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11 SUPERIOR COURT OF CALIFORNIA

12 IN AND FOR THE COUNTY OF LOS ANGELES

13 JACKIE KRUPNICK, an individual,

14 Plaintiff,

15 vs.

16 MANLY AND SONS, LLC, a limited
 17 liability company; and DOES 1-100,
 18 inclusive,

19 Defendants.

20 Case No.: 20STCV40004

21 FIRST AMENDED COMPLAINT

- 22 1. SEX/GENDER DISCRIMINATION
- 23 2. DENIAL OF PREGNANCY
- 24 3. FAILURE TO PREVENT
- 25 4. ACCOMMODATION
- 26 5. FAILURE TO PREVENT
- 27 6. DISCRIMINATION
- 28 7. FAILURE TO PAY MINIMUM WAGE
8. FAILURE TO PAY OVERTIME
9. FAILURE TO PROVIDE PAID SICK
10. LEAVE
11. FAILURE TO PROVIDE MEAL PERIODS
12. OR PAY PREMIUMS
13. FAILURE TO PROVIDE REST PERIODS
14. OR PAY PREMIUMS
15. FAILURE TO PAY ALL WAGES DUE AT
16. END OF EMPLOYMENT
17. FAILURE TO FURNISH ACCURATE
18. ITEMIZED WAGE STATEMENTS
19. FAILURE TO INDEMNIFY FOR
20. BUSINESS EXPENSES
21. PRIVATE ATTORNEYS GENERAL ACT

22 JURY TRIAL DEMANDED

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1 Plaintiff Jackie Krupnick brings this class action against Manly and Sons, LLC, a limited
2 liability company; and Does 1 through 100, for violations of the Labor Code and Government Code.

3 **PARTIES**

4 1. Jackie Krupnick ("Krupnick" or "Plaintiff") is and at all times relevant herein was
5 employed in Los Angeles County, California, and was an "employee" as defined by the Fair
6 Employment and Housing Act ("FEHA"), as well as the Labor Code and the applicable California
7 Industrial Wage Commission ("IWC") Order(s).

8 2. Manly and Sons, LLC ("Manly and Sons, LLC" or "Defendant") is a California limited
9 liability company formed under the laws of that state.

10 3. At all times relevant herein, Manly and Sons, LLC has been an "employer" under the
11 FEHA, as well as the Labor Code and the applicable California Industrial Wage Commission ("IWC")
12 Order(s).

13 4. Manly and Sons, LLC and Does 1-100 are collectively referred to as Defendants.

14 5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as
15 Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such
16 Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names
17 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each
18 of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged
19 and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants.
20 Unless otherwise indicated, each Defendant was acting within the course and scope of said agency
21 and/or employment, with the knowledge and/or consent of said co-Defendant.

22 6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
23 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
24 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
25 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
26 within the course and scope of such agency, service, employment partnership, joint venture and/or
27 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
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1 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
2 the remaining Defendants.

3 **VENUE AND JURY TRIAL DEMAND**

4 7. Venue is proper in this court because the unlawful acts alleged herein took place in Los
5 Angeles County, California and Plaintiff's place of employment with Defendants was within Los
6 Angeles County. Plaintiff hereby demands a jury trial.

7 **GENERAL ALLEGATIONS**

8 8. Krupnick was hired by Manly and Sons, LLC as a barber on or around August 25, 2019,
9 to work at Manly and Sons, LLC's location in the Echo Park neighborhood of Los Angeles. Krupnick
10 was at all times, and in reality, an employee of Manly and Sons, LLC, though she was also, at all times,
11 willfully misclassified as an independent contractor and treated as such.

12 9. On information and belief, Manly and Sons, LLC owns and operates no less than three
13 barber shops/salons in California, and willfully misclassifies all of its barber-employees (and,
14 potentially, other employees also) as independent contractors.

15 10. In or around January 2020, Krupnick became pregnant.

16 11. On or around May 12, 2020, Krupnick was diagnosed with placenta previa, a
17 condition wherein the fetus partially or totally covers the mother's cervix, and which can cause
18 severe bleeding throughout the pregnancy and during labor, as well as pre-term birth. Krupnick's
19 medical provider advised Krupnick to "listen to her body" and rest if she was in any pain or
20 discomfort.

21 12. The Echo Park barbershop was closed during the initial "wave" of the coronavirus
22 pandemic in 2020; the shop reopened on June 3, 2020. On that day, Krupnick returned to work and
23 worked a five-hour workshift. Due to the volume of work and the lack of a rest period, Krupnick
24 experienced pain and discomfort and was exhausted at the end of the shift.

25 13. On June 5, 2020, Krupnick was at home, resting until her next appointment. She
26 noticed that one of her appointments was taken off of her "books" (viewable on a smart phone app)
27 and given to another barber. That same, day, Krupnick spoke with Tony Pin ("Pin"), shop manager,
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1 why this happened; Pin replied that it was Manly and Sons, LLC's policy to spread the customers
2 around evenly among all of the barbers. Krupnick told Pin that she worked a full day the previous
3 workday, that it made her very exhausted and caused her pain, and that, due to her pregnancy, she
4 couldn't work a full day like the other barbers. Pin said "oh, you want me to treat you special? You
5 know the rules."

6 14. With that, Manly and Sons, LLC denied Krupnick's request for accommodation of
7 her pregnancy-related condition, which in turn substantially increased the chance that Krupnick
8 would suffer from severe bleeding, a preterm birth, or worse.

9 15. Out of deference to her health and that of her unborn child, Krupnick was
10 constructively terminated on or about June 7, 2020.

11 16. On October 14, 2020, Krupnick filed a complaint with the California Department of
12 Fair Employment and Housing, and was issued a right-to-sue notice that same day. (**Exhibit 1.**)

13 17. In accordance with the fiction that Krupnick was an independent contractor and not
14 an employee, Manly and Sons, LLC did not pay her any wages for her labor. Instead, Krupnick
15 was paid directly by clients. She was also forced to pay rent to Manly and Sons, LLC in order to
16 work there. Furthermore, she was required to purchase all of her own hairstyling equipment and
17 supplies, and was not reimbursed to any extent.

18 18. Krupnick worked as much as eleven hours or more in a single workday, and up to
19 66 hours or more in a workweek. However, and because Manly and Sons, LLC misclassified her as
20 an independent contractor, it did not pay her overtime or doubletime wages as appropriate.

21 19. Also in accordance with the fiction that she was an independent contractor, Krupnick
22 was not provided with the opportunity to take a paid ten-minute rest period for every four hours
23 worked, nor was she provided with the opportunity to take a thirty-minute meal period for every five
24 hours worked. Krupnick was also not paid an hour of pay for every rest and meal period that was not
25 provided to her in accordance with applicable Wage Orders of the Industrial Welfare Commission.

1 20. Furthermore, and due to her erroneous misclassification as an independent contractor,
2 Krupnick was not provided with complete and accurate wage statements in accordance with Labor
3 Code section 226(a).

4 21. Additionally, because she was misclassified as an independent contractor, Krupnick was
5 not provided with paid sick leave in violation of Labor Code section 245 *et seq.*

6 22. At all times relevant herein, Krupnick did not maintain a separate business location.

7 23. At all times relevant herein, Krupnick did not have the ability to set or negotiate her own
8 rates for the services she performed.

9 24. At all times relevant herein, Krupnick was not customarily engaged in the same type of
10 work performed under contract with another hiring entity, and did not hold herself out to other potential
11 customers as available to perform the same type of work.

12 25. At no point since Krupnick's separation of employment has she been paid all wages due
13 and owing, *supra*.

14 26. The foregoing list of misconduct is a partial list only and set forth by way of example.

15 27. On October 16, 2020, Krupnick provided written notice to the Labor and Workforce
16 Development Agency ("LWDA") and Manly and Sons, LLC regarding the specific provisions of
17 the Labor Code alleged to have been violated, including the facts and theories to support those
18 alleged violations. (**Exhibit 2.**)

19 28. As of the filing of this Complaint, more than 65 calendar days after Krupnick's
20 initial written notice, the LWDA has not provided written notice that it intends to investigate any of
21 Krupnick's allegations as set forth above. Accordingly, Krupnick has satisfied the administrative
22 prerequisites under Labor Code section 2699.3 to bring a civil action to recover civil penalties
23 against Defendants, in addition to other remedies, for violations of the California Labor Code.

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FIRST CAUSE OF ACTION
SEX/GENDER DISCRIMINATION
(Gov. Code, § 12940, subd. (a))
Against Defendants

29. Plaintiff hereby realleges and incorporates by reference each paragraph above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

30. The Fair Employment and Housing Act ("FEHA") explicitly prohibits an employer from refusing to hire or employ a person, discharging a person from employment, or discriminating against such person in compensation or in terms, conditions or privileges of employment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. (Gov. Code, § 12940, subd. (a).) "Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation" includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics. (Gov. Code, § 12926, subd. (n).)

31. At all times relevant herein mentioned, Plaintiff was qualified for the position she held with Defendants.

32. Defendants were at all times material herein Plaintiff's employer pursuant to Government Code section 12926, subdivision (d) and were therefore barred from discriminating in its employment decisions in violation of Government Code section 12940, subdivision (a).

33. Nevertheless, as set forth above, Defendants discriminated against Plaintiff based on the basis of sex/gender, in violation of Government Code section 12940, subdivision (a).

34. Defendants' actions towards Plaintiff were committed by them, their officers, directors, and/or managing agents, and/or employees in an oppressive, fraudulent, and malicious manner, and ratified by them, in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

1 35. Wherefore, Plaintiff has been injured as set forth above and requests relief as
2 hereafter provided.

3 **SECOND CAUSE OF ACTION**
4 **DENIAL OF PREGNANCY-RELATED ACCOMMODATION**
5 **(Gov. Code, § 12945, subd. (a)(3)(A))**
6 **Against Defendants**

7 36. Plaintiff hereby realleges and incorporates by reference each paragraph above as
8 though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this
9 cause of action.

10 37. The Fair Employment and Housing Act (“FEHA”) provides that it is unlawful for an
11 employer to refuse to provide reasonable accommodation for an employee for a condition related to
12 pregnancy, childbirth, or a related medical condition, if the employee so requests, with the advice
13 of the employee’s health care provider. (Gov. Code, § 12945, subd. (a)(3)(C).)

14 38. Nevertheless, as set forth above, Defendants refused to provide reasonable
15 accommodations, in violation of the FEHA.

16 39. Defendants’ actions towards Plaintiff were committed by them, their officers,
17 directors, and/or managing agents, and/or employees in an oppressive, fraudulent, and malicious
18 manner, and ratified by them, in order to injure or damage Plaintiff, thereby justifying an award of
19 punitive damages.

20 40. Wherefore, Plaintiff has been injured as set forth above and requests relief as
21 hereafter provided.

22 **THIRD CAUSE OF ACTION**
23 **FAILURE TO PREVENT DISCRIMINATION**
24 **(Gov. Code, § 12940, subd. (k))**
25 **Against Defendants**

26 41. Plaintiff hereby realleges and incorporates by reference each and every allegation
27 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
28 allegations of this cause of action.

1 42. FEHA requires an employer to take all reasonable steps necessary to prevent
2 discrimination and retaliation from occurring. (Gov. Code, § 12940, subd. (k).)

3 43. Nevertheless, as set forth above, Defendants failed to prevent discrimination and
4 retaliation against Plaintiff.

5 44. As a result of Defendants' conduct, Plaintiff has suffered damages.

6 45. Defendants' actions towards Plaintiff were committed by them, their officers,
7 directors, and/or managing agents, and/or employees in an oppressive, fraudulent, and malicious
8 manner, and ratified by them, in order to injure or damage Plaintiff, thereby justifying an award of
9 punitive damages.

10 46. Wherefore, Plaintiff has been injured as set forth above and requests relief as
11 hereafter provided.

12 **FOURTH CAUSE OF ACTION**
13 **FAILURE TO PAY MINIMUM WAGE**
14 **(Lab. Code § 1182 *et seq.*)**
 Against Defendants

15 47. Plaintiff hereby realleges and incorporates by reference each and every allegation set
16 forth above as though fully set forth herein, except as said paragraphs are

17 48. Pursuant to California Labor Code section 1194(a), notwithstanding any agreement
18 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
19 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
20 balance of the full amount of this minimum wage or overtime compensation, including interest
21 thereon, reasonable attorney's fees, and costs of suit.

22 49. Labor Code section 1194.2 provides that in any action under section 1194 or 1197.1
23 to recover wages because of the payment of a wage less than the minimum wage fixed by an order
24 of the commission or by statute, an employee shall be entitled to recover liquidated damages in an
25 amount equal to the wages unlawfully unpaid and interest thereon.

1 50. Pursuant to Labor Code section 1197, the minimum wage for employees fixed by
2 the commission is the minimum wage to be paid to employees, and the payment of a less wage than
3 the minimum so fixed is unlawful.

4 51. Labor Code section 1198 provides that the maximum hours of work and the
5 standard conditions of work fixed by the commission shall be the maximum hours of work and the
6 standard conditions of labor for employees. The employment of any employee for longer hours
7 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

8 52. During the relevant time period, Defendants failed to pay Plaintiff the minimum
9 wage for each hour worked.

10 53. Labor Code section 1197.1 provides that any employer or other person acting either
11 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
12 to any employee a wage less than the minimum fixed by an order shall be subject to the
13 aforementioned civil penalty, restitution of wages, and liquidated damages payable to the
14 employee.

15 54. Wherefore, Plaintiff has been damaged as set forth above and requests relief as
16 hereafter provided.

17 **FIFTH CAUSE OF ACTION**
18 **FAILURE TO PAY OVERTIME**
19 **(Lab. Code § 510 & 1198)**
 Against Defendants

20 55. Plaintiff hereby realleges and incorporates by reference each and every allegation set
21 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
22 allegations of this cause of action.

23 56. Pursuant to Labor Code section 510, any work in excess of eight hours in one workday
24 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
25 seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-
26 half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
27 compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any
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1 work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no
2 less than twice the regular rate of pay of an employee.

3 57. Pursuant to Labor Code section 1198, the maximum hours of work and standard
4 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
5 conditions of labor for employees and the employment of any employee for longer hours than those
6 fixed by the commission or under conditions of labor prohibited by the order is unlawful.

7 58. During the relevant time period, Plaintiff regularly worked overtime and doubletime.

8 59. During the relevant time period, Defendants intentionally and willfully failed to pay the
9 proper overtime/doubletime wages due to Plaintiff.

10 60. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
11 provided.

12 **SIXTH CAUSE OF ACTION**
13 **FAILURE TO PAY SICK LEAVE**
14 **(Lab. Code, §§ 218, 233, 246 *et seq.*)**
Against Defendants

15 61. Plaintiff hereby realleges and incorporates by reference each and every allegation set
16 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
17 allegations of this cause of action.

18 62. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
19 employees at that employee's "regular rate of pay."

20 63. According to the California Supreme Court, sick pay is a form of wages. (*Murphy v.*
21 *Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.)

22 64. Labor Code section 233 provides that "any employer who provides sick leave for
23 employees shall permit an employee to use in any calendar year the employee's accrued and
24 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
25 during six months at the employee's then current rate of entitlement, for the reasons specified in
26 subdivision (a) of Section 246.5."

1 65. During the relevant time period, Defendants intentionally and willfully failed to pay
2 Plaintiff sick pay as required by law. Accordingly, Plaintiff did not receive the full amount of paid
3 sick time that she was entitled to receive by law, and was therefore denied the right to use sick
4 leave within the meaning of Labor Code sections 233(a) and (c).

5 66. Any employer who violates Labor Code section 233 is liable to employees for the
6 greater of one days' pay or actual damages, reasonable equitable relief, and reasonable attorneys'
7 fees and costs. (Lab. Code, § 233, subds. (d), (e).)

8 67. Further, Labor Code section 218 authorizes a private right of action to recover unpaid
9 wages.

10 68. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
11 provided.

12 **SEVENTH CAUSE OF ACTION**
13 **FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS**
14 **(Lab. Code, §§ 226.7, 512)**
 Against Defendants

15 69. Plaintiff hereby realleges and incorporates by reference each and every allegation
16 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
17 allegations of this cause of action.

18 70. Labor Code section 226.7 requires employers to provide employees meal periods as
19 mandated by Order of the Industrial Welfare Commission. It states:

20 a. No employer shall require any employee to work during any meal or rest
21 period mandated by an applicable order of the Industrial Welfare
22 Commission.

23 b. If an employer fails to provide an employee a meal period or rest period in
24 accordance with an applicable order of the Industrial Welfare Commission,
25 the employer shall pay the employee one additional hour of pay at the
26 employee's regular rate of compensation for each work day that the meal or
27 rest period is not provided.

1 71. Labor Code section 512(a) and the applicable wage order provide that an employer
2 may not employ a person for a work period of more than five hours per day without providing that
3 employee a meal period of not less than thirty minutes, except that if the total work period per day
4 is no more than six hours, the meal period may be waived by mutual consent of both the employer
5 and employee. An employer may not employ a person for a work period of more than ten hours
6 per day without providing an employee with a second meal period of not less than thirty minutes,
7 except that if the total work period per day of the employee is no more than twelve hours, the meal
8 period may be waived by mutual consent of both the employer and the employee, and if the first
9 meal period was not waived.

10 72. During the relevant time period, Plaintiff was not provided with meal breaks as
11 required by law and did not receive an additional hour of premium pay for each missed meal
12 period.

13 73. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

14 **EIGHTH CAUSE OF ACTION**
15 **FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS**
16 **(Lab. Code, § 226.7)**
 Against Defendants

17 74. Plaintiff hereby realleges and incorporates by reference each and every allegation
18 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
19 allegations of this cause of action.

20 75. Labor Code section 226.7 requires employers to provide employees rest periods as
21 mandated by Order of the Industrial Welfare Commission. It states:

- 22 a. No employer shall require any employee to work during any meal or rest
23 period mandated by an applicable order of the Industrial Welfare
24 Commission.
25 b. If an employer fails to provide an employee a meal period or rest period in
26 accordance with an applicable order of the Industrial Welfare Commission,
27 the employer shall pay the employee one additional hour of pay at the
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employee's regular rate of compensation for each work day that the meal or rest period is not provided.

76. Section 11 of the applicable IWC Wage Order provides:

“(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area.

(B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.”

77. During the relevant time period, Plaintiff was not provided with rest breaks as required by law and did not receive an additional hour of premium pay for each missed rest break.

78. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

NINTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES DUE AT END OF EMPLOYMENT
(Lab. Code, § 201, *et seq.*)
Against Defendants

79. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

80. Labor Code section 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

81. Labor Code section 202 requires an employer to pay an employee all earned wages within 72 hours of the employee quitting his or her employment, or immediately at the time of quitting if the employee has given 72 hours previous notice of his or her intention to quit.

82. As set forth above, Plaintiff was not timely paid all earned but unpaid wages when her employment with Defendants ended.

83. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

TENTH CAUSE OF ACTION
FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS
(Lab. Code, § 226(a))
Against Defendants

84. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

85. Pursuant to Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (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, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary services assignment.”

1 86. An employee suffering injury as a result of the knowing and intentional failure by an
2 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
3 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
4 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate
5 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
6 fees. (Lab. Code, § 226, subd. (e)(1).)

7 87. An employee is deemed to suffer injury if the employer fails to provide a wage
8 statement or if the employer fails to provide accurate and complete information as required by any one
9 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
10 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
11 during the pay period or any of the other information required to be provided pursuant to Labor Code
12 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
13 and address of the employer and iv) the name of the employee and the last four digits of his or her
14 social security number or employee identification number. (Lab. Code, § 226, subds. (e)(2)(A), (B)(i)-
15 (iv).) "Promptly and easily determine" means a reasonable person would be able to readily ascertain
16 the information without reference to other documents or information. (Lab. Code, § 226, subd.
17 (e)(2)(C).)

18 88. As set forth above, Defendants intentionally and willfully failed to furnish accurate
19 itemized wage statements which complied with Labor Code section 226.

20 89. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
21 provided.

22 **ELEVENTH CAUSE OF ACTION**
23 **FAILURE TO INDEMNIFY FOR BUSINESS EXPENSES**
24 **(Lab. Code, § 2802.)**
25 **Against Defendants**

26 90. Plaintiff hereby realleges and incorporates by reference each and every paragraph
27 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
28 allegations of this cause of action.

1 91. Labor Code section 2802, subdivision (a) provides that “[a]n employer shall
2 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
3 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
4 of the employer, even though unlawful, unless the employee, at the time of obeying the directions,
5 believed them to be unlawful.”

6 92. Nonetheless, as set forth above, Defendants failed to reimburse Plaintiff for all
7 incurred business expenses.

8 93. Labor Code section 2802 further provides that, in an action for reimbursement of
9 business expenses, a prevailing plaintiff is entitled to an award of attorney’s fees.

10 94. Wherefore, Plaintiff has been injured as set forth above and requests relief as
11 hereafter provided.

12 **TWELFTH CAUSE OF ACTION**
13 **PRIVATE ATTORNEYS GENERAL ACT**
14 **(Lab. Code, § 2698 *et seq.*)**
 Against Defendants

15 115. Plaintiff hereby realleges and incorporates by reference each and every allegation
16 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
17 allegations of this cause of action.

18 116. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
19 Code which provides for a civil penalty to be assessed and collected by the LWDA for violations
20 of the Labor Code may, as an alternative, be recovered through a civil action brought by an
21 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
22 to the procedures outlined in Labor Code section 2699.3.

23 117. Plaintiff was employed by Defendants and the alleged violations were committed
24 against him during his time of employment. Plaintiff is therefore an aggrieved employee as
25 defined by Labor Code section 2699, subdivision (c). Other current and former employees are also
26 aggrieved employees in that one or more of the alleged violations were also committed against
27 them during their time of employment with Defendants.

118. Pursuant to Labor Code section 2699, subdivision (f), the civil penalty recoverable in a PAGA action is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

119. Pursuant to California Labor Code section 2699, subdivision (g), an aggrieved employee may recover the civil penalty on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Furthermore, any employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees and costs.

120. Wherefore, Plaintiff and other employees (current and former) have been aggrieved as set forth above and request relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

As to the First through Third Causes of Action:

1. For compensatory damages, both general and special;
2. For punitive damages;
3. For injunctive relief;
4. For statutory attorneys' fees and costs, including those available under Government Code section 12965(b) and Code of Civil Procedure section 1021.5;
5. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code sections 3287(a) and 3289(b); and
6. For such other and further relief as the court deems just and proper.

As to the Fourth through Eleventh Causes of Action:

1. That this Court award injunctive relief, including that available under Labor Code sections 226(h) and 248.5(e);
2. That this Court award unpaid wages, including meal and rest break premiums;
3. That this Court award penalties including, but not limited to, those available under Labor Code sections 203 and 226;
4. That this Court award statutory attorneys' fees and costs, including those available under Labor Code sections 226(e)(1) and (h), 248.5(e), 1194, as well as those available under Code of Civil Procedure section 1021.5;
5. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
6. That this Court award such other and further relief as the court deems just and proper.

As to the Twelfth Cause of Action:

1. For civil penalties, including but not limited to those available under Labor Code sections 226.3, 558, 1197.1, and 2699(f);
2. For injunctive relief;
3. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code section 2699(g);
4. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code sections 3287(a) and 3289(b); and
5. For such other and further relief as the court deems just and proper.

///

DATED: January 6, 2021

MAYALL HURLEY P.C.

By



JOHN P. BRISCOE
RACHEL ALLGAIER
Attorneys for Plaintiff

Exhibit 1



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

October 14, 2020

John Briscoe
2453 Grand Canal Blvd.
Stockton, California 95207

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202010-11526914
Right to Sue: Krupnick / Manly and Sons LLC

Dear John Briscoe:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

October 14, 2020

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202010-11526914
Right to Sue: Krupnick / Manly and Sons LLC

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

October 14, 2020

Jackie Krupnick
[REDACTED]
[REDACTED]

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202010-11526914
Right to Sue: Krupnick / Manly and Sons LLC

Dear Jackie Krupnick:

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective October 14, 2020 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

1 that one of her appointments was taken off of her "books" (viewable on a smart phone app)
2 and given to another barber. That same, day, Complainant spoke with Tony Pin, shop
3 manager, why this happened; Mr. Pin replied that it was Respondent's policy to spread the
4 customers around evenly among all of the barbers. Complainant told Mr. Pin that she
5 worked a full day the previous workday, that it made her very exhausted and caused her
6 pain, and that, due to her pregnancy, she couldn't work a full day like the other barbers.
7 Tony Pin said "oh, you want me to treat you special? You know the rules." With that,
8 Respondent denied Complainant's request for accommodation of her pregnancy-related
9 condition, which in turn substantially increased the chance that Complainant would suffer
10 from severe bleeding, a preterm birth, or worse. Out of deference to her health and that of
11 her unborn child, Complainant was constructively terminated on or about June 7, 2020. The
12 foregoing list of misconduct (which Defendant failed to prevent) is a partial list only, and set
13 forth by mere way of example.
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1 VERIFICATION

2 I, **John P. Briscoe**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On October 14, 2020, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Stockton, CA**
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Exhibit 2

LAW OFFICES
MAYALL HURLEY

A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91203
(818) 646-6440

MAILING ADDRESS:
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207-8253

FAX (209) 473-4818
TELEPHONE (209) 477-3833

WWW.MAYALLLAW.COM

VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
RACHAEL ALLGAIER

OF COUNSEL
J. ANTHONY ABBOTT

October 16, 2020

SUBMITTED ELECTRONICALLY

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

Manly and Sons, LLC
1200 N. Alvarado St.
Los Angeles, CA 90026

Re: Jackie Krupnick

To whom it may concern:

This firm represents Jackie Krupnick in connection with her prior employment with Manly and Sons, LLC in Los Angeles, California. In accordance with California Labor Code section 2699.3, this letter shall serve as Ms. Krupnick's written notice to the Labor and Workforce Development Agency ("LWDA") and Manly and Sons, LLC regarding the following violations, and facts and theories supporting those violations, on Ms. Krupnick's behalf and, as a proxy for the LWDA, on behalf of current and other former California employees of Manly and Sons, LLC.

Ms. Krupnick was hired by Manly and Sons, LLC as a barber on or around August 25, 2019, to work at Manly and Sons, LLC's location in the Echo Park neighborhood of Los Angeles. Her employment ended on or around June 7, 2020.

Krupnick was at all times, and in reality, an employee of Manly and Sons, LLC, though she was also at all times, willfully misclassified as an independent contractor and treated as such. However, Ms. Krupnick, at all times relevant herein, did not set her own rates; rather, Manly and Sons, LLC set its rates on its website. (See **Exhibit A**; see also Lab. Code, §§ 2750.3, subd. (c)(2)(B)(xi)(I), 2778, subd. (b)(2)(L)(i).) Furthermore, Ms. Krupnick did not have her own book of business and schedule her own appointments; instead, there was one book of business and Manly and Sons, LLC frequently scheduled appointments for her and assigned walk-in

appointments to her. (See Lab. Code, §§ 2750.3, subd. (c)(2)(B)(xi)(III), 2778, subd. (b)(2)(L)(iii).) Last, Ms. Krupnick did not maintain her own business license. (See Lab. Code, §§ 2750.3, subd. (c)(2)(B)(xi)(III), 2778, subd. (b)(2)(L)(iv).) Accordingly, Manly and Sons, LLC willfully misclassified Ms. Krupnick as an independent contractor, in violation of Labor Code section 226.8.

In accordance with the fiction that Ms. Krupnick was an independent contractor, she was required to pay rent to Manly and Sons, LLC in order to work there. She was furthermore required to purchase all of her own hairstyling equipment and supplies, and she was not reimbursed to any extent. Accordingly, Manly and Sons, LLC violated Labor Code section 2802.

Furthermore, and since she was misclassified as an independent contractor, Manly and Sons, LLC did not pay her wages as required by the Labor Code. In fact, Manly and Sons, LLC did not pay her any wages at all—she was instead paid directly by customers. Furthermore, Ms. Krupnick frequently worked as much as eleven hours or more in a single workday, and up to 66 hours or more in a workweek; still, however, she was not paid any wages at all for her labor. By failing to pay Ms. Krupnick the minimum wage, Manly and Sons, LLC violated Labor Code sections 1182.12 and 1197. By failing to pay overtime and doubletime wages earned, Manly and Sons, LLC violated Labor Code section 510.

Because she was willfully misclassified as an independent contractor, Ms. Krupnick was not provided with paid, ten-minute rest periods for every four hours worked, nor was she provided with thirty-minute meal periods for every five hours worked. Additionally, Ms. Krupnick was not paid an hour of premium pay for every rest and meal period which not provided. Accordingly, Manly and Sons, LLC violated Labor Code sections 226.7 and 512.

Additionally, and because she was misclassified as an independent contractor, Ms. Krupnick was not provided with complete and accurate wage statements, in violation of Labor Code section 226(a). Manly and Sons, LLC did not maintain copies of wage statements or a computer-generated record of all required information, in a further violation of Labor Code section 226(a). Manly and Sons, LLC further failed to keep payroll records showing hours worked, in violation of Labor Code section 1174.

Ms. Krupnick, due to her misclassification as an independent contractor, was also not provided with paid sick leave in violation of Labor Code section 246.

Last, and because of her misclassification, Ms. Krupnick was not paid all wages due and owing upon separation of employment, in violation of Labor Code sections 201 and 202.

Each of the foregoing Labor Code violations were, pursuant to a uniform policy and practice, committed as against current and other former California employees of Manly and Sons, LLC, and within the last year.

Labor and Workforce Development Agency
Manly and Sons, LLC
Re: Jackie Krupnick
October 16, 2020
Page 3 of 3

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Ms. Krupnick intends to amend her civil complaint against Manly and Sons, LLC, pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code, § 2698 *et seq.*), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By

A handwritten signature in blue ink, appearing to read "John P. Briscoe", is written over a horizontal line.

JOHN P. BRISCOE

Exhibit A

Manly and Sons Barber Co.

1200 N. Alvarado Street, Los Angeles, CA, 90026

4.9 ★ ★ ★ ★ ★ | 1465 Reviews | 662 ♥

Barbers

Categories

Service Combos

Services

Haircut & Beard trim No lineup - \$61.00

haircut and beard trim with no lineup

haircut & beard trim w/ Lineup - \$72.00

haircut and beard trim with sharp razor lineup

Haircut & Shave - \$80.00

A haircut and shave

headshave & Face shave - \$80.00

head shave and face shave combo

buzz cut+beard trim w/Lineup - \$60.00

buzz cut plus beard trim with razor lineup

Buzzcut+Beard trim - \$40.00

buzzcut and a beard trim no lineup

BuzzCut+shave - \$60.00

a buzzcut and full face shave

Head shave beard trim no lineup - \$61.00

head shave and beard trim with No Lineup

Head shave beard trim & lineup - \$72.00

head shave beard trim and lineup with razor

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 2453 Grand Canal Boulevard, Stockton, California 95207 that is located in the county where the mailing and/or delivery below took place.

On February 8, 2021, I served the following document:

FIRST AMENDED COMPLAINT

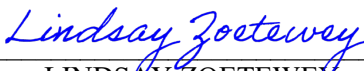
addressed to:

Clifford S. Davidson
SNELL & WILMER
One Centerpointe Drive
Lake Oswego, OR 97035
csdavidson@swlaw.com
jlanglois@swlaw.com

- ☐ **BUSINESS PRACTICE TO ENTRUST DEPOSIT TO OTHERS:** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On the date specified below, at my place of business at Stockton, California a copy of the document described above was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid addressed to the individuals and/or entities mentioned above; and that envelope was placed for collection and mailing on that date following ordinary business practice.
- ☐ **BY EXPRESS SERVICE CARRIER:** On the date specified below, I directed to be deposited in a box or other facility regularly maintained by Federal Express or delivered to a courier or driver authorized by said express service carrier to receive documents, a copy of the document mentioned above, in an envelope designed by the said express service carrier, with delivery fees paid or provided for, addressed to the individuals and/or entities mentioned above.
- ☒ **BY EMAIL:** Based on an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person[s] at the e-mail address[es] listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 8, 2021, at Stockton, California.


LINDSAY ZOETEWAY