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County of San Diego
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Attorneys for **MATTHEW CHAVEZ, NICOLE DEIS, and all those similarly situated**

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL COURTHOUSE

MATTHEW CHAVEZ, an individual; and
NICOLE DEIS, an individual;

Plaintiff,

vs.

ROISE BARBERS, INC., a California
Corporation; JONATHAN M. ROISE, an
individual; and DOES 1-20, inclusive.

Defendants.

Case No.: 37-2020-00040793-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND RESTITUTION**

- 1. Failure to Indemnify for Business Related Expenses (Lab. Code §2802)**
- 2. Failure to Provide Accurate Itemized Wage Statements (Lab. Code §226)**
- 3. Unlawful Deductions from Earned Wages (Lab. Code §§221, 224)**
- 4. Failure to Make Semi-Monthly Payments (Lab. Code §204)**
- 5. Waiting Time Penalties (Lab Code §203)**
- 6. Failure to Maintain Accurate Records (Lab. Code §1174 *et seq.*)**
- 7. Rest Break Violations (Lab Code §226.7)**
- 8. Unfair & Unlawful Business Practices (Bus. & Prof. Code §17200 *et seq.*)**
- 9. Unjust Enrichment**
- 10. PAGA Representative Action (Lab. Code §2698 *et seq.*)**
- 11. Failure to Provide Personnel Files Upon Request (Lab. Code §§226, 1198.5)**

DEMAND FOR TRIAL BY JURY

JUDGE: HON. EDDIE C. STURGEON
DEPT.: C-67

COMPLAINT FILED: 11/6/20
TRIAL DATE: NONE SET

NATURE OF THE ACTION

1. Plaintiffs MATTHEW CHAVEZ and NICOLE DEIS (collectively “Plaintiffs”) bring this class action pursuant to section 382 of the Code of Civil Procedure (“CCP”) and this representative action pursuant to the Private Attorney General Act of 2004 (“PAGA”), on behalf of themselves and all similarly situated aggrieved employees of Defendants ROISE BARBERS, INC., JONATHAN M. ROISE and DOES 1-20, inclusive (collectively “Defendants”) who worked in the State of California during the applicable class period (the “Class”; the Class is further defined and described with particularity in ¶¶3 and 30, below).

2. As explained in much greater detail below, it is alleged herein that Defendants have engaged in a company-wide practice of shifting the cost of doing business to their employees, including Plaintiffs, through unlawful deductions from their employees’ wages. As a result of these unlawful deductions and Defendants’ failure to indemnify its employees for business related expenses incurred in the discharge of their duties, Plaintiffs and the employees they seek to represent have suffered financial harm, including, but not limited to: unpaid wages, out of pocket expenses incurred in the discharge of their duties, and illegal deductions from their earned wages. It is further alleged that Defendants have engaged in a company-wide practice of failing and refusing to deliver to Plaintiffs and their fellow employees itemized wage statements that comply with California law. As a result, Defendants’ employees are unable to verify the amounts they are lawfully owed for services rendered to Defendants’ benefit.

3. By way of this action, Plaintiffs seek to represent a class composed of, and defined as the following: all persons who are, or who during the Class Period were, employed by Defendants in the State of California as barbers, stylists and/or beauticians, or who have and/or perform, or who during the Class Period had and/or performed, substantially similar job functions, duties and responsibilities as barbers, stylists and/or beauticians (the “Class”).

4. The “Class Period” is defined as the period of time between the filing of this Complaint and four years prior to its filing.

5. Plaintiffs seek to recover damages, restitution, statutory penalties, civil penalties, punitive damages, costs of suit and attorney’s fees, to obtain injunctive relief, and to obtain any and

all other legal and/or equitable relief as this Court may deem just, as a result of Defendants' unlawful actions as described more fully below.

PARTIES & JURISDICTION

6. Plaintiff MATTHEW CHAVEZ is, and at all times relevant hereto was, a resident of the County of San Diego, in the State of California, and was employed by Defendants as a stylist in the County of San Diego in the State of California.

7. Plaintiff NICOLE DEIS is, and at all times relevant hereto was, a resident of the County of San Diego, in the State of California and was employed by Defendants as a stylist in the County of San Diego, in the State of California.

8. Defendant ROISE BARBERS, INC., ("Roise Barbers") is, and at all times relevant hereto was, a corporation incorporated under the laws of the State of California and authorized to conduct business within the State of California under California Secretary of State Entity (File) Number C3405026. Defendant Roise Barbers is headquartered and has its principal place of business at 899 Market Street, Suite 6 in San Diego, California. Defendant Roise Barbers owns and operates a number of barbershops (upon information and belief, four (4)) within the County of San Diego in the State of California, which are all called "Floyds 99 Barbershop" (hereinafter "Floyds 99"). The conduct described and allegations set forth herein apply equally as to each and every one of the Floyds 99 locations that were owned and operated by Defendant Roise Barbers within the State of California during the Class Period.

9. Defendant JONATHAN M. ROISE ("Roise") is, and at all times relevant hereto was, an individual residing in the County of San Diego in the State of California. At all times relevant hereto, Defendant Roise was Defendant Roise Barbers' President, Chief Executive Officer, Secretary, Chief Financial Officer, sole Director, and designated agent for service of process. Upon information and belief, Defendant Roise is the sole shareholder of Defendant Roise Barbers. In acting in such capacities, Defendant Roise implemented, carried out, enforced, promoted, ratified, condoned, ordered, or otherwise authorized the conduct and/or practices giving rise to the wrongs alleged herein. Based on the foregoing, Defendant Roise is and was Plaintiffs' "employer or other

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person acting on behalf of [Plaintiffs'] employer" for purposes of California Labor Code ("Lab. Code") §§558 and 558.1 *et seq.*

10. Plaintiffs are ignorant of whether or how many other fictitious names were used by Defendant Roise Barbers in California during the Class Period, but it is believed other businesses were or may have been operated under different names but did business in the same illegal manner as did Defendants, as alleged below.

11. Plaintiffs do not know the true names and capacities, whether individual, corporate, associate, or otherwise of defendant DOES 1 through 20, inclusive. Such fictitious defendants are sued pursuant to the provisions of CCP §474. Plaintiffs are informed and believe, and based upon such information and belief allege, that each fictitious defendant was in some way responsible for, participated in, or contributed to the matter and things of which Plaintiffs complain herein, and in some form and under some theory, is or are subject to liability therefor. When the exact nature and identity of such fictitious defendants is determined, Plaintiffs will seek leave to amend this Complaint to set forth same.

12. All of the wrongs and liabilities alleged herein occurred and/or arose in the County of San Diego, in the State of California. Moreover, Defendant Roise Barber's principal place of business is in the County of San Diego, in the State of California. As such, this Court has jurisdiction over this action pursuant to Code of Civil Procedure ("CCP") §410.10, and venue is proper in the Superior Court of California, for the County of San Diego, pursuant to CCP §395.5.

13. Defendant Roise Barbers and all of its subsidiaries and affiliated companies, along with Defendant Roise, shall hereinafter be collectively referred to as "Defendants."

EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. Pursuant to Lab. Code §2699.3(a)(1), Counsel for Plaintiffs submitted to the Labor & Workforce Development Agency ("LWDA") written notice setting forth the specific provisions of the Lab. Code alleged to have been violated by Defendants, including the facts and circumstances in support thereof. This notice was submitted on or around July 9, 2020 via the LWDA online PAGA submission portal. A copy of the aforementioned notice was also sent via certified mail to

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Defendant Roise Barbers at the same time. As of the filing of this complaint, Counsel for Plaintiff has not received from the LWDA a response to this notice.

15. On or around November 10, 2020, Counsel for Plaintiffs submitted via the LWDA online PAGA submission portal a supplemental PAGA notice concerning rest break violations, arising under Lab. Code §§226.7 and 204.11. A copy of the aforementioned supplemental notice was also sent via certified mail to Defendant Roise Barbers at the same time. As of the filing of this complaint, Counsel for Plaintiff has not received from the LWDA a response to this notice.

GENERAL ALLEGATIONS

16. Plaintiffs and the Class are, or during the Class Period were, all barbers, stylists and/or beauticians who are licensed pursuant to the California Barbering & Cosmetology Act (the “Act”)¹. All of the barbering and cosmetology services they rendered to Defendants’ clients on behalf of Defendants, are those which require a valid license issued under the Act. These services include, but are not limited to, haircuts, haircoloring/dyeing, hairstyling, beard trimming/shaving, and other similar services (collectively the “Services”).

17. Plaintiffs and the Class are compensated with a combination of base hourly wages for all hours worked, incentive-based wages and cash and credit card tips. Their base hourly wages do not, and did not during the Class Period, exceed two-times (2x) California’s state minimum wage. Accordingly, the incentive-based wages paid to Plaintiffs and the Class constitute piece-rate wages pursuant to Labor Code §204.11 (notwithstanding Defendants’ misclassification of these wages as “commissions”).

18. Plaintiffs’ and the Class’ incentive-based wages are earned based on, among other things (see ¶24, below), their provision of Services to Defendants’ clients. Specifically, Plaintiffs and the Class were/are supposed to earn a guaranteed, agreed-upon percentage of the price paid by the client for each Service provided to that client on Defendants’ behalf. These percentage rates range from 42.5-55% and are determined based on factors such as the respective employee’s length of tenure and professional qualifications. By way of example, if an employee is supposed to earn incentive-based wages equal to 50% of the service price paid by the client, and he or she performs

¹ Codified at California Business & Professions Code §7301, *et seq.*

one haircutting Service that costs the client \$30.00², he or she is supposed to earn \$15.00 for the provision of that Service.

19. However, Defendants do not actually pay Plaintiffs or the Class the guaranteed, agreed-upon percentage of the cost of each Service that is paid by Defendants' clients. Instead, Defendants first deduct a standard \$1.50 from the price of each service the client receives, and pay Plaintiffs and the Class the guaranteed, agreed-upon percentage on only that reduced amount (i.e. service price minus \$1.50). By way of example, if an employee is supposed to earn incentive-based wages equal to 50% of the price of each Service he/she provides, and he/she performs a single haircutting service that costs the client \$30.00³, the employee is paid 50% of \$28.50 (i.e. a total of \$14.75) even though he/she is supposed to earn 50% of the original \$30.00 sales price for that service (i.e. \$15.00). Moreover, if the same employee performs for a single client a beard trim that costs \$10.00, a shampoo that costs \$10.00 and a haircut that costs \$30.00, the employee is paid 50% of \$45.50 (i.e. a total of \$22.75) even though he/she is supposed to earn 50% of the combined sales prices of each service (i.e. a total of \$25.00 – or 50% of \$50.00). The \$1.50 amount that is deducted from the price of each Service is commonly referred to by Plaintiffs and the Class as the "Chair Fee" or "Shop Fee" or "Service Fee/Charge" (referred to hereinafter as the "Chair Fee").

20. Proceeds collected by Defendants from the Chair Fee are only used to pay or reimburse Defendants for the costs of the materials (as distinguished from the equipment – see below) that Plaintiffs and the Class must use in order to complete many of the Services that Plaintiffs and the Class provide to Defendants' clients on Defendants' behalf. Examples of such materials include, but are not limited to, the shaving cream used to shave clients' necks at the end of their haircut, the talc powder that is often applied at the end of a regular haircut, the hair styling products that are applied to clients' hair at the end of their haircuts, the chemicals and/or dyes that are used to color or highlight clients' hair, and/or the Barbicide that is used to disinfect the Plaintiffs' and Class' barbering and cosmetology equipment⁴. (The Materials are not the same as, and do not

² While all amounts used herein are believed to be similar or equal to the amounts currently charged by Defendants for the same Service(s), the amounts used herein are for purposes of example only.

³ See FN2, above.

⁴ All of the aforementioned materials will be collectively referred to herein as the "Materials."

include, the barbering and cosmetology equipment that Plaintiffs and the Class use to perform the various Services; for example, the scissors, trimmers, trimmer guards, combs, razors, shavers, hairbrushes, spray bottles, etc. (collectively the “Equipment”).

21. Defendants cannot provide to their clients most Services without the use of Materials. However, for those limited Services that can be performed without the use of any Materials, such as up-dos or blow-dries, the Chair Fee is still deducted from the price of the service that is paid by client, upon which price Plaintiffs’ and the Class’ incentive-based wages are based. In other words, the Chair Fee is deducted from the amounts upon which all of Plaintiffs’ and the Class’ incentive-based wages are calculated regardless of whether the Services they provide require the use of any Materials.

22. Plaintiff and the Class perform, on average, between 130-200+ Services per month.

23. There were periods of the Class Period during which Defendants’ employees were not aware that their wages were being reduced by way of Defendants’ Chair Fee policy. Once it was discovered, many of Defendants’ employees complained to Defendant Roise about not previously knowing about or agreeing to the Chair Fee. Defendants’ employees also questioned Defendant Roise as to whether the Chair Fee was a legal way to reduce the amount of wages they thought they should be earning. This caused many of Defendants’ employees to begin questioning the accuracy of the wages they were receiving each pay period. Based on the number of complaints and inquiries received by Defendant Roise, Defendant Roise knew, or in the exercise of reasonable care should have known, that the imposition of the Chair Fee and the resulting shift of the cost of doing business to his employees was unlawful under California law. Despite this knowledge, Defendant Roise continuously mandated that Defendant Roise Barbers deduct the Chair Fee from the wages of each of its employees during the Class Period. The purpose of him doing so was to reduce the cost of doing business and, consequently, to secure additional income for himself at the expense of his employees.

24. In addition to the incentive-based wages they receive for performing the Services, Plaintiffs and the Class also receive, or are supposed to receive, incentive-based wages equal to

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10% of the price of the retail goods they sell to Defendants’ customers. These products include, but are not limited to, hairstyling products and color treatment chemicals.

25. The itemized wage statements that are delivered to Plaintiffs and the Class each pay period include none of the following: the number of piece-rate units earned and any applicable piece rate(s); the total hours of rest periods and the rate(s) of compensation therefor; and the total amount of tips earned.

26. In many cases, the rate paid to Plaintiffs and the Class for rest period time, as reflected on their paystubs, is below the minimum wage. When that amount is not below the minimum wage, it does not appear to reflect the employee’s average and/or regular hourly rate in accordance with Lab. Code §§226.2(a)(3)(i-ii) and/or 204.11. Therefore, Plaintiffs are not being compensated for their rest breaks in accordance with the foregoing Labor Code sections. Despite the foregoing, no premium wages have ever been paid to the Class as required by Lab. Code §226.7.

27. Plaintiffs and the Class often receive paystubs that do not accurately reflect the true amount of tips they believed they received (or should be receiving) from all of their respective clients during a given pay period. In some cases, the amount of tip payments reflected on paystubs is identical to the amount of “commission”⁵ wages earned during the same pay period, which does not seem accurate to Plaintiffs based on how those wages are supposed to be earned compared to the amounts they are actually receiving. In other cases, the amount of tips reflected on a given paystub is lower than the amount of tips Plaintiffs thought they were owed based on their recollection of the amounts that each client tipped them. As such, Plaintiffs and the Class are informed and believed, and based thereon allege, that Defendants have withheld from their compensation at least a portion of the tips Plaintiffs and the Class have earned from their respective customers.

28. As a result of the foregoing, these itemized wage statements do not enable, and have never enabled, Plaintiffs or the Class to confirm the accuracy of the wages they are paid versus those which they are owed. Plaintiffs have demanded itemized breakdowns with information

⁵ As explained above, these wages actually constitute piece-rate wages, but are categorized by Defendants within their records and paystubs as “commissions.”

sufficient for them to confirm the accuracy of their wages on numerous occasions but have never been provided any such information by Defendants. Plaintiffs allege that Defendants' failure to provide wage statements that comply with the Labor Code is willful, intentional and part of Defendants' attempts to conceal from the Class facts that would disclose Defendants' unlawful practice of charging its employees the Chair Fee.

CLASS ACTION ALLEGATIONS

29. This action has been brought and may be properly maintained as a class action pursuant to CCP §382 because there is a well-defined community of interests in the litigation, and the proposed class is easily ascertainable.

30. Plaintiffs seek to represent a class composed of, and defined as, the following: all persons who are, or who during the Class Period were, employed by Defendants in the State of California as barbers, stylists and/or beauticians, or who have and/or perform, or who during the Class Period had and/or performed, substantially similar job functions, duties and responsibilities as barbers, stylists and/or beauticians.

31. Plaintiff reserves the right under California Rule of Court, Rule 1855(b), to amend, and/or modify the Class descriptions above with greater specificity, or to further designate appropriate subclasses.

NUMEROSITY

32. The total number of persons affected by the actions, omissions, conduct, and/or business practices of Defendants is expected to be close to or more than one hundred (100). The potential members of the class defined above are so numerous that joinder thereof would be impracticable. While the precise number of class members has not been determined at this time, Plaintiffs are informed and believes that Defendants currently employ, and during Class Period employed, over one hundred (100) employees in the State of California. If turnover rates during the Class Period are considered, the total number of potential Class Members will likely increase.

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COMMONALITY

33. There are several issues of law and fact common to the Class which predominate over any questions affecting only individual Plaintiffs and/or The Class. These common questions of law or fact include, but are not limited, to the following:

- a. Whether Defendants failed to indemnify Plaintiffs and the Class for business related expenses incurred by Plaintiffs and the Class in the discharge of their duties as Defendants' employees, in violation of California Labor Code ("Lab. Code") §2802;
- b. Whether Defendants made unlawful deductions from, or unlawfully withheld, Plaintiffs' and the Class' earned wages, in violation of Lab. Code §§221-224;
- c. Whether Plaintiffs and the Class received the correct amount of wages for their rest periods, in accordance with Lab. Code §226.2, *et seq.*
- d. Whether Defendants failed to provide Plaintiffs and the Class accurate, itemized wage statements that complied with state law, in violation of Lab. Code §§226 and/or 226.3;
- e. Whether Defendants failed to timely pay all earned wages owed and due to Plaintiffs and/or the Class in violation of Lab. Code §204;
- f. Whether Defendants failed to maintain accurate records related to the days and hours worked by, and wages earned by and owed to, Plaintiffs and/or the Class in violation of Lab. Code §1174(d); and
- g. Whether Defendants failed to pay all earned wages upon either the Plaintiffs' or a Class Member's termination, resignation or discharge from employment with Defendants, in violation of Lab. Code §203.
- h. Whether Defendants failed to compensate Plaintiffs and/or Class Members for their rest breaks in accordance with Lab. Code §§226.7 and/or 204.11.
- i. Whether Defendants' conduct alleged herein amounts to a violation of Business & Professions Code ("Bus. & Prof. Code") §17200, *et seq.*

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TYPICALITY

34. Plaintiffs' claims are typical of the claims of members of the Class. Plaintiffs and the Class were both subjected to the same wrongful acts, omissions, business practices, and/or conduct of Defendants as alleged herein, and, as a result, Plaintiffs have suffered harm and sustained injuries and damages similar to those suffered and sustained by the Class.

ADEQUACY OF REPRESENTATION

35. Plaintiffs have made themselves available for interviews by counsel, have assisted with Counsel's investigation of the facts and claims at issue and have provided case-related documents during the course of that investigation. They have fairly and adequately represented and protected and will continue to fairly and adequately represent and protect, the interests of all members of the class. Counsel who will represent the Plaintiffs and the Class is competent and experienced in litigating large employment actions, including class actions. Plaintiffs and Plaintiffs' Counsel will act to protect the interests of the Class and will not place their own individual interests above those of the Class.

SUPERIORITY OF CLASS ACTION AS METHOD OF LITIGATION

36. A class action is the best way to adjudicate this controversy and is superior to alternative available means for fairly and efficiently adjudicating same. Individual joinder of all Class Members is not practical, and questions of law and fact common to the Class(es) predominate over any questions affecting only individual class members. Each and every Class Member has been damaged and is entitled to recovery by way of Defendants' unlawful acts, omissions, practices and/or conduct as alleged herein.

37. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and for the judicial system. Plaintiffs are unaware of any difficulties that are likely to arise or be encountered in the management of this action, which would preclude its maintenance as a class action.

ASCERTAINABILITY

38. California Law requires that employers, like Defendants, maintain accurate records related to the hours worked, wages earned, and duties performed by their employees. As such, the

identify of potential Class Members can be ascertained by resort to the records which Defendants are required to maintain by law.

FIRST CAUSE OF ACTION

FAILURE TO INDEMNIFY FOR BUSINESS RELATED EXPENSES

(Lab. Code §2802)

39. Plaintiffs hereby incorporate all prior paragraphs of this Complaint as if fully set forth and incorporated herein.

40. Lab. Code §2802 provides, in relevant part, as follows:

“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

41. At all times relevant hereto, Defendants deducted the \$1.50 Chair Fee from the amounts upon which Plaintiffs’ and the Class’ incentive-based wages were calculated. The Chair Fee was collected and used by Defendants in order to cover or recoup the costs incurred by Defendants for the Materials that were used by Plaintiffs and the Class in the course of performing the Services on Defendants’ behalf. Defendants could not reasonably or effectively provide the Services to its clients without the use of the Materials. Consequently, Defendants could not reasonably or effectively transact business without the use of the Materials.

42. Based on the manner in which Defendants’ compensation structure was enforced, Plaintiffs and the Class were forced to pay Defendants between \$0.64 and \$0.82 (or between 42.5% and 55% of the \$1.50 Chair Fee) for each Service they performed, in order to compensate Defendants for the costs of the Materials used in performing those services. This was so even when the Service(s) that was (were) being provided required the use of no Materials at all.

43. Defendants have failed and refused to reimburse Plaintiffs and the Class for the proceeds of the Chair Fee that Plaintiffs and the Class have been forced to incur in the discharge of their duties as Defendants’ employees.

44. Plaintiffs and the Class have suffered harm in the form of the unreimbursed amounts that Defendants have failed to pay for business expenses incurred in the discharge of Plaintiffs’ and

the Class' duties. Defendants' conduct was the direct and proximate cause of the harm suffered by Plaintiffs and the Class. The amount of said harm shall be determined according to proof at trial.

45. Pursuant to Labor Code §558.1, Defendant Roise is an "[employer] or [person] acting on behalf" thereof and is therefore legally responsible and liable for Defendants' failure to pay or reimburse the aforementioned amounts. Moreover, because Defendant Roise had either actual or constructive knowledge that the imposition of the Chair Fee was unlawful under California law, his conduct in mandating that Defendant Roise Barbers impose the Chair Fee was willful.

46. Plaintiffs and the Class are informed and believe and based thereon allege that Defendants engaged in the misconduct alleged above with the intent to secure for themselves a discount on their overhead costs and with the intent to defraud, deceive or oppress Plaintiffs and the Class. As such, Plaintiffs and the Class are entitled to an award of punitive damages.

47. Lab. Code §2802(c) provides, as follows: "For purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

48. As a further result of Defendants' conduct and actions as alleged herein, Plaintiffs and the Class have been required to and did retain legal counsel, resulting in the accrual of attorney fees, costs and other legal expenses in an amount to be determined at trial. Plaintiffs are entitled to an award of reasonable attorney fees and costs of suit in accordance with applicable law pursuant to Lab. Code §2802(c), *et seq.*

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Lab. Code §226, Wage Order 2-2001)

49. Plaintiffs hereby incorporate all prior paragraphs of this Complaint as if fully set forth and incorporated herein.

50. Labor Code §226 subdivision (a) requires, in pertinent part, that:

"Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned... (3) the number of piece-rate units

earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned,... and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee..."

51. Plaintiffs and the Class were supposed to paid on a bi-weekly basis. Accordingly, they were to receive a wage statement compliant with Lab. Code §226(a) every other week.

52. Defendants wage statements do not set forth the number of piece rate units created or the rate(s) paid per piece.

53. Notwithstanding the unlawfulness of the deduction, Defendants' wage statements do not accurately set forth the amount of wages deducted and/or withheld as a result of the Defendants' assessment of the Chair Fee on each Barbering Service completed by Plaintiffs and the Class.

54. Defendants' wage statements commonly reflected an hourly rate for rest period compensation that is both incorrect and, in some cases, below the minimum wage. In other cases, no hourly rate is reflected at all.

55. As a result of the foregoing, both the gross and net wages reflected within each wage statement are incorrect and inaccurate.

56. Based on the foregoing, at no time relevant hereto did Plaintiffs or the Class ever receive from Defendants itemized wage statements that accurately set forth the information required by Lab. Code §226(a). Specifically, Defendants failed to set forth the accurate amount of gross wages earned, the accurate amount of net wages earned, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate.

57. Plaintiffs and, on information and belief certain members of the Class, requested on multiple occasions that complete and accurate wage statements be provided with their paychecks because they suspected that their wages were not being paid correctly. Defendants have never furnished this information to any employee and, as a result, all employees have suffered injury under §226.

58. Not providing accurate wage statements or any information related to Plaintiffs' and the Class' piece rate wages was part of Defendants' efforts to shield Plaintiffs and the Class from information that would disclose the existence or imposition or deduction of the Chair Fee. As such, Plaintiffs and the Class allege that Defendants engaged in the misconduct alleged above with the intent to conceal information related to the true amount of wages Plaintiffs and the Class earned and should have been paid, in order to secure for themselves a discount on their overhead costs and with the intent to defraud, deceive or oppress Plaintiffs and the Class.

59. Pursuant to Lab. Code §226(e)(1), Plaintiffs and the Class have suffered injury as a result of a knowing and intentional failure by Defendant to comply with §226(a) and are therefore entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees in an amount according to proof at trial.

60. Pursuant to Labor Code §558.1, Defendant Roise is an "[employer] or [person] acting on behalf" thereof and is therefore legally responsible and liable for the aforementioned damages and/or statutory penalties forth in Lab. Code §226 *et seq.*

61. In addition, Defendants are subject to civil penalties pursuant to Lab. Code §226.3.

THIRD CAUSE OF ACTION

UNLAWFUL AND UNAUTHORIZED DEDUCTIONS FROM EARNED WAGES

(Lab. Code §§221, 224)

62. Plaintiffs hereby incorporate all prior paragraphs of this Complaint as if fully set forth and incorporated herein.

63. Lab. Code §221 prevents an employer from taking back any wages from an employee after they are earned.

64. Defendants' compensation structure required only that an employee provide the client's desired service and complete the client's sale within the company point of sale system, in order for that employee to earn his/her incentive-based wages arising from the provision of that service. Upon satisfaction of both criteria, the wages resulting from that transaction were deemed

earned and, therefore, due and payable to the employee. However, after the transaction occurred but prior to the completion of the corresponding payroll cycle, Defendants deducted the Chair Free from employees' earned wages in amounts ranging from \$0.64 to \$0.82 (or between 42.5% and 55% of the \$1.50 Chair Fee) for each Barbering Service provided.

65. Neither Plaintiffs nor the Class authorized this deduction from their earned wages. Assuming *arguendo* that they did, the deduction still represents Employer's shifting of the cost of doing business to its employees and, therefore, amounts to a rebate or deduction in the standard wages employees were owed pursuant to a wage agreement, in violation of California law.

66. Upon information and belief, Defendants have also unlawfully withheld tips paid to Plaintiffs and the Class.

67. Plaintiffs and the Class are informed and believe and based thereon allege that Defendants engaged in the misconduct alleged above with the intent to secure for themselves a discount on their overhead costs and with the intent to defraud, deceive or oppress Plaintiffs and the Class.

68. As a direct and proximate result of the aforementioned conduct, Plaintiffs and the Class have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such compensation, wages and lost interest on such monies, and have accrued attorney's fees in seeking to compel Defendants to fully perform their obligations under state law, to pay all wages owed and due. The amount of said harm will be determined according to proof at the time of trial.

69. Plaintiffs and the Class have been deprived of their rightfully earned wages as a direct and proximate result of Defendants' failure and refusal to pay the aforementioned compensation. For the reasons stated herein, Plaintiffs and the Class request the unpaid wages, interest, attorney's fees and costs, punitive damages, and all other forms of relief which the Court deems just and proper, in an amount to be determined according to proof at trial.

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FOURTH CAUSE OF ACTION

FAILURE TO MAKE SEMI-MONTHLY PAYMENTS

(Lab. Code §204)

70. Plaintiffs hereby incorporate all prior paragraphs of this Complaint as if fully set forth and incorporated herein.

71. Labor Code §204 reads in relevant part: “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

72. Plaintiffs and the Class have earned incentive-based wages that, to date, have still not been paid by Defendants in violation of Lab. Code §204.

73. At all times relevant hereto, Defendants maintained, and still continue to maintain, a practice of failing to pay their employees, including Plaintiffs and the Class, all of their earned incentive-based wages and, upon information and belief, tips and the full amount of rest period wages owed pursuant to Lab. Code §226.2.

74. Plaintiffs and the Class are informed and believe and based thereon allege that Defendant engaged in the misconduct alleged above with the intent to secure for themselves a discount on their wages payable and/or deceive or oppress Plaintiffs and the Class.

75. In committing the violations of state law alleged herein, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiffs and the Class with all earned wages.

76. As a direct and proximate result of the aforementioned conduct, Plaintiffs and the Class have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such compensation and lost interest on such monies, and have accrued substantial attorney’s fees in seeking to compel Defendants to fully perform their obligations under state law.

77. As such, Plaintiffs and the Class are entitled the unpaid wages, interest, attorney’s fees and costs, and all other forms of relief which the Court deems just and proper, in an amount to be determined according to proof at trial.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§201, 202, & 203 et seq)

78. Plaintiffs hereby incorporate all prior paragraphs of this Complaint as if fully set forth and incorporated herein.

79. Labor Code §201(a) reads, in relevant part, as follows: “(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

80. Pursuant to Lab. Code §202:

“If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

81. Lab. Code §203 reads, in relevant part, as follows:

“If an employer willfully fails to pay, without abatement or reduction, ...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days....”

82. Plaintiffs and members of the Class have either been discharged from, or have quit, their employment with Defendants, but have not been paid the entire amount of earned wages that they are due and owed. Specifically, they are still owed the amounts unlawfully deducted or withheld from their earned wages as a result of the imposition/assessment of the Chair Fee. They are also owed unpaid tips and rest break wages. Thus, Defendants have violated Lab. Code §§201-203.

83. In committing the violations of state law as herein alleged, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiffs and The Class for all wages earned and/or all hours worked. Accordingly, Plaintiffs and the Class are entitled the associated unpaid wages and waiting time penalties.

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84. As a direct and proximate result of the aforementioned conduct, Plaintiffs and the Class have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such compensation and lost interest on such monies, and have accrued attorney's fees in seeking to compel Defendants to fully perform their obligations under state law.

85. Pursuant to Labor Code §558.1, Defendant Roise is an "[employer] or [person] acting on behalf" thereof and is therefore legally responsible and liable for the aforementioned damages and/or statutory penalties arising under Lab. Code §203, *et seq.*

SIXTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE RECORDS

(Lab. Code §§1174, et seq., and IWC Order 2-2001 §7)

86. Plaintiffs hereby incorporate all prior paragraphs of this Complaint as if fully set forth and incorporated herein.

87. Lab. Code §1174(d) requires employers to:

"[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments."

88. IWC Order 2-2001 §7(a) provides, in relevant part, as follows:

"Every employer shall keep *accurate* information with respect to each employee including the following:... (4) Total wages paid each payroll period... (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. The employer shall maintain an accurate production record." (emphasis added).

89. At all times relevant hereto, Defendants failed to maintain complete and accurate records of the amount of wages earned by, owed to and paid to employees, the number of piece-rate units earned by their employees, the applicable piece rates paid per unit, the tips earned by each of their employees, and all hourly rates in effect (including the accurate hourly rate for rest breaks) during the respective pay periods.

90. As a result of the foregoing failure by Defendants, Plaintiffs and the Class have been harmed and Defendants' aforementioned conduct was the direct and proximate result of said harm.

SEVENTH CAUSE OF ACTION

REST BREAK VIOLATIONS

(Lab. Code §§ 204.11, 226.7)

91. Plaintiffs hereby incorporate all prior paragraphs of this Complaint as if fully set forth and incorporated herein.

92. Lab. Code §204.11 provides, in relevant part, that “an employee may be compensated for rest and recovery periods at a rate of pay not less than the employee's regular base hourly rate.”

93. Lab. Code §226.7(c) reads, in relevant part, as follows:

If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

94. When Plaintiffs’ wage statements actually provided information as to their rate for rest period compensation, that rate was below the minimum wage or otherwise not reflective of their regular base hourly rate, as required by Lab. Code §204.11. As such, Defendants have failed to provide Plaintiffs and the Class with rest periods in accordance with state law, as required by Labor Code §226.7.

95. Despite failing to provide rest periods to Plaintiffs and the Class which were in accordance with State law, Defendants failed to compensate Plaintiff and Class Members with the additional one hour of premium pay pursuant to Lab. Code §226.7.

96. As a direct result of the foregoing, Plaintiffs and Class Members have suffered harm in the form of the unpaid premium wages that Defendants have failed to pay for having not providing rest breaks in accordance with state law. The amount of said harm shall be determined according to proof at trial.

97. As a further result of Defendants’ conduct and actions as alleged herein, Plaintiff and Class Members have been required to and did retain legal counsel, resulting in the accrual of attorney fees, costs and other legal expenses in an amount to be determined at trial. Plaintiffs are

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entitled to an award of reasonable attorney fees and costs of suit in accordance with applicable law pursuant to Lab. Code §226.7 *et seq.*

98. Pursuant to Labor Code §558.1, Defendant Roise is an “[employer] or [person] acting on behalf” thereof and is therefore legally responsible and liable for the aforementioned damages and/or statutory penalties arising under Lab. Code §226.7.

EIGHTH CAUSE OF ACTION

UNFAIR, UNLAWFUL BUSINESS PRACTICES

(Bus & Prof. Code §§17000, 17200, et. seq.)

99. Plaintiffs hereby incorporate all prior paragraphs of this Complaint as if fully set forth and incorporated herein.

100. Defendants’ conduct, acts, omissions, behavior and/or practices as alleged hereinabove, including but not limited to: failing to indemnify its employees for business related expenses incurred in the discharge of their duties, unlawfully deducting amounts from their earned wages or otherwise unlawfully withholding earned wages, failing to furnish accurate itemized wage statements that enabled employees to verify the accuracy of their wages; and, failing to timely compensate Plaintiff and Class Members with all wages earned and therefore due and owed, all constitute unlawful and/or unfair business practices in violation of California Bus. & Prof. Code §17200, *et. seq.*

101. As a result of Defendants’ conduct, Plaintiff and the Class have suffered and continue to suffer economic injury in the form of earned but unpaid wages

102. As a result of their unlawful and/or unfair business practices Defendant has realized and continue to realize the unlawful monetary gains and unfair benefits accrued at the expense of Plaintiff’s and Class Members’ earned wages in an amount according to proof at trial. Defendants have been and continue to be unjustly enriched through their wrongful conduct.

103. Defendants should be enjoined from continuing to engage in the alleged activity and made to disgorge all unlawful gains and restore to Plaintiff and the Class all unpaid wages, plus interest thereon, and such other legal and/or equitable remedies as are available to Plaintiff and the Class all in an amount to be determined according to proof at trial.

NINTH CAUSE OF ACTION

UNJUST ENRICHMENT – RESTITUTION

104. Plaintiffs hereby incorporate all prior paragraphs of this Complaint as if fully set forth and incorporated herein.

105. At all times mentioned herein, there was an unjust benefit conferred upon Defendants by way Defendants’ use of the Chair Fee; i.e. by way of the business-related expenses for which Plaintiffs and the Class paid but did not receive reimbursement.

106. At all times mentioned herein, Defendants were in receipt of compensation, regular wages, tips, rest break wages, and/or other monies which had been earned by and which belonged to Plaintiffs and the Class.

107. Defendants’ retention of Plaintiff’ and the Class’ wages is inequitable under the circumstances as outlined above and should be restored and returned to Plaintiffs and Class Members.

108. Plaintiffs and the Class seek restitution, or in the alternative, the imposition of a constrictive trust, on the funds inequitably received and/or retained by Defendants.

109. As a direct result of Defendants’ conduct Plaintiff and Class Members suffered damages and seek restitution in an amount according to proof at trial.

TENTH CAUSE OF ACTION

PAGA REPRESENTATIVE ACTION

(Lab. Code §2699, et. seq.)

110. Plaintiffs hereby incorporate all prior paragraphs of this Complaint as if fully set forth and incorporated herein.

111. Lab. Code §2699(a), also known as PAGA, at subsection (a), provides, in relevant part, as follows:

“Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an

aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

112. Lab. Code §2699(c) provides as follows: “For purposes of this part, ‘aggrieved employee’ means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

113. Lab. Code §2699(e) provides as follows:

“For purposes of this part, whenever the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.”

114. Lab. Code. §2699.3(a), provides, in relevant part, as follows:

“A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

“(1)(A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

“(2)(A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.”

115. On or around July 9, 2020, Plaintiffs, on behalf of themselves and the Class, sent to the LWDA and Defendants a notice of claims pursuant to Labor Code §2699.3. As of the date of this filing, the LWDA has not provided a response to that notice.

116. Plaintiffs and the Class are all “aggrieved employees” under the definition provided above, in that one or more of the violations listed hereinabove and hereinbelow were committed against each of them.

117. Failure to Provide Accurate Itemized Wage Statements: Defendants’ failure to provide itemized wage statements displaying all of the information required by Lab. Code

§226(a)(1-9) constitutes a violation of Lab. Code §226. Plaintiff and Class Members are therefore “aggrieved employees” under the foregoing statute. Lab. Code §226.3 provides for civil penalties to be assessed for violations of the foregoing statute. Defendant is therefore subject to the imposition of civil penalties pursuant to Lab. Code §226.3.

118. Failure to Make Semi-Monthly Payments: Defendants’ failure to make semi-monthly payments of wages owed and due constitutes a violation of Lab. Code §204. Plaintiff and the Class are therefore “aggrieved employees” under the foregoing statute. Lab Code §210 provides for civil penalties to be assessed for violations of Lab. Code §204. Defendant is, therefore, subject to the imposition of civil penalties pursuant to Lab. Code §210(a)(1-2).

119. Failure to Pay All Wages Owed Upon Discharge: Defendants’ failure to pay all wages due and owed upon discharge constitutes a violation of Lab. Code §§202 and 203. Plaintiff and the Class are therefore “aggrieved employees” under the foregoing statutes. Lab. Code §2699(f) provides for civil penalties to be assessed for violations of Lab. Code §§202 and 203. Defendant is therefore subject to the imposition of civil penalties pursuant to Lab. Code §2699(f).

120. Failure to Maintain Accurate Records: Defendants’ failure to maintain accurate records constitutes a violation of Lab. Code §1174. Plaintiff and the Class are therefore “aggrieved employees” under the foregoing statute. Lab. Code §1174.5 provides for a civil penalty to be assessed for violations of the foregoing statutes. Defendants are therefore subject to the imposition of penalties pursuant to Lab. Code §1174.5.

121. Failure to Provide Rest Breaks: Defendants’ failure to compensate Plaintiffs and the Class with their regular hourly rate during all rest breaks, and subsequent failure to pay premium wages for not complying with Lab. Code §§226.7 and/or 204.11, constitutes a violation of both aforementioned Lab. Code sections. Plaintiff and the Class are therefore “aggrieved employees” under the foregoing statutes. Lab. Code §2699(f) provides for civil penalties to be assessed for violations of Lab. Code §§226.7 and/or 204.11. Defendant is therefore subject to the imposition of civil penalties pursuant to Lab. Code §2699(f).

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ELEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE PERSONNEL FILE UPON WRITTEN REQUEST

(Lab. Code §§226, 1198.5)

(Alleged by Plaintiffs in their Individual Capacities as against Defendants)

122. Plaintiffs hereby incorporate all prior paragraphs of this Complaint as if fully set forth and incorporated herein.

123. Lab. Code §226 provides, in relevant part, as follows:

“(c) An employer who receives a written or oral request to inspect or receive a copy of records pursuant to [§226(b)] pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request....

“(f) A failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.

124. Lab. Code §1198.5 provides, in relevant part, as follows:

“(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

“(b)(1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request,

“(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.”

125. Plaintiffs sent to Defendants a request for their personnel files pursuant to Lab. Code §§226 and 1198.5, on or around August 9, 2020. As of the date of this filing, Defendants have refused or otherwise failed to respond to Plaintiffs’ request with the documents sought. Plaintiffs have therefore suffered harm under the aforementioned statutes.

126. As a result of the foregoing, Plaintiffs are entitled to the penalties set forth in Lab. Code §§226 and 1198.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of the themselves and the Class, hereby pray for:

1. An order certifying that this action may be maintained as a class action for all purposes;
2. Actual damages including, but not limited to, unpaid wages and interest thereon, in an amount to be determined according to proof at trial;
3. Statutory penalties in an amount to be determined according to proof at trial;
4. Civil penalties in an amount to be determined according to proof at trial;
5. Punitive damages in an amount to be determined according to proof at trial;
6. An order enjoining Defendants from engaging in the unlawful and unfair conduct as described hereinabove;
7. Disgorgement of ill-gotten profits resulting from Defendants' unfair and unlawful business practices;
8. Attorney's fees and costs; and
9. Any other legal and equitable relief the Court may deem just and proper

DATED: January 15, 2021

**CALLAHAN, THOMPSON, SHERMAN &
CAUDILL, LLP**

By 
ANNETTE C. CLARK
RYAN J. CARLSON
Attorneys for **MATTHEW CHAVEZ,
NICOLE DEIS and those similarly
situated thereto**

DEMAND FOR JURY TRIAL

Plaintiffs MATTHEW CHAVEZ and NICOLE DEIS, on behalf of themselves and the class of individuals they seek to represent by way of this action, hereby demand a trial by jury.

DATED: January 15, 2021

**CALLAHAN, THOMPSON, SHERMAN &
CAUDILL, LLP**

By



ANNETTE C. CLARK
RYAN J. CARLSON
Attorneys for **MATTHEW CHAVEZ,
NICOLE DEIS and those similarly
situated thereto**

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