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County of San Francisco
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MIWANDA BARNES and ALLISON CAMILLE, individually, and on behalf of others similarly situated,

Plaintiffs,

vs.

SPRIG, INC., and DOES 1-20, inclusive,

Defendants.

Case No.: CGC-15-548154

CLASS AND REPRESENTATIVE ACTION

FIRST AMENDED COMPLAINT

(1) Failure to pay overtime wages;
(2) Failure to pay minimum wages;
(3) Failure to reimburse business expenses;
(4) Failure to provide meal periods;
(5) Failure to provide rest periods;
(6) Failure to furnish accurate itemized wage statements;
(7) Failure to pay all wages earned upon discharge;
(8) Unlawful and/or unfair business practices;
(9) Labor Code Private Attorney General Act;
(10) Failure to provide opportunity to request a copy of consumer report.

Demand For Jury Trial

Plaintiffs Miwanda Barnes and Allison Camille, on behalf of themselves and all other persons similarly situated, complain and allege as follows:

I. INTRODUCTION

1. Plaintiffs were each employed as a "Server" by Defendant Sprig, Inc., and Does 1-20, (collectively referred to as "Sprig" or "Defendants") in California. Sprig Servers deliver meals prepared by Sprig to Sprig's customers. Sprig approximately from August 2014 until January 1, 2016 uniformly misclassified its Servers as independent contractors when they were, in fact, employees under California law.

2. Plaintiffs, on behalf of herself and all other Servers in California (collectively referred to as "Class Members"), allege claims arising from Sprig's unlawful misclassification of its Servers. The Servers were employees pursuant to California law because Sprig had the right to control over how Plaintiffs and Class Members completed their work duties as Servers. Plaintiffs also each bring an individual action for violation of the California Investigative Consumer Reporting Agencies Act ("ICRAA").

3. Due to Sprig's unlawful misclassification of its Servers, Sprig consistently and uniformly violated numerous provides of the Labor Code, Wage Order 5, and California's Unfair Competition Law, Business and Professions Code § 17200, *et seq.* ("UCL"). Specifically, Sprig had a consistent policy and/or practice of: (1) misclassifying Servers as independent contractors instead of properly classifying them as employees; (2) failing to pay Servers a minimum wage for all hours worked; (3) failing to pay Servers overtime wages, while misclassified, for work performed more than eight in a day or forty in a week; (4) failing to provide Servers with off-duty meal periods of at least one half hour for every five hours worked; (5) failing to provide Servers with off-duty rest periods of at least ten minutes for every four hours or major fraction thereof worked; (6) willfully failing to pay compensation owed in a prompt and timely manner to Plaintiffs and Servers whose employment with Sprig has terminated; (7) requiring Plaintiffs and Servers to incur business-related expenses, but failing to fully reimburse them for these necessary costs; (8) knowingly and intentionally failing to furnish timely and accurate itemized wage statements; (9) failing to remit gratuities paid by customers for the Servers to them; (10) having a pattern or practice of willful misclassification; (11) having a pattern or

practice of charging willfully misclassified workers a fee or making deductions from compensation; (12) collecting wages paid to Servers by improperly deducting work related expenses from wages; (13) requiring wages to be paid through direct deposit; and, (14) failing to provide Labor Code § 2810.5 notice required to Servers at time of hire.

4. Plaintiffs, on behalf of themselves and all Class Members, seek unpaid minimum wages for all hours worked unpaid overtime wages, wages for missed meal and rest periods, reimbursement for required business expenses, unpaid gratuities, statutory penalties, punitive damages, restitution, declaratory and injunctive relief, attorneys' fees and costs, prejudgment interest, and other relief under Wage Order 5, the Labor Code, California Code of Civil Procedure ("CCP") §§ 1021.5, the UCL, California common law, San Francisco's minimum wage ordinance, San Francisco Administrative Code Chapter 12R, Sec. 12R.1 *et seq.*, and the Private Attorneys General Act ("PAGA"), Cal. Labor Code § 2698 *et seq.*

II. VENUE AND JURISDICTION

5. Venue is proper because Sprig's principal place of business is in San Francisco, CA. In addition, each cause of action enumerated below arises from California state law and the events giving rise to this lawsuit took place in California, including the County of San Francisco.

6. This Court has jurisdiction over Plaintiffs' and Class Members' claims under Labor Code §§ 201-04, 226, 226.7, 510, 512, 558, 1194, 1197, 2698 *et seq.*, 2802, Bus. & Prof. Code § 17200 *et seq.*, and Wage Order 5.

III. PARTIES

7. Plaintiff Miwanda Barnes currently resides in San Francisco, CA. Barnes was employed by Sprig as a Server from approximately October 2014 through February 2015. While employed as a Server, Barnes worked in San Francisco County, where she worked shifts scheduled by Sprig and posted on Sprig's website and/or online platform.

8. Plaintiff Allison Camille currently resides in Woodland, CA. Camille was employed by Sprig as a Server from approximately October 2015 through November 2015. While employed as a Server, Camille worked in San Francisco County, where she worked shifts scheduled by Sprig and posted on Sprig's website and/or online platform.

9. Defendant Sprig, Inc. is a California corporation headquartered in San Francisco, California.

10. The true names and capacities, whether individual, corporate, associate, or otherwise of Defendant sued herein as DOES 1 through 20, inclusive, are currently unknown to Plaintiffs, who therefore sue Defendants by fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

11. Plaintiffs are informed and believe, and based thereon allege, that Defendants acted in all respects pertinent to this action as the agents of the other DOE defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

IV. FACTUAL BACKGROUND

A. Sprig unlawfully and uniformly misclassified its Servers as independent contractors.

12. Sprig operated and conducted business as an employer of Servers in the state of California. Sprig cooks meals that are then delivered to its customers by the Servers. As a result, Servers are an integral part of Sprig's business, and Sprig's revenues depend upon the Servers. Sprig states that a "huge part of the Sprig brand is customer service, and our servers are the face of the company."

13. Sprig uniformly classified all of its Servers in California as independent contractor from approximately August 2014 to December 31, 2016.

14. Sprig had the right to terminate Servers at any time and in Sprig's sole discretion.

15. Servers did not require special skills. The skills required of Servers are those that can, and generally are, performed by employees rather than by specially-skilled independent contractors.

16. The Servers delivered meals that are created and prepared by Sprig. The packaging of these meals has Sprig's name.

17. Sprig had significant control over the Servers' hiring process, which included a background check and a mandatory unpaid orientation that lasts for 1 hour.

18. Sprig supervised Servers on each and every delivery because they received a rating on each delivery, and Sprig tracked the Servers' location during each delivery. Sprig had the right to terminate Servers for low ratings. Sprig had the right to schedule fewer work shifts for those Servers who Sprig determines have low ratings. Sprig stated that these ratings "help us to build the very best server team[,] schedule those who perform the best, [and] . . . give servers feedback as to their performance."

19. Sprig created the work shifts, and Sprig scheduled the Servers for these work shifts. Servers were instructed not to cancel work shifts once Sprig had created the work shift schedule.

20. Sprig required the Servers to clock-in and clock-out of every work shift. Although Sprig schedule work shifts for a specific amount of time, Sprig regularly instructed Servers to clock-out of their shift before the scheduled end of the shift, and Sprig only paid the Servers for the time they were clocked in.

21. The Sprig smartphone application was a necessary tool for the Servers' jobs.

22. Sprig set the Servers' compensation, and Sprig sets the price of the meals that are delivered by the Servers. The Servers were paid by the hour, on a weekly basis, and as part of Sprig's regular payroll.

23. Sprig instructed Servers on how to complete deliveries. Sprig told the Servers: what Sprig customers to deliver to; to always "double check to make sure you deliver the correct meal;" to "always go to the customer's door;" to "introduce yourself by name at the door, and use the customer's name as well;" to "tell the customer the names of the meals they are receiving;" to "thank the customer for their order;" to never "ask a customer for a high rating;" and, it is a "big no-no" to "ask a customer if you can use their restroom."

24. In addition, Servers were prohibited from sub-contracting and from having any other person in their car during a Sprig delivery.

B. Additional factual background

25. Despite Sprig's extensive right to control, Sprig willfully and intentionally misclassified its Servers as independent contractors.

26. Sprig failed to pay Servers for all hours worked. Sprig scheduled an orientation that lasted 1 hour for each Server but it did not compensate the Servers for those hours worked.

27. Sprig failed to pay Servers for overtime wages. Plaintiff Camille and Class members worked more than eight hours in a day and/or forty hours in a week, but Sprig did not pay Servers overtime wages for those hours worked more than eight in a day and/or forty in a week.

28. Sprig did not provide Servers with a thirty minute, duty-free meal period within the first five work hours in a work day or a second 30-minute, duty-free meal period after ten hours worked in a worked day.

29. Sprig did not provide Servers with a ten minute, duty-free rest period for every four hours or major fraction thereof worked during a workday after the first three and a half hours of work.

30. Sprig did not fully reimburse Servers for all reasonable and necessary business expenditures they incurred while completing their job duties. Servers regularly incurred reasonable and necessary business expenditures in the course of completing their duties, which include, but are not limited to, wear and tear on personal vehicles, fuel for those same personal vehicles, parking, personal car insurance coverage, and monthly cellular phone voice and data plans. Sprig also charged Servers for the use of "leased" phones, and requires each Server to also "lease," for $25, "equipment" from Sprig, including a delivery bag, a mobile phone charger, and a uniform. Sprig also instructed Servers to double-park when delivering meals, which caused Servers to regularly incur parking tickets, but fails to reimburse Servers for these parking tickets.

31. Sprig intentionally and knowingly did not furnish Servers with timely and accurate wage statements that show: (1) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked by each respective individual; (2) number of hours worked; (3) gross wages earned; (4) net wages earned; (5) all deductions; (6) inclusive dates of the period for which the employee is paid; (7) the employee identification or social security number; and, (8) the name and address of the legal entity that is the employer. Plaintiffs and Class Members have

suffered actual harm and damages from Sprig's failure to provide these accurate itemized wage statements because they remained ignorant of their actual hours worked and their applicable hourly rate. Thus, the Servers were unable to assert their statutory protections to Sprig's various Labor code violations at the time the violations occurred.

32. During the Class Period, Sprig failed to pay all compensation, such as minimum wage for all hours worked, due and owing to Plaintiffs and all former Servers upon separation, as required by Labor Code §§ 201 and 202. This failure to pay all compensation due was willfully done by Sprig.

33. Sprig collected payments from its Servers for use of a smartphone and "lease" of "equipment", and, as described herein, has a pattern or practice of willfully misclassifying its Servers in violation of Labor Code § 226.8(a)(2).

34. Sprig required that its servers receive wages through direct deposit in violation of Labor Code § 213.

35. At hire, Sprig failed to provide Servers written notice that provided the Servers' rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, and the physical address of the employer's main office or principal place of business, and a mailing address, if different. This policy and practice violates Labor Code § 2810.5.

36. Sprig also failed to pay its Servers gratuities paid to the Servers by customers. Sprig told its customers that the amount charged for the food delivery includes a tip for the Servers, which customers pay. All of Sprig's sales are completed by credit card. Yet Sprig does not remit the full amount of gratuities it collected from customers to Servers.

37. During the Class Period, Plaintiffs are informed and believe, and based thereon allege, that Sprig tortiously interfered with Servers' prospective economic advantage. Tipping is customary in the meal delivery business, and Sprig does not remit tips to the Servers. Sprig intentionally interfered with the Servers' tips by falsely telling Customers that tip was included in the amount that was paid to Sprig. This caused Customers to forego tipping the Servers. Sprig's actions were unlawful under Cal. Labor Code § 351 and UCL § 17200, *et seq*.

38. During the Class Period, Plaintiffs are informed and believe, and based thereon allege, that Sprig violated the Unfair Competition Law, California Business and Professions Code § 17200 *et*

seq. and California Labor Code § 1199, 2699.5, by the predicate violations of the California wage and hour laws described above.

39. Sprig did not always classify Servers as independent contractors. From approximately, September 2013 to August 2014, Sprig classified Servers in California as employees. Beginning in approximately January 1, 2016, Sprig has again reclassified its California Servers as employees.

CLASS ACTION ALLEGATIONS

40. This action is maintainable as a representative action pursuant to California Code of Civil Procedure § 382 as to violations of the Labor Code, Wage Order 5, and the UCL for Sprig's uniform misclassification of employees as independent contractors, minimum wage violations, meal and rest period violations, waiting time penalties, failure to furnish timely, itemized wage statements, failure to remit gratuities, and attorneys' fees and costs. Plaintiffs are representative of other Servers and are acting on behalf of their interests. The similarly situated employees are known to Sprig and are readily identifiable and locatable through Sprig's own employment records. The Class that Plaintiffs seek to represent is defined as follows:

> All persons who worked as Sprig Servers in California at any time from September 1, 2013 through December 31, 2015.

41. Plaintiffs are informed and believe that Sprig employed over forty Servers in the state of California. As a result, the individuals included within the alleged Class are so numerous that joinder of each of them would be impracticable, and the disposition of their claims in a class action, rather than in numerous individual actions, will benefit the parties, the Court, and the interests of justice.

42. Among the proposed Class there is a well-defined community of interest in the questions of law and/or fact involved, affecting the Class Members. These common questions include, but are not limited to:

a. Whether Sprig's uniform decision to classify all Class Members as independent contractors and not as employees violates California common law, the Labor Code, and Wage Order 5 §§ 2(E), 2(F), 2(H) and 3;

b. Whether Sprig's uniform right to control requires that the Servers be classified as employees under California Law;

c. Whether the Servers are engaged in a distinct occupation or business from Sprig;

d. Whether the skills required for the delivery jobs support employee status;

e. Whether the Servers' work is part of Sprig's regular business;

f. Whether Sprig's failure to pay Class Members an amount equal to or greater than the minimum wage for all hours worked violates the Labor Code and Wage Order 5;

g. Whether Sprig's failure to pay Class Members all overtime wages violates the Labor Code and Wage Order 5;

h. Whether Sprig's failure to provide meal periods to Class Members violates Labor Code §§ 226.7, 512 and Wage Order 5;

i. Whether Sprig's failure to provide paid rest periods to Class Members violates Labor Code § 226.7 and Wage Order 5;

j. Whether Sprig's failure to provide formerly employed Class Members with all wages due upon separation violates Labor Code §§ 201-203;

k. Whether Sprig's failure to fully reimburse Class Members for their employment-related expenses violates Labor Code § 2802;

l. Whether Sprig's failure to provide Class Members with itemized statements of wages and hours worked violates Labor Code § 226 and Wage Order 5;

m. Whether Sprig's various violations of the Labor Code serve as predicate violations of the UCL.

43. Common questions of law and/or fact predominate over questions that affect only individual Class Members. Plaintiffs' claims are typical of those belonging to the members of the Class they seek to represent, and Plaintiffs can adequately represent the Class they seek to represent.

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
Failure to Pay Overtime Wages
[Cal. Lab. Code §§ 510, 558 and Wage Order 5]

44. Plaintiffs re-allege, on behalf of themselves and Class Members, each and every paragraph of this Complaint as though fully set forth.

45. California Labor Code §§ 510, 558, and Wage Order 5 entitle non-exempt employees to overtime premiums for hours worked in excess of eight (8) in a given day, forty (40) in a given workweek, or on the seventh day worked in a single workweek. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation.

46. While misclassified as independent contractors, Plaintiff Camille and members of the Class Members worked in excess of eight hours per day and in excess of forty hours per week, and Defendants unlawfully failed to pay Plaintiff Camille and Class Members the proper overtime compensation.

47. As a result of these violations, Sprig is liable for unpaid overtime wages, interest thereon, and attorneys' fees and costs.

48. Plaintiffs, on behalf of themselves and Class Members, also request relief as described below.

SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS
Failure to Pay Minimum Wages
[Cal. Lab. Code §§ 1194, 1197, 1197.1, Wage Order 5, and Chapter 12R of the San Francisco Administrative Code]

49. Plaintiffs re-allege, on behalf of themselves and Class Members, each and every paragraph of this Complaint as though fully set forth.

50. California Labor Code §§ 1194, 1197, 1197.1 and Wage Order 5 entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation.

51. Sprig did not compensate Sprig Servers for all hours worked, included an unpaid orientation that was 1.5 hours, which occurred in a week that Servers worked at least two hours for Sprig within San Francisco.

52. California's minimum wage per hour worked is $9 and was $8 prior to July 1, 2014. According to San Francisco's minimum wage ordinance, San Francisco's minimum wage per hour worked is $12.25, and it was $11.05 during 2015, $10.74 during 2014, and $10.55 during 2013.

53. As a result of these violations, Sprig is liable for unpaid minimum wages, liquidated damages, and attorneys' fees and costs.

54. Plaintiffs, on behalf of themselves and Class Members, also request relief as described below.

THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS
Failure to Reimburse for Business Expenses
[Cal. Lab. Code § 2802]

55. Plaintiffs re-allege, on behalf of themselves and Class Members, each paragraph of this Complaint as though fully set forth.

56. Labor Code § 2802 provides that "[a]n 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."

57. Plaintiffs and Class Members incurred reasonable and necessary expenses in the course of completing their job duties for Sprig, which were not reimbursed by Sprig. These expenses included but are not limited to "leasing" equipment from Sprig, wear and tear on personal vehicles used to transport them, fuel for those same personal vehicles, parking, personal car insurance coverage, purchasing a cellular phone, monthly cellular phone voice and data plans, and parking tickets.

58. Plaintiffs and Class Members are entitled to reimbursement for these necessary expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802.

59. Plaintiffs, on behalf of themselves and Class Members, also request relief as described below.

FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
Failure to Provide Meal Periods
[Cal. Lab. Code §§ 226.7, 512, and Wage Order 5]

60. Plaintiffs re-allege, on behalf of themselves and Class Members, each paragraph of this Complaint as though fully set forth.

61. Sprig failed to provide meal periods as required by Labor Code §§ 226.7, 512 and Wage Order 5.

62. Plaintiffs and Class Members worked in excess of five hours a day without being provided at least half hour meal periods in which they were relieved of their duties, as required by Labor Code §§ 226.7 and 512 and Wage Order 5. *See Brinker Restaurant Corp., et al. v. Superior Court* (2012) 53 Cal. 4th 1004, 1040-41 ("The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30–minute period, and does not impede or discourage them from doing so . . . [A] first meal period [is required] no later than the end of an employee's fifth hour of work, and a second meal period [is required] no later than the end of an employee's 10th hour of work.").

63. Because Sprig failed to provide proper meal periods, it is liable to Plaintiffs and Class Members for one hour of additional pay at the regular rate of compensation for each work day that the proper meal periods were not provided, pursuant to Labor Code §§ 226.7 and 512 and Wage Order 5, as well as interest thereon, plus reasonable attorneys' fees and costs of suit pursuant to Civil Procedure Code § 1021.5.

64. Plaintiffs, on behalf of themselves and Class Members, also request further relief as described below.

FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
Failure to Provide Rest Periods
[Cal. Lab. Code § 226.7 and Wage Order 5]

65. Plaintiffs re-allege, on behalf of themselves and Class Members, each paragraph of this Complaint as though fully set forth.

66. Defendant failed to provide the rest periods that are required by Wage Order 5. *See Brinker*, 53 Cal. 4th 1004 at 1029 ("Employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.").

67. Because Sprig failed to provide proper rest periods, it is liable to Plaintiffs and Class Members for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not provided, pursuant to Labor Code § 226.7 and Wage Order 5, as well as

interest thereon, plus reasonable attorneys' fees and costs of suit pursuant to Civil Procedure Code § 1021.5.

68. Plaintiffs, on behalf of themselves and Class Members, also request relief as described below.

SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
Failure to Furnish Timely and Accurate Itemized Wage Statements
[Cal. Lab. Code § 226 and Wage Order 5]

69. Plaintiffs re-allege, on behalf of themselves and Class Members, each paragraph of this Complaint as though fully set forth.

70. In violation of Labor Code § 226(a), Sprig did not provide Plaintiffs or Class Members with accurate itemized wage statements in writing showing: (1) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked by each respective individual; (2) number of hours worked; (3) gross wages earned; (4) net wages earned; (5) all deductions; (6) inclusive dates of the period for which the employee is paid; (7) the employee identification or social security number; and, (8) the name and address of the legal entity that is the employer.

71. As a result of Sprig's failure to provide accurate itemized wages statements, Plaintiffs and Class Members suffered actual damages and harm by being unable to determine their applicable hourly rate for each pay period, which prevented them from becoming aware of these violations and asserting their statutory protections under California law.

72. Sprig knowingly and intentionally failed to comply with Labor Code § 226(a) on each and every wage statement provided to Plaintiffs and Class and Subclass Members.

73. Pursuant to Labor Code § 226(e), Plaintiffs and Class Members are entitled to recover the greater of all actual damages or fifty dollars ($50.00) for the initial pay period in which a violation occurs and one hundred dollars ($100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000.00).

74. Plaintiffs and Class Members are entitled to an award of costs and reasonable attorneys' fees under Labor Code § 226(h).

75. Plaintiffs, on behalf of themselves and Class Members, also request relief as described below.

SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
Failure to Pay All Compensation Due Upon Discharge
[Cal. Lab. Code §§ 201-203]

76. Plaintiffs re-allege, on behalf of themselves and Class Members, each paragraph of this Complaint as though fully set forth.

77. California Labor Code §§ 201 and 202 require Sprig to pay all compensation due and owing to former Servers immediately upon discharge or within seventy-two hours of their termination of employment. California Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for such "waiting time" penalties in the form of continued compensation up to thirty workdays.

78. Sprig willfully failed to pay Plaintiffs and Class Members who are no longer employed by Sprig compensation due upon termination as required by California Labor Code §§ 201 and 202. As a result, Sprig is liable to Plaintiffs and former employee Class Members waiting time penalties provided under California Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

79. Plaintiffs, on behalf of themselves and Class Members, also request relief as described below.

EIGHTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
Unfair Business Practices in Violation of California
[Bus. & Prof. Code §§ 17200 *et seq.*]

80. Plaintiffs re-allege, on behalf of themselves and Class Members, each paragraph of this Complaint as though fully set forth.

81. Plaintiffs bring this cause of action individually and as a representative of all others subject to Sprig's unlawful acts and practices.

82. Business and Professions Code § 17200 prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice. Business and Professions Code § 17204 allows

"any person who has suffered injury in fact and has lost money or property" to prosecute a civil action for violation of the Unfair Competition Law.

83. Sprig committed unlawful, unfair, and/or fraudulent business acts and practices as defined by Business and Professions Code § 17200 by failing to pay minimum wage for all hours worked, failing to pay overtime wages, failing to pay wages for missed meal and rest periods, failing to reimburse business expenses, and failing to remit gratuities.

84. Sprig's conduct in failing to remit gratuities to Servers constitutes a violation of Cal. Lab. Code § 351, which is enforceable pursuant to UCL § 17200, *et seq.*

85. Sprig collected, took, and received gratuities that were paid, given to, or left for the Server by the customer. Alternatively, Sprig deducted any amount from wages due Servers on account of a gratuity. Alternatively, Sprig required Servers to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the Servers from Sprig.

86. Servers and Customers were in an economic relationship that would have resulted in an economic benefit to Plaintiffs and Class Members, Sprig knew of the economic relationship between the Servers and Customers. Sprig intended to and did disrupt this relationship.

87. Sprig engaged in wrongful conduct by informing customers that tips were included in the purchase price of delivery of meals. Sprig did not remit any tips to Plaintiffs and Class Members in violation of Cal. Lab. Code § 351 and the UCL.

88. The above-described unlawful actions of Sprig constitute false, unfair, fraudulent and/or deceptive business practices, within the meaning of Business and Professions Code § 17200, *et seq.*

89. As a result of its unlawful acts, Sprig reaped unfair benefits and illegal profits at the expense of Plaintiffs, and the Class they seek to represent. Sprig should be enjoined from this activity, caused to specifically perform its obligations, and made to disgorge these ill-gotten gains and pay restitution to Plaintiffs and the members of the Class including, but not limited to, restitution of all unpaid wages, plus interest, as well as attorneys' fees and costs.

90. Plaintiffs, on behalf of themselves and Class Members, also request relief as described below.

NINTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
Violation of the Private Attorneys General Act ("PAGA")
[Cal. Lab. Code § 2698 *et seq.*)]

91. Plaintiffs re-allege, on behalf of themselves and Class Members, each paragraph of this Complaint as though fully set forth herein.

92. Plaintiffs are "aggrieved employees" under PAGA, as they have been employed by Sprig during the applicable statutory period and suffered one or more of the Labor Code violations herein. As such, they seek to recover, on behalf of herself and all other current and former aggrieved employees of Sprig, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

93. Plaintiffs seek to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims is not required.

94. On August 17, 2015, Plaintiff Barnes gave written notice by certified mail of Sprig's violations of various provisions of the California Labor Code as alleged in this complaint to the Labor and Workforce Development Agency ("LWDA") and Sprig. *See* Letter from Byron Goldstein to the LWDA and Sprig (August 17, 2015) attached hereto as Exhibit A. The LWDA did not provide notice of its intention to investigate Sprig's alleged violations within thirty-three (33) calendar days of the August 17, 2015 postmark date of the notice sent by Plaintiffs. *See* Cal. Lab. Code § 2699.3.

95. Plaintiffs seek civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

a. failure to provide prompt payment of wages to Servers upon termination and resignation in violation of Labor Code §§ 201-03 and 256;

b. failure to provide accurate itemized wage statements to Servers in violation of Labor Code §§ 226(a) and 226.3;

c. failure to provide meal and rest periods in violation of Wage Order 5 and Labor Code §§ 226.7, 512;

d. failure to keep required payroll records in violation of Wage Order 5 and Labor Code §§ 1174 and 1174.5;

e. failure to pay overtime wages in violation of Wage Order 5 and Labor Code §§ 510 and 558'

f. failure to pay minimum wages in violation of Wage Order 5, Labor Code §§ 1182.12, 1194, and 1197, and San Francisco's minimum wage ordinance;

g. failure to reimburse Servers employees for all reasonably necessary expenditures and losses in violation of Labor Code § 2802;

h. failure to pay all wages twice during each calendar month on days designated in advance by the employer as the regular paydays in violation of Labor Code § 204;

i. willful misclassification of all Servers as independent contractors in violation of Labor Code § 226.8;

j. charging of Servers who Sprig willfully misclassified as independent contractors a fee, making deductions from compensation, and imposing fines arising from the Servers' employment, in violation of Labor Code § 226.8;

k. engaging in a pattern or practice of Paragraphs 89(i) and (j) mentioned herein, in violation of Labor Code § 226.8(c);

l. failure to remit gratuities in violation of Labor Code § 351;

m. requirement that wages be paid via direct deposit in violation of Labor Code § 213;

n. Sprig failed to provide its Servers written notice, at the time they were hired, that provided the Servers' rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, and the physical address of the employer's main office or principal place of business, and a mailing address, if different, in violation of Labor Code § 2810.5;

o. unlawful collection of wages in violation of Labor Code §§ 221 and 225.5;

96. With respect to violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars ($250) per

aggrieved employee for the first violation, and one thousand dollars ($1,000) per aggrieved employee for each subsequent violation of Labor Code § 226(a).

97. With respect to violations of Labor Code § 512, Labor Code § 558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars ($50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages, and one hundred dollars ($100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Moreover, Plaintiffs seeks civil penalties in the amount of unpaid wages owed to aggrieved employees pursuant to Labor Code § 558(a)(3).

98. With respect to violations of Labor Code § 1174, Labor Code § 1174.5 imposes a civil penalty of $500.

99. With respect to violations of Labor Code § 226.8, Labor Code § 226.8(b) imposes a civil penalty of not less than $5,000 and not more than $15,000 for each violation, in addition to any other penalties or fines permitted by law. Labor Code § 226.8(c) imposes a civil penalty of not less than $10,000 and not more than $25,000 for each violation if the court determines that the employer engaged in a pattern or practice of violations, in addition to any other penalties or fines permitted by law.

100. Labor Code § 2699 *et seq*. imposes a civil penalty of one hundred dollars ($100) per pay period, per aggrieved employee for initial violations, and two hundred dollars ($200) pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided, including Labor Code §§ 226.7, 226.8, 510, 558, 1174, 1182.12, 1194, 1197, 1198, and 2802.

101. Enforcement of statutory provisions to protect workers and to ensure proper and prompt payment of wages is a fundamental public interest. Plaintiffs' successful enforcement of important rights affecting the public interest will confer a significant benefit upon the general public. Private enforcement of these rights is necessary, as no public agency has pursued enforcement. Plaintiffs are incurring a financial burden in pursuing this action, and it would be against the interest of justice to

require the payment of attorneys' fees and costs from any recovery obtained, pursuant to, inter alia, California Labor Code § 2699.

TENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
Violation of the California Investigative Consumer Reporting Agencies Act (Cal. Civ. Code § 1786.16(b))

102. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth herein.

103. Plaintiffs each allege this cause of action on an individual basis only.

104. Defendants willfully violated California Civil Code § 1786.16(b)(1) because they failed to provide, by means of a box to check on a written form, the opportunity to request and receive a copy of the consumer background report obtained for each Plaintiff.

105. Plaintiffs each seeks statutory damages of $10,000 for this violation pursuant to California Civil Code § 1786.16(a)(2)(B).

106. Plaintiffs each seeks punitive damages for these violations pursuant to California Civil Code § 1786.50(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the proposed Class, pray for judgment against Defendants as follows:

A. Certification of Plaintiffs' claims as a class action, pursuant to Cal. Code of Civ. Pro. Section 382, on behalf of the proposed class;

B. Class notice to all Servers in California who worked for Sprig from September 1, 2013 through December 31, 2015;

C. That the Court declare that Sprig's policies and/or practices of misclassifying Plaintiffs and Class Members as independent contractors violated California law;

D. That the Court declare that Sprig's policies and/or practices constituted a pattern or practice of willful misclassification in violation of California Labor Code § 226.8;

E. That the Court declare that Sprig's policies and/or practices constituted a pattern or practice of charging willfully misclassified workers a fee or making a deduction from compensation in violation of California Labor Code § 226.8;

F. That the Court declare that Sprig's policies and/or practices constituted an unlawful collection of wages in violation of California Labor Code §§ 221 and 225.5;

G. That the Court declare that Sprig's policies and/or practices constituted an unlawful requirement that wages be paid through direct deposit in violation of California Labor Code § 213;

H. That the Court declare that Sprig's policies and/or practices constituted an unlawful failure to provide notice required by Labor Code Section 2810.5;

I. That the Court declare that Defendants' policies and/or practices of failing to remit gratuities violated California Labor Code § 351 and Business and Professions Code § 17200, *et seq.* and/or is tortious interference with prospective economic advantage;

J. That the Court declare that Sprig's policies and/or practices of failing to pay an amount equal to or greater than minimum wage for all hours worked to Plaintiffs and Class Members violated the Labor Code, San Francisco's minimum wage ordinance, and Wage Order 5 as to Plaintiffs and the Class Members;

K. That the Court declare that Sprig's policies and/or practices of failing to pay overtime wages while misclassified for all hours worked beyond eight in a day or forty in a week violated the Labor Code and Wage Order 5 as to Plaintiffs and the Class Members;

L. That the Court declare that Sprig's failure to provide meal periods violated California Labor Code §§ 226.7 and 512, and Wage Order 5, by failing to provide them a meal period of at least one half hour in which they were relieved of all duties for every five hours of work;

M. That the Court declare that Sprig's failure to provide rest periods violated California Labor Code § 226.7 and Wage Order 5 by failing to provide them a rest period of at least ten minutes for every four hours of work or major portion thereof;

N. That the Court declare that, as to former employee Class Members, Sprig has violated California Labor Code §§ 201-203 for willful failure to pay compensation at the time of termination of employment, resulting in unpaid waiting time penalties;

O. That the Court declare that Sprig's policies and/or practices of failing to keep accurate payroll records of daily hours worked for Plaintiffs and Class Members violated California Labor Code § 1174(d) and 1174.5;

P. That the Court declare that Sprig's failure to reimburse all business expenses incurred by Servers in the discharge of their duties as employees of Sprig violated California Labor Code § 2802;

Q. That the Court declare that Sprig's failure to furnish timely and accurate wage statements violated California Labor Code § 226;

R. That the Court declare that Sprig's above-mentioned policies and/or practices violated the UCL;

S. That the Court declare that Sprig's above-mentioned policies and/or practices violated PAGA as to the Plaintiffs and all other aggrieved employees;

T. An order preliminarily and permanently enjoining Sprig from engaging in the practices challenged herein;

U. An order that, Sprig display prominently on its Internet Web site the notice required by Labor Code § 226.8(e);

V. An award to Plaintiffs and Class Members of damages in the amount of unpaid overtime wages, minimum wages, liquidated damages, interest, and penalties subject to proof at trial;

W. An award to Plaintiffs and Class Members of damages in the amount of unpaid unreimbursed business expenses, and interest thereon, subject to proof at trial;

X. An award to Plaintiffs and the Class Members of one (1) hour of additional pay at the regular rate of compensation for each workday that meal periods were not provided, pursuant to California Labor Code § 226.7 and Wage Order 5(11), and interest thereon;

Y. An award to Plaintiffs and Class Members of one (1) hour of additional pay at the regular rate of compensation for each workday that rest periods were not provided, pursuant to California Labor Code § 226.7 and Wage Order 5(12), and interest thereon;

Z. An award to Plaintiffs and Class Members for all unpaid gratuities and interest thereon, subject to proof at trial.

AA. An award of damages and penalties to Plaintiffs and the Class Members for Sprig's failure to provide accurate itemized wage statements, pursuant to California Labor Code § 226(a);

BB. An award of payments due to Plaintiffs and Class Members who have left Sprig's employ, as waiting time penalties, pursuant to California Labor Code § 203;

CC. Prejudgment and post-judgment interest;

DD. For an order that Sprig make restitution to Plaintiffs and Class Members for Sprig due to their unlawful business practices as described herein pursuant to California Business and Professions Code §§ 17200-17205 and California Labor Code § 1199;

EE. An award to Class Representative Plaintiffs and the Class Members of reasonable attorneys' fees and costs, pursuant to California Civil Procedure Code § 1021.5, California Labor Code §§ 226, 1194, 2698(g) and/or other applicable law;

FF. An award of PAGA penalties as alleged herein; and,

GG. Such other and further relief that the Court may deem just and proper.

Dated: July 7, 2016

Respectfully submitted,

GOLDSTEIN, BORGEN, DARDARIAN & HO

Byron Goldstein

Attorneys for Plaintiffs
Miwanda Barnes and Allison Camille

EXHIBIT A

Shareholders
David Borgen
Linda M. Dardarian
Laura L. Ho

Goldstein, Borgen, Dardarian & Ho

Of Counsel
Barry Goldstein
Morris J. Baller

August 17, 2015

Via Certified U.S. Mail

California Labor & Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail

Sprig, Inc.
Gagan Biyani
1825 Turk Street
San Francisco, CA 94115

Re: PAGA Notice Pursuant to California Labor Code § 2699

Dear Sir or Madam:

Please be advised that Miwanda Barnes has retained Goldstein, Borgen, Dardarian & Ho and Browne Labor Law to represent her and all other aggrieved employees for wage and hour claims against their employer, Sprig, Inc., which is a company that has its principal place of business in San Francisco. This letter serves as notice of the below allegations pursuant to California Labor Code § 2699.3.

Sprig prepares and delivers meals. In order to provide these services, Sprig utilizes numerous delivery drivers who Sprig titles "Servers." The Servers deliver meals that Sprig creates and prepares to customers who order meals from Sprig.

Sprig has uniformly misclassified its Servers, including Ms. Barnes, and continues to uniformly misclassify its Servers as independent contractors. However, under California law, Ms. Barnes and the other Servers have been and are employees. Sprig has violated and continues to violate several California Labor Code provisions, which are listed below. Therefore, Sprig is liable for civil penalties under the Private Attorney Generals Act of 2004 ("PAGA"). Labor Code § 2698 *et seq.* We request that your agency investigate the claims alleged against Sprig below.

Sprig Servers are Employees

Sprig has uniformly misclassified its Servers as independent contractors. Sprig has and exercises significant control over the Servers, including during the Servers' hiring process, which includes a background check. The Servers deliver meals that are created and prepared by Sprig.

The packaging of these meals has Sprig's name. Sprig creates and assigns work shifts for the Servers, and Sprig requires the Servers to clock-in and clock-out of every shift.

The Servers are a regular and essential part of Sprig's business, and Sprig's revenues rely on the number deliveries that the Servers complete. Sprig sets the Servers' compensation, the Servers are paid by the hour, and Sprig created a weekly pay period for the Servers. Servers do not require special skills. The Sprig smartphone application is a necessary tool for the Servers' jobs. The Servers have no opportunity to increase their profit or loss based on their managerial skill because Sprig sets the Servers' schedules and their pay. Thus, Sprig Servers are employees.

Unlawful Failure to Pay Minimum Wage

Sprig has failed to maintain a policy or practice that compensates Ms. Barnes and its other Servers an amount equal to or greater than the minimum wage for all hours worked, as required by Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission Wage Order 5-2001. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation.

Sprig failed to pay Ms. Barnes and its other Servers for all hours worked. Although Sprig schedules work shifts for Ms. Barnes and its other Servers for fixed time periods, Ms. Barnes and the other Servers were not paid for their entire shifts. For example, Ms. Barnes was scheduled for a 3.5-hour shift on November 7, 2014 but Sprig paid her for only 2.93 hours. In addition, Ms. Barnes and the other Servers were required to attend an unpaid orientation at Sprig's offices. As a result of violations of Labor Code §§ 1194, 1197, 1197.1 and Wage Order 5-2001 for failure to pay minimum wage, Sprig is liable for civil penalties and unpaid wages pursuant to Labor Code §§ 558, 1197.1, and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

Sprig has failed to maintain a policy that provided Ms. Barnes and its other Servers with off-duty rest periods as required by California law. Ms. Barnes and similarly situated Servers regularly worked 4 hours or major fraction thereof during work days without being provided at least a ten minute rest period in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and Wage Order 5-2001. Sprig failed to pay Ms. Barnes and its other Servers the premium compensation mandated by Labor Code § 226.7(b) for these missed rest periods. As a result of violations of Labor Code §§ 226.7, 512 and Wage Order 5-2001, Sprig is liable for civil penalties and unpaid wages pursuant to Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

Sprig has failed to maintain a policy or practice that provided its Servers with off-duty meal periods as required by California law. Sprig Servers regularly worked in excess of 5 hours a day without being provided at least half-hour meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, and Wage Order 5-2001. Sprig failed to its Servers the premium compensation mandated by Labor Code § 226.7(b) for these missed meal periods. As a result of violations of Labor Code §§ 226.7 and 512 and Wage Order 5-2001,

Sprig is liable for civil penalties and unpaid wages pursuant to Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Reimburse Expenses

Sprig has failed to indemnify Ms. Barnes and its other Servers for all necessary expenditures or losses. Sprig did not reimburse Ms. Barnes and its other Servers for mileage, parking, gas, parking tickets, vehicle wear and tear, uniform maintenance, tolls, other travel costs, cell phone usage, and vehicle insurance. Sprig also charged Ms. Barnes and its other Servers for the use of a phone. Labor Code § 2802 requires the employer to indemnify employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge their duties. As a result of violations of Labor Code § 2802, Sprig is liable for civil penalties pursuant to Labor Code Labor Code §§ 558, 2802 and 2698 *et seq.*

Unlawful Failure to Furnish Wage Statements

Sprig has violated Labor Code § 226(a) by willfully failing to furnish Ms. Barnes and its other Servers with accurate, itemized wage statements. Sprig sends Servers some wage-related information by email that Sprig calls "invoices." These wage statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, the name and address of the employer, and the employee's last four digits of their social security number or employee identification number. As a result of violations of Labor Code § 226(a), Sprig is liable for civil penalties pursuant to Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Unlawful Failure to Pay Wages due Upon Discharge

Sprig has violated Labor Code §§ 201 and 202 by willfully failing to pay all compensation due and owing to Ms. Barnes and all former Servers at the time they were discharged, including compensation for all hours worked, premium pay for missed meal periods, and premium pay for missed rest periods. Pursuant to §§ 203 and 256 of the Labor Code, Ms. Barnes and other Servers who have been discharged are now also entitled to recover up to 30 days of wages due to Defendant's "willful" failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code. Additionally, because Sprig violated Labor Code §§ 201and 203 of the Labor Code, Sprig is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Pattern or Practice of Willful Misclassification

Sprig has violated Labor Code § 226.8(a)(1) by willfully misclassifying its Servers as independent contractors instead of employees. As described above, Sprig had and exercised significant control of its Servers, set the Servers' schedules and pay, paid the Servers by the hour, paid the Servers on a weekly basis, the Servers were a regular part Sprig's business, and Sprig's revenues depended on the Servers' completion of deliveries. Despite Sprig's choice to retain a significant right to control its Servers, Sprig's creation of an employee relationship, and Sprig's knowledge that its Servers were employees, Sprig chose to uniformly classify Ms. Barnes and the other Servers as independent contractors.

Sprig has engaged in a pattern or practice of willful misclassification of its Servers as independent contractors because it has misclassified all of its Servers as independent contractors as opposed to employees. Labor Code § 226.8(c). As a result, Sprig is liable for civil penalties pursuant to Labor Code §§ 226.8(a)(1), 226.8(c), and 2698 *et seq*.

Pattern or Practice of Charging Willfully Misclassified Workers a Fee or Making Deductions from Compensation

Sprig has violated Labor Code § 226.8(a)(2) by charging its Servers for a smartphone, and, as described above, had a pattern or practice of willfully misclassifying its Servers. Thus, Sprig has engaged in a pattern or practice of charging Professionals a fee, and by making deductions from compensation. As a result, Sprig is liable for civil penalties pursuant to Labor Code §§ 226.8(a)(2), 226.8(c), and 2698 *et seq*.

Unlawful Failure to Keep Accurate Payroll Records of Daily Hours Worked

Sprig has failed to keep payroll records showing total hours worked and wages paid to Ms. Barnes and other Servers. Under Labor Code § 1174(d), employers must keep "payroll records showing the hours worked daily by and the wages paid to . . . employees [. . .]." Because Sprig did not keep accurate time records reflecting hours worked for Ms. Barnes and other Servers, it is liable for civil penalties pursuant to Labor Code § 2698 *et seq*. To the extent that Sprig's failure to keep accurate payroll records was willful, it is liable for civil penalties under Labor Code § 1174.5.

Unlawful Failure to Pay All Wages Twice Each Calendar Month

Sprig failed to properly compensate Ms. Barnes and its other Servers for all hours worked, meal periods, and rest periods. Accordingly, Sprig violated Labor Code § 204(a), which requires that employers pay "*all wages* [. . .] twice during each calendar month on days designated in advance by the employer as the regular paydays" (emphasis added). As a result, Sprig is liable for civil penalties pursuant to Labor Code § 2698 *et seq*.

Unlawful Collection of Wages by Employer

Sprig has violated Labor Code §§ 221 and 225.5. Section 221 makes it "unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Sprig collected payments from Ms. Barnes and its other Servers related to smartphones for the use of Sprig's smartphone application. As a result, Sprig is liable for civil penalties and damages pursuant to Labor Code §§ 221, 225.5, and 2698 *et seq*.

Unlawful Requirement That Wages Must Be Paid Through Direct Deposit

Sprig has violated Labor Code § 213 because it required Ms. Barnes and its other Servers to receive wages through direct deposit. Sprig only pays wages by direct deposit. As a result, Sprig is liable for civil penalties pursuant to Labor Code §§ 213 and 2698 *et seq*.

Unlawful failure to provide the notice required by Labor Code Section 2810.5

Sprig has violated Labor Code § 2810.5 by failing to provide Ms. Barnes and its other Servers written notice, at the time they were hired, that provided, *inter alia*, the Servers' rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, and the physical address of the employer's main office or principal place of business, and a mailing address, if different. As a result of violations of Labor Code § 2810.5, Sprig is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

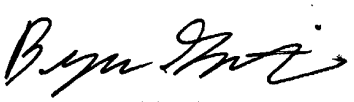
Unlawful failure to remit gratuities

Sprig has violated Labor Code § 351 by failing to pay Ms. Barnes and its other Servers the gratuities charged to credit cards that Sprig collected. Sprig told its customers that the amount charged for the food delivery included tip. All of Sprig's sales are done by credit card. Yet Sprig did not remit the full amount of gratuities it collected to Ms. Barnes and the other Servers. As a result of violations of Labor Code § 351, Sprig is liable for civil penalties pursuant to Labor Code Labor Code § 2698 *et seq.*

Conclusion

Sprig has violated or has caused to be violated a number of California wage and hour laws. Plaintiff requests the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA's provisions. Alternatively, Plaintiff requests the agency inform her if it does not intend to investigate these violations so that she may amend her lawsuit to include the violations discussed in this letter.

Very truly yours,



Byron R. Goldstein

BRG/kbm

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Case: *Barnes v. Sprig, Inc.*
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STATE OF CALIFORNIA)
) SS
COUNTY OF ALAMEDA)

I have an office in the county aforesaid. I am over the age of eighteen years and not a party to the within entitled action. My business address is 300 Lakeside Drive, Suite 1000, Oakland, California 94612.

I declare that on the date hereof I served a copy of

FIRST AMENDED COMPLAINT

SEE ATTACHED SERVICE LIST

☒ **By U.S. Mail:** By placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Oakland, California addressed as set forth below.

☒ **(*State*)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on July 8, 2016

DAMON VALDEZ

Printed Name

Signature

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