the defendants named herein as DOES 1 through 25, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs will amend this Complaint to show their true names and capacities when the same have been ascertained. Each defendant fictitiously named herein

caused or contributed to the injuries complained of by plaintiffs, and engaged in or participated in the wrongful activities alleged herein.

16. Unless otherwise stated in this Complaint, the term "defendants" shall mean and include the named defendants identified in paragraphs 10 through 14 and DOES 1 through 25, inclusive.

AGENCY ALLEGATIONS

17. Each of the defendants named herein was the agent, employee, partner, manager, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor- in-interest and/or predecessor-in-interest of some or all of the other defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other defendants so as to be liable for the conduct of them. Each defendant acted pursuant to and within the scope of the relationships alleged above and knew or should have known about, authorized, ratified, adopted, approved, controlled, or aided and abetted the conduct of all other defendants.

18. Defendants had the authority to supervise, direct, or control the acts of other employees, and are therefore, "Agents" as the term is defined in Labor Code § 350 and the case of *Jameson v. Five Feet Restaurant* (2003) 107 Cal.App.4th 138.

19. Defendants and each of them are responsible contractually, intentionally, or in some actionable manner, for the events and happenings referred to in this complaint, and caused and continue to cause damages legally thereby to the Class members, either through defendants' own conduct or through the conduct of their agents, servants, or employees, or due to the ownership, maintenance, or control of the instrumentality causing the damage, or in some other actionable manner.

TOLLING OF STATUTES OF LIMITATION

20. Plaintiffs did not know or suspect that defendants' conduct was actionable until approximately six months before this action was filed. They only learned of their claims after speaking with their counsel of record. Prior to then, the plaintiffs understood

that to keep their jobs as valets they would have to strictly adhere to the conditions imposed by the defendants. Defendants routinely intimidated Class members with threats of termination. The plaintiffs witnessed or heard of other valets summarily fired by defendants A. Leon, M. Leon and Pantoja when the employee did not comply with defendants' demands. For many years, the defendants evaded the legal consequences of their wrongdoing. This continuous course of conduct provides a reasonable basis for the plaintiffs to have not suspected that they had actionable claims.

21. Any applicable statute of limitations is tolled pursuant to the continuing violation doctrine. The California Supreme Court describes the continuing violation doctrine as aggregating "a series of wrongs or injuries for purposes of the statute of limitations, treating the limitations period as accruing for all of them upon commission or sufferance of the last of them." *Aryeh v. Canon Bus. Solutions* (2013) 55 Cal.4th 1185, 1192; *see also Richards v. CH2M Hill, Inc*. (2001) 26 Cal.4th 798, 811-818; *National Railroad Passenger Corporation v. Morgan* (2002) 536 U.S. 101, 118. Allegations of a pattern of reasonably frequent and similar acts may, in a given case, justify treating the acts as an indivisible course of conduct actionable in their entirety, notwithstanding that the conduct occurred partially outside and partially inside the limitations period. *Yanowitz v. L'Oreal USA, Inc*. (2005) 36 Cal.4th 1028, 1058-59; Richards, 26 Cal.4th at 823; *Komarova v. National Credit Acceptance, Inc*. (2009) 175 Cal.App.4th 324, 345 (applying the doctrine to harassing debt collection activities). Throughout the Class Period, defendants continuously confiscated the tips belonging to Class members, routinely failed to provide them with meal and rest breaks and committed the other statutory and common law violations alleged herein.

22. Defendants' conduct is also subject to the continuous accrual exception. Under that theory, a cause of action challenging a recurring wrong may accrue not once but each time a new wrong is committed. It is immaterial in such cases that plaintiff could have commenced the action earlier. *See Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 821; *Komarova*, 175 Cal.App.4th at 343-45. "[A] series of

wrongs or injuries may be viewed as each triggering its own limitations period, such that a suit for relief may be partially time-barred as to older events but timely as to those within the applicable limitations period." *Aryeh*, 55 Cal.4th at 1192. As alleged herein, the defendants have continuously violated applicable law through a common course of conduct by repeatedly taking tips, failing to provide meal and rest breaks and committing the other statutory and common law violations alleged herein.

JURISDICTION AND VENUE

23. This Court has jurisdiction over the subject matter of this civil class action pursuant to sections 382 and 410.10 of the Code of Civil Procedure and section 17203 of the Business & Professions Code. Personal jurisdiction over defendants is proper because each defendant resides in this District and has availed himself, herself or itself of the privilege of doing business within the State of California by conducting systematic and continuous business contacts within this State. Each plaintiff suffered damages in excess of the Court's minimum jurisdictional threshold.

24. Venue is proper because a substantial part of the events and actions giving rise to plaintiffs' causes of action occurred in the County of Los Angeles and this District.

FACTUAL BACKGROUND

25. During the Class Period, Class members served as United valets providing parking services to the restaurants and businesses identified in paragraph 34 and at private parties and special events. Class members are required to purchase uniforms bearing United's logo and wear the uniforms while working. They are not reimbursed for the purchase. Since in or about 2001, United promised to pay a wage of $10.00 per hour, subject to the reductions alleged in paragraph 28.

26. When Class members retrieve vehicles for patrons or guests, they receive cash tips. Tips are provided in addition to any parking fee that may be charged by defendants. Given the fact that the restaurants, night clubs and events often attract high-income individuals in festive moods, tips can be very substantial. In addition, some of the locations offer "VIP" parking services which can also increase the gratuities Class

members receive. For example, it is not uncommon for a patron to pay an $8.00 parking fee with a $20.00 bill, amounting to a $12.00 tip.

27. The defendant managers namely, A. Leon, M. Leon or Pantoja, tell Class members that the tips belong to the defendants. Class members are required to give their tips to a shift supervisor. Shift supervisors are trusted friends or family members of the defendant managers. The tips are commingled with the cash paid for the parking charge. At the end of a shift, Class members are paid in cash. Defendants do not provide them with pay stubs, IRS W-2 forms, or other wage or tax documents.

28. Depending on the amount collected from patrons and guests, sometimes the hourly wages are reduced. This is done at the discretion of the managers and shift supervisors. When questioned, the managers and supervisors tell Class members that there is insufficient money to pay them in full.

29. After paying out some or all of the hourly wages, shift supervisors hold onto all of the remaining cash until the managers come by to collect the proceeds. The shift supervisors complete a daily report showing the number of vehicles that were parked, the fees collected from patrons or guests, and the amount paid to Class members. The reports are collected by the managers along with the cash proceeds. This usually occurs every one to three days. The managers deliver the reports to United's Culver City headquarters and the cash is divided among the defendants. The net result of this is that Class members do not receive any of their tips.

30. Defendants produced a document entitled, "Agreement For Operation Of A Parking Concession" between United and Pantoja ("Agreement"). Important information, including the date of the Agreement, is redacted. The Agreement confirms a joint venture relationship between United and Pantoja or the "Operator," as he is described in the Agreement, the cash flow to United, and its involvement in overseeing payroll. Paragraph 4 of the Agreement, under the heading "Rights of Operator", admits the tip confiscation scheme: "Operator shall be entitled to retain gross receipts from the patrons of customers, as derived from the operation of the parking concession so long as this Operating

Agreement remains in force. *It is anticipated that such gross receipts will be made up of gratuities or tips from patrons of the customers or charges the patron is required to pay for the parking.*" (Italics added).

31. Approximately six weeks before this case was filed, Defendants became aware that they were being investigated by the U.S. Department of Labor. As a result, defendants began requiring current employee Class members to sign a "Payroll Report" and a "Gratuity Report" at the end of their shifts. Copies of these forms are attached hereto as Exhibits 1 and 2, respectively. The defendant managers or shift supervisors directed by the managers enter false information on the forms. For example, the Payroll Report forms reflect a wage calculated at $8.00 per hour and the Gratuity Report forms show tips which average out to $2.00 per hour. As previously alleged, since in or about 2001, United has promised to pay its valets $10.00 per hour. Thus the forms merely reflect the regular hourly rate the valets earn. The purpose of these forms is to create the false appearance that Class members are actually receiving their tips and thereby conceal defendants' wrongdoing.

32. Class members are denied meal and rest breaks by the defendants. Defendants' policy is that Class members are not allowed to take breaks. Those who seek to take breaks are threatened with termination. In addition, defendants do not provide Class members with the additional hour of compensation owed for each applicable shift in which they were unable to take a mandated meal or rest break.

33. Defendants require Class members to work on demand or face termination. Some Class members work seven days a week without overtime compensation. They must work on holidays, such as Christmas, New Year's Day, Mother's Day and Valentine's Day, without exception or face termination.

34. The wrongful practices alleged in paragraphs 27, 28, 29, 32 and 33 occurred throughout the Class Period. The defendants engaged in those practices at the following locations:

a. Ago (Restaurant, located on Melrose Avenue, West Hollywood, CA);

b. Area (Dance Club, formerly located on North La Cienega Boulevard, Los Angeles, CA);

c. Chloe (Boutique, located on Melrose Place, Los Angeles, CA);

d. Comme Ça (Restaurant, located on Melrose Avenue, West Hollywood, CA);

e. Fig and Olive (Restaurant, located on Melrose Place, West Hollywood, CA);

f. Fogo de Chao (Restaurant, located on North La Cienega Boulevard, Beverly Hills, CA)

g. Industry (Dance Club, formerly located on North La Cienega Boulevard, Los Angeles, CA);

h. Katsuya (Restaurant, located on San Vicente Boulevard, Los Angeles, CA);

i. Le Petit Bistro (Restaurant, located on North La Cienega Boulevard, West Hollywood, CA);

j. Lucques (Restaurant, located on Melrose Avenue, West Hollywood, CA);

k. Mari Vana (Restaurant, located on Melrose Place, West Hollywood, CA).

l. Marni (Boutique, located on Melrose Place, Los Angeles, CA);

m. Mastro's Steakhouse (Restaurant, located on North Canon Drive, Beverly Hills, CA);

n. Monique Lhuillier Salon (Boutique, located on Melrose Place, Los Angeles, CA);

o. Nobu (Restaurant, located on North La Cienega Boulevard, West Hollywood, CA);

p. Oscar de la Renta (Boutique, located on Melrose Place, Los Angeles, CA);

q. Picca (Restaurant, located on West Pico Boulevard, Los Angeles, CA);

r. Republic (Restaurant, formerly located on North La Cienega Boulevard, West Hollywood, CA);

s. Serge Normant at John Frieda Salon (Beauty Salon, located on Melrose Place, Los Angeles, CA);

t. Sotto (Restaurant, located on West Pico Boulevard, Los Angeles, CA);

u. STK (Restaurant, located on North La Cienega Boulevard, West Los Angeles, CA);

v. Taste On Melrose (Restaurant, located on North La Cienega Boulevard, West Hollywood, CA);

w. The Mayan (Nightclub, located in downtown Los Angeles, CA); and

x. The Stinking Rose (Restaurant, located on North La Cienega Boulevard, Beverly Hills, CA).

35. Through further investigation, plaintiffs may identify additional locations where the violations occur.

CLASS ACTION ALLEGATIONS

36. All causes of action in this Complaint are being brought and properly maintained as a class action pursuant to the provisions of Code of Civil Procedure § 382 and other applicable law.

37. The Class Period is defined as December 10, 2009 through the date of final judgment in this matter or at such earlier time as the alleged wrongdoing ceases.

38. Plaintiffs seek to represent a Class composed of:

All persons who have worked as parking valets for United Valet Parking, Inc., Mariano Pantoja, Martha Leon or Alfonso Leon during the Class Period and were deprived of tips or gratuities in violation of California law.

39. In addition, plaintiffs seek certification of the following two subclasses:

Subclass 1: All current, former, or prospective non-exempt employees who have worked as parking valets for United Valet Parking, Inc., Mariano

Pantoja, Martha Leon or Alfonso Leon during the Class Period without receiving compensation for missed or late meal or rest periods in violation of the California Labor Code and applicable wage orders.

Subclass 2: All current, former, or prospective non-exempt employees who have worked as parking valets for United Valet Parking, Inc., Mariano Pantoja, Martha Leon or Alfonso Leon during the Class Period without receiving reimbursement for the cost and maintenance of their uniforms in violation of the California Labor Code and applicable wage orders.

(Plaintiffs reserve the right under California Rules of Court, Rule 3.765 to amend or modify the Class definition with greater specificity or further division into subclasses or limitation to particular issues).

40. There is a well-defined community of interest in the litigation and the proposed Class and each Subclass are ascertainable:

Numerosity: The Class and each Subclass are so numerous that the individual joinder of all members is impractical under the circumstances of this case. While the exact number of Class members is unknown to plaintiffs at this time, plaintiffs allege that there are hundreds of current and former Class members.

Common Questions Predominate: Common questions of law and fact exist as to all Class and Subclass members and predominate over any questions that affect only individual members of the Class. Predominant common questions include: (i) whether defendants confiscate the tips paid to Class members in violation of applicable law, including, Labor Code § 351, Business & Professions Code § 17200 and/or common law; (ii) whether defendants breached an implied-in-fact employment contract with Class members; (iii) whether defendants convert the personal property of Class members for their own use; (iv) whether defendants have a policy or practice of refusing to provide Class members with legally required meal and rest breaks; (v) whether defendants have a policy or practice of categorically refusing to pay Class members the additional

compensation they are owed for all shifts during which they missed a meal or rest break; (vi) whether defendants are liable for failing to pay all wages owed to Class members at the time of termination; (vii) whether defendants fail to issue accurate wage statements to Class members; (viii) whether defendants maintain a policy or practice of refusing to provide Class members with indemnity for the cost and maintenance of their uniforms; (ix) whether defendants' conduct violates California's Unfair Competition Law; (x) whether Class members will be irreparably injured if defendants are not enjoined from continuing the conduct alleged herein; and (xi) whether restitution, damages and/or other remedies are appropriate.

Typicality: Plaintiffs claims are typical of the claims of other members of the Class and each Subclass. Plaintiffs and members of the Class sustained injury arising out of defendants' common practice of repeatedly stealing tips, failing to provide meal and rest breaks and committing the other statutory and common law violations alleged herein.

Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of the Class and each Subclass. Plaintiffs have no interests that are adverse to the interests of the other members of the Class. In addition, they have retained counsel experienced in the prosecution of complex class action litigation.

Superiority: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Because individual joinder of all Class members is impractical, class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. The expenses and burdens of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while important public interests will be served by addressing the matter as a class action. The cost to and burden on the court system of adjudication of individualized litigation would be substantial, and considerably more than the costs and burdens of a class

action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

Ascertainability: Class members can be ascertained from defendants' records and notified of the pendency of this action.

FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT

(Against All Defendants)

41. Plaintiffs repeat and reallege all of the allegations contained in paragraphs 1through 40 as if fully set forth herein. Plaintiffs assert this cause of action against all defendants.

42. The employer-employee relationship is a contractual one. Class members had or have an implied-in-fact contract with defendants. The provisions of the California Labor Code, including, but not limited to, Labor Code § 351, and the employer obligations contained therein are a part of each such implied-in-fact agreement.

43. Class members performed their obligations under the contract at all times relevant hereto, performing the labor required of them.

44. Defendants collected, took and received tips from Class members which were given directly to Class members by patrons and guests. The tips confiscated by the defendants are a "Gratuity" as that term is defined by Labor Code § 350(e). Additionally, defendants, with the money unlawfully taken from Class members, paid "Agents" as that term is defined in Labor Code § 350(d).

45. Pursuant to Labor Code § 351: "No employer or agent shall collect, take, or receive any gratuity or a part thereof, paid, given to or left for an employee by a patron, or deduct any amount from wages due an employee on account of such gratuity, or require an employee to credit the amount or any part thereof of such gratuity against and as a part of the wages due the employee from the employer. Every such gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for."

46. Patrons of the foregoing businesses and guests at special events where Class members sometimes work reasonably believe that United valets are allowed to keep the

tips that they give to them. As a result, defendants' confiscation of tips frustrates an important purpose of the law which is to prevent fraud on the public in connection with the practice of tipping. *See* Labor Code § 356. Section 356 prohibits private agreements that contravene the statutory scheme. *Id*.

47. Labor Code § 350 defines "Employer," "Employee," and "Employing" broadly to include any form of work or service performed by anyone regardless of age, classification or status in any type of business establishment or enterprise. The statutory scheme does not require a showing that protected persons be "employed" in a technical sense.

48. Defendants' taking, collecting and receiving Class members' tips occurred pursuant to a policy whereby Class members must accede to defendants' practices or lose their jobs. To the extent that, and if, the tips at issue were paid to defendants pursuant to contract, such contract is illegal under Labor Code § 356 and other California law.

49. By taking the tips belonging to Class members, defendants violate Labor Code § 351 and thereby breach the employment contract. As a direct and proximate result of defendants' breach of contract, Class members have suffered damages in the amount of such tips wrongfully appropriated subject to proof at the time of trial, plus interest thereon.

SECOND CAUSE OF ACTION FOR MONEY HAD AND RECEIVED

(Against All Defendants)

50. Plaintiffs repeat and reallege all of the allegations contained in paragraphs 1through 49 as if fully set forth herein. Plaintiffs assert this cause of action against all defendants.

51. Throughout the Class Period, defendants became indebted to Class members in an amount to be proven at trial for tip money wrongfully taken from them. The tips paid to Class members are their own, individual property pursuant to the common law of gifted property. Defendants used duress to take tips from Class members and exercised undue influence over Class members who were required to give up their tips as a condition of employment.

52. Defendants have not returned any portion of the monies taken from Class members. Demand for payment was made and is being made by this complaint. Public policy and fairness dictate that the tips be returned to Class members, with interest from the date that the tips were wrongfully confiscated.

THIRD CAUSE OF ACTION FOR CONVERSION

(Against All Defendants)

53. Plaintiffs repeat and reallege all of the allegations contained in paragraphs 1through 52 as if fully set forth herein. This cause of action is asserted against all defendants.

54. Labor Code § 351 provides that gratuities are the sole property of the employee to whom they are paid or given. By the conduct alleged herein, defendants wrongfully exercised dominion over the gratuities intended for and given solely to Class members by patrons and guests. As a result, Class members were denied the possession, use and enjoyment of the gratuities and were damaged thereby.

55. Defendants' intentionally deprived Class members of their property and subjected them to cruel and unjust hardship in conscious disregard of their rights. Defendants' authorized, managing agents carried out these acts which were ratified by United, Sabet and the other defendants. Defendants' conduct was deliberate, malicious and constitutes despicable conduct. By reason thereof, plaintiffs are entitled to recover punitive and exemplary damages.

FOURTH CAUSE OF ACTION FOR MEAL AND REST BREAK VIOLATIONS

(Against All Defendants)

56. Plaintiffs repeat and reallege all of the allegations contained in paragraphs 1through 40 as if fully set forth herein. Plaintiffs assert this cause of action against all defendants.

57. Labor Code § 226.7 requires employers to provide meal and rest breaks in accordance with the IWC Wage Orders of the Industrial Welfare Commission. The terms and conditions of employment of Class members are governed by the California Industrial

Welfare Commission Wage Order 4-2001 ("Wage Order 4-2001") which sets the employment standards for professional, technical, clerical, mechanical and other similar occupations, including parking valets and attendants.

58. Class members are not exempt from the meal and rest period requirements of section 226.7 and Industrial Welfare Commission Wage Order 4-2001.

59. Section 11(A) of Wage Order 4-2001 requires employers to make available for Class members a 30 minute meal break for all shifts in excess of 5 hours. Alternatively, section 11(B) requires an employer to pay an employee an additional hour of compensation for every shift that a mandated meal period is not provided.

60. Section 12 (A) of Wage Order 4-2001 requires a 10 minute rest period for every 4 hours worked (or major fraction thereof). Alternatively, section12 (B) requires an employer to pay an employee an additional hour of compensation for every shift that a mandated rest period is not provided.

61. Throughout the Class Period, defendants refused to provide Class members with meal and rest breaks or the additional compensation for the missed breaks as required by section 226.7 and Wage Order 4-2001. Defendants are liable for providing additional compensation to Class members for the foregoing violations.

FIFTH CAUSE OF ACTION FOR FAILURE TO PAY FOR UNIFORMS

(Against All Defendants)

62. Plaintiffs repeat and reallege all of the allegations contained in paragraphs 1through 40 as if fully set forth herein. Plaintiffs assert this cause of action against all defendants.

63. Labor Code § 2802 (a) states: “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.”

64. If an employer requires an employee to wear a uniform, Labor Code § 2802 (a) and section 9(A) of Wage Order 4-2001 require that the employer pay for the cost of the uniform.

65. The term "uniform", as defined by section 9(A) of Wage Order 4-2001, includes wearing apparel and accessories of distinctive design and color. In addition, employers are required to pay to maintain (i.e., wash) the uniform. *Id*.

66. Defendants violated Labor Code § 2802(a) and section 9(A) of Wage Order 4-2001by imposing on Class members the cost and maintenance of the uniforms they wear. Defendants do not indemnify Class members for those expenditures. Defendants are liable for providing additional compensation to Class members for the foregoing violations.

SIXTH CAUSE OF ACTION FOR UNFAIR COMPETITION

(Against All Defendants)

67. Plaintiffs repeat and reallege all of the allegations contained in paragraphs 1through 66 as if fully set forth herein. Plaintiffs assert this cause of action against all defendants.

68. California's Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200 *et seq*., proscribes "any unlawful, unfair or fraudulent business act or practice." This statute is written in the disjunctive and broadly covers the foregoing three varieties of unfair competition. The statute's purpose is to protect both consumers and competitors in commercial markets for goods and services.

69. Defendants' policies and implementing procedures constitute "unlawful" and "unfair" business acts or practices. Class members are denied:

(a) Gratuities in violation of Labor Code § 351;

(b) Meal and rest break benefits in violation of Labor Code § 226.7 and Wage Order 4-2001;

(c) Compensation for missed meal and rest breaks in violation of Labor Code §§ 204 and 226.7 and Wage Order 4-2001;

(d) Compensation for time worked during periods that should have been devoted to meal and rest breaks in violation of Labor Code §§ 204 and 226.7 and Wage Order 4-2001;

(e) Compensation of accrued wages after termination of employment in violation of Labor Code §§ 201 and 202;

(f) Accurate, itemized wage statements in violation of Labor Code § 226; and

(g) Indemnification for the cost and maintenance of uniforms in violation of Labor Code § 2802(a) and Wage Order 4-2001.

70. Each plaintiff is a "person" within the meaning of Business & Professions Code § 17201.

71. As a result of the foregoing acts and omissions, defendants have been able to unfairly compete with similar businesses in California in violation of Business & Professions Code § 17200, *et seq*.

72. Class members are entitled to equitable relief in the form of an injunction to prevent future violations and restitution of the money defendants have wrongfully withheld and taken from them. Class members are also entitled to prejudgment interest.

73. Under Business & Professions Code § 17203, the entry of permanent and mandatory injunctive relief against defendants is necessary to prevent such unfair and unlawful conduct from continuing in the future. If defendants are not enjoined, they will continue to commit the Labor Code and common law violations alleged above. Thus, there is threatened future harm and continuing violations which justify injunctive relief. The Court should issue a preliminary and permanent injunction:

(a) Ordering defendants to cease and desist confiscating Class members' tips;

(b) Ordering defendants to comply with the meal and rest break laws enumerated in Labor Code § 226.7 and Wage Order 4-2001;

(c) Ordering defendants to provide Class members with accurate, itemized wage statements as required by Labor Code § 226;

(d) Ordering defendants to provide Class members with compensation for all accrued wages after termination of employment as mandated by Labor Code §§ 201 and 202; and

(e) Ordering Defendants to indemnify Class members for the cost and maintenance of their uniforms.

74. Plaintiffs further request an order requiring defendants to disgorge and restore to Class members all additional compensation owing to them under California Labor Code §§ 201, 204, 226.7, 351, and 2802(a) and Wage Order 4-2001. The UCL allows for both an injunction and restitution in the same case.

75. Plaintiffs' efforts in securing the requested relief will result in the enforcement of an important right affecting the public interest justifying an award of attorney's fees and costs under Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all other members of the Class, pray that this Court adjudge and decree as follows:

1. That this is a proper class action under section 382 of the Code of Civil Procedure and the named plaintiffs are appropriate to be appointed as representatives of the Class;

2. For compensatory damages in an amount to be proven at trial;

3. Preliminary and permanent injunctions enjoining and restraining defendants from continuing the unfair and unlawful business practices and requiring the establishment of appropriate and effective means to prevent future violations;

4. Restitution of all compensation due, including but not limited to, gratuities, unpaid wages and benefits, according to proof;

5. For punitive damages;

6. Declaratory relief;

7. Reasonable attorney's fees and costs pursuant to, *inter alia*, Cal. Civ. Proc. Code § 1021.5;

8. For prejudgment and post judgment interest; and

9. For such other and further relief as the Court deems just and proper.

DATED: October 3, 2014

LAW OFFICES OF GEORGE A. SHOHET
A PROFESSIONAL CORPORATION

By: _____
George A. Shohet
Attorneys for Plaintiffs

JURY TRIAL DEMAND

Plaintiffs hereby demand a trial by jury in this matter.

DATED: October 3, 2014

LAW OFFICES OF GEORGE A. SHOHET
A PROFESSIONAL CORPORATION

By: _____

George A. Shohet
Attorneys for Plaintiffs

PAYROLL REPORT

Name:_____ Location:_____

Period:_____

DATE	TIME	HOUR	PAYROLL	Received / Signature

EXHIBIT 1

GRATUITY REPORT

Name:_____ **Location:**_____

Period:_____

DATE	GRATUITY	RECEIVED / SIGNATURE

EXHIBIT 2

PROOF OF SERVICE

I, Brian C. Kriezel, declare as follows:

I am employed in the County of Los Angeles, State of California, by the Law Offices of George A. Shohet, A Professional Corporation, whose business address is 245 Main Street, Suite 310, Venice, California 90291. I am over the age of 18 and not a party to this action. On

October 3, 2014, I served the following document(s) described as:

FIRST AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE CALIFORNIA LABOR CODE, UNFAIR COMPETITION LAW AND COMMON LAW

on the interested parties in this action.

I electronically transferred a true and correct copy of the above-entitled document(s) to Case Anywhere for service on all counsel of record by electronic service pursuant to the Order Authorizing Electronic Service. This service complies with Cal. Code Civ. Proc. §1010.6.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that the original of the aforementioned document(s) was/were printed on recycled paper, and that this Proof of Service was executed by me on October 3, 2014, at Venice, California.

By:_____

Brian C. Kriezel