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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

DANIELLE WILSON, MOLLIE BRAHAN-
PENBERTHY, and BRIAN DREW, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

INDEPENDENT BREWERS UNITED, LLC, a
Delaware limited liability company; and NORTH
AMERICAN BREWERIES, INC., a Delaware
corporation,

Defendants.

NO.

CLASS ACTION COMPLAINT

Plaintiffs Danielle Wilson, Mollie Brahan-Penberthy, and Brian Drew (“Plaintiffs”), by their undersigned attorneys, for this class action complaint against Defendants Independent Brewers United, LLC and North American Breweries, Inc., (collectively “Defendants”), allege as follows:

I. INTRODUCTION

1.1 Nature of Action. Plaintiffs Danielle Wilson, Mollie Brahan-Penberthy, and Brian Drew, on behalf of themselves and all others similarly situated bring this class action against Defendants, which own and operate Pyramid Brewing Co. and the Seattle Alehouse (“Pyramid Brewing”) in Seattle, Washington. Plaintiffs allege Defendants have engaged in a

1 systematic scheme of wage and hour abuse, unfair and deceptive acts and practices, and
2 unfair methods of competition that harmed their hourly-paid employees in the state of
3 Washington. These abuses include: (1) failing to provide employees with the rest breaks to
4 which they are entitled; (2) failing to provide employees with the meal breaks to which they
5 are entitled; (3) failing to record and pay employees for all hours worked; (4) failing to
6 compensate employees at the proper overtime rate for hours worked beyond forty in a
7 workweek; (5) failing to pay nonmanagerial, nonsupervisory banquet employees all automatic
8 service charges paid by customers; and (6) failing to disclose to customers that portions of
9 automatic service charges are not paid directly to nonmanagerial and nonsupervisory banquet
10 employees.

11 **II. JURISDICTION AND VENUE**

12 2.1 Jurisdiction. Defendants are within the jurisdiction of this Court. Defendant
13 Independent Brewers United, LLC is registered to do business in Washington, and both
14 Defendants conduct business in Washington. Thus, Defendants have obtained the benefits of
15 the laws of Washington as well as Washington's commercial and labor markets.

16 2.2 Venue. Venue is proper in King County because Defendants operate a brewing
17 company and restaurant in King County and transact business in King County, and Plaintiffs
18 performed work for Defendants in King County.

19 2.3 Governing Law. The claims of Plaintiffs and the Class members asserted in this
20 class action complaint are brought solely under state law causes of action and are governed
21 exclusively by Washington law.

22 **III. PARTIES**

23 3.1 Plaintiff Danielle Wilson. Plaintiff Danielle Wilson has worked for Defendants as a
24 server and banquet employee at Pyramid Brewing since approximately April 2014. During the
25 duration of her employment, Plaintiff has been a resident of Washington. Plaintiff has
26 performed work for Defendants in King County, Washington.

1 Pursuant to Washington Civil Rule 23, Plaintiffs also bring this case as a class action on behalf
2 of the following defined Subclass:

3 All current and former nonmanagerial and nonsupervisory
4 employees of Defendants who have worked in the State of
5 Washington as banquet employees between April 24, 2014 and
the date of final disposition of this action.

6 Excluded from the Class and Subclass are any entities in which Defendants have a controlling
7 interest or which have a controlling interest in one or both Defendants, and Defendants' legal
8 representatives, assignees, and successors. Also excluded are the judge to whom this case is
9 assigned and any member of the judge's immediate family.

10 4.2 Numerosity. Plaintiffs believe there are hundreds of current and former
11 employees of Defendants in both the Class and Subclass. The members of the Class and
12 Subclass are so numerous that joinder of all members is impracticable. Moreover, the
13 disposition of the claims of the Class and Subclass in a single action will provide substantial
14 benefits to all parties and the Court.

15 4.3 Commonality.

16 4.3.1 **Class**: There are numerous questions of law and fact common to
17 Plaintiffs and Class members. These questions include, but are not limited to, the following:

18 a. Whether Defendants have engaged in a common course of failing to
19 provide Class members with a ten-minute rest break for every four hours of work;

20 b. Whether Defendants have engaged in a common course of requiring
21 Class members to work more than three consecutive hours without a rest break;

22 c. Whether Defendants have engaged in a common course of failing to
23 ensure that Class members take the rest breaks to which they are entitled;

24 d. Whether Defendants have engaged in a common course of failing to
25 provide Class members with a thirty-minute meal break for every five hours of work;

26

1 e. Whether Defendants have engaged in a common course of failing to
2 ensure that Class members take the meal breaks to which they are entitled;

3 f. Whether Defendants have created a culture that discourages Class
4 members from taking the rest and meal breaks to which they are entitled;

5 g. Whether Defendants have engaged in a common course of altering the
6 time records of Class members;

7 h. Whether Defendants have engaged in a common course of failing to
8 keep true and accurate records of all hours worked by Class members;

9 i. Whether Defendants have engaged in a common course of failing to
10 properly compensate Class members for all hours worked, including overtime;

11 j. Whether Defendants have engaged in a common course of requiring or
12 permitting employees to perform off-the-clock work;

13 k. Whether Defendants have engaged in a common course of requiring or
14 authorizing employees to wait on the premises until there is sufficient work to be performed;

15 l. Whether Defendants willfully deprived Plaintiffs and the Class of the
16 wages to which they were entitled;

17 m. Whether Defendants engaged in unfair or deceptive acts or practices
18 in relation to Class members;

19 n. Whether Defendants' unfair or deceptive acts or practices occurred in
20 trade or commerce;

21 o. Whether Defendants' unfair or deceptive acts or practices are
22 injurious to the public interest under RCW 19.86.093;

23 p. Whether Defendants' unfair or deceptive acts or practices injured
24 Class members;

25 q. Whether Defendants engaged in unfair methods of competition in
26 relation to Class members;

1 r. Whether Defendants' unfair methods of competition occurred in
2 trade or commerce;

3 s. Whether Defendants' unfair methods of competition are injurious to
4 the public interest under RCW 19.86.093;

5 t. Whether Defendants' unfair methods of competition injured Class
6 members;

7 u. Whether Defendants have violated RCW 49.12.020;

8 v. Whether Defendants have violated WAC 296-126-092;

9 w. Whether Defendants have violated RCW 49.46.090;

10 x. Whether Defendants have violated RCW 49.46.130;

11 y. Whether Defendants have violated RCW 49.46.160;

12 z. Whether Defendants have violated RCW 49.48.010;

13 aa. Whether Defendants have violated RCW 49.52.050;

14 bb. Whether Defendants violated RCW 19.86.010-.920;

15 cc. Whether Defendants violated SMC 14.20.020;

16 dd. Whether Defendants violated SMC 14.20.025;

17 ee. Whether Defendants violated SMC 14.20.030; and

18 ff. The nature and extent of class-wide injury and the measure of
19 compensation for such injury.

20 4.3.2 **Subclass:** There are numerous questions of law and fact common to
21 Plaintiffs and Subclass members. These questions include, but are not limited to, the
22 following:

23 a. Whether Defendants have engaged in a common course of failing to
24 disclose to customers in itemized receipts and in menus the percentage of automatic service
25 charges that are paid or payable directly to Defendants' nonmanagerial and nonsupervisory
26 banquet employees;

1 b. Whether Defendants have engaged in a common course of failing to pay
2 nonmanagerial, nonsupervisory banquet employees all of the automatic service charges
3 Defendants collect from customers;

4 c. Whether Defendants engaged in unfair or deceptive acts or practices
5 in relation to Class members;

6 d. Whether Defendants' unfair or deceptive acts or practices occurred in
7 trade or commerce;

8 e. Whether Defendants' unfair or deceptive acts or practices are
9 injurious to the public interest under RCW 19.86.093;

10 f. Whether Defendants' unfair or deceptive acts or practices injured
11 Class members;

12 g. Whether Defendants engaged in unfair methods of competition in
13 relation to Class members;

14 h. Whether Defendants' unfair methods of competition occurred in
15 trade or commerce;

16 i. Whether Defendants' unfair methods of competition are injurious to
17 the public interest under RCW 19.86.093;

18 j. Whether Defendants' unfair methods of competition injured Class
19 members;

20 k. Whether Defendants have violated RCW 49.46.160;

21 l. Whether Defendants have violated RCW 49.48.010;

22 m. Whether Defendants have violated RCW 49.52.050;

23 n. Whether Defendants violated SMC 14.20.020;

24 o. Whether Defendants violated SMC 14.20.025;

25 p. Whether Defendants violated SMC 14.20.030;

26 q. Whether Defendants have violated RCW 19.86.010-.920; and

1 r. The nature and extent of the injury to members of the Subclass and the
2 measure of compensation for such injury.

3 4.4 Typicality.

4 4.4.1 **Class:** Plaintiffs' claims are typical of the claims of the members of the
5 Class because Plaintiffs were employed in Washington by Defendants as non-exempt,
6 nonmanagerial, and nonsupervisory employees. The claims of Plaintiffs, like the claims of the
7 Class, arise out of the same common course of conduct by Defendants and are based on the
8 same legal and remedial theories.

9 4.4.2 **Subclass:** Plaintiffs' claims are typical of the claims of the Subclass
10 members because Plaintiffs were employed in Washington by Defendants as nonmanagerial
11 and nonsupervisory banquet employees. The claims of Plaintiffs, like the claims of the
12 Subclass, arise out of the same common course of conduct by Defendants and are based on
13 the same legal and remedial theories.

14 4.5 Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class
15 and Subclass. Plaintiffs have retained competent and capable attorneys who are experienced
16 trial lawyers with significant experience in complex and class action litigation, including
17 employment law. Plaintiffs and their counsel are committed to prosecuting this action
18 vigorously on behalf of the Class and Subclass and have the financial resources to do so.
19 Neither Plaintiffs nor their counsel have interests that are contrary to or that conflict with
20 those of the proposed Class and Subclass.

21 4.6 Predominance. Defendants have engaged in a common course of both wage
22 and hour abuse, unfair and deceptive acts and practices, and unfair methods of competition
23 that harmed Plaintiffs and members of the Class and Subclass. The common issues arising
24 from this conduct that affect Plaintiffs and members of the Class and Subclass predominate
25 over any individual issues.

1 5.8 Defendants have had actual or constructive knowledge of the facts set forth in
2 Paragraphs 5.2 through 5.7.

3 5.9 Common Course of Conduct: Failure to Provide Proper Meal Breaks.
4 Defendants have engaged in a common course of failing to provide Plaintiffs and Class
5 members with a thirty-minute meal break for every five hours of work.

6 5.10 Defendants have engaged in a common course of requiring or permitting
7 Plaintiffs and Class members to work more than five consecutive hours without a meal break.

8 5.11 Defendants have engaged in a common course of failing to ensure Plaintiffs
9 and Class members have taken the meal breaks to which they are entitled.

10 5.12 Defendants have engaged in a common course of failing to provide Plaintiffs
11 and Class members with thirty minutes of additional pay for each missed meal break.

12 5.13 Defendants have created and fostered a workplace culture that encourages
13 employees to skip meal breaks.

14 5.14 Defendants have had actual or constructive knowledge of the facts set forth in
15 Paragraphs 5.9 through 5.13.

16 5.15 Common Course of Conduct: Failure to Pay for All Hours of Work. Defendants
17 have engaged in a common course of failing to pay Plaintiffs and Class members for each hour
18 worked. Defendants have done so by manipulating time records and failing to pay Plaintiffs
19 and Class members for hours worked off the clock and hours spent waiting until Defendants
20 instructed them to clock in when sufficient work became available to perform.

21 5.16 Defendants have engaged in a common course of manipulating time records so
22 that Plaintiffs and Class members are not credited with all hours worked. This manipulation
23 has often taken the form of “time shaving,” whereby Defendants delete an employee’s actual
24 time punch record and substitute a false time punch record in order to decrease the amount
25 of recorded worked time.

1 5.17 In approximately late 2017, Defendants acknowledged that employee time
2 records had been improperly altered and paid out a small portion of the unpaid wages owed
3 to employees. But Defendants failed to compensate employees for all of the hours worked.

4 5.18 Defendants have also engaged in a common course of requiring or permitting
5 employees to perform work off the clock so as to avoid working beyond scheduled hours and
6 going into overtime.

7 5.19 Pyramid Brewing is located across the street from Safeco Field and near
8 CenturyLink Field. Because of this location, much of Defendants’ business is dependent on the
9 events at the fields and the schedules of the professional sports teams that play there.

10 5.20 To ensure there is sufficient staff to handle the fluctuating number of
11 customers, Defendants have a policy or practice of requiring or authorizing employees to
12 clock out after working for a number of hours and remain on the premises until there is
13 sufficient work to be performed. At that point, Defendants authorize or require employees to
14 clock back in and serve customers. While clocked out during these periods, Defendants’
15 employees are “engaged to wait.”

16 5.21 As a result of their common course of conduct, Defendants have failed to pay
17 Plaintiffs and Class members for all hours worked, including overtime hours.

18 5.22 As a result of their common course of conduct, Defendants have failed to
19 maintain accurate records of hours worked by Plaintiffs and Class members.

20 5.23 Defendants have had actual or constructive knowledge of the facts set forth in
21 Paragraphs 5.15 through 5.22.

22 5.24 Common Course of Conduct: Failure to Pay Overtime Wages. Defendants have
23 engaged in a common course of failing to pay overtime wages to Plaintiffs and Class members.

24 5.25 Defendants have engaged in a common course of failing to pay overtime wages
25 to Plaintiffs and Class members during workweeks in which Plaintiffs and Class members
26 worked over forty hours but were not credited for all hours worked.

1 5.26 Defendants have engaged in a common course of failing to pay overtime wages
2 to Plaintiffs and Class members during workweeks in which missed rest break time extended
3 the workweek beyond forty hours.

4 5.27 Defendants have engaged in a common course of failing to pay overtime wages
5 to Plaintiffs and Class members during workweeks in which missed meal break time extended
6 the workweek beyond forty hours.

7 5.28 Defendants have had actual or constructive knowledge of the facts set forth in
8 Paragraphs 5.24 through 5.27.

9 5.29 Common Course of Conduct: Failure to Pay Automatic Service Charges to
10 Employees and Failure to Disclose Defendants' Retention of Automatic Service Charges.

11 Defendants' have engaged in a common course of wage and hour abuse by routinely failing to
12 pay nonmanagerial, nonsupervisory banquet employees all or part of the automatic service
13 charges Defendants collect from customers for the banquet employees' services.

14 5.30 Defendants have a practice of including an automatic service charge on their
15 banquet bills.

16 5.31 Defendants have engaged in a common course of failing to pay nonmanagerial,
17 nonsupervisory banquet employees all of the automatic service charges Defendants collect
18 from customers.

19 5.32 Defendants engaged in a common course of failing to disclose to customers in
20 itemized receipts and in menus the percentage of automatic service charges that are paid or
21 payable directly to Defendants' nonmanagerial and nonsupervisory banquet employees.

22 5.33 Defendants have had actual or constructive knowledge of the facts set forth in
23 Paragraphs 5.29 through 5.32.

24 5.34 Common Course of Conduct: Unfair and Deceptive Acts and Practices.
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1 5.35 Defendants have engaged in a common course of unfairly and deceptively
2 manipulating time records so that Plaintiffs and Class members were not credited with and
3 paid for all hours worked.

4 5.36 Defendants have engaged in a common course of unfairly failing to provide
5 Plaintiffs and Class members with the rest and meal breaks to which they were entitled and
6 ensure those breaks were received.

7 5.37 Defendants have engaged in a common course of unfairly and deceptively
8 failing to disclose to customers in itemized receipts and in menus the percentage of automatic
9 service charges that are paid or payable directly to their nonmanagerial and nonsupervisory
10 banquet employees.

11 5.38 Defendants have engaged in a common course of unfairly failing to pay
12 nonmanagerial, nonsupervisory banquet employees all of the automatic service charges they
13 collect from customers.

14 5.39 Defendants' unfair and deceptive conduct occurred in trade or commerce.

15 5.40 Defendants' unfair and deceptive conduct is injurious to the public interest
16 because the conduct violated a statute that contains a specific legislative declaration of public
17 interest impact, injured other persons, had the capacity to injure other persons, and has the
18 capacity to injure other persons.

19 5.41 Defendants' unfair and deceptive conduct has caused injury to Plaintiffs and
20 Class and Subclass members.

21 5.42 Common Course of Conduct: Unfair Methods of Competition. Defendants have
22 generated revenue through a common course of unfair methods of competition with other
23 businesses, including: (1) by manipulating time records so that Plaintiffs and Class members
24 were not credited with and paid for all hours worked; (2) by failing to provide Plaintiffs and
25 Class members with the rest and meal breaks to which they were entitled and failing to
26 ensure those breaks were received; (3) by failing to disclose to customers in itemized receipts

1 and in menus the percentage of automatic service charges that are paid or payable directly to
2 their nonmanagerial and nonsupervisory banquet employees; and (4) failing to pay
3 nonmanagerial, nonsupervisory banquet employees all of the automatic service charges they
4 collect from customers.

5 5.43 These methods of unfair competition have allowed Defendants to increase
6 profits by paying less for labor than companies that otherwise comply with Washington's
7 wage and hour laws.

8 5.44 Defendants' unfair methods of competition occurred in trade or commerce.

9 5.45 Defendants' unfair methods of competition are injurious to the public interest
10 because the conduct violated a statute that contains a specific legislative declaration of public
11 interest impact, injured other persons, had the capacity to injure other persons, and have the
12 capacity to injure other persons.

13 5.46 Defendants' unfair methods of competition have caused injury to Plaintiffs and
14 Class and Subclass members.

15 VI. FIRST CLAIM FOR RELIEF

16 (Violations of RCW 49.12.020 and WAC 296-126-092— 17 Failure to Provide Rest Periods—on Behalf of Plaintiffs and Class Members)

18 6.1 Plaintiffs reallege and incorporate by reference each and every allegation set
19 forth in the preceding paragraphs.

20 6.2 RCW 49.12.010 provides that "[t]he welfare of the state of Washington
21 demands that all employees be protected from conditions of labor which have a pernicious
22 effect on their health. The state of Washington, therefore, exercising herein its police and
23 sovereign power declares that inadequate wages and unsanitary conditions of labor exert
24 such pernicious effect."

25 6.3 RCW 49.12.020 provides that "[i]t shall be unlawful to employ any person in
26 any industry or occupation within the state of Washington under conditions of labor
detrimental to their health."

1 6.4 Under RCW 49.12.005 and WAC 296-126-002, “conditions of labor” “means
2 and includes the conditions of rest and meal periods” for employees.

3 6.5 WAC 296-126-092 provides that employees shall be allowed certain paid rest
4 periods during their shifts.

5 6.6 Under Washington law, Defendants have an obligation to provide employees
6 with the rest breaks to which they are entitled.

7 6.7 Under Washington law, Defendants have an obligation to ensure that
8 employees take the rest breaks to which they are entitled.

9 6.8 Under Washington law, Defendants have an obligation to provide employees
10 with ten minutes of additional pay for each missed rest break.

11 6.9 By the actions alleged above, Defendants have violated the provisions of RCW
12 49.12.020 and WAC 296-126-092.

13 6.10 As a result of the unlawful acts of Defendant, Plaintiffs and members of the
14 Class have been deprived of compensation in amounts to be determined at trial, and Plaintiffs
15 and members of the Class are entitled to the recovery of such damages, including interest
16 thereon, attorneys’ fees under RCW 49.48.030, and costs.

17 **VII. SECOND CLAIM FOR RELIEF**

18 **(Violations of RCW 49.12.020 and WAC 296-126-092—**

19 **Failure to Provide Meal Periods—on Behalf of Plaintiffs and Class Members)**

20 7.1 Plaintiffs reallege and incorporate by reference each and every allegation set
21 forth in the preceding paragraphs.

22 7.2 RCW 49.12.010 provides that “[t]he welfare of the state of Washington
23 demands that all employees be protected from conditions of labor which have a pernicious
24 effect on their health. The state of Washington, therefore, exercising herein its police and
25 sovereign power declares that inadequate wages and unsanitary conditions of labor exert
26 such pernicious effect.”

1 7.3 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in
2 any industry or occupation within the state of Washington under conditions of labor
3 detrimental to their health.”

4 7.4 Under RCW 49.12.005 and WAC 296-126-002, “conditions of labor” “means
5 and includes the conditions of rest and meal periods” for employees.

6 7.5 WAC 296-126-092 provides that employees shall be allowed certain meal
7 periods during their shifts, and the meal periods shall be on the employer’s time when the
8 employee is required by the employer to remain on duty on the premises or at a prescribed
9 work site in the interest of the employer.

10 7.6 Under Washington law, Defendants have an obligation to provide employees
11 with the meal breaks to which they are entitled.

12 7.7 Under Washington law, Defendants have an obligation to ensure that
13 employees take the meal breaks to which they are entitled.

14 7.8 Under Washington law, Defendants have an obligation to provide employees
15 with thirty minutes of additional pay for each missed meal break.

16 7.9 By the actions alleged above, Defendants have violated the provisions of RCW
17 49.12.020 and WAC 296-126-092.

18 7.10 As a result of the unlawful acts of Defendants, Plaintiffs and members of the
19 Class have been deprived of compensation in amounts to be determined at trial, and Plaintiffs
20 and members of the Class are entitled to the recovery of such damages, including interest
21 thereon, attorneys’ fees under RCW 49.48.030, and costs.

1 **VIII. THIRD CLAIM FOR RELIEF**
2 **(Violation of RCW 49.46.090—Payment of Wages Less than Entitled—on**
3 **Behalf of Plaintiffs and Class Members)**

4 8.1 Plaintiffs reallege and incorporate by reference each and every allegation set
5 forth in the preceding paragraphs.

6 8.2 Under RCW 49.46.090, employers must pay employees all wages to which they
7 are entitled under the Washington Minimum Wage Act (WMWA).

8 8.3 By the actions alleged above, Defendants have violated the provisions of RCW
9 49.46.090 by failing to pay wages to Plaintiffs and Class members for missed rest and meal
10 breaks, by manipulating time records, by failing to pay wages to Plaintiffs and Class members
11 for hours worked off the clock, and by failing to pay wages to Plaintiffs and Class members for
12 hours spent waiting on the premises until Defendants instructed them to clock in when
13 sufficient work became available to perform including hours worked off the clock and hours
14 spent waiting until Defendants instructed them to clock in when sufficient work became
15 available to perform.

16 8.4 As a result of the unlawful acts of Defendant, Plaintiffs and members of the
17 Class have been deprived of compensation in amounts to be determined at trial, and Plaintiffs
18 and members of the Class are entitled to the recovery of such damages, including interest
19 thereon, as well as attorneys' fees and costs under RCW 49.46.090.

20 **IX. FOURTH CLAIM FOR RELIEF**
21 **(Violations of RCW 49.46.130—Failure to Pay Overtime Wages—on Behalf of**
22 **Plaintiffs and Class Members)**

23 9.1 Plaintiffs reallege and incorporate by reference each and every allegation set
24 forth in the preceding paragraphs.

25 9.2 RCW 49.46.130 provides that “no employer shall employ any of his employees
26 for a workweek longer than 40 hours unless such employee receives compensation for his
employment in excess of the hours above specified at a rate not less than one and one-half
times the regular rate at which he is employed.”

1 9.3 By the actions alleged above, Defendants have violated the provisions of RCW
2 49.46.130 by failing to pay overtime wages to Plaintiffs and Class members during workweeks
3 in which Plaintiffs and Class members worked over forty hours but were not credited for all
4 hours worked and workweeks in which missed rest and meal break time extended the
5 workweek beyond forty hours.

6 9.4 As a result of the unlawful acts of Defendant, Plaintiffs and members of the
7 Class have been deprived of compensation in amounts to be determined at trial, and Plaintiffs
8 and members of the Class are entitled to recovery of such damages, including interest
9 thereon, as well as attorneys' fees and costs under RCW 49.46.090.

10 **X. FIFTH CLAIM FOR RELIEF**

11 **(Violation of RCW 49.46.090(1) and RCW 49.46.160—Failure to Pay**
12 **Automatic Service Charges to Employees and Failure to**
13 **Disclose Defendants' Retention of Automatic Service Charges—on Behalf of**
14 **Plaintiffs and Subclass Members)**

15 10.1 Plaintiffs reallege and incorporate by reference each and every allegation set
16 forth in the preceding paragraphs.

17 10.2 RCW 49.46.160 defines a "service charge" as "a separately designated amount
18 collected by employers from customers that is for services provided by employees, or is
19 described in such a way that customers might reasonably believe that the amounts are for
20 such services." RCW 49.46.160 requires "[a]n employer that imposes an automatic service
21 charge related to food, beverages, entertainment, or portorage provided to a customer must
22 disclose in an itemized receipt and in any menu provided to the customer the percentage of
23 the automatic service charge that is paid or is payable directly to the employee or employees
24 serving the customer."

25 10.3 If employers fail to warn customers—via "an itemized receipt and in any menu
26 provided to the customer"—that an automatic service charge is not payable to the employees
servicing the customer, then, under and by virtue of RCW 49.46.020(3) and RCW 49.46.090(1),
the money collected from the automatic service charge must be paid to the employees

1 servicing the customer.

2 10.4 RCW 49.46.020(3) provides that “[a]n employer must pay to its employees . . .
3 all service charges as defined under RCW 49.46.160 except those that, pursuant to RCW
4 49.46.160, are itemized as not being payable to the employee or employees servicing the
5 customer.”

6 10.5 For purposes of RCW 49.46.160, the term “[e]mployee’ means nonmanagerial,
7 nonsupervisory workers, including but not limited to servers, bus[s]ers, banquet attendant[s],
8 banquet captains, bartenders, barbacks, and porters.” RCW 49.46.160(2)(a).

9 10.6 RCW 49.46.090(1) provides that “[a]ny employer who pays any employee less
10 than wages to which such employee is entitled under or by virtue of this chapter, shall be
11 liable to such employee affected for the full amount of such wage rate, less any amount
12 actually paid to such employee by the employer, and for costs and such reasonable attorney’s
13 fees as may be allowed by the court.”

14 10.7 Plaintiffs and members of the Subclass are employees under RCW 49.46.160.

15 10.8 Defendants are employers under RCW 49.46.160.

16 10.9 Defendants impose an automatic service charge related to food, beverages,
17 and portorage provided to their customers.

18 10.10 Defendants fail to disclose to customers in itemized receipts and in menus the
19 percentage of automatic service charges that are paid or payable directly to their
20 nonmanagerial and nonsupervisory banquet employees.

21 10.11 Defendants fail to pay nonmanagerial, nonsupervisory banquet employees all
22 of the automatic service charges they collect from customers.

23 10.12 Defendants have retained for themselves automatic service charges that they
24 collected from their customers.

25 10.13 By the actions alleged above, Defendants violated RCW 49.46.020(3), RCW
26 49.46.090, and RCW 49.46.160 by collecting automatic service charges from customers while

1 failing to disclose in itemized receipts or in menus provided to customers that all or part of
2 these automatic service charges are retained by Defendants, not paid directly to the banquet
3 servers serving the customers.

4 10.14 As a result of the unlawful acts of Defendants, Plaintiffs and members of the
5 Subclass have been deprived of compensation in amounts to be determined at trial and
6 pursuant to RCW 49.46.090, Plaintiffs and members of the Subclass are entitled to recovery of
7 such damages, including interest thereon, as well as attorneys' fees and costs.

8 **XI. SIXTH CLAIM FOR RELIEF**

9 **(Violation of RCW 49.48.010—Unpaid Wages on Termination—on Behalf of**
10 **Plaintiff Drew and Those Members of the Class and Subclass Who Are No**
11 **Longer Employed by Defendants)**

12 11.1 Plaintiffs reallege and incorporate by reference each and every allegation set
13 forth in the preceding paragraphs.

14 11.2 RCW 49.48.010 provides that “[w]hen any employee shall cease to work for an
15 employer, whether by discharge or by voluntary withdrawal, the wages due him or her on
16 account of his or her employment shall be paid to him or her at the end of the established pay
17 period.” The statute further provides that “[i]t shall be unlawful for any employer to withhold
18 or divert any portion of an employee’s wages”

19 11.3 By the actions alleged above, Defendants have violated the provisions of RCW
20 49.48.010 by failing to pay wages owed for missed rest and meal breaks, for all hours of work,
21 for overtime hours worked, and for automatic service charges to Plaintiff Drew and members
22 of the Class and Subclass who are no longer employed by Defendants.

23 11.4 As a result of the unlawful acts of Defendants, Plaintiff Drew and members of
24 the Class and Subclass who are no longer employed by Defendants have been deprived of
25 compensation in amounts to be determined at trial, and Plaintiff Drew and members of the
26 Class and Subclass who are no longer employed by Defendants are entitled to the recovery of
such damages, including interest thereon, attorneys' fees under RCW 49.48.030, and costs.

XII. SEVENTH CLAIM FOR RELIEF

(Violation of RCW 49.52.050—Willful Refusal to Pay Wages—on Behalf of Plaintiffs and Members of the Class and Subclass)

12.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

12.2 RCW 49.52.050 provides that “[a]ny employer or officer, vice principal or agent of any employer . . . who . . . [w]ilfully and with intent to deprive the employee of any part of his or her wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract” shall be guilty of a misdemeanor.

12.3 Defendants’ violations of RCW 49.12.020, WAC 296-126-092, RCW 49.46.090, RCW 49.46.130, RCW 49.46.160, and RCW 49.48.010 were willful and constitute violations of RCW 49.52.050.

12.4 RCW 49.52.070 provides that any employer who violates the provisions of RCW 49.52.050 shall be liable in a civil action for twice the amount of wages withheld, attorneys’ fees, and costs.

12.5 As a result of the willful, unlawful acts of Defendants, Plaintiffs and members of the Class and Subclass have been deprived of compensation in amounts to be determined at trial and Plaintiffs and members of the Class and Subclass are entitled to recovery of twice such damages, including interest thereon, as well as attorneys’ fees and costs under RCW 49.52.070.

XIII. EIGHTH CLAIM FOR RELIEF

(Violations of chapter 19.86 RCW—Unfair and Deceptive Acts and Practices and Unfair Methods of Competition—on Behalf of Plaintiffs and Members of the Class and Subclass)

13.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

1 13.2 RCW 19.86.020 provides that “[u]nfair methods of competition and unfair or
2 deceptive acts or practices in the conduct of any trade or commerce are hereby declared
3 unlawful.”

4 13.3 RCW 19.86.090 further provides that “[a]ny person who is injured . . . by a
5 violation of RCW 19.86.020,” may be awarded “damages up to an amount not to exceed three
6 times the actual damages sustained”

7 13.4 Defendants engaged in unfair or deceptive practices and unfair methods of
8 competition when they manipulated time records so that Plaintiffs and members of the Class
9 and Subclass were not credited with and paid for all of the hours they worked.

10 13.5 Defendants engaged in unfair acts or practices and unfair methods of
11 competition when they failed to provide Plaintiffs and members of the Class and Subclass with
12 rest and meal breaks to which they were entitled and failed to ensure those breaks were
13 received.

14 13.6 Defendants engaged in unfair acts or practices and unfair methods of
15 competition when they failed to disclose to customers in itemized receipts and in menus the
16 percentage of automatic service charges that are paid or payable directly to their
17 nonmanagerial and nonsupervisory banquet employees.

18 13.7 Defendants engaged in unfair acts or practices and unfair methods of
19 competition when they failed to pay nonmanagerial, nonsupervisory banquet employees all of
20 the automatic service charges they collect from customers.

21 13.8 Defendants’ unfair or deceptive acts or practices and unfair methods of
22 competition occurred in trade or commerce.

23 13.9 Defendants’ unfair and deceptive courses of conduct and unfair methods of
24 competition were injurious to the public interest because the courses of conduct and methods
25 violated a statute that contains a specific legislative declaration of public interest impact,
26

1 injured other persons, had the capacity to injure other persons, and has the capacity to injure
2 other persons.

3 13.10 As a direct and proximate cause of Defendants’ unfair or deceptive acts or
4 practices and unfair methods of competition, Plaintiffs, Class members, and Subclass
5 members have suffered injury.

6 13.11 As a result of Defendants’ unfair and deceptive practices, Plaintiffs, Class
7 members, and Subclass members are entitled to recover treble damages, reasonable
8 attorney’s fees, and costs pursuant to RCW 19.86.090.

9 **XIV. NINTH CLAIM FOR RELIEF**
10 **(Violations of SMC 14.20.020—Failure to Pay All Compensation Owed—on Behalf of**
11 **Plaintiffs and Members of the Class and Subclass)**

12 14.1 Plaintiffs reallege and incorporate by reference each and every allegation set
13 forth in the preceding paragraphs.

14 14.2 SMC 14.20.020 provides that “[a]n employer shall pay all compensation owed to
15 an employee by reason of employment on an established regular pay day at no longer than
16 monthly payment intervals.”

17 14.3 SMC 14.20.025 provides that each time compensation is paid, an employer shall
18 give written notice to the employee of all hours worked and all deductions taken by the
19 employer for that pay period.

20 14.4 SMC 14.20.30 provides that the employer must also retain payroll records that
21 document all hours worked by each employee, including straight-time and overtime hours,
22 and records of all deductions taken from the employee’s wages each pay period.

23 14.5 SMC 14.20.045 provides that the failure of an employer to comply with any
24 requirement imposed upon it under Chapter 14.20 (“Wage Theft Ordinance”) constitutes a
25 violation of the ordinance.

26 14.6 SMC 14.20.090(A) provides that “any person or class of persons that suffers
financial injury as a result of a violation of [the Wage Theft Ordinance] . . . may be awarded

1 reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to
2 remedy the violation including, without limitation, the payment of any unpaid compensation
3 plus interest due to the person and liquidated damages in an additional amount of up to twice
4 the unpaid compensation”

5 14.7 By the actions alleged above, Defendants have violated the provisions of SMC
6 14.20.020 by failing to pay all compensation owed to Plaintiffs and members of the Class and
7 Subclass by reason of their employment, including compensation for missed rest and meal
8 breaks; compensation for all hours of work; full payment of all overtime wages owed; and full
9 payment of all service charges owed.

10 14.8 As a result of the unlawful acts of Defendant, Plaintiffs and members of the Class
11 and Subclass have been deprived of compensation in amounts to be determined at trial, and
12 Plaintiffs and members of the Class and Subclass are entitled to the recovery of such damages,
13 including interest thereon, an additional amount of twice the unpaid compensation, and
14 attorneys’ fees and costs under SMC 14.20.090.

15 **XV. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs, on their own and on behalf of the members of both the Class
17 and the Subclass, pray for judgment against Defendants as follows:

- 18 A. Certify the proposed Class and Subclass;
- 19 B. Appoint Plaintiffs as representatives of the Class and Subclass;
- 20 C. Appoint the undersigned attorneys as counsel for the Class and Subclass;
- 21 D. Award Plaintiffs and members of the Class and Subclass compensatory,
22 exemplary, and treble damages, in amounts to be proven at trial;
- 23 E. Enjoin Defendants and their officers, agents, successors, employees,
24 representatives, and any and all persons acting in concert with them, as provided by law, from
25 engaging in each of the unfair and deceptive acts or practices set forth herein;
- 26 F. Award Plaintiffs and the members of the Class and Subclass attorneys’ fees and

1 costs, as allowed by law;

2 G. Award Plaintiffs and members of the Class and Subclass prejudgment and post-
3 judgment interest, as provided by law;

4 H. Permit Plaintiffs and members of the Class and Subclass leave to amend the
5 complaint to conform to the evidence presented at trial; and

6 I. Grant such other and further relief as the Court deems necessary, just, and
7 proper.

8 RESPECTFULLY SUBMITTED AND DATED this 24th day of April, 2018.

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