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JUL 07 2021

S. DREW

Attorneys for Plaintiff,
REBECCA TSAO, and all others similarly situated
(Additional Counsel on Following Page)

FILED
Superior Court of California
County of Los Angeles

JUL 07 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By Deborah McKinley Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

REBECCA TSAO, on behalf of herself, all
others similarly situated and as an "aggrieved
employee" on behalf of other "aggrieved
employees" under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff(s),

vs.

STRETCH PRO, LLC, a California limited
liability company, TAKESHI HAYASHI, an
individual; and DOES 1-50, inclusive,

Defendants.

Case No.: 20STCV34078

CLASS ACTION

SECOND AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code, §§ 226.2, 558.1, 1194, 1197, and 1198);
2. Failure to Indemnify (Lab. Code §§ 558.1 and 2802);
3. Wage Statement Penalties (Lab. Code § 226, 226.2, and 558.1);
4. Waiting Time Penalties (Lab. Code §§ 201-203 and 558.1);
5. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
6. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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07/16/2021

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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff REBECCA TSAO (hereafter collectively “Plaintiff”), on behalf of herself and all
2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendants STRETCH
5 PRO, LLC, TAKESHI HAYASHI, and DOES 1-50 (collectively “Defendants”) for alleged
6 violations of the California Labor Code, Industrial Welfare Commission Order No. 2-2001
(hereafter “the Wage Order”), and the Business and Professions Code.

7 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
8 and other similarly situated current and former California-based workers, whether classified as
9 employees or independent contractors, including but not limited to, stretch therapists, and workers
10 in comparable positions, for unpaid wages and other related relief. These claims are based on
11 Defendants’ alleged failures to (1) pay all wages for all hours worked at the correct rates of pay,
12 (2) indemnify Plaintiff and the below-described class for reasonable expenses incurred during the
13 course of performing their duties, (3) provide accurate written wage statements, (4) timely pay
14 final wages upon termination of employment, and (5) fairly compete. Accordingly, Plaintiff now
15 seeks to recover unpaid wages and related relief through this class action.

16 **PARTIES**

17 3. Plaintiff is a resident of California. Defendants employed Plaintiff as a stretch
18 therapist-employee from February of 2019 to September 9, 2019, though they characterized her
and the other Class Members as independent contractors.

19 4. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
20 California Code of Regulations Section 11020 and an “aggrieved employee” within the meaning
21 of Labor Code Section 2699(c).

22 5. Defendant STRETCH PRO, LLC is a limited liability company organized and
23 existing under the laws of California and therefore a citizen of California based on Plaintiff’s
information and belief.

24 6. Defendant TAKESHI HAYASHI is an individual and a citizen of California based
25 on Plaintiff’s information and belief.

26 7. In relevant part, California Labor Code § 558.1 states:

27 (a) Any employer or other person acting on behalf of an employer, who violates,
28 or causes to be violated, any provision regulating minimum wages or hours and



1 days of work in any order of the Industrial Welfare Commission, or violates, or
2 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
liable as the employer for such violation.

3 (b) For purposes of this section, the term “other person acting on behalf of an
4 employer” is limited to a natural person who is an owner, director, officer, or
5 managing agent of the employer, and the term “managing agent” has the same
meaning as in subdivision (b) of § 3294 of the Civil Code.

6 8. Based on Plaintiff’s information and belief, Defendant TAKESHI HAYASHI is
7 natural person and an owner, director, officer, and/or managing agent of Defendant STRETCH
8 PRO, LLC, who directly or indirectly, or through an agent or any other person, employed or
9 exercised control over the wages, hours, or working conditions of Plaintiff and the Class.
10 Therefore, he is liable to Plaintiff and the Class for his violations of, or causing Defendants to
11 violate the Labor Code and the Wage Order pursuant to Labor Code section 558.1.

12 9. Defendants advertise that they provide the following services:

13 Our stretching technique is a comprehensive recovery process that involves one-
14 on-one assisted stretching. This technique takes you through multi-directional
15 movements that allow you to remodel and strengthen fascia and muscles to
16 increase flexibility and mobility. Our specialized stretching is performed by a
licensed physical therapist and a certified stretch therapist.

17 10. At all relevant times, Plaintiff and the Class Members were employees of
18 Defendants. Defendants engaged, suffered, and permitted them to work. Defendants could
19 terminate Plaintiff and the Class Members at will. Defendants trained Plaintiff and the Class
20 Members how to perform the work. Defendants assigned Plaintiff and the Class Members the
21 clients they serviced. Defendants collected payment from the clients. Defendants paid Plaintiff
22 and the Class Members a nonnegotiable rate of pay. The work Plaintiff and the Class Members
23 performed was wholly within the scope of Defendants’ usual course of business of providing
24 stretch therapy services. Defendants knew or should have known their actions of misclassifying
25 employees as independent contractors violated California law.

26 11. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
27 participation in the conduct alleged herein, of the Defendants sued as DOES 1-50, inclusive, but
28



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1 is informed and believes and thereon alleges that said Defendants are legally responsible for the
2 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
3 Plaintiff will amend the Complaint to alleges the true names and capacities of the DOE
4 Defendants when ascertained.

5 12. Plaintiff is informed and believes and thereon alleges that, at all relevant times
6 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
7 remaining Defendants, and in doing the things hereinafter alleged were acting within the course
8 and scope of such agency or employment and with the approval and ratification of each of the
9 other Defendants.

10 13. At all relevant times, in perpetrating the acts and omissions alleged herein,
11 Defendants, and each of them, acted pursuant to and in furtherance of a policy and/or practice, or
12 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
13 described class in accordance with applicable law as alleged herein.

14 14. Plaintiff is informed and believes and thereon alleges that each and every one of
15 the acts and omissions alleged herein was performed by and/or attributable to all Defendants, each
16 acting as agents, employees, and/or under the direction and control of each of the other
17 Defendants, and that said acts and failures to act were within the course and scope of said agency,
18 employment, and/or direction and control.

19 **CLASS ALLEGATIONS**

20 15. This action has been brought and may be maintained as a class action pursuant to
21 California Code of Civil Procedure section 382 because there is a well-defined community of
22 interest among the persons who comprise the readily ascertainable class defined below and
23 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
24 a class action.

25 16. **Class Definition:** The class is defined as follows: All individuals, currently and
26 formerly employed or contracted with, in California as independent contractors, including but not
27 limited to stretch therapists and workers in comparable positions, at any time during the period
28 beginning four years prior to the filing of this action and ending on the date that final judgment is



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entered in this action (“the Class”).

17. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

18. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California law.

19. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay;

B. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;

C. Whether Defendants knowingly and intentionally failed to provide the Class with accurate wage statements;

D. Whether Defendants willfully failed to provide the Class with timely final wages;

E. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code sections 17200, *et seq.*, with respect to the Class; and

F. Whether Class Members are entitled to restitution of money or property that Defendants may have acquired from them through the herein alleged violations.

20. **Typicality:** Plaintiff’s claims are typical of the other Class Members’ claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the Wage Order, and the Business and Professions Code.

21. **Adequacy of Class Representatives:** Plaintiff is an adequate class representative



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1 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
2 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of the Class
3 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
4 Members.

5 22. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
6 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
7 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
8 Plaintiff and absent Class Members.

9 23. **Superiority:** A class action is vastly superior to other available means for fair and
10 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
11 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
12 and efficiently prosecute their common claims in a single forum without the unnecessary
13 duplication of effort and expense that numerous individual actions would entail. In addition, the
14 monetary amounts due to many individual Class Members are likely to be relatively small and
15 would thus make it difficult, if not impossible, for individual Class Members to both seek and
16 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
17 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
18 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

21 **(Lab. Code §§ 226.2, 558.1, 1194, 1197, and 1198)**

22 **(By Plaintiff and the Class against all Defendants)**

23 24. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

24 25. At all relevant times, Plaintiff and the other Class Members have been employees
25 of Defendants and entitled to the benefits and protections of California Labor Code sections 558.1,
26 1194, 1197, 1198, and the Wage Order.

27 26. Section 2 of the Wage Order defines "hours worked" as "the time during which an
28 employee is subject to the control of an employer, and includes all the time the employee is



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1 suffered or permitted to work, whether or not required to do so.” As the California Supreme Court
2 has explained, this definition is disjunctive, meaning time can be an “hour worked” if either (a)
3 the employee is subject to the employer's control, or (b) the employer suffers or permits the
4 employee to work during that time, whether or not the employee is required to do so. *Mendiola*
5 *v. CPS Sec. Solutions, Inc.* (2015) 60 Cal. 4th 833, 838 (citing *Morillion v. Royal Packing Co.*
6 (2000) 22 Cal.4th 575, 582-83).

7 27. Section 4 of the Wage Order requires an employer to pay non-exempt employees
8 at least the minimum wage set forth therein for all hours worked, which consist of all hours that
9 an employer has actual or constructive knowledge that employees are working.

10 28. In relevant part, Labor Code section 1194 states,

11
12 (a) Notwithstanding any agreement to work for a lesser wage, any
13 employee receiving less than the legal minimum wage or the legal
14 overtime compensation applicable to the employee is entitled to
15 recover in a civil action the unpaid balance of the full amount of
this minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees, and costs of suit.

16 29. Labor Code section 1197 makes it unlawful for an employer to pay an employee
17 less than the minimum wage required under the applicable Wage Order for all hours worked
18 during a payroll period.

19 30. Labor Code section 1198 makes it unlawful for an employer to employ an
20 employee under conditions that violate the Wage Order.

21 31. In conjunction, these provisions of the Labor Code require employers to pay non-
22 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
23 worked, including unrecorded hours when the employer knew or reasonably should have known
24 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
25 Cal.4th 575, 585.)

26 32. At all relevant times, Defendants failed to pay Plaintiff and the other Class
27 Members at least the minimum wage under California law for all hours worked.

28 33. During the relevant time period, Defendants required Plaintiff to perform the



stretch services they advertised to their customers. At all relevant times, Defendants required the other Class Members to perform the same services. Defendants paid Plaintiff and the Class Members by a flat rate commission only. Defendants required Plaintiff and the Class Members to undergo training on their methods though they did not pay them for such training time. Defendants required Plaintiff and the Class Members to adhere to the client schedule that Defendants set for them, use Defendants' equipment and supplies to perform the stretch therapy to Defendants' clients, wear apparel with the "Stretch Pro" logo clearly displayed, and prohibited them from working for other stretch therapy providers. Though Defendants issued payments by check to Plaintiff and the Class Members for the services they provided on a biweekly basis, Defendants did not issue Plaintiff and the Class Members itemized wage statements stating the wages they earned, the rates they earned them at, and the hours they worked. Defendants did not pay Plaintiff and the Class Members by the hour for the time they spent performing stretch therapy services for Defendants' clients. Defendants, further, required Plaintiff and the Class Members to complete a training period which lasted approximately two weeks. Defendants, however, failed to pay Plaintiff and the Class Members for this training period.

34. Labor Code § 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
 - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

35. Pursuant to Labor Code § 226.2, the Wage Order and *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, Defendants were also required to separately compensate Plaintiff and the Class for rest periods of at least 10 minutes for each four-hour period of work or major fraction thereof, whether or not rest periods were provided and for all nonproductive time in addition to their commission. Defendants failed to compensate Plaintiff and the Class Members separately for their 10-minute rest and recovery time and for other nonproductive time, the time they spent cleaning the stretch beds, replacing the towels for the



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1 customers, and replacing the pillow cases after each customer.

2 36. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
3 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
4 failure to compensate the Class for all hours worked at the correct rate of pay as required by
5 California law.

6 37. In relevant part, California Labor Code § 558.1 states:

7 (a) Any employer or other
8 person acting on behalf of an employer, who violates, or causes to be violated,
9 any provision regulating minimum wages or hours and days of work in any order
10 of the Industrial Welfare Commission, or violates, or causes to be violated, §§
203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for
such violation.

11 (b) For purposes of this section, the term "other person acting on behalf of an
12 employer" is limited to a natural person who is an owner, director, officer, or
13 managing agent of the employer, and the term "managing agent" has the same
14 meaning as in subdivision (b) of § 3294 of the Civil Code.

15 38. At all relevant times herein, Takeshi Hayashi and DOE Defendants 6-10 were
16 employers of Plaintiff and Class Members, and/or "owners," "managing agents," and/or
17 "officers" of Stretch Pro, LLC and the other employers identified above. Takeshi Hayashi and
18 DOE Defendants 6-10 directly or indirectly, or through an agent or other person, employed and
19 exercised control over the wages, hours, and/or working conditions of the Plaintiff and Class
Members, and caused the violations to the Labor Code and the Wage Order described above.

20 39. At all relevant times, Plaintiff and the Class Members were employees of Takeshi
21 Hayashi and DOE Defendants 6-10. Takeshi Hayashi and DOE Defendants 6-10 engaged, and
22 suffered and permitted, Plaintiff and the Class Members to work. Takeshi Hayashi and DOE
23 Defendants 6-10 were clearly aware that Plaintiff and the Class Members worked for the
24 company and had the power to prevent them from working. Takeshi Hayashi and DOE
25 Defendants 6-10 also exercised control over Plaintiff and the Class Members' wages, hours, and
26 working conditions. Further, Takeshi Hayashi and DOE Defendants 6-10 had the right to control
27 and exercised such control over the manner in which Plaintiff and the Class Members performed
28 their work for Takeshi Hayashi and DOE Defendants 6-10. The services they rendered were at



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1 all times an integral part of Takeshi Hayashi and DOE Defendants 6-10's business. The
2 relationship between Plaintiff and the Class Members, on one hand, and Takeshi Hayashi and
3 DOE Defendants 6-10, on the other, was terminable at will without cause. Despite these
4 circumstances, Takeshi Hayashi and DOE Defendants 6-10 willfully misclassified Plaintiff and
5 the Class Members as independent contractors and failed to pay them for all hours worked at
6 the correct rates of pay. Takeshi Hayashi and DOE Defendants 6-10 have engaged in a pattern
and/or practice of doing so.

7 40. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
8 Members have suffered damages in an amount, subject to proof, to the extent that they were not
9 paid the full amount of wages earned during each pay period during the applicable limitations
10 period, including minimum wages, regular wages, overtime wages, and/or wages at least twice
11 the minimum wage.

12 41. Pursuant to Labor Code section 1194, Plaintiff, on behalf of herself and Class
13 Members, seek to recover unpaid wages (minimum wages, regular wages, overtime wages, and/or
14 wages at least twice the minimum wage), liquidated damages in amounts equal to the amounts of
15 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts
subject to proof.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO INDEMNIFY**

18 **(Lab. Code §§ 558.1 and 2802)**

19 **(By Plaintiff and the Class against all Defendants)**

20 42. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

21 43. At all relevant times, Plaintiff and the other Class Members have been employees
22 of Defendants and entitled to the benefits and protections of the California Labor Code sections
23 1198 and 2802 and the Wage Order.

24 44. In pertinent part, California Labor Code section 2802(a) states:

25 "An employer shall indemnify his or her employee[s] for all necessary
26 expenditures incurred by the employee in direct consequence of the
27 discharge of his or her duties."

28 45. At relevant times during the applicable limitations period, Defendants required



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1 Plaintiff and the other Class Members to incur certain business expenses in the course of
2 performing their duties, including use of a personal mobile telephone. Defendants required
3 Plaintiff and the Class Members to install an application on their personal mobile phones in order
4 to communicate with Defendants about their work schedule. Defendants did not offer mobile
5 phones to Plaintiff and the Class Members for this purpose, nor did they reimburse them for use
6 of their personal mobile phones.

7 46. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
8 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
9 failure to indemnify Plaintiff and the other Class Members for the reasonable expenses they
10 incurred during the course of performing their duties.

11 47. In relevant part, California Labor Code § 558.1 states:

12 (a) Any employer or other person acting on behalf of an employer, who violates,
13 or causes to be violated, any provision regulating minimum wages or hours and
14 days of work in any order of the Industrial Welfare Commission, or violates, or
15 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
16 liable as the employer for such violation.

17 (b) For purposes of this section, the term "other person acting on behalf of an
18 employer" is limited to a natural person who is an owner, director, officer, or
19 managing agent of the employer, and the term "managing agent" has the same
20 meaning as in subdivision (b) of § 3294 of the Civil Code.

21 48. At all relevant times herein, Takeshi Hayashi and DOE Defendants 6-10 were
22 employers of Plaintiff and Class Members, and/or "owners," "managing agents," and/or
23 "officers" of Stretch Pro, LLC and the other employers identified above. Takeshi Hayashi and
24 DOE Defendants 6-10 directly or indirectly, or through an agent or other person, employed and
25 exercised control over the wages, hours, and/or working conditions of the Plaintiff and Class
26 Members, and caused the violations to the Labor Code and the Wage Order described above.

27 49. At all relevant times, Plaintiff and the Class Members were employees of Takeshi
28 Hayashi and DOE Defendants 6-10. Takeshi Hayashi and DOE Defendants 6-10 engaged, and
suffered and permitted, Plaintiff and the Class Members to work. Takeshi Hayashi and DOE
Defendants 6-10 were clearly aware that Plaintiff and the Class Members worked for the
company and had the power to prevent them from working. Takeshi Hayashi and DOE
Defendants 6-10 also exercised control over Plaintiff and the Class Members' wages, hours, and



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1 working conditions. Further, Takeshi Hayashi and DOE Defendants 6-10 had the right to control
2 and exercised such control over the manner in which Plaintiff and the Class Members performed
3 their work for Takeshi Hayashi and DOE Defendants 6-10. The services they rendered were at
4 all times an integral part of Takeshi Hayashi and DOE Defendants 6-10's business. The
5 relationship between Plaintiff and the Class Members, on one hand, and Takeshi Hayashi and
6 DOE Defendants 6-10, on the other, was terminable at will without cause. Despite these
7 circumstances, Takeshi Hayashi and DOE Defendants 6-10 willfully misclassified Plaintiff and
8 the Class Members as independent contractors and failed to pay them for all hours worked at
9 the correct rates of pay. Takeshi Hayashi and DOE Defendants 6-10 have engaged in a pattern
and/or practice of doing so.

10 50. By reason of the above, Plaintiff and the members of the Class are entitled to
11 reimbursement for all necessary expenditures and losses and interest due and owing to within four
12 years (4) of the date of the filing of the Complaint until the date of entry of judgment pursuant to
13 California Labor Code section 2802(b). Further, Plaintiff, on behalf of herself and the members
14 of the Class, seek reasonable attorney's fees pursuant to Labor Code section 2802(c).

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code §§ 226, 226.2, and 558.1)

(By Plaintiff and the Class against all Defendants)

18 51. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

19 52. At all relevant times during the applicable limitations period, Plaintiff and the
20 other Class Members have been employees of Defendants and entitled to the benefits and
21 protections of California Labor Code section 226.

22 53. Pursuant to California Labor Code § 226(a), Plaintiff and the Class were entitled
23 to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement
24 showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in effect during
25 the pay period; and d) the corresponding number of hours worked at each hourly rate by the
employee.

26 54. Pursuant to California Labor Code section 226(e), an employee suffering injury as
27 a result of a knowing and intentional failure by an employer to comply with subdivision (a) is
28 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period



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1 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
2 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
3 is entitled to an award of costs and reasonable attorneys' fees.

4 55. Pursuant to California Labor Code section 226(e), an employee is deemed to suffer
5 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
6 injury if the employer fails to provide accurate and complete information as required by California
7 Labor Code section 226(a) and the employee cannot "promptly and easily determine" from the
8 wage statement alone one or more of the following:

9 A. The amount of the gross wages or net wages paid to the employee during
10 the pay period or any of the other information required to be provided on the itemized wage
11 statement pursuant to California Labor Code section 226(a);

12 B. Which deductions the employer made from gross wages to determine the
13 net wages paid to the employee during the pay period;

14 C. The name and address of the employer and, if the employer is a farm labor
15 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
16 and address of the legal entity that secured the services of the employer during the pay period;
17 and

18 D. The name of the employee and only the last four digits of his or her social
19 security number or an employee identification number other than a social security number.

20 56. "Promptly and easily determine," as stated in California Labor Code section
21 226(e), means a reasonable person would be able to readily ascertain the information without
22 reference to other documents or information.

23 57. Defendants violated California Labor Code § 226, by failing to issue wage
24 statements of any kind and by failing to properly and accurately itemize Plaintiff and each Class
25 Member's gross wages earned and they failed to meet the other requirements of California Labor
26 Code § 226.

27 58. Defendants' failure to provide Plaintiff and the other Class Members with accurate
28 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
the other Class Members with accurate wage statements but intentionally failed to provide them
with accurate wage statements. That Defendants' conduct was knowing and intentional is evident
in that Defendants misclassified Plaintiff and the other Class Members as independent contractors



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1 despite that Defendants exercised control over Plaintiff and the other Class Members' wages,
2 hours, and working conditions. Moreover, Defendants did this knowing that the work Plaintiff
3 and the other Class Members performed was wholly within the scope of Defendants' usual course
4 of business. Thus, Defendants' conduct was knowing and intentional.

5 59. As a result of being provided with inaccurate wage statements by Defendants,
6 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
7 wage statements were violated and they were misled about the amount of wages they had actually
8 earned and were owed. In addition, the absence of accurate information on their wage statements
9 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
10 and mathematical computations to determine the amounts of wages owed, has caused difficulty
11 and expense in attempting to reconstruct time and pay records, and/or has led to the submission
12 of inaccurate information about wages to state and federal government agencies. Further, Plaintiff
13 and the other Class Members were not able to ascertain from the wage statements whether
14 Defendants complied with their obligations under California Labor Code sections 226(a).

15 60. Labor Code § 226.2 states,

16 For employees compensated on a piece-rate basis during a pay period, the
17 following shall apply for that pay period:

18 The itemized statement required by subdivision (a) of Section 226 shall, in
19 addition to the other items specified in that subdivision, separately state the
20 following, to which the provisions of Section 226 shall also be applicable:

21 The total hours of compensable rest and recovery periods, the rate
22 of compensation, and the gross wages paid for those periods during
23 the pay period.

24 Except for employers paying compensation for other
25 nonproductive time in accordance with paragraph (7), the total
26 hours of other nonproductive time, as determined under paragraph
27 (5), the rate of compensation, and the gross wages paid for that time
28 during the pay period.

61. Defendants failed to issue to Plaintiff and Class Members itemized wage
statements that state the total hours worked, and the hourly rates for non-stretch therapy tasks.

62. In relevant part, California Labor Code § 558.1 states:



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1 (a) Any employer or other person acting on behalf of an employer, who violates,
2 or causes to be violated, any provision regulating minimum wages or hours and
3 days of work in any order of the Industrial Welfare Commission, or violates, or
4 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
5 liable as the employer for such violation.

6 (b) For purposes of this section, the term “other person acting on behalf of an
7 employer” is limited to a natural person who is an owner, director, officer, or
8 managing agent of the employer, and the term “managing agent” has the same
9 meaning as in subdivision (b) of § 3294 of the Civil Code.

10 63. At all relevant times herein, Takeshi Hayashi and DOE Defendants 6-10 were
11 employers of Plaintiff and Class Members, and/or “owners,” “managing agents,” and/or
12 “officers” of Stretch Pro, LLC and the other employers identified above. Takeshi Hayashi and
13 DOE Defendants 6-10 directly or indirectly, or through an agent or other person, employed and
14 exercised control over the wages, hours, and/or working conditions of the Plaintiff and Class
15 Members, and caused the violations to the Labor Code and the Wage Order described above.

16 64. At all relevant times, Plaintiff and the Class Members were employees of Takeshi
17 Hayashi and DOE Defendants 6-10. Takeshi Hayashi and DOE Defendants 6-10 engaged, and
18 suffered and permitted, Plaintiff and the Class Members to work. Takeshi Hayashi and DOE
19 Defendants 6-10 were clearly aware that Plaintiff and the Class Members worked for the
20 company and had the power to prevent them from working. Takeshi Hayashi and DOE
21 Defendants 6-10 also exercised control over Plaintiff and the Class Members’ wages, hours, and
22 working conditions. Further, Takeshi Hayashi and DOE Defendants 6-10 had the right to control
23 and exercised such control over the manner in which Plaintiff and the Class Members performed
24 their work for Takeshi Hayashi and DOE Defendants 6-10. The services they rendered were at
25 all times an integral part of Takeshi Hayashi and DOE Defendants 6-10’s business. The
26 relationship between Plaintiff and the Class Members, on one hand, and Takeshi Hayashi and
27 DOE Defendants 6-10, on the other, was terminable at will without cause. Despite these
28 circumstances, Takeshi Hayashi and DOE Defendants 6-10 willfully misclassified Plaintiff and
the Class Members as independent contractors and failed to pay them for all hours worked at
the correct rates of pay. Takeshi Hayashi and DOE Defendants 6-10 have engaged in a pattern
and/or practice of doing so.

65. Pursuant to California Labor Code § 226(e), Plaintiff and the Class are entitled to



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1 recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period
2 in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for each
3 violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate
4 penalty of four thousand dollars (\$4,000) per Class Member, and are also entitled to an award of
5 costs and reasonable attorneys' fees.

6 **FOURTH CAUSE OF ACTION**

7 **WAITING TIME PENALTIES**

8 **(Lab. Code §§ 201-203, and 558.1)**

9 **(By Plaintiff and the Class against all Defendants)**

10 66. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

11 67. At all relevant times during the applicable limitations period, Plaintiff and the
12 Class have been employees of Defendants and entitled to the benefits and protections of California
13 Labor Code sections 201 to 203 and the Wage Order.

14 68. Labor Code § 201 provides that all earned and unpaid wages of an employee who
15 is discharged are due and payable immediately at the time of discharge.

16 69. Labor Code § 202 provides that all earned and unpaid wages of an employee who
17 quits after providing at least 72-hours notice before quitting are due and payable at the time of
18 quitting and that all earned and unpaid wages of an employee who quits without providing at least
19 72-hours notice before quitting are due and payable within 72 hours.

20 70. By failing to pay earned minimum, regular, and overtime wages to Plaintiff and
21 the Class Members, Defendants failed to timely pay them all earned and unpaid wages in violation
22 of Labor Code § 201 or § 202.

23 71. Labor Code § 203 provides that the wages of an employee continue on a daily
24 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
25 unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

26 72. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
27 and the Class Members all of their earned and unpaid wages have been willful in that, at all
28 relevant times, Defendants have deliberately maintained policies and practices that violate the
requirements of the Labor Code and the Wage Order even though, at all relevant times, they have
had the ability to comply with those legal requirements.

73. In relevant part, California Labor Code § 558.1 states:



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(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

74. At all relevant times herein, Takeshi Hayashi and DOE Defendants 6-10 were employers of Plaintiff and Class Members, and/or “owners,” “managing agents,” and/or “officers” of Stretch Pro, LLC and the other employers identified above. Takeshi Hayashi and DOE Defendants 6-10 directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Plaintiff and Class Members, and caused the violations to the Labor Code and the Wage Order described above.

75. At all relevant times, Plaintiff and the Class Members were employees of Takeshi Hayashi and DOE Defendants 6-10. Takeshi Hayashi and DOE Defendants 6-10 engaged, and suffered and permitted, Plaintiff and the Class Members to work. Takeshi Hayashi and DOE Defendants 6-10 were clearly aware that Plaintiff and the Class Members worked for the company and had the power to prevent them from working. Takeshi Hayashi and DOE Defendants 6-10 also exercised control over Plaintiff and the Class Members’ wages, hours, and working conditions. Further, Takeshi Hayashi and DOE Defendants 6-10 had the right to control and exercised such control over the manner in which Plaintiff and the Class Members performed their work for Takeshi Hayashi and DOE Defendants 6-10. The services they rendered were at all times an integral part of Takeshi Hayashi and DOE Defendants 6-10’s business. The relationship between Plaintiff and the Class Members, on one hand, and Takeshi Hayashi and DOE Defendants 6-10, on the other, was terminable at will without cause. Despite these circumstances, Takeshi Hayashi and DOE Defendants 6-10 willfully misclassified Plaintiff and the Class Members as independent contractors and failed to pay them for all hours worked at the correct rates of pay. Takeshi Hayashi and DOE Defendants 6-10 have engaged in a pattern and/or practice of doing so.

76. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of



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1 herself and the Class Members, in amounts subject to proof not to exceed 30 days of waiting time
2 penalties for each Class Member.

3 **FIFTH CAUSE OF ACTION**

4 **UNFAIR COMPETITION**

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

6 **(By Plaintiff and the Class against all Defendants)**

7 77. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

8 78. At all relevant times during the applicable limitations period, Plaintiff and the
9 other Class Members have been employees of Defendants and entitled to the benefits and
10 protections of the Business and Professions Code sections 17200, *et seq.*

11 79. The unlawful conduct of Defendants alleged herein amount to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
14 gained a competitive advantage over other comparable companies doing business in California
15 that comply with their legal obligations to compensate employees for all earned wages.

16 80. Pursuant to Labor Code § 350, Defendants were at all times an “employer” or
17 “agent” of an employer and Plaintiff and Class Members were at all times “employees” pursuant
18 to that statute. Labor Code § 351 prohibits an employer or agent of the employer from collecting,
19 taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by
20 a patron, or deducting any amount from wages due an employee on account of a gratuity, or
21 requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part
22 of the wages due the employee from the employer. Labor Code § 351 further declares that every
23 gratuity: “... is the sole property of the employee or employees to whom it was paid, given, or
24 left for.”

25 81. Defendants retained five percent (5%) of the tips their customers included in their
26 credit card payments to Defendants for Plaintiff and Class Members. Defendants, through their
27 agents, acted in direct violation of California Labor Code Regent § 351, when they confiscated
28 all tips from Plaintiff and Class Members.

82. Labor Code § 353 requires every employer to keep accurate records of all
gratuities received by it, whether received directly from the employee or indirectly by means of
deductions from the wages of the employee or otherwise. Plaintiff is informed and believes and



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thereon asserts that Defendants violated this Section with respect to gratuities intended for Plaintiff and Class Members.

83. Defendants' engaged in unfair competition, chiefly through misclassifying Plaintiff and the other Class Members as independent contractors despite knowing that they were properly employees and failing to pay them for all hours worked. As a result of Defendants' unfair competition, Plaintiff and the Class have suffered injuries in fact and lost money or property. Plaintiff and the Class were deprived of wages for hours worked for which they did not receive wages at the correct rates of pay, and for unpaid wages resulting from not being provided with accurate wage statements and timely wages during and upon separation from employment.

84. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code section 17200, et seq. Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to reimburse them for reasonable expenses incurred during the course of performing their duties, and pay them all the wages and tips earned.

85. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the other Class Members have suffered injuries in fact and lost money or property. Defendants deprived Plaintiff and the other Class Members of minimum wages, reimbursement for expenses they incurred during the course of performing their duties, tips, and unpaid wages resulting from not being provided with accurate wage statements.

86. Pursuant to California Business & Professions Code section 17203, Plaintiff and the other Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

87. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

88. Accordingly, with respect to this cause of action, on behalf of herself and the Class, Plaintiff prays for the herein stated relief, and an award of all reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

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SIXTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

89. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

90. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning July 6, 2019 and ending on the date that final judgment is entered in this action.

91. Labor Code § 204 states

(a) All 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

92. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.



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1 93. During the applicable time period, Defendants violated California Labor Code
2 §§ 201, 202, 203, 204, 226, 226.2, 226.8, 351, 353, 558.1, 1174, 1174.5, 1194, 1197, 1198,
3 2750.3, 2751, 2753, and 2802.

4 94. Labor Code § 226.2 states,

5 (b) For employees compensated on a piece-rate basis during a pay period, the
6 following shall apply for that pay period:

7 (2) Employees shall be compensated for rest and recovery periods and other
8 nonproductive time separate from any piece-rate compensation.

9 95. Labor Code section 226.8 states:

10 (a) It is unlawful for any person or employer to engage in any of the
11 following activities:

12 (1) Willful misclassification of an individual as an independent
13 contractor.

14 (2) Charging an individual who has been willfully
15 misclassified as an independent contractor a fee, or making
16 any deductions from compensation, for any purpose,
17 including for goods, materials, space rental, services,
18 government licenses, repairs, equipment maintenance, or
19 fines arising from the individual's employment where any
20 of the acts described in this paragraph would have violated
21 the law if the individual had not been misclassified.

22 (b) If the Labor and Workforce Development Agency or a court issues
23 a determination that a person or employer has engaged in any of
24 the enumerated violations of subdivision (a), the person or
25 employer shall be subject to a civil penalty of not less than five
26 thousand dollars (\$5,000) and not more than fifteen thousand
27 dollars (\$15,000) for each violation, in addition to any other
28 penalties or fines permitted by law.

 (c) If the Labor and Workforce Development Agency or a court issues
a determination that a person or employer has engaged in any of
the enumerated violations of subdivision (a) and the person or
employer has engaged in or is engaging in a pattern or practice of
these violations, the person or employer shall be subject to a civil
penalty of not less than ten thousand dollars (\$10,000) and not
more than twenty-five thousand dollars (\$25,000) for each
violation, in addition to any other penalties or fines permitted by



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law.

96. “Willful misclassification means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” (Id., § (i)(4).).

97. Defendants misclassified Plaintiff and the Aggrieved Employees as independent contractors and engaged in a pattern and/or practice of so doing. Through their misclassification of Plaintiff and Aggrieved Employees, Defendants have engaged in a pattern and practice of willful misclassification of their employees as independent contractors for their own financial benefit. Each person or entity referenced above collectively as Defendants advised the others to treat Plaintiff and the Aggrieved Employees at issue in this case as independent contractors.

98. In relevant part, California Labor Code § 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

99. At all relevant times herein, Takeshi Hayashi and DOE Defendants 6-10 were employers of Plaintiff and Aggrieved Employees, and/or “owners,” “managing agents,” and/or “officers” of Stretch Pro, LLC and the other employers identified above. Takeshi Hayashi and DOE Defendants 6-10 directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Plaintiff and Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above.

100. At all relevant times, Plaintiff and the Aggrieved Employees were employees of Takeshi Hayashi and DOE Defendants 6-10. Takeshi Hayashi and DOE Defendants 6-10 engaged, and suffered and permitted, Plaintiff and the Aggrieved Employees to work. Takeshi



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Hayashi and DOE Defendants 6-10 were clearly aware that Plaintiff and the Aggrieved Employees worked for the company and had the power to prevent them from working. Takeshi Hayashi and DOE Defendants 6-10 also exercised control over Plaintiff and the Aggrieved Employees' wages, hours, and working conditions. Further, Takeshi Hayashi and DOE Defendants 6-10 had the right to control and exercised such control over the manner in which Plaintiff and the Aggrieved Employees performed their work for Takeshi Hayashi and DOE Defendants 6-10. The services they rendered were at all times an integral part of Takeshi Hayashi and DOE Defendants 6-10's business. The relationship between Plaintiff and the Aggrieved Employees, on one hand, and Takeshi Hayashi and DOE Defendants 6-10, on the other, was terminable at will without cause. Despite these circumstances, Takeshi Hayashi and DOE Defendants 6-10 willfully misclassified Plaintiff and the Aggrieved Employees as independent contractors and failed to pay them for all hours worked at the correct rates of pay. Takeshi Hayashi and DOE Defendants 6-10 have engaged in a pattern and/or practice of doing so.

101. Labor Code § 2753 provides for joint and several liability for a person who "knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for that individual." Takeshi Hayashi and DOE Defendants 6-10 are and were, at relevant times, owners, directors, officers, or managing agents of Defendants and violated or caused to be violated the provisions regulating the misclassification of employees as independent contractors. They knowingly advised the other employers identified above to treat Plaintiff and the Aggrieved Employees as independent contractors and not employees. Therefore, they are individually liable for misclassification.

102. Labor Code § 2751 states:

- (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.
- (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract



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terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.

(c) As used in this section, “commissions” has the meaning set forth in Section 204.1. For purposes of this section only, “commission” does not include any of the following:

(1) Short-term productivity bonuses such as are paid to retail clerks.

(2) (Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.

(3) Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

103. At all relevant times, Defendants have failed to provide Plaintiff and the Aggrieved Employees with signed commission agreements that included a copy of the employee handbook. As a result, Defendants have violated California Labor Code § 2751.

104. Pursuant to Labor Code § 350, Defendants were at all times “employers” or “agents” of and employer and Plaintiff and the other Aggrieved Employees were at all times “employees” pursuant to that statute. Labor Code § 351 prohibits an employer or agent of the employer from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deducting any amount from wages due an employee on account of a gratuity, or requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Labor Code § 351 further declares that every gratuity: “... is the sole property of the employee or employees to whom it was paid, given, or left for.”

105. Defendants, through their agents acted in direct violation of California Labor Code Regent § 351, when they confiscated all tips from Plaintiff and the other Aggrieved Employees.

106. Labor Code § 353 requires every employer to keep accurate records of all gratuities received by it, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Plaintiff is informed and believes and thereon asserts that Defendants violated this Section with respect to gratuities intended for Plaintiff and the other Aggrieved Employees. Defendants retained five percent (5%) of the tips



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1 their customers included in their credit card payments to Defendants for Plaintiff and the other
2 Aggrieved Employees.

3 107. Labor Code § 1174, which also pertains to recordkeeping, states:

4 Every person employing labor in this state shall:

5 ...

6 (c) Keep a record showing the names and addresses of all employees
7 employed and the ages of all minors.

8 (d) Keep, at a central location in the state or at the plants or
9 establishments at which employees are employed, payroll records
10 showing the hours worked daily by and the wages paid to, and the number
11 of piece-rate units earned by and any applicable piece rate paid to,
12 employees employed at the respective plants or establishments. These
13 records shall be kept in accordance with rules established for this purpose
14 by the commission, but in any case shall be kept on file for not less than
15 three years. An employer shall not prohibit an employee from maintaining
16 a personal record of hours worked, or, if paid on a piece-rate basis, piece-
17 rate units earned.

18 108. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
19 behalf of themselves and other current or former employees, to bring a civil action to recover
20 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

21 109. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
22 entitled to recover civil penalties for each of the Defendants' violations of California Labor
23 Code §§ 201, 202, 203, 204, 226, 226.2, 226.8, 351, 353, 558.1, 1174, 1174.5, 1194, 1197, 1198,
24 2750.3, 2751, 2753, and 2802 during the applicable limitations period in the following amounts:

25 A. For violations of California Labor Code § 204, one hundred dollars
26 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
27 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
28 (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 1174, five hundred dollars
(\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
California Labor Code § 1174.5).

C. For violations of California Labor Code § 226.8, \$25,000.00 for each
Aggrieved Employee for each violation of California Labor Code section 226.8 as part of a
pattern or practice in addition to any other penalties or fines permitted by law (penalties set by



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1 Labor Code section 226.8(c)); or alternatively, \$15,000.00 for each Aggrieved Employee for
2 each violation of California Labor Code section 226.8 in addition to any other penalties or fines
3 permitted by law (penalties set by Labor Code section 226.8(b)).

4 D. For violations of California Labor Code §2751, \$100 per Aggrieved
5 Employee for each of the pay periods in which initial violations of § 2751 occurred, and \$200
6 per Aggrieved Employee per pay period in which subsequent violations of § 2751 occurred
(penalties set by Labor Code § 2699(f)(2)).

7 E. For violations of California Labor Code § 226(a), two hundred fifty
8 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
9 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
10 established by California Labor Code § 226.3).

11 F. For violations of California Labor Code § 1197, one hundred dollars
12 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
13 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
14 pay period (regardless of whether the initial violations were intentionally committed) (penalty
amounts established by California Labor Code § 1197.1).

15 G. For violations of California Labor Code §§ 351 and 353, one hundred
16 dollars (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two
17 hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent
18 violation (penalty amounts established by California Labor Code § 2699(f)(2)). Alternatively,
19 if Takeshi Hayashi and DOE Defendants 6-10 are deemed not to have employed one or more
20 employees at the time of the violations, \$500 against Takeshi Hayashi and DOE Defendants 6-
21 10 under California Labor Code § 2699(f)(1).

22 H. For violations of California Labor Code §§ 201, 202, 203, 226.2, 1194,
23 1198, and 2802 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
24 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
25 period for each subsequent violation (penalty amounts established by California Labor Code §
2699(f)(2)).

26 110. Plaintiff has complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated July 6, 2020 and September 9, 2020, Plaintiff
28 filed written notice online with the Labor and Workforce Development Agency (“LWDA”) and



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1 gave written notice by certified mail to Defendants of the specific provisions of the California
2 Labor Code alleged to have been violated, including the facts and theories to support the alleged
3 violations. True and correct copies of the notices to the LWDA dated July 6, 2020 and
4 September 9, 2020 are collectively attached as Exhibit A. Plaintiff accompanied his LWDA
5 notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response
6 within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipates that the LWDA
7 will provide written notice to Plaintiff informing her that it does not intend to investigate these
8 allegations.

9 111. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
10 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
11 connection with their claims for civil penalties.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for
14 relief and judgment against Defendants as follows:

- 15 A. An order that the action be certified as a class action;
- 16 B. An order that Plaintiff be appointed class representative;
- 17 C. An order that counsel for Plaintiff be appointed class counsel;
- 18 D. Unpaid Wages;
- 19 E. Actual Damages;
- 20 F. Statutory Damages;
- 21 G. Liquidated Damages;
- 22 H. Restitution;
- 23 I. Declaratory and injunctive relief;
- 24 J. Equitable relief;
- 25 K. Pre-judgment interest;
- 26 L. Statutory penalties;
- 27 M. Civil penalties;
- 28 N. Costs of suit;
- O. Interest;
- P. Reasonable attorneys' fees; and
- Q. Such other relief as the Court deems just and proper.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: July 7, 2021

By: 

DAVID SPIVAK
CAROLINE TAHMASSIAN
Attorneys for Plaintiff,
REBECCA TSAO



SPIVAK LAW

Employee Rights Attorneys
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SpivakLaw.com

EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

July 6, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Rebecca Tsao / SPLLC*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, Rebecca Tsao (hereafter “Tsao”) provides notice on behalf of herself and all individuals, currently and formerly employed or contracted with, in California as independent contractors, including but not limited to stretch therapists and workers in comparable positions (hereafter “Aggrieved Employees”) by Stretch Pro, LLC, a California limited liability company, and Takeshi Hayashi, an individual who resides in California and is the owner and sole member of the aforementioned entity which he does business as (hereafter Stretch Pro, LLC and Hayashi are collectively referred to as “SPLLC”) of violations of Labor Code §§ 201, 202, 203, 204, 226, 226.8, 351, 353, 558.1, 1194, 1197, 1198, 2750.3, 2751, 2753, and 2802.

At all relevant times, SPLLC has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Tsao and the Aggrieved Employees are “employees” within the meaning of Wage Order 2 (hereafter “the Wage Order”), subdivision (2)(E) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

SPLLC advertises that it provides the following services:

Our stretching technique is a comprehensive recovery process that involves one-on-one assisted stretching. This technique takes you through multi-directional movements that allow you to remodel and strengthen fascia and muscles to increase flexibility and mobility. Our specialized stretching is performed by a licensed physical therapist and a certified stretch therapist.

SPLLC employed Tsao as a stretch therapist-employee from February of 2019 to September 9, 2019, though it characterized her and the other Aggrieved Employees as independent contractors. Throughout this time period, SPLLC required Tsao to perform the stretch services it advertised to its customers as described above. At all relevant times, SPLLC required the other Aggrieved Employees to perform the same services. SPLLC paid Tsao and the Aggrieved Employees by a flat rate commission only. SPLLC required Tsao and the other Aggrieved Employees to undergo training on its methods though it did not pay them for such training time. SPLLC required Tsao and the other Aggrieved Employees to adhere to the client schedule that it set for them, use SPLLC's equipment and supplies to perform the stretch therapy to SPLLC's clients, wear apparel with the "Stretch Pro" logo clearly displayed, and prohibited them from working for other stretch therapy providers. Though SPLLC issued payments by check to Tsao and the other Aggrieved Employees for the services they provided on a biweekly basis, SPLLC did not issue Tsao and the other Aggrieved Employees itemized wage statements stating the wages they earned, the rates they earned them at, and the hours they worked. SPLLC did not pay Tsao and the other Aggrieved Employees by the hour for the time they spent performing stretch therapy services for SPLLC's clients. SPLLC retained five percent (5%) of the tips its customers included in their credit card payments to SPLLC for Tsao and the other Aggrieved Employees. SPLLC required Tsao and the other Aggrieved Employees to install an application on their personal mobile phones in order to communicate with SPLLC about their work schedule. SPLLC did not offer mobile phones to Tsao and the other Aggrieved

Employees for this purpose, nor did it reimburse them for use of their personal mobile phones.

At all times relevant, Tsao and the Aggrieved Employees resided in California.

SPLLC's conduct toward Tsao and the Aggrieved Employees was at all times knowing, intentional, and willful.

In sum, SPLLC engaged in the following violations:

1. Willful misclassification of Tsao and the Aggrieved Employees as independent contractors;
2. Failure to pay Tsao and the Aggrieved Employees minimum wages for all hours worked;
3. Failure to pay Tsao and the Aggrieved Employees one and one-half times the State minimum wage for all hours worked over eight hours in one workday, over 40 hours in one workweek, and/or up to eight hours on the seventh consecutive workday in a workweek;
4. Failure to provide Tsao and the Aggrieved Employees with accurate wage statements;
5. Collection and retention of tips SPLLC's customers left for Tsao and the Aggrieved Employees;
6. Failure to timely pay Tsao and the Aggrieved Employees all earned and unpaid wages during, and at the conclusion of, their employment with SPLLC; and
7. Failure to reimburse Tsao and the Aggrieved Employees for all business expenses they incurred.

Accordingly, Tsao now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on SPLLC's violations of the California Labor Code.

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The Wage Order

Wage Order 2 applies to “all persons employed in the personal service industry whether paid on a time, piece rate, commission, or other basis.” § 1. The phrase “Personal service industry” includes

“any industry, business, or establishment operated for the purpose of rendering, directly or indirectly, any service, operation, or process used or useful in the care, cleansing, or beautification of the body, skin, nails, or hair, or in the enhancement of personal appearance or health, including but not limited to beauty salons, schools of beauty culture offering beauty care to the public for a fee, barber shops, bath and massage parlors, physical conditioning, weight control salons, health clubs, and mortuaries.”

§ 2(J) (emphasis added). At all relevant times during the applicable limitations period, Tsao was employed by SPLLC as a stretch therapist. As such work involves physical conditioning and health, Tsao and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Willful Independent Contractor Misclassification **(Lab. Code §§ 226.8, 2753)**

Labor Code section 226.8 states:

- (a) It is unlawful for any person or employer to engage in any of the following activities:
 - (1) Willful misclassification of an individual as an independent contractor.
 - (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental,

services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

- (b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.
- (c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

“Willful misclassification means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” (*Id.*, § (i)(4).)

At all relevant times, Tsao and the Aggrieved Employees were employees of SPLLC. SPLLC engaged, suffered, and permitted them to work. SPLLC could terminate Tsao and the Aggrieved Employees at will. SPLLC trained Tsao and the Aggrieved Employees how to perform aspects of their work. SPLLC assigned Tsao and the Aggrieved Employees the clients they serviced. SPLLC collected payment from the clients. SPLLC paid Tsao and the Aggrieved

Employees a nonnegotiable rate of pay per service. The work Tsao and the Aggrieved Employees performed was wholly within the scope of SPLLC's usual course of business of stretch therapy. SPLLC knew or should have known its actions of misclassifying employees as independent contractors violated California law.

SPLLC misclassified Tsao and the Aggrieved Employees as independent contractors and engaged in a pattern and/or practice of so doing. Through its misclassification of Tsao and every other Aggrieved Employee, SPLLC has engaged in a pattern and practice of willful misclassification of its employees as independent contractors for its own financial benefit. Each person or entity referenced above collectively as SPLLC advised the others to treat Tsao and the Aggrieved Employees at issue in this case as independent contractors.

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Takeshi Hayashi was an employer of Tsao and the Aggrieved Employees, and/or "owner," "managing agent," and/or "officer" of Stretch Pro, LLC and the other employers identified above. Takeshi Hayashi directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the

Wage Order described above.

At all relevant times, Tsao and the Aggrieved Employees were employees of Takeshi Hayashi. Takeshi Hayashi engaged, and suffered and permitted, Tsao and the Aggrieved Employees to work. Takeshi Hayashi was clearly aware that Tsao and the Aggrieved Employees worked for her company and had the power to prevent them from working. Takeshi Hayashi also exercised control over Tsao and the Aggrieved Employees' wages, hours, and working conditions. Further, Takeshi Hayashi had the right to control and exercised such control over the manner in which Tsao and the Aggrieved Employees performed their work for Takeshi Hayashi. The services they rendered were at all times an integral part of Takeshi Hayashi's business. The relationship between Tsao and the Aggrieved Employees, on one hand, and Takeshi Hayashi, on the other, was terminable at will without cause. Despite these circumstances, Takeshi Hayashi willfully misclassified Tsao and the Aggrieved Employees as independent contractors. He has engaged in a pattern and/or practice of doing so.

Labor Code § 2753 provides for joint and several liability for a person who "knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for that individual." Takeshi Hayashi is and was, at relevant times, an owner, director, officer, or managing agent of SPLLC and violated or caused to be violated the provisions regulating the misclassification of employees as independent contractors. He knowingly advised the other employers identified above to treat Tsao and the Aggrieved Employees as independent contractors and not employees. Therefore, he is individually liable for misclassification.

Accordingly, on behalf of herself and the Aggrieved Employees, Tsao seeks against SPLLC civil penalties as follows:

1. \$25,000.00 for each aggrieved employee for each violation of California Labor Code section 226.8 as part of a pattern or practice in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(c)); or alternatively,

2. \$15,000.00 for each aggrieved employee for each violation of California Labor Code section 226.8 in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(b)).

Failure to Provide Signed and Complete Commission Agreements
(Lab. Code § 2751)

Labor Code § 2751 states:

- (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.
- (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.
- (c) As used in this section, “commissions” has the meaning set forth in Section 204.1. For purposes of this section only, “commission” does not include any of the following:
 - (1) Short-term productivity bonuses such as are paid to retail clerks.
 - (2) (Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.

- (3) Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

At all relevant times, SPLLC has failed to provide Tsao and the Aggrieved Employees with signed commission agreements that included a copy of the employee handbook. As a result, SPLLC has violated California Labor Code § 2751. Accordingly, Tsao seeks civil penalties on behalf of herself and the Aggrieved Employees for the violations of Labor Code § 2751 at \$100 per aggrieved employee for each of the pay periods in which initial violations of § 2751 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 2751 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Pay Wages For All Hours Worked At The Correct Rates of Pay
(Lab. Code §§ 558.1, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Section 4(B) of Wage Order states:

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2(G) of the Wage Order states:

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

As described above, SPLLC failed to pay minimum wages to Tsao and the Aggrieved Employees for all hours worked. Accordingly, Tsao seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee per pay period in which initial violations of § 1194 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 1194 occurred (penalties set by Labor Code § 2699(f)(2));
2. \$100 for each aggrieved employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each aggrieved employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages and liquidated damages (penalties set by California Labor Code section 1197.1); and
3. \$100 for each aggrieved employee for each initial violation of California Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Timely Pay Wages During Employment
(Lab. Code §§ 204 and 558.1)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code §§ 201 and 202) 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

As alleged herein, SPLLC failed to provide Tsao and the Aggrieved Employees all wages owed, including, but not limited to, all minimum wages at the legal rates of pay for all regular hours worked. As a result, SPLLC failed to pay Tsao and the Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, SPLLC has violated California Labor Code § 204. Accordingly, Tsao seeks civil penalties on behalf of herself and the

Aggrieved Employees as follows:

1. For all initial violations of Labor Code § 204 that are deemed to be neither willful nor intentional, \$100.00 for each aggrieved employee per pay period for each violation (penalties set by California Labor Code § 210);
2. For all initial violations of Labor Code § 204 that are deemed to be either willful or intentional, \$200.00 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by California Labor Code § 210); and

For all subsequent violations of Labor Code § 204, regardless of whether the initial violation of Labor Code § 204 is deemed to be either willful or intentional, \$200.00 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by California Labor Code § 210).

Failures to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203 and 558.1)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, 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 therefor is commenced; but the wages shall not continue for more than 30 days.

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

By failing to pay wages to Tsao and Aggrieved Employees as set forth above, SPLLC is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and Aggrieved Employees, Tsao seeks civil penalties from SPLLC as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202

occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Indemnify for Expenses
(Lab. Code 2802)

In pertinent part, Labor Code § 2802, subdivision (a), states, “An employer shall indemnify his or her employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

At all relevant times during the applicable limitations period, SPLLC required Tsao and the other Aggrieved Employees to incur reasonable expenses, include mobile phone expenses. It did not reimburse them for such expenses.

Accordingly, Tsao seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

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Unlawful Collection and Retention of Tips
(Lab. Code §§ 351, 353)

Pursuant to Labor Code § 350, SPLLC was at all times an “employer” or “agent” of an employer and Tsao and the other Aggrieved Employees were at all times “employees” pursuant to that statute. Labor Code § 351 prohibits an employer or agent of the employer from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deducting any amount from wages due an employee on account of a gratuity, or requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Labor Code § 351 further declares that every gratuity: “... is the sole property of the employee or employees to whom it was paid, given, or left for.”

SPLLC, through their agents acted in direct violation of California Labor Code Regent § 351, when they confiscated all tips from Tsao and the other Aggrieved Employees.

Tsao, on behalf of herself and the other Aggrieved Employees, seeks civil penalties under Labor Code § 2699(f) (2) for violations by SPLLC of California Labor Code § 351 in the amounts of \$100 per employee for each of SBLLC’s and Hayashi’s initial violations and \$200 per employee per pay period for their subsequent violations. Alternatively, if Hayashi is deemed not to have employed one or more employees at the time of the violations, Tsao, on behalf of herself and the aggrieved employees, seeks civil penalties against Hayashi under California Labor Code § 2699(f)(1) in the amount of \$500.

Labor Code § 353 requires every employer to keep accurate records of all gratuities received by it, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Tsao is informed and believes and thereon asserts that SPLLC violated this Section with respect to gratuities intended for Tsao and the other Aggrieved Employees.

Tsao, on behalf of herself and the other Aggrieved Employees, additionally

seeks civil penalties under Labor Code § 2699(f) (2) for violations by SBLLC and by Hayashi of California Labor Code § 353 in the amounts of \$100 per employee for each of the initial violations and \$200 per employee per pay period for their subsequent violations. Alternatively, if Hayashi is deemed not to have employed one or more employees at the time of the violations, Tsao, on behalf of herself and the other Aggrieved Employees, seeks civil penalties against Hayashi under California Labor Code § 2699(f)(1) in the amount of \$500.

Failure To Provide Accurate Wage Statements
(Lab. Code §§ 226 and 226.2)

Labor Code § 226(a) requires an employer to provide an employee, either semimonthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
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,
6. The inclusive dates of the period for which the employee is paid,
7. The name of the employee and his or her social security number,

except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;

8. The name and address of the legal entity that is the employer, 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.

At all times relevant during the applicable limitations period, SPLLC violated California Labor Code § 226, by failing to issue wage statements of any kind and by failing to properly and accurately itemize each Aggrieved Employee's gross wages earned and it failed to meet the other requirements of California Labor Code § 226.

Labor Code § 226.2 states,

For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the

gross wages paid for that time during the pay period.

Lab.Code § 226.2(a)(2).

SPLLC failed to issue to Tsao and the Aggrieved Employees itemized wage statements that state the total hours worked, and the hourly rates for non-staging and non-designing tasks.

Accordingly, Tsao seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 2699(f)(2));
2. \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by California Labor Code § 226.3); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 558.1, 1174, 1174.5, 1198)

Labor Code § 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

SPLLC has willfully failed to maintain the records required by § 1174. Accordingly, Tsao seeks civil penalties from SPLLC on behalf of herself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699,

LWDA / Stretch Pro, LLC

7/6/2020

Page 20 of 20

subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,

A handwritten signature in black ink, appearing to read "David Spivak".

David Spivak, Esq.

david@spivaklaw.com

cc: Rebecca Tsao
Walter Haines, Esq.

Takeshi Hayashi
8000 Sunset Blvd., B145
Los Angeles CA 90046

Stretch Pro, LLC
c/o Legalzoom.com, Inc.
101 North Brand Blvd., 11th Floor
Glendale CA 91203



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

September 9, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Rebecca Tsao / SPLLC*

To whom it may concern:

This is a supplemental notice and incorporates the original notice dated July 6, 2020 (enclosed) in its entirety.

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, Rebecca Tsao (hereafter “Tsao”) provides notice on behalf of herself and all individuals, currently and formerly employed or contracted with, in California as independent contractors, including but not limited to stretch therapists and workers in comparable positions (hereafter “Aggrieved Employees”) by Stretch Pro, LLC, a California limited liability company, and Takeshi Hayashi, an individual who resides in California and is the owner and sole member of the aforementioned entity which he does business as (hereafter Stretch Pro, LLC and Hayashi are collectively referred to as “SPLLC”) of violations of Labor Code §§ 226.2, 558.1, 1194, 1197, and 1198.

At all relevant times, SPLLC has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Tsao and the Aggrieved Employees are “employees” within the meaning of Wage Order 2

(hereafter “the Wage Order”), subdivision (2)(E) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

SPLLC advertises that it provides the following services:

Our stretching technique is a comprehensive recovery process that involves one-on-one assisted stretching. This technique takes you through multi-directional movements that allow you to remodel and strengthen fascia and muscles to increase flexibility and mobility. Our specialized stretching is performed by a licensed physical therapist and a certified stretch therapist.

SPLLC employed Tsao as a stretch therapist-employee from February of 2019 to September 9, 2019, though it characterized her and the other Aggrieved Employees as independent contractors. Throughout this time period, SPLLC required Tsao to perform the stretch services it advertised to its customers as described above. At all relevant times, SPLLC required the other Aggrieved Employees to perform the same services. SPLLC paid Tsao and the Aggrieved Employees by a flat rate commission only. SPLLC required Tsao and the other Aggrieved Employees to undergo training on its methods though it did not pay them for such training time. SPLLC required Tsao and the other Aggrieved Employees to adhere to the client schedule that it set for them, use SPLLC’s equipment and supplies to perform the stretch therapy to SPLLC’s clients, wear apparel with the “Stretch Pro” logo clearly displayed, and prohibited them from working for other stretch therapy providers.

Though SPLLC issued payments by check to Tsao and the other Aggrieved Employees for the services they provided on a biweekly basis, SPLLC did not issue Tsao and the other Aggrieved Employees itemized wage statements stating the wages they earned, the rates they earned them at, and the hours they worked. SPLLC did not pay Tsao and the other Aggrieved Employees by the hour for the time they spent performing stretch therapy services for SPLLC’s clients.

SPLLC, further, required Tsao and the other Aggrieved Employees to complete a training period which lasted approximately two weeks. SPLLC, however, failed to pay Tsao and the other Aggrieved Employees for this training period.

SPLLC also failed to compensate Tsao and the other Aggrieved Employees separately for their 10-minute rest and recovery time and for other nonproductive time, the time they spent cleaning the stretch beds, replacing the towels for the customers, and replacing the pillow cases after each customer.

SPLLC retained five percent (5%) of the tips its customers included in their credit card payments to SPLLC for Tsao and the other Aggrieved Employees. SPLLC required Tsao and the other Aggrieved Employees to install an application on their personal mobile phones in order to communicate with SPLLC about their work schedule. SPLLC did not offer mobile phones to Tsao and the other Aggrieved Employees for this purpose, nor did it reimburse them for use of their personal mobile phones.

At all times relevant, Tsao and the Aggrieved Employees resided in California. SPLLC's conduct toward Tsao and the Aggrieved Employees described above was at all times knowing, intentional, and willful.

In sum, SPLLC engaged in the following violations:

1. Willful misclassification of Tsao and the Aggrieved Employees as independent contractors;
2. Failure to pay Tsao and the Aggrieved Employees minimum wages for all hours worked;
3. Failure to provide Tsao and the Aggrieved Employees with accurate wage statements;
4. Collection and retention of tips SPLLC's customers left for Tsao and the Aggrieved Employees;
5. Failure to timely pay Tsao and the Aggrieved Employees all earned and unpaid wages during, and at the conclusion of, their employment with SPLLC; and
6. Failure to reimburse Tsao and the Aggrieved Employees for all

business expenses they incurred.

Accordingly, Tsao now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on SPLLC's violations of the California Labor Code.

The Wage Order

Wage Order 2 applies to "all persons employed in the personal service industry whether paid on a time, piece rate, commission, or other basis." § 1. The phrase "Personal service industry" includes

"any industry, business, or establishment operated for the purpose of rendering, directly or indirectly, any service, operation, or process used or useful in the care, cleansing, or beautification of the body, skin, nails, or hair, or in the enhancement of personal appearance or health, including but not limited to beauty salons, schools of beauty culture offering beauty care to the public for a fee, barber shops, bath and massage parlors, physical conditioning, weight control salons, health clubs, and mortuaries."

§ 2(J) (emphasis added). At all relevant times during the applicable limitations period, Tsao was employed by SPLLC as a stretch therapist. As such work involves physical conditioning and health, Tsao and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Willful Independent Contractor Misclassification **(Lab. Code §§ 226.8, 2753)**

Labor Code section 226.8 states:

- (a) It is unlawful for any person or employer to engage in any of the following activities:
 - (1) Willful misclassification of an individual as an

independent contractor.

- (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.
- (b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.
- (c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

“Willful misclassification means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” (*Id.*, § (i)(4).)

SPLLC willfully misclassified Tsao and the other Aggrieved Employees. SPLLC

required Tsao and the Aggrieved Employees to perform the stretch services it advertised to its customers as described above. SPLLC paid Tsao and the Aggrieved Employees by a flat rate commission only. SPLLC required Tsao and the other Aggrieved Employees to undergo training on its methods though it did not pay them for such training time. SPLLC required Tsao and the other Aggrieved Employees to adhere to the client schedule that it set for them, use SPLLC's equipment and supplies to perform the stretch therapy to SPLLC's clients, wear apparel with the "Stretch Pro" logo clearly displayed, and prohibited them from working for other stretch therapy providers.

At all relevant times, Tsao and the Aggrieved Employees were employees of SPLLC. SPLLC engaged, suffered, and permitted them to work. SPLLC could terminate Tsao and the Aggrieved Employees at will. SPLLC trained Tsao and the Aggrieved Employees how to perform aspects of their work. SPLLC assigned Tsao and the Aggrieved Employees the clients they serviced. SPLLC collected payment from the clients. SPLLC paid Tsao and the Aggrieved Employees a nonnegotiable rate of pay per service. The work Tsao and the Aggrieved Employees performed was wholly within the scope of SPLLC's usual course of business of stretch therapy. SPLLC knew or should have known its actions of misclassifying employees as independent contractors violated California law.

SPLLC misclassified Tsao and the Aggrieved Employees as independent contractors and engaged in a pattern and/or practice of so doing. Through its misclassification of Tsao and every other Aggrieved Employee, SPLLC has engaged in a pattern and practice of willful misclassification of its employees as independent contractors for its own financial benefit. Each person or entity referenced above collectively as SPLLC advised the others to treat Tsao and the Aggrieved Employees at issue in this case as independent contractors.

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the

Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Takeshi Hayashi was an employer of Tsao and the Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of Stretch Pro, LLC and the other employers identified above. Takeshi Hayashi directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above.

At all relevant times, Tsao and the Aggrieved Employees were employees of Takeshi Hayashi. Takeshi Hayashi engaged, and suffered and permitted, Tsao and the Aggrieved Employees to work. Takeshi Hayashi was clearly aware that Tsao and the Aggrieved Employees worked for her company and had the power to prevent them from working. Takeshi Hayashi also exercised control over Tsao and the Aggrieved Employees’ wages, hours, and working conditions. Further, Takeshi Hayashi had the right to control and exercised such control over the manner in which Tsao and the Aggrieved Employees performed their work for Takeshi Hayashi. The services they rendered were at all times an integral part of Takeshi Hayashi’s business. The relationship between Tsao and the Aggrieved Employees, on one hand, and Takeshi Hayashi, on the other, was terminable at will without cause. Despite these circumstances, Takeshi Hayashi willfully misclassified Tsao and the Aggrieved Employees as independent contractors. He has engaged in a pattern and/or practice of doing so.

Labor Code § 2753 provides for joint and several liability for a person who “knowingly advises an employer to treat an individual as an independent

contractor to avoid employee status for that individual.” Takeshi Hayashi is and was, at relevant times, an owner, director, officer, or managing agent of SPLLC and violated or caused to be violated the provisions regulating the misclassification of employees as independent contractors. He knowingly advised the other employers identified above to treat Tsao and the Aggrieved Employees as independent contractors and not employees. Therefore, he is individually liable for misclassification.

Accordingly, on behalf of herself and the Aggrieved Employees, Tsao seeks against SPLLC civil penalties as follows:

1. \$25,000.00 for each aggrieved employee for each violation of California Labor Code section 226.8 as part of a pattern or practice in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(c)); or alternatively,
2. \$15,000.00 for each aggrieved employee for each violation of California Labor Code section 226.8 in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(b)).

Failure to Provide Signed and Complete Commission Agreements
(Lab. Code § 2751)

Labor Code § 2751 states:

- (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.
- (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that

expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.

- (c) As used in this section, “commissions” has the meaning set forth in Section 204.1. For purposes of this section only, “commission” does not include any of the following:
- (1) Short-term productivity bonuses such as are paid to retail clerks.
 - (2) (Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.
 - (3) Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

At all relevant times, SPLLC has failed to provide Tsao and the Aggrieved Employees with signed commission agreements that included a copy of the employee handbook. As a result, SPLLC has violated California Labor Code § 2751. Accordingly, Tsao seeks civil penalties on behalf of herself and the Aggrieved Employees for the violations of Labor Code § 2751 at \$100 per aggrieved employee for each of the pay periods in which initial violations of § 2751 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 2751 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Pay Wages For All Hours Worked At The Correct Rates of Pay
(Lab. Code §§ 226.2, 558.1, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Section 4(B) of Wage Order states:

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2(G) of the Wage Order states:

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

Labor Code § 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
 - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

As described above, SPLLC failed to pay Tsao and the Aggrieved Employees for all hours worked at the correct rates of pay. As described above, SPLLC required Tsao and the other Aggrieved Employees to complete a training period which lasted approximately two weeks. SPLLC, however, failed to pay Tsao and the other Aggrieved Employees for this training period. SPLLC also failed to compensate Tsao and the other Aggrieved Employees separately for their 10-minute rest and recovery time and for other nonproductive time, the time they spent cleaning the stretch beds, replacing the towels for the customers, and replacing the pillow cases after each customer.

Accordingly, Tsao seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. \$100 for each aggrieved employee per pay period in which initial violations of § 1194 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 1194 occurred (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each aggrieved employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each aggrieved employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed)(penalties set by California Labor Code section 1197.1); and
4. \$100 for each aggrieved employee for each initial violation of California Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Timely Pay Wages During Employment
(Lab. Code §§ 204 and 558.1)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code §§ 201 and 202) 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages

or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

As alleged herein, SPLLC failed to provide Tsao and the Aggrieved Employees all wages owed, including, but not limited to, all minimum wages at the legal rates of pay for all regular hours worked. As a result, SPLLC failed to pay Tsao and the Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, SPLLC has violated California Labor Code § 204. Accordingly, Tsao seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. For all initial violations of Labor Code § 204 that are deemed to be neither willful nor intentional, \$100.00 for each aggrieved employee per pay period for each violation (penalties set by California Labor Code § 210);
2. For all initial violations of Labor Code § 204 that are deemed to be either willful or intentional, \$200.00 for each aggrieved employee, per pay period for each violation (penalties set by California Labor Code § 210); and
3. For all subsequent violations of Labor Code § 204, regardless of whether the initial violation of Labor Code § 204 is deemed to be either willful or intentional, \$200.00 for each aggrieved employee, per pay period for each violation (penalties set by California Labor Code § 210).

Failures to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203 and 558.1)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, 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 therefor is commenced; but the wages shall not continue for more than 30 days.

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing

agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

SPLLC’s conduct toward Tsao and the Aggrieved Employees described above was at all times knowing, intentional, and willful. By failing to pay wages to Tsao and Aggrieved Employees as set forth above, SPLLC is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and Aggrieved Employees, Tsao seeks civil penalties from SPLLC as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
4. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Indemnify for Expenses
(Lab. Code 2802)

In pertinent part, Labor Code § 2802, subdivision (a), states, “An employer shall indemnify his or her employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

At all relevant times during the applicable limitations period, SPLLC required

Tsao and the other Aggrieved Employees to incur reasonable expenses, include mobile phone expenses. It did not reimburse them for such expenses. SPLLC required Tsao and the other Aggrieved Employees to install an application on their personal mobile phones in order to communicate with SPLLC about their work schedule. SPLLC did not offer mobile phones to Tsao and the other Aggrieved Employees for this purpose, nor did it reimburse them for use of their personal mobile phones.

Accordingly, Tsao seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Unlawful Collection and Retention of Tips
(Lab. Code §§ 351, 353)

Pursuant to Labor Code § 350, SPLLC was at all times an “employer” or “agent” of an employer and Tsao and the other Aggrieved Employees were at all times “employees” pursuant to that statute. Labor Code § 351 prohibits an employer or agent of the employer from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deducting any amount from wages due an employee on account of a gratuity, or requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Labor Code § 351 further declares that every gratuity: “... is the sole property of the employee or employees to whom it was paid, given, or left for.”

SPLLC retained five percent (5%) of the tips its customers included in their credit card payments to SPLLC for Tsao and the other Aggrieved Employees. SPLLC, through their agents acted in direct violation of California Labor Code Regent § 351, when they confiscated all tips from Tsao and the other Aggrieved Employees.

Tsao, on behalf of herself and the other Aggrieved Employees, seeks civil penalties under Labor Code § 2699(f) (2) for violations by SPLLC of California Labor Code § 351 in the amounts of \$100 per employee for each of SBLLC's and Hayashi's initial violations and \$200 per employee per pay period for their subsequent violations. Alternatively, if Hayashi is deemed not to have employed one or more employees at the time of the violations, Tsao, on behalf of herself and the aggrieved employees, seeks civil penalties against Hayashi under California Labor Code § 2699(f)(1) in the amount of \$500.

Labor Code § 353 requires every employer to keep accurate records of all gratuities received by it, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Tsao is informed and believes and thereon asserts that SPLLC violated this Section with respect to gratuities intended for Tsao and the other Aggrieved Employees.

Tsao, on behalf of herself and the other Aggrieved Employees, additionally seeks civil penalties under Labor Code § 2699(f) (2) for violations by SBLLC and by Hayashi of California Labor Code § 353 in the amounts of \$100 per employee for each of the initial violations and \$200 per employee per pay period for their subsequent violations. Alternatively, if Hayashi is deemed not to have employed one or more employees at the time of the violations, Tsao, on behalf of herself and the other Aggrieved Employees, seeks civil penalties against Hayashi under California Labor Code § 2699(f)(1) in the amount of \$500.

Failure To Provide Accurate Wage Statements
(Lab. Code §§ 226 and 226.2)

Labor Code § 226(a) requires an employer to provide an employee, either

semimonthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
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,
6. The inclusive dates of the period for which the employee is paid,
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer, 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.

At all times relevant during the applicable limitations period, SPLLC violated California Labor Code § 226, by failing to issue wage statements of any kind and by failing to properly and accurately itemize each Aggrieved Employee's gross

wages earned and it failed to meet the other requirements of California Labor Code § 226. Though SPLLC issued payments by check to Tsao and the other Aggrieved Employees for the services they provided on a biweekly basis, SPLLC did not issue Tsao and the other Aggrieved Employees itemized wage statements stating the wages they earned, the rates they earned them at, and the hours they worked.

Labor Code § 226.2 states,

For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

Lab.Code § 226.2(a)(2).

SPLLC failed to issue to Tsao and the Aggrieved Employees itemized wage statements that state the total hours worked, and the hourly rates for non-staging and non-designing tasks.

Accordingly, Tsao seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

5. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 2699(f)(2));
6. \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by California Labor Code § 226.3); and
7. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 558.1, 1174, 1174.5, 1198)

Labor Code § 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three

years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

SPLLC has willfully failed to maintain the records required by § 1174. Accordingly, Tsao seeks civil penalties from SPLLC on behalf of herself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

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Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

Caroline Tahmassian, Esq.

caroline@spivaklaw.com

Encls. as stated

cc: Rebecca Tsao
Walter Haines, Esq.

Takeshi Hayashi
8000 Sunset Blvd.
B145
Los Angeles CA 90046

Stretch Pro, LLC
c/o Legalzoom.com, Inc.
Agent for Service of Process
101 North Brand Blvd.
11th Floor
Glendale CA 91203



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

July 6, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Rebecca Tsao / SPLLC*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, Rebecca Tsao (hereafter “Tsao”) provides notice on behalf of herself and all individuals, currently and formerly employed or contracted with, in California as independent contractors, including but not limited to stretch therapists and workers in comparable positions (hereafter “Aggrieved Employees”) by Stretch Pro, LLC, a California limited liability company, and Takeshi Hayashi, an individual who resides in California and is the owner and sole member of the aforementioned entity which he does business as (hereafter Stretch Pro, LLC and Hayashi are collectively referred to as “SPLLC”) of violations of Labor Code §§ 201, 202, 203, 204, 226, 226.8, 351, 353, 558.1, 1194, 1197, 1198, 2750.3, 2751, 2753, and 2802.

At all relevant times, SPLLC has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Tsao and the Aggrieved Employees are “employees” within the meaning of Wage Order 2 (hereafter “the Wage Order”), subdivision (2)(E) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

SPLLC advertises that it provides the following services:

Our stretching technique is a comprehensive recovery process that involves one-on-one assisted stretching. This technique takes you through multi-directional movements that allow you to remodel and strengthen fascia and muscles to increase flexibility and mobility. Our specialized stretching is performed by a licensed physical therapist and a certified stretch therapist.

SPLLC employed Tsao as a stretch therapist-employee from February of 2019 to September 9, 2019, though it characterized her and the other Aggrieved Employees as independent contractors. Throughout this time period, SPLLC required Tsao to perform the stretch services it advertised to its customers as described above. At all relevant times, SPLLC required the other Aggrieved Employees to perform the same services. SPLLC paid Tsao and the Aggrieved Employees by a flat rate commission only. SPLLC required Tsao and the other Aggrieved Employees to undergo training on its methods though it did not pay them for such training time. SPLLC required Tsao and the other Aggrieved Employees to adhere to the client schedule that it set for them, use SPLLC's equipment and supplies to perform the stretch therapy to SPLLC's clients, wear apparel with the "Stretch Pro" logo clearly displayed, and prohibited them from working for other stretch therapy providers. Though SPLLC issued payments by check to Tsao and the other Aggrieved Employees for the services they provided on a biweekly basis, SPLLC did not issue Tsao and the other Aggrieved Employees itemized wage statements stating the wages they earned, the rates they earned them at, and the hours they worked. SPLLC did not pay Tsao and the other Aggrieved Employees by the hour for the time they spent performing stretch therapy services for SPLLC's clients. SPLLC retained five percent (5%) of the tips its customers included in their credit card payments to SPLLC for Tsao and the other Aggrieved Employees. SPLLC required Tsao and the other Aggrieved Employees to install an application on their personal mobile phones in order to communicate with SPLLC about their work schedule. SPLLC did not offer mobile phones to Tsao and the other Aggrieved

Employees for this purpose, nor did it reimburse them for use of their personal mobile phones.

At all times relevant, Tsao and the Aggrieved Employees resided in California.

SPLLC's conduct toward Tsao and the Aggrieved Employees was at all times knowing, intentional, and willful.

In sum, SPLLC engaged in the following violations:

1. Willful misclassification of Tsao and the Aggrieved Employees as independent contractors;
2. Failure to pay Tsao and the Aggrieved Employees minimum wages for all hours worked;
3. Failure to pay Tsao and the Aggrieved Employees one and one-half times the State minimum wage for all hours worked over eight hours in one workday, over 40 hours in one workweek, and/or up to eight hours on the seventh consecutive workday in a workweek;
4. Failure to provide Tsao and the Aggrieved Employees with accurate wage statements;
5. Collection and retention of tips SPLLC's customers left for Tsao and the Aggrieved Employees;
6. Failure to timely pay Tsao and the Aggrieved Employees all earned and unpaid wages during, and at the conclusion of, their employment with SPLLC; and
7. Failure to reimburse Tsao and the Aggrieved Employees for all business expenses they incurred.

Accordingly, Tsao now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on SPLLC's violations of the California Labor Code.

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The Wage Order

Wage Order 2 applies to “all persons employed in the personal service industry whether paid on a time, piece rate, commission, or other basis.” § 1. The phrase “Personal service industry” includes

“any industry, business, or establishment operated for the purpose of rendering, directly or indirectly, any service, operation, or process used or useful in the care, cleansing, or beautification of the body, skin, nails, or hair, or in the enhancement of personal appearance or health, including but not limited to beauty salons, schools of beauty culture offering beauty care to the public for a fee, barber shops, bath and massage parlors, physical conditioning, weight control salons, health clubs, and mortuaries.”

§ 2(J) (emphasis added). At all relevant times during the applicable limitations period, Tsao was employed by SPLLC as a stretch therapist. As such work involves physical conditioning and health, Tsao and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Willful Independent Contractor Misclassification **(Lab. Code §§ 226.8, 2753)**

Labor Code section 226.8 states:

- (a) It is unlawful for any person or employer to engage in any of the following activities:
 - (1) Willful misclassification of an individual as an independent contractor.
 - (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental,

services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

- (b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.
- (c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

“Willful misclassification means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” (*Id.*, § (i)(4).)

At all relevant times, Tsao and the Aggrieved Employees were employees of SPLLC. SPLLC engaged, suffered, and permitted them to work. SPLLC could terminate Tsao and the Aggrieved Employees at will. SPLLC trained Tsao and the Aggrieved Employees how to perform aspects of their work. SPLLC assigned Tsao and the Aggrieved Employees the clients they serviced. SPLLC collected payment from the clients. SPLLC paid Tsao and the Aggrieved

Employees a nonnegotiable rate of pay per service. The work Tsao and the Aggrieved Employees performed was wholly within the scope of SPLLC's usual course of business of stretch therapy. SPLLC knew or should have known its actions of misclassifying employees as independent contractors violated California law.

SPLLC misclassified Tsao and the Aggrieved Employees as independent contractors and engaged in a pattern and/or practice of so doing. Through its misclassification of Tsao and every other Aggrieved Employee, SPLLC has engaged in a pattern and practice of willful misclassification of its employees as independent contractors for its own financial benefit. Each person or entity referenced above collectively as SPLLC advised the others to treat Tsao and the Aggrieved Employees at issue in this case as independent contractors.

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Takeshi Hayashi was an employer of Tsao and the Aggrieved Employees, and/or "owner," "managing agent," and/or "officer" of Stretch Pro, LLC and the other employers identified above. Takeshi Hayashi directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the

Wage Order described above.

At all relevant times, Tsao and the Aggrieved Employees were employees of Takeshi Hayashi. Takeshi Hayashi engaged, and suffered and permitted, Tsao and the Aggrieved Employees to work. Takeshi Hayashi was clearly aware that Tsao and the Aggrieved Employees worked for her company and had the power to prevent them from working. Takeshi Hayashi also exercised control over Tsao and the Aggrieved Employees' wages, hours, and working conditions. Further, Takeshi Hayashi had the right to control and exercised such control over the manner in which Tsao and the Aggrieved Employees performed their work for Takeshi Hayashi. The services they rendered were at all times an integral part of Takeshi Hayashi's business. The relationship between Tsao and the Aggrieved Employees, on one hand, and Takeshi Hayashi, on the other, was terminable at will without cause. Despite these circumstances, Takeshi Hayashi willfully misclassified Tsao and the Aggrieved Employees as independent contractors. He has engaged in a pattern and/or practice of doing so.

Labor Code § 2753 provides for joint and several liability for a person who "knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for that individual." Takeshi Hayashi is and was, at relevant times, an owner, director, officer, or managing agent of SPLLC and violated or caused to be violated the provisions regulating the misclassification of employees as independent contractors. He knowingly advised the other employers identified above to treat Tsao and the Aggrieved Employees as independent contractors and not employees. Therefore, he is individually liable for misclassification.

Accordingly, on behalf of herself and the Aggrieved Employees, Tsao seeks against SPLLC civil penalties as follows:

1. \$25,000.00 for each aggrieved employee for each violation of California Labor Code section 226.8 as part of a pattern or practice in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(c)); or alternatively,

2. \$15,000.00 for each aggrieved employee for each violation of California Labor Code section 226.8 in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(b)).

Failure to Provide Signed and Complete Commission Agreements
(Lab. Code § 2751)

Labor Code § 2751 states:

- (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.
- (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.
- (c) As used in this section, “commissions” has the meaning set forth in Section 204.1. For purposes of this section only, “commission” does not include any of the following:
 - (1) Short-term productivity bonuses such as are paid to retail clerks.
 - (2) (Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.

- (3) Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

At all relevant times, SPLLC has failed to provide Tsao and the Aggrieved Employees with signed commission agreements that included a copy of the employee handbook. As a result, SPLLC has violated California Labor Code § 2751. Accordingly, Tsao seeks civil penalties on behalf of herself and the Aggrieved Employees for the violations of Labor Code § 2751 at \$100 per aggrieved employee for each of the pay periods in which initial violations of § 2751 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 2751 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Pay Wages For All Hours Worked At The Correct Rates of Pay
(Lab. Code §§ 558.1, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Section 4(B) of Wage Order states:

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2(G) of the Wage Order states:

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

As described above, SPLLC failed to pay minimum wages to Tsao and the Aggrieved Employees for all hours worked. Accordingly, Tsao seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee per pay period in which initial violations of § 1194 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 1194 occurred (penalties set by Labor Code § 2699(f)(2));
2. \$100 for each aggrieved employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each aggrieved employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages and liquidated damages (penalties set by California Labor Code section 1197.1); and
3. \$100 for each aggrieved employee for each initial violation of California Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Timely Pay Wages During Employment
(Lab. Code §§ 204 and 558.1)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code §§ 201 and 202) 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

As alleged herein, SPLLC failed to provide Tsao and the Aggrieved Employees all wages owed, including, but not limited to, all minimum wages at the legal rates of pay for all regular hours worked. As a result, SPLLC failed to pay Tsao and the Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, SPLLC has violated California Labor Code § 204. Accordingly, Tsao seeks civil penalties on behalf of herself and the

Aggrieved Employees as follows:

1. For all initial violations of Labor Code § 204 that are deemed to be neither willful nor intentional, \$100.00 for each aggrieved employee per pay period for each violation (penalties set by California Labor Code § 210);
2. For all initial violations of Labor Code § 204 that are deemed to be either willful or intentional, \$200.00 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by California Labor Code § 210); and

For all subsequent violations of Labor Code § 204, regardless of whether the initial violation of Labor Code § 204 is deemed to be either willful or intentional, \$200.00 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by California Labor Code § 210).

Failures to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203 and 558.1)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, 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 therefor is commenced; but the wages shall not continue for more than 30 days.

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

By failing to pay wages to Tsao and Aggrieved Employees as set forth above, SPLLC is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and Aggrieved Employees, Tsao seeks civil penalties from SPLLC as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202

occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Indemnify for Expenses
(Lab. Code 2802)

In pertinent part, Labor Code § 2802, subdivision (a), states, “An employer shall indemnify his or her employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

At all relevant times during the applicable limitations period, SPLLC required Tsao and the other Aggrieved Employees to incur reasonable expenses, include mobile phone expenses. It did not reimburse them for such expenses.

Accordingly, Tsao seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

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Unlawful Collection and Retention of Tips
(Lab. Code §§ 351, 353)

Pursuant to Labor Code § 350, SPLLC was at all times an “employer” or “agent” of an employer and Tsao and the other Aggrieved Employees were at all times “employees” pursuant to that statute. Labor Code § 351 prohibits an employer or agent of the employer from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deducting any amount from wages due an employee on account of a gratuity, or requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Labor Code § 351 further declares that every gratuity: “... is the sole property of the employee or employees to whom it was paid, given, or left for.”

SPLLC, through their agents acted in direct violation of California Labor Code Regent § 351, when they confiscated all tips from Tsao and the other Aggrieved Employees.

Tsao, on behalf of herself and the other Aggrieved Employees, seeks civil penalties under Labor Code § 2699(f) (2) for violations by SPLLC of California Labor Code § 351 in the amounts of \$100 per employee for each of SBLLC’s and Hayashi’s initial violations and \$200 per employee per pay period for their subsequent violations. Alternatively, if Hayashi is deemed not to have employed one or more employees at the time of the violations, Tsao, on behalf of herself and the aggrieved employees, seeks civil penalties against Hayashi under California Labor Code § 2699(f)(1) in the amount of \$500.

Labor Code § 353 requires every employer to keep accurate records of all gratuities received by it, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Tsao is informed and believes and thereon asserts that SPLLC violated this Section with respect to gratuities intended for Tsao and the other Aggrieved Employees.

Tsao, on behalf of herself and the other Aggrieved Employees, additionally

seeks civil penalties under Labor Code § 2699(f) (2) for violations by SBLLC and by Hayashi of California Labor Code § 353 in the amounts of \$100 per employee for each of the initial violations and \$200 per employee per pay period for their subsequent violations. Alternatively, if Hayashi is deemed not to have employed one or more employees at the time of the violations, Tsao, on behalf of herself and the other Aggrieved Employees, seeks civil penalties against Hayashi under California Labor Code § 2699(f)(1) in the amount of \$500.

Failure To Provide Accurate Wage Statements
(Lab. Code §§ 226 and 226.2)

Labor Code § 226(a) requires an employer to provide an employee, either semimonthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
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,
6. The inclusive dates of the period for which the employee is paid,
7. The name of the employee and his or her social security number,

except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;

8. The name and address of the legal entity that is the employer, 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.

At all times relevant during the applicable limitations period, SPLLC violated California Labor Code § 226, by failing to issue wage statements of any kind and by failing to properly and accurately itemize each Aggrieved Employee's gross wages earned and it failed to meet the other requirements of California Labor Code § 226.

Labor Code § 226.2 states,

For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the

gross wages paid for that time during the pay period.

Lab.Code § 226.2(a)(2).

SPLLC failed to issue to Tsao and the Aggrieved Employees itemized wage statements that state the total hours worked, and the hourly rates for non-staging and non-designing tasks.

Accordingly, Tsao seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 2699(f)(2));
2. \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by California Labor Code § 226.3); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 558.1, 1174, 1174.5, 1198)

Labor Code § 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

SPLLC has willfully failed to maintain the records required by § 1174. Accordingly, Tsao seeks civil penalties from SPLLC on behalf of herself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699,

LWDA / Stretch Pro, LLC

7/6/2020

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subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,

A handwritten signature in black ink, appearing to read "David Spivak".

David Spivak, Esq.

david@spivaklaw.com

cc: Rebecca Tsao
Walter Haines, Esq.

Takeshi Hayashi
8000 Sunset Blvd., B145
Los Angeles CA 90046

Stretch Pro, LLC
c/o Legalzoom.com, Inc.
101 North Brand Blvd., 11th Floor
Glendale CA 91203

State of California,
County of Los Angeles

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

Daniel T. Ho, Esq.
Brooke W. Waldrop, Esq.
Daniel T. Ho & Associates, P.C.
2600 W Olive Ave, Ste 500
Burbank, CA 91505-4572
DHo@dtthassociates.com
bww@dtthassociates.com

EXECUTED on Wednesday, July 07, 2021, at Los Angeles, California.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Emily H. Ly
EMILY HOUNG LY