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6 General, Jacob R. Davis and
Proposed Class Members
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN BERNARDINO, CIVIL CENTRAL DISTRICT**

11 JACOB R. DAVIS,
and ROES One through
12 Twenty five,
13 Plaintiffs, Private
Attorney Generals;
14 Putative Class
Representatives

15 vs.

16 INTERNATIONAL COFFEE AND
17 TEA, LLC, LUPE AVILERA,
18 and DOES 1 through 25, inclusive,
19 Defendants.
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Case No.: CIVDS 1413685

VERIFIED PRIVATE ATTORNEY
GENERAL, CLASS ACTION COMPLAINT
FOR:

1. FAILURE TO PAY WAGES UNDER CALIFORNIA LABOR LAW AND IWC WAGE ORDERS; ILLEGAL TIP DEDUCTIONS, LABOR CODE § 351
2. CONVERSION OF LABOR (Penal Code §487);
3. VIOLATION OF UNFAIR BUSINESS PRACTICES ACT, Bus. & Prof. §17200 et. seq.
4. ENFORCEMENT UNDER THE CALIFORNIA PRIVATE ATTORNEY GENERAL ACT; Labor Code § 2698 et. seq. INDIVIDUAL PENALTIES,

Demand for Jury Trial

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23 **JURISDICTION, VENUE, PARTIES**

- 24 1. This Private Attorney General Act, Class Action is brought under California
25 State Law only. It does not state a Cause of Action under any Federal
26 Law, including but not limited to the Federal Fair Labor Standards Act. It
27 asserts causes of action which are NOT preempted by United States
28 Federal Law, and which are specifically reserved to the states per 29

1 U.S.C. § 218(a). This action is also brought under the authority of
2 *Iskanian v. CLS Transportation LLC*, California Supreme Court Case No.
3 S204032 (June 23, 2014), so it is a State Action and not a Federal Action.
4 It is for individual wages and penalties, not for State Civil Penalties.
5 Therefore, no Pre-filing Notice was given to the State of California Labor
6 Board, nor to the Defendant Employer, before this Action was filed.

7 2. Jacob R. Davis, Plaintiff, Private Attorney General, Putative Class
8 Representative, (hereinafter "PLAINTIFF") is a resident of the County of
9 San Bernardino, State of California. Plaintiff works for Defendant
10 Employer in Rancho Cucamonga at the Store located at Haven Ave and
11 Foothill Blvd. Many of the violations of State Law of which he is a victim
12 occurred in this jurisdiction, and within the applicable Statutes of
13 Limitations.

14 3. PLAINTIFF is informed, believes, and thereon alleges, that Defendant
15 INTERNATIONAL COFFEE AND TEA, LLC (hereinafter "Coffee Bean
16 Stores") is a Delaware Registered Company doing business in California
17 as "International Coffee and Tea, LLC," California Secretary of State LLC
18 Number 199835110002. Defendant operates retail stores under the
19 name of "Coffee Bean and Tea Leaf Store."

20 4. PLAINTIFF is informed, believes, and thereon alleges, that Defendant
21 Lupe Avilera is the Coffee Bean Store Restaurant Manager where the
22 Plaintiff works. Defendant Avilera is a Resident of the State of California.
23 Under California Law the Manager has personal liability for violation of
24 State Labor Law and Employment Law herein alleged under the holding of
25 *Martinez v. Combs* (2010) 49 Cal. 4th 35.

26 5. PLAINTIFF is informed, believes, and thereon alleges, that Roes 1 through
27 25 are current and/or prior employees of Defendant Coffee Bean Stores
28 who have suffered similar losses and violations of California Law as have

1 more critical if the tip deductions cause the hourly rate to fall below the
2 minimum wage. Plaintiff seeks preliminary and permanent injunction
3 preventing future violation of this automatic tip credit and offsetting against
4 wages earned. In this Action Plaintiff, Private Attorney General, putative
5 class representative also seeks to recover all actual wages owed, all waiting
6 time penalties, interest. A Claim for Statutory Attorney Fees is also made.
7 This illegal tip deduction is shown on the Earnings Statements issued by
8 Defendants to their Employees labeled "Tips Offset" under Deductions. See
9 Example attached as **Exhibit One** hereto. Those statements do not correctly
10 state the amount of wages owed to each employee.

11 10. PLAINTIFF alleges, and is informed that Coffee Bean Stores and the other
12 Defendants have a pattern and practice of requiring PLAINTIFFS and all
13 Employees, putative class members to pool their tips for each particular
14 period. Defendants then illegally use such tip amounts to offset wages
15 owed to Plaintiffs, employees and Putative Class Members. Plaintiffs are
16 informed and believe and on that basis allege that Defendants would have
17 terminated their employment, had they previously objected to the tip
18 deductions from their wages.

19 11. PLAINTIFF is informed, believes, and thereon alleges that Defendant Coffee
20 Bean Stores is a private company that operates Coffee Bean Stores
21 franchises in California. PLAINTIFFS are informed, believe, and thereon
22 allege that in California alone, there are more than 2000 Employee Servers,
23 putative class members and victims employed by Coffee Bean Stores within
24 the Statute of Limitations time frame.

25 12. PLAINTIFF is informed, believes, and thereon alleges that there are many
26 competing companies in California that do similar food service for the Public.

27 13. PLAINTIFF alleges that although Plaintiffs were provided with an actual
28 statement of earnings less tip deductions, those statements were not correct

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and intentionally misstated the gross and net earnings of Plaintiff and other employees. PLAINTIFF claims the individual fines and penalties based on such false statements of net wages which the employees have earned.

14. PLAINTIFF alleges that he, and all class members are employees, that meet the definition under California State Law of "Non-exempt", and "Non-management" employees who are entitled to minimum wages and over time hourly pay under 8 CCR §11040, and IWC Wage Order No. 5-2001.

15. PLAINTIFF is informed and believes and thereon alleges that within the controlling Statute of Limitations, he and each employee, putative class member suffered an estimated loss of at least \$20.00 per pay period for unpaid wages, so at least \$520.00 per year in illegal tip deduction offsets.

16. PLAINTIFF is informed, believes, and thereon alleges that he and each employee, and/or class member are owed an estimated \$20.00 per pay period for unpaid wages, or \$520.00 per year for each year of work for Defendants.

17. PLAINTIFF is informed, believes, and thereon alleges that there are in excess of 2,000 other putative class member Employees with similar claims of \$520.00 or more per year in unpaid wages for the Statute of Limitations period. Defendant Employer and the other named Defendant employees owe the employees, putative class members an estimated \$7,000,000.00 from unpaid wages at 10% Interest with \$25.00 penalty per pay period, together with other penalties and attorney fees. This wage damage figure is subject to modification for class size, verified tip deductions and offsets in violation of State Law and the controlling IWC Wage Order.

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1 SECOND CAUSE OF ACTION:

2 CONVERSION OF LABOR against all Defendants

3 (Penal Code §§ 484, 487, 496)

4 18. PLAINTIFF realleges, and incorporates by reference each and every
5 allegation in paragraphs 1 through 17 as though set forth in full.

6 19. In addition to being a violation of the State Labor Code and IWC Wage
7 Order, as well as of a stated public policy position by the State Division of
8 Labor Standards Enforcement, the failure to pay for all hours worked is a
9 violation of Penal Code §§ 484 and 487, theft of labor. Withholding such
10 wages justifies an award of treble damages per §496. That figure is
11 estimated to be \$21,000,000.00 added on top of the actual tips illegally
12 deducted and penalties alleged in paragraph 17.

13 20. Under Labor Code §§ 2698 et. seq., PLAINTIFFS, Private Attorney Generals
14 and/or putative Class Representatives can bring an action against the
15 Employer Coffee Bean and other Defendants for such theft of labor to
16 recover the value of same, treble damages and to prevent future violations,
17 and compel payment of withholdings for taxes, worker's compensation fee
18 and related deductions to the State of California for such withheld amounts.

19 21. Such remedies include payment of the value of such labor to each class
20 member, victim, payment of interest, waiting time penalties and interest ,
21 treble damages plus reasonable Attorney fees.

22 22. Such violations of State Penal Code section and other related Statutes also
23 justify the award of Punitive Damages or treble damages as defined by State
24 law to punish the Defendants and make a public example of them to prevent
25 other Employers within the State from violating such wage laws.

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1 THIRD CAUSE OF ACTION:
2 UNFAIR BUSINESS PRACTICES AND
3 THREAT OF RETALIATION BY EMPLOYER

4 Plaintiff against all Defendants (Labor Code §354, Bus. & Prof. Code 17200 et.
5 seq.)

6 23. PLAINTIFF realleges, and incorporates by reference each and every
7 allegation in paragraphs 1 through 22 as though set forth in full.

8 24. The Unfair Business Practices Act and the California Fair Employment and
9 Housing Act, plus related case law make it illegal for an Employer to gain a
10 competitive advantage by failing to pay all wages earned by employees. It
11 is also illegal to retaliate against an Employee who brings to the Employer's
12 attention violations of State Law.

13 25. PLAINTIFF IS afraid that he will be the victim of retaliation for reporting
14 these violations to the Employer and State Labor Authorities.

15 PLAINTIFF is informed, believes, and thereon alleges that Employer Coffee
16 Bean Stores will terminate PLAINTIFF in part, in retaliation for said
17 complaints, and for filing this Action for the Class Members and themselves.

18 26. Such illegal retaliatory termination would result in direct damages and losses
19 by PLAINTIFF, including but not limited to wages and related benefits.

20 27. PLAINTIFF is informed and believes and on that basis alleges that Defendant
21 Coffee Bean Stores have terminated other Employees, Class members who
22 have raised similar issues with the Employer Defendant. Such pattern of
23 illegal retaliation entitles PLAINTIFF and putative Class Members to both all
24 lawful damages in an amount according to the proof to a Jury and Injunctive
25 Relief as set by the Court.

26 28. PLAINTIFF also alleges that the failure to pay all wages through illegal tip
27 deductions gives the DEFENDANT Employer an unfair competitive advantage
28 over other similar retailers. Illegal retention of tips by an Employer is a crime

- 1 under Labor Code §354.
- 2 29. As either Private Attorney General, or as an actually injured Party,
3 PLAINTIFF asserts this cause of action in the alternative, under the California
4 Business Practices Act; Bus. & Prof. Code §17200 et. seq.
- 5 30. Defendant Coffee Bean Stores competes with other Companies in providing
6 beverage restaurant services to the Public.
- 7 31. To reduce their charges and costs to the Public and thereby unfairly compete
8 with other such Companies, Defendants illegally fail to pay the full earned
9 wages, State Taxes and related costs for PLAINTIFFS and Employees, Class
10 Members, thus artificially reducing Coffee Bean Stores expenses.
- 11 32. To equalize the competition and prevent an unfair business advantage
12 PLAINTIFF requests the Court to order Defendants to pay all wages and
13 related sums to the Employees, pay all proper State Taxes, Workers
14 Compensation and Unemployment Insurance premiums based on the true
15 value of the Employees' labor hours.
- 16 33. Further, PLAINTIFF requests the Court to order the Defendant to disgorge
17 all interest and profits earned by the acts of unfair competition, payable as
18 required by Law.
- 19 34. PLAINTIFF requests an order that the Defendants pay to the PLAINTIFF, as
20 Private Attorney General and/or Class Representative an appropriate award
21 for such representation services, and order payment of Attorney fees and
22 costs to PLAINTIFF, PUTATIVE CLASS Counsel.
- 23 35. PLAINTIFF has suffered direct damages as a result of the illegal tip
24 deductions and failure to pay taxes on said wages.
- 25 36. PLAINTIFF requests all injunctive and statutory remedies available by law to
26 punish and stop DEFENDANTS' illegal acts.

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- 1 representatives thereof, and the undersigned counsel of record to represent
- 2 the Private Attorney Generals and/or the proposed class; and,
- 3 2. Award wages, waiting time penalties, other damages against Defendants
- 4 based on their violations of the State Labor Code and Industrial Welfare
- 5 Order 5-2001 payable to Plaintiffs, each employee, each Class Member and
- 6 the State of California according to proof; and,
- 7 3. Award injunctive relief and damages for Defendants' various acts of threat,
- 8 intimidation, termination, and to stop acts of Unfair Competition;
- 9 4. Award damages for theft of Labor under the California Penal Code according
- 10 to proof including treble damages; and,
- 11 5. Award restitution, disgorgement, injunctive relief and all other relief allowed
- 12 under Cal. Bus. Prof. Code §§ 17200 et seq.
- 13 6. Assess prejudgment interest on the damages as awarded and computed
- 14 above.
- 15 7. Award punitive damages and sanctions equal to ten times the amount of
- 16 general and special damages or 25% of the net worth of the Defendant
- 17 Employer Coffee Bean Stores, as provided by California Code of Civil
- 18 Procedure § 1670.5, and §3294, which ever is greater; and,
- 19 8. Award to Plaintiffs their attorneys' fees, costs of suit as provided under
- 20 applicable law and Qui Tam amounts (including, but not limited to Labor
- 21 Code §1194); and,
- 22 9. Award against the Defendant all fines, penalties and costs provided for by
- 23 law, payable as required by law; and,
- 24 10. Order the Defendants to pay to the State of California all taxes, workers
- 25 compensation premiums and related amounts calculated from the total of
- 26 the withheld wages.
- 27 11. Order a Trial by Jury.
- 28 12. Grant such further relief as the Court deems just and proper.

1 Executed by Plaintiff Jacob R. Davis under the penalty of perjury that the
2 above is true and correct to the best of his knowledge and belief. State of
3 California, Pico Rivera, this 15th day of September, 2014.

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5 By _____
6 Jacob R. Davis

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8 Dated: September 15, 2014

9 By _____
10 Boris Smyslov, Attorney for Plaintiff, Private
11 Attorney General, Putative Class Representative
12 Jacob R. Davis, on behalf of himself, on behalf of all
13 others similarly situated, and on behalf of the
14 General Public as Private Attorney General
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