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FILED APR 20 2015
SHIRLEY E. FAUST, CLERK
By *[Signature]* Deputy

APR 20 15 PM 2:35

MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

PAM WALTER, JIMMY SMITH, LISA
BARNHILL, ZACH WINN, WINDY CARLSON,
DENISE PYRON, ASHLEY O'CONNOR, and
JOHN DOES 1-10, individuals, and in their
capacity as class representatives,

Plaintiffs,

v.

HILTON GARDEN INNS FRANCHISE, LLC;
GATEWAY HOSPITALITY GROUP, INC;
BOZEMAN LODGING INVESTORS, LLC d/b/a
HILTON GARDEN INN BOZEMAN;
WESTERN HOSPITALITY GROUP, LP d/b/a/
HILTON GARDEN INN OF MISSOULA; JWT
HOSPITALITY GROUP BILLINGS, LLC d/b/a
HILTON GARDEN INN BILLINGS;
KALISPELL HOTEL, LLC d/b/a HILTON
GARDEN INN KALISPELL; ALL OTHER
GATEWAY HOSPITALITY GROUP
MANAGED HOTELS IN MONTANA; and
JOHN DOES 1-10,

Defendants.

DEPT. No. 2

Case No. DV 15-196

**FIRST AMENDED CLASS
ACTION COMPLAINT and
REQUEST FOR
DECLARATORY RELIEF**

CLASS ACTION (COMPLAINT)

NOW COMES Putative Class Representatives, Pam Walter, Jimmy Smith, Lisa Barnhill, Zach Winn, Windy Carlson, Denise Pyron, Ashley O'Connor and John Does 1-10, on behalf of themselves and all others similarly situated, state and allege in support of their Class Action Complaint against Defendants Hilton Garden Inn Franchise Group, LLC, Gateway Hospitality Group and Bozeman Lodging Investors, LLC d/b/a Hilton Garden Inn-Bozeman, Western Hospitality Group, LP d/b/a Hilton Garden Inn-Missoula, JWT Hospitality Group Billings, LLC d/b/a Hilton Garden Inn-Billings, Kalispell Hotel, LLC also known as Hilton Garden Inn-Kalispell, and other Gateway managed Hotels in Montana (collectively referred to hereafter as "Hilton Garden Inn" or "Defendants") for damages and restitution as follows:

I. NATURE OF ACTION

1. This is a class action brought on behalf of non-management banquet/event server employees of four Hilton Garden Inn hotels, and other Gateway managed hotels, located in Montana for damages and restitution against Defendants. Specifically, this action seeks to recover lost wages that Defendants wrongfully withheld from Plaintiffs and members of the Class in violation of Montana statutory and common law, including Montana Code Annotated §§ 39-3-

201, et. seq. and § 30-14-201, et. seq. Defendants have engaged in willful, wrongful, repeated, and ongoing violations of Montana law. Additionally, this action seeks injunctive relief so that Defendants no longer withhold wages from their server employees.

II. PARTIES, JURISDICTION AND VENUE

2. Named Plaintiff and Putative Class Representative, Pam Walter, brings this action on behalf of herself and all others similarly situated.

3. At all relevant times, Plaintiff Pam Walter was a resident of Missoula County, Montana. Plaintiff Pam Walter is currently a non-management server employee of the Hilton Garden Inn in Missoula, Montana.

4. Named Plaintiff and Putative Class Representative, Jimmy Smith, brings this action on behalf of himself and all others similarly situated.

5. At all relevant times, Plaintiff Jimmy Smith was a resident of Flathead County, Montana. Plaintiff Jimmy Smith is a former non-management server employee of the Hilton Garden Inn in Kalispell, Montana.

6. Named Plaintiff and Putative Class Representative, Lisa Barnhill, brings this action on behalf of herself and all others similarly situated.

7. At all relevant times, Plaintiff Lisa Barnhill was a resident of Missoula County, Montana. Plaintiff Lisa Barnhill is currently a non-management server employee of the Hilton Garden Inn in Missoula, Montana.

8. Named Plaintiff and Putative Class Representative, Zach Winn, brings this action on behalf of himself and all others similarly situated.

9. At all relevant times, Plaintiff Zach Winn was a resident of Missoula County, Montana. Plaintiff Zach Winn is currently a non-management server employee of the Hilton Garden Inn in Missoula, Montana.

10. Named Plaintiff and Putative Class Representative, Windy Carlson, brings this action on behalf of herself and all others similarly situated.

11. At all relevant times, Plaintiff Windy Carlson was a resident of Flathead County, Montana. Plaintiff Windy Carlson is a former non-management server employee of the Hilton Garden Inn in Kalispell, Montana.

12. Named Plaintiff and Putative Class Representative, Denise Pyron, brings this action on behalf of herself and all others similarly situated.

13. At all relevant times, Plaintiff Denise Pyron was a resident of Flathead County, Montana. Plaintiff Denise Pyron is currently a non-management server employee of the Hilton Garden Inn in Kalispell, Montana.

14. Named Plaintiff and Putative Class Representative, Ashley O'Connor, brings this action on behalf of herself and all others similarly situated.

15. At all relevant times, Plaintiff Ashley O'Connor was a resident of Missoula County, Montana. Plaintiff O'Connor is currently a non-management server employee of the Hilton Garden Inn in Missoula, Montana.

16. Plaintiff, John Does 1-10, are domiciled in Montana. Plaintiff Does are current or former non-management server employees of the Hilton Garden Inn in Montana.

17. Gateway Hospitality Group, Inc. is a corporation organized under the laws of the state of Ohio, with its statutory home office in Twinsburg, Ohio, doing and transacting business in the State of Montana, with its registered agent for service of process Shane N. Reely, 3819 Stephens Ave., Ste. 201, Missoula, MT 59801.

18. The Hilton Garden Inns Franchise, LLC, is a limited liability company organized under the laws of the state of Delaware, with its statutory home office in McLean, Virginia, and which may be served through its registered agent for service of process Corporation Service Company, 2711 Centerville Rd., Ste 400, Wilmington, DE 19808.

19. The Bozeman Lodging Investors, LLC doing business as Hilton Garden Inn Bozeman is a business organized under the laws of the state of Montana, with its statutory home office in Bozeman, Montana, and which may be served through its registered agent for service of process Don Cape, Jr., 2020 Charlotte St., Bozeman, MT 59718. Its physical address is 2023 Commerce Way, Bozeman, MT 59715.

20. The Western Hospitality Group, LP doing business as Hilton Garden Inn-Missoula is a business organized under the laws of the state of Montana, with its statutory home office in Missoula, Montana, and which may be served through its registered agent for service of process Robert Voelker, 3720 North Reserve St., Missoula, MT. Its physical address is 3720 North Reserve St., Missoula, MT 59807.

21. The JWT Hospitality Group Billings, LLC doing business as Hilton Garden Inn Billings is a business organized under the laws of the state of Montana, with its statutory home office in Bozeman, Montana, and which may be served through its registered agent for service of process Don Cape, Jr., 2020 Charlotte St., Bozeman, MT 59718. Its physical address is 2465 Grant Rd, Billings, MT 59102.

22. The Kalispell Hotel, LLC also known as Hilton Garden Inn Kalispell is a business organized under the laws of the state of Montana, with its statutory home office in Lakeside, Montana, and which may be served through its registered agent for service of process Chris Walters, 1840 Highway 93 South, Kalispell, MT 59901. Its physical address is 1840 U.S. Highway 93 S., Kalispell, MT 59901.

23. Gateway Hospitality Group is a management company for Hilton, Marriott and Hyatt hotels. Gateway Hospitality Group is in the business of hotel management, including "food and beverage management" within the state of

Montana. Gateway Hospitality Group is the management company for the Hilton Garden Inn-Bozeman, Hilton Garden Inn-Missoula, Hilton Garden Inn-Billings, and Hilton Garden Inn-Kalispell, as well as other Gateway managed hotels in the State of Montana, the identities of which are not known to Plaintiffs at this time.

24. John Does 1 through 10 are businesses who are managed by Gateway Hospitality Group within the state of Montana, and who employ the same unlawful wage withholding practices described herein as the Hilton Garden Inn, but whose identities, names and addresses are unknown at this time. These Defendant businesses are nonetheless liable as alleged herein for the reasons as set forth below.

25. All members of the Class are residents of only Montana.

26. This action is instituted under Title 39, Chapter 3, of the Montana Code, including Montana Code Annotated §39-3-201, §39-3-207, §30-14-201, et seq., Title 30, Chapter 14, Part 2 of the Montana Code, including Montana Code Annotated §30-14-207, §30-14-222 and pursuant to Montana common law causes of action.

27. This Court has jurisdiction over the parties and subject matter of this action. Venue properly lies in the Fourth Judicial District of Montana, Missoula County, pursuant to Montana Code Annotated §§ 25-2-117, 25-2-122, where one of the Defendants resides and where the tort was committed.

28. The minimum jurisdictional requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), are not met.

29. This Court has personal jurisdiction over each Defendant because, among other things, each: (a) transacted business in Montana; (b) participated in setting, carrying out, and enforcing the wrongful policy of withholding wages from Plaintiffs and class members; (c) had substantial contacts with Montana; (d) resided in this county by maintaining a principal office; and/or (e) engaged in an ongoing scheme and practice in violation of Montana law that was directed at and had the intended effect of causing injury to persons residing in, located in, or doing business throughout Montana.

III. ALLEGATIONS COMMON TO ALL COUNTS

30. Defendants offer a variety of services, including overnight accommodations, business services, such as meeting and conference facilities, and dining and event services. As part of the dining and event services, the Hilton Garden Inn provides services for banquets, weddings and other special events (“banquet services”). Banquet/event server employees perform all tasks necessary to set up food and drinks before an event, serve during the event, and clean up after the event.

31. Gateway Hospitality Group is the approved management company for the Hilton Garden Inn-Missoula. They assumed the management responsibilities,

including implementing policies concerning the food, beverage and event services of the Hilton Garden Inn-Missoula in February, 2006.

32. Gateway Hospitality Group is the approved management company for the Hilton Garden Inn- Billings. They assumed the management responsibilities, including implementing certain policies concerning the food, beverage and event services of the Hilton Garden Inn-Billings in January, 2008.

33. Gateway Hospitality Group is the approved management company for the Hilton Garden Inn- Bozeman. They assumed the management responsibilities, including implementing certain policies concerning the food, beverage and event services of the Hilton Garden Inn-Bozeman in April of 2012.

34. Gateway Hospitality Group is the approved management company for the Hilton Garden Inn- Kalispell. They assumed the management responsibilities, including implementing certain policies concerning the food, beverage and event services of the Hilton Garden Inn-Kalispell in June 2007.

35. Gateway Hospitality Group states on its website that its “backbone and focus is on food and beverage.” It states “Gateway Hospitality Group developed as a niche product, which is a hybrid of a focused-service property with full service amenities; it also includes conference space as well as exception [sic] food and beverage for our guest’s [sic] banquet, business and dining needs.” Further, it states of its business, “Our culinary passion enables us to continually

focus on the event and meeting market with the food and beverage side of the business. We utilize our combined full service expertise and talents to make our properties stand out as the hotel of choice for executive travelers who want and expect more in today's competitive hospitality market.”

36. On information and belief, prior to the Hilton Garden Inn hotels being managed by the Gateway Hospitality Group, employee servers at banquets were compensated a salary as well as a portion of the tips they made during their shifts. For events hosted by the Hilton Garden Inn hotels, a flat rate service charge of 15-18% was charged to the consumer for food and beverage. This service charge was then distributed to the server employees.

37. When Gateway Hospitality Group assumed the management responsibilities for the Hilton Garden Inn hotels, they implemented a new policy (“the Policy”) in which the server employees were not compensated their rightful portion of the gratuity charge, which was called a “service charge” or “set-up fee.”

38. Instead, the Hilton Garden Inn hotels increased the rate to 18% to 20% on the sub-total of the bill (the included charged items for which varied) and renamed (in some cases) the gratuity charge a “set up fee.” This fee was/is not paid or distributed to the server employees of events/banquets. Instead, the Hilton Garden Inn retains this money for its own benefit.

39. Following the Policy change, purchasers of banquet services did/do not receive a clear disclosure that the service charge was/is not being used by the Hilton Garden Inn hotels for purposes other than payment of tips and/or wages.

40. In fact, in direct contradiction to what actually occurs, the Hilton Garden Inn routinely represents to customers that the gratuity will be fully distributed to the servers. Exh. 1 (sample Banquet Event Order "BEO," Hilton Garden Inn – Bozeman, 2013).

41. For example, a large BEO may consist of separate charges for "food," "beverage," "AV," "room," "staff," and "misc." Under the Policy, the arbitrary "service charge" indicated on the BEO typically constitutes an additional 18-20% of the total of all of those separate charges but is not distributed to the servers.

42. A sample "BEO" and "Banquet Check" from a banquet that occurred at the Hilton Garden Inn - Bozeman in 2013 after the new Policy went into place are attached hereto as Exh. 1. The "service charge" reflected in the BEO amounts to \$1,591.20, which is approximately 20% of the sub-total charges of \$8,056.00. The BEO does not reflect a "set up fee." Further, the "Catering Sales Event Agreement" that the customer signed relating to the event specifically states that the "Service Charge" "will be distributed to servers" when in fact it is not.

43. The Banquet Check from the same 2013 event indicates a “Service Charge” in the amount of approximately \$7,876.00, which is 20% of the total bill. This amount is the same as the “Set Up Fee” and is, in fact, one and the same.

44. A sample BEO and Banquet Check from a banquet event held at the Hilton Garden Inn – Bozeman in 2012 is attached hereto as Exh. 2. These documents reflect a banquet that occurred prior to the Policy went into place. In this event, the customer was charged a “Service Charge” in the amount of \$1,090.62, which is 18% of the “food” charge of \$6,059.00.

45. A comparison of the banquet events from 2013 and 2012 reveals that the “service” charge and “set up fee” are arbitrary and in fact a gratuity which must be paid to the server employees. Irrespective of what verbiage is used to describe the charge, (ie. whether called a “service” or “set up” charge), it is an arbitrary fee applied to the bill in lieu of a tip that is owed to the server employees.

46. Highlighting the arbitrary nature of the service charge and further demonstrating that it is a gratuity that must be distributed to server employees, is attached Exh. 3, a sample Banquet Check from a banquet event held at the Hilton Garden Inn - Bozeman, which shows a service charge of 20% of all itemized charges.

47. Plaintiff Pam Walter began working at the Hilton Garden Inn-Missoula in April 2006. She was hired as a non-management server employee and she presently assists at that position.

48. At the time she was hired, she was compensated an hourly wage and a portion of tips earned during her shift as part of a tip sharing arrangement with the other server employees.

49. On or around 2006, Plaintiff and all other non-management server employees at the Hilton Garden Inn-Missoula, were no longer compensated the portion of tips earned during her shift.

50. Plaintiff Jimmy Smith began working at the Hilton Garden Inn-Kalispell in June 2011. He was hired as a non-management server employee and left in mid-summer 2014.

51. From the time he was hired, Plaintiff Jimmy Smith was compensated an hourly wage only without any tips.

52. Plaintiff Lisa Barnhill began working at the Hilton Garden Inn-Missoula in July 2011. She was hired as a non-management server employee and she presently holds that position.

53. From the time she was hired, Plaintiff Lisa Barnhill was compensated an hourly wage only without any tips.

54. Plaintiff Zach Winn began working at the Hilton Garden Inn-Missoula in June 2009. He was hired as a non-management server employee and he presently holds that position.

55. From the time he was hired, Plaintiff Zach Winn was compensated an hourly wage only without any tips.

56. Plaintiff Windy Carlson began working at the Hilton Garden Inn-Kalispell in 2011. She was hired as a non-management server employee and left Hilton Garden Inn in mid-2014.

57. From the time she was hired, Plaintiff Windy Carlson was compensated an hourly wage without any tips.

58. Plaintiff Denise Pyron began working at the Hilton Garden Inn-Kalispell in 2011. She was hired as a non-management server employee and she presently holds that position.

59. From the time she was hired, Plaintiff Denise Pyron was compensated an hourly wage only without any tips.

60. Plaintiff Ashley O'Connor began working at the Hilton Garden Inn-Missoula on August 22, 2012. She was hired as a non-management server employee and she presently holds that position.

61. From the time she was hired, Plaintiff Ashley O'Connor was compensated an hourly wage without any tips.

62. Presently, non-management server employees at the Hilton Garden Inn-Missoula, Billings, Bozeman and Kalispell are denied their earned service fee wages.

63. As such, Defendants have failed, and are continuing to fail, to distribute directly to the non-management server employees' wages due.

64. Defendants have repeatedly and willfully failed to pay non-management server employees' wages due.

65. Defendants have and continued to falsely represent to customers that the charges assessed for services would be distributed to the server employees, when in fact they are not.

CLASS ACTION ALLEGATIONS

66. Pursuant to Montana Rule of Civil Procedure Rule 23, Plaintiffs bring this action on behalf of themselves and the members of the following proposed Class, each member of which was domiciled in Montana and a sole resident of Montana:

All past and present non-management server employees of the Hilton Garden Inn who provided services at any time within the applicable statute of limitations period prior to commencement of this action and did not receive a portion of the service charge as tip income in connection with banquet activities at the hotel for which a service charge or gratuity charge was imposed.

67. Plaintiffs reserve the right to amend the class definitions as appropriate after class discovery is completed.

68. Class certification is appropriate for the benefit of the Plaintiff and Class members under Montana Rule of Civil Procedure 23.

69. Members of the class are so numerous and geographically dispersed that joinder of all members is impractical. The Hilton Garden Inn establishments that employ the Class members are located in four different cities across Montana. It is estimated that each establishment employs or has employed within the applicable Class periods hundreds of potential Class members.

70. There are questions of law and fact common to the Class and such questions predominate over questions affecting individual members. The common legal and factual questions include, but are not limited to, the following:

- a. Whether Defendants "set up fee" constitutes a service charge, tip, gratuity or arbitrary fee under Montana Code Annotated § 39-3-201, et. seq.
- b. Whether, and the extent to which, the Class members have been denied wages.
- c. Whether, and the extent to which, the Defendants have been unjustly enriched by consuming the service charge otherwise due to the Class members.

- d. Whether, and the extent to which, the Defendants wrongfully converted the Class members wages.
- e. Whether Defendant's above described conduct constitutes unfair methods of competition per Montana Code Annotated § 30-14-201, et. seq.
- f. Whether Defendants acted with actual fraud or actual malice.
- g. The nature and extent of class-wide injuries and the measure of damages for the injuries.

71. The claims and questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages. The claims of the Class members and Class representatives depend on a common contention that is of such a nature that it is capable of class-wide resolution. Namely, the resolution of the above mentioned legal and factual questions in the affirmative will resolve all of the class members claims.

72. Plaintiffs are members of the Class. Plaintiffs' claims are typical of the claims of the members of the Class, because Plaintiffs are a non-management servers who customarily serves/served at banquets and other events hosted at the Hilton Garden Inn. The Class representatives' interest coincide with and are not antagonistic to other members of the Class. The representative Class members, like

all potential Class members, were/are wrongfully denied wage benefits because of the same policy in place at the Hilton Garden Inns.

73. The class representatives will fairly and adequately protect the interests of the members of the Class because it is in their best interest to prosecute the claims alleged herein to obtain full compensation due to them for the unfair and illegal conduct of which they complain.

74. The class representatives have retained and are represented by counsel who are competent and experienced in the prosecution of employment and class action litigation. The class representatives are willing and prepared to serve the Court and the Class members in a representative capacity with all of the obligations and duties material thereto and determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for Class members.

75. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and varying adjudications, establishing incompatible standards of conduct for Defendants.

76. Defendants have acted on grounds that apply generally to the class, so that final relief is appropriate respecting the Class as a whole.

77. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The Class is readily definable and is one for which Defendants have records. Prosecution as a class action will eliminate the

possibility of repetitious litigation. Treatment of this case as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would produce. Class treatment will also permit the adjudication of relatively small claims by many Class members who otherwise could not afford to litigate the claims such as is asserted in this Complaint. This class action does not present any difficulties of management that would preclude its maintenance as a class action.

IV. CAUSES OF ACTION

COUNT ONE

(Violation of Montana Code Annotated Title 39, Chapter 3)

78. Plaintiffs incorporate and re-allege each of the foregoing paragraphs.

79. The conduct described herein constitutes repeated, unlawful, and willful failure to pay wages due under Title 39, Chapter 3 of the Montana Code Annotated, including Montana Code Annotated § 39-3-201.

80. Pursuant to Montana Code Annotated §39-3-206, Plaintiffs are entitled to 110% of the wages due and unpaid.

81. Pursuant to Montana Code Annotated § 39-2-206, Plaintiffs are entitled to recover wages and penalties for a period of 3 years from the date in

which this claim is filed if the employee is still employed by the employer or for a period of 3 years prior to the date of the employee's last date of employment.

82. Pursuant to Montana Code Annotated § 39-3-214, Plaintiffs are entitled to recover their attorney fees and costs reasonably incurred in connection with a successful prosecution of her case.

83. Pursuant to Montana common and statutory law, including Mont. Code Ann. § 39-3-208, any contract executed in violation of Montana law is void.

COUNT TWO
(Unjust Enrichment)

84. Plaintiffs repeat and re-alleges the allegations in the foregoing paragraphs.

85. Defendants have unjustly benefitted from failing to pay wages due to Plaintiff and the other Class members. Defendants have conferred the benefit of the non-management server employees without offering compensation due in circumstances where compensation is reasonably expected and required.

86. It would be unjust for Defendants to be permitted to retain the benefit of these overpayments that were conferred by Plaintiffs and the Class.

87. By reason of its unlawful conduct, Defendants must compensate Plaintiffs and the Class.

88. Defendants should not be allowed to unjustly retain the economic benefit derived from said improper conduct and should be ordered to pay Plaintiffs and Class members restitution and pre-judgment interest.

**COUNT THREE
(Conversion)**

89. Plaintiffs incorporate and re-allege each of the foregoing paragraphs.

90. Plaintiffs had a right to possession of the compensation they rightfully earned, including the service fees under Title 39, Chapter 3 of the Montana Code Annotated, including Montana Code Annotated § 39-3-201, et seq.

91. Defendants wrongfully converted Plaintiffs wages earned, including the service fee, in violation Title 39, Chapter 3 of the Montana Code Annotated, including Montana Code Annotated § 39-3-201, et seq.

92. Plaintiffs suffered damages as a result.

**COUNT FOUR
(Unfair Trade Practices)**

93. Plaintiffs incorporate and re-allege each of the foregoing paragraphs.

94. By virtue of the above mentioned violations of Montana law, Defendants were also engaged in unfair methods of competition in violation of Title 30, Chapter 14, Part 2, inasmuch as violations of any provision of Title 30 are

deemed to be unfair methods of competition prohibited by Montana Code Annotated § 30-14-201, et seq.

95. The competition in which Defendants were engaged or participating in is both the competition with other providers of banquet services and competition with its own employees for customers' dollars. Defendants derive an unfair advantage over their law abiding banquet service competitors.

96. Defendants derive an unfair advantage over their law-abiding restraint and banquet service providers by (a) lowering their overall costs through the means of retaining tip income due under law to Plaintiffs and Class members, (b) attracting customers by being able to offer customers seemingly lower "base" prices than law-abiding competitors through the retention of tip income, and (c) misleading customers into believing that the service charge will be paid as tip income and thereby obtaining the business of customers through unfair and illegal business advantage over law-compliant hotels, restaurants and banquet service providers. Defendants derive an unfair advantage over and causes harm and injury to its current and former employees, who the law presumes would receive additional discretionary tip income from customers who were made aware of the lack of distribution of the service charge to the employees, by misleading customers in to believing that all service charge is being distributed and thereby

lulling customers into not negotiating a lower base price or service charge that would leave more discretionary dollars available for employees.

97. These unfair competitive advantages were gained by Defendants at the direct expense of Plaintiffs and Class members, and the Plaintiffs and Class members were injured as a result of Defendants' unfair method of competition and the Defendants' unfair competitive behavior in the hotel banquet market.

COUNT FIVE
(Punitive Damages)

98. Each and every allegation set forth in this complaint is incorporated herein by reference.

99. Defendants acted with actual fraud or actual malice. Defendants knew or had reason to know facts that would have led a reasonable business and person of like size to realize that their conduct, acts and omissions were likely to cause injury to Plaintiffs. The failure to provide employees with their full and rightful compensation owed created a high probability of injury to Plaintiffs.

100. Defendants deliberately proceeded to act with indifference to or with conscious disregard of the high probability of injury to the Plaintiffs by their violation of Montana law and the rights of Plaintiff employees.

101. Defendants made representations with knowledge of its falsity regarding the nature of Plaintiff employees' compensation and/or concealed

materials facts with the purpose of depriving the Plaintiff employees of property or legal rights or otherwise causing injury.

**COUNT SIX
(Declaratory Relief)**

102. Each and every allegation set forth in this complaint is incorporated herein by reference.

103. Disputes currently exists between Plaintiffs and Defendants concerning Plaintiffs' rights to what Defendant calls either a "set up fee" or "service fee."

104. An actual controversy exists between the parties as to whether the "set up fee" or "service fee" is an arbitrary fee under the applicable Montana Code provisions, including Mont. Code Ann. § 39-3-201, et seq., and whether it is required by law to be distributed as a tip.

105. Plaintiffs request a declaratory ruling pursuant to Mont. Code Ann. §§ 27-8-101 et seq. that:

- a. The "set up fee" or "service fee" charged to customers purchasing banquet/event services constitutes "wages" under Mont. Code Ann. §§ 39-3-201, 204.
- b. The "set up fee" or "service fee" charged to customers purchasing banquet/event services must be distributed to server employees as tip

wages due and payable pursuant to Mont. Code Ann. §§ 39-3-201, 204.

- c. Defendants' policy of withholding the "set up fee" or "service fee" from server employees/Plaintiffs violates Montana law, including Montana Code Annotated § 39-3-204.
- d. Plaintiffs are entitled to attorney's fees and costs.
- e. Plaintiffs are entitled compensatory damages to Plaintiffs and the Class in an amount of 110% of the wages due and unpaid pursuant to Title 29, Chapter 3, et. seq.
- f. That the Court award three times the amount of actual damages pursuant to Mont. Code Ann. § 30-14-222.

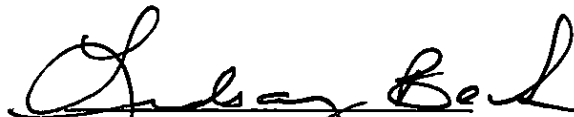
PRAYER FOR RELIEF

106. WHEREFORE, Plaintiffs pray:
- a. That the summons be issued and that Defendants be duly served with a copy of this Complaint and required to answer same, and that this Court decree and enter judgment;
 - b. That the Court determine that this action may be maintained as a class action under Montana of Civil Procedure Rule 23 and appoint the Plaintiffs as representatives of the Class;
 - c. That the Court adjudge and decree that Defendants have violated Montana Code Annotated Title 29, Chapter 3, et. seq. and award Plaintiffs and the Class appropriate damages and relief;

- d. That the Court award compensatory damages to Plaintiffs and the Class in an amount of 110% of the wages due and unpaid pursuant to Title 29, Chapter 3, et. seq.;
- e. That the Court award three times the amount of actual damages pursuant to Mont. Code Ann. § 30-14-222.
- f. That the Court award Plaintiffs their attorney fees reasonable costs;
- g. That the Court render judgment that Defendants have been unjustly enriched by its wrongful conduct, and award restitution to Plaintiffs and the Class;
- h. That the Court award punitive damages;
- i. That the Court grants Plaintiffs' declaratory relief as stated; and
- j. That the Court orders such other, further and general relief as is just and proper.

DATED, this 16th day of April 2015.

SUBMITTED BY:



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Bozeman, MT 59715

JASON ARMSTRONG
510 S. 23rd Street
Bozeman, MT 59718

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of April 2015, a true and accurate copy of the foregoing was served upon counsel listed below by U.S. Mail.

Hilton Garden Inns Franchise, LLC.
c/o Corporation Service Company
2711 Centerville Rd., Ste 400
Wilmington, DE 19808

Registered Agent for Hilton Garden Inns Franchise

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