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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

ELISA NAVARRETE, an individual,

Plaintiff,

vs.

ENDO CREW, INC., a corporation; and
DOES 1-100, inclusive,

Defendants.

Case No.: STK-CV-UOE-2020-0008395

SECOND AMENDED COMPLAINT

1. FAILURE TO PAY MINIMUM WAGE
2. FAILURE TO PAY OVERTIME
3. FAILURE TO PROVIDE PAID SICK LEAVE
4. FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS
5. FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS
6. FAILURE TO PAY ALL WAGES DUE AT END OF EMPLOYMENT
7. FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
8. FAILURE TO INDEMNIFY FOR BUSINESS EXPENSES
9. UNFAIR BUSINESS PRACTICES
10. INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS
11. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
12. CONVERSION
13. PRIVATE ATTORNEYS GENERAL ACT

JURY TRIAL DEMANDED

1 Plaintiff Elisa Navarrete brings this class and representative action against Endo Crew, Inc., a
2 corporation; and Does 1 through 100, for violations of the California Labor Code and the California
3 Business and Professions Code.¹

4 **PARTIES**

5 1. Elisa Navarrete (“Navarrete” or “Plaintiff”) is and at all times relevant herein was
6 employed in San Joaquin County, California, and was an “employee” as defined by the Labor Code
7 and the applicable California Industrial Wage Commission (“IWC”) Order(s).

8 2. Endo Crew, Inc. (“ECI” or “Defendant”) is a California corporation formed under the
9 laws of that state.

10 3. At all times relevant herein, ECI has been an “employer” under the Labor Code and the
11 applicable California Industrial Wage Commission (“IWC”) Order(s).

12 4. ECI and Does 1-100 are collectively referred to as Defendants.

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

21 6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
22 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
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26 ¹ All subsequent references to the “Labor Code” and the “Business and Professions Code” shall refer to the California
Labor Code and the California Business and Professions Code, respectively.

1 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
2 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
3 within the course and scope of such agency, service, employment partnership, joint venture and/or
4 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
5 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
6 the remaining Defendants.

7 **VENUE AND JURY TRIAL DEMAND**

8 7. Venue is proper in this court because the unlawful acts alleged herein took place in San
9 Joaquin County, California and Plaintiff's place of employment with Defendants was within San
10 Joaquin County. Plaintiff hereby demands a jury trial.

11 **GENERAL ALLEGATIONS**

12 8. Navarrete was hired by ECI in or around 2013 as a stylist at ECI's Versailles salon in
13 Tracy, California. Her employment with ECI ended on or around February 29, 2020.

14 9. At all times during her employment with ECI, Navarrete was willfully, and erroneously,
15 misclassified as an independent contractor. However, she was never free from the control and direction
16 of ECI; she was required to adhere to its policies, procedures, and rules (and she and other employees
17 were reprimanded if they failed to do so). By way of example, Navarrete's clients were required to
18 make appointments by calling ECI's front desk. Navarrete was further required to charge a minimum
19 rate for all stylings. Navarrete was also required to perform stylings during standard business hours and
20 could not do so on Sundays or Mondays.

21 10. Furthermore, Navarrete did not perform work that was outside the usual scope of ECI's
22 business.

23 11. Additionally, Navarrete was not customarily engaged in an independently established
24 trade, occupation, or business of the same nature as the work she performed for ECI.

1 12. In accordance with the fiction that Navarrete was an independent contractor, she was not
2 paid *any hourly wage by ECI*, even though she typically worked anywhere from 60-80 hours in a
3 workweek.

4 13. Furthermore, Navarrete was encouraged to sell ECI's hair products, and was paid a ten
5 percent commission for such sales.

6 14. At all times during her employment with ECI, Navarrete did not fall within any other
7 exemption to California overtime laws.

8 15. Also in accordance with the fiction that she was an independent contractor, Navarrete
9 paid rent to ECI (\$265 per week, plus \$150 per quarter) for the "privilege" of using ECI's premises to
10 provide hairstyling services. Navarrete was also required to pay ECI \$150 per year for ECI's own
11 advertising; however, Navarrete is informed and believes that no advertising was actually done, at least
12 not with the money that she (and other employees) of ECI paid for that express purpose.

13 16. Also in accordance with the fiction that she was an independent contractor, Navarrete
14 was not provided with the opportunity to take a ten-minute rest period for every four hours worked, nor
15 was she provided with the opportunity to take a thirty-minute meal period for every five hours worked.
16 Navarrete was also not paid an hour of pay for every rest and meal period that was not provided to her
17 in accordance with applicable Wage Orders of the Industrial Welfare Commission.

18 17. Furthermore, and due to her erroneous misclassification as an independent contractor,
19 Navarrete was not provided with complete and accurate wage statements in accordance with Labor
20 Code section 226(a).

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

23 19. Navarrete was also required by pay money for wear and tear on ECI's equipment (e.g.,
24 barber seats).

25 20. At all times relevant herein, Navarrete did not maintain a separate business location.
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1 21. At all times relevant herein, Navarrete did not have the ability to set or negotiate her
2 own rates for the services she performed.

3 22. At all times relevant herein, Navarrete did not have the ability to set her own hours.

4 23. At all times relevant herein, Navarrete was not customarily engaged in the same type of
5 work performed under contract with another hiring entity, and did not hold herself out to other potential
6 customers as available to perform the same type of work.

7 24. Separately from the foregoing, Navarrete was encouraged by ECI to buy hairstyling
8 products and supplies from Salon Centric. There existed a contract between Navarrete and Salon
9 Centric by which she would accrue points for purchases of these supplies, and those points could then
10 be used towards further purchases of supplies with Salon Centric.

11 25. However, ECI interfered with the contract between Navarrete and Salon Centric by
12 taking points from Navarrete which had economic value to her.

13 26. Even if a contract did not exist between Navarrete and Salon Centric, there was an
14 existing and/or prospective business relationship between the two parties, as well as a probability of
15 future economic benefit to be derived from that relationship. Nonetheless, ECI wrongfully interfered
16 with Navarrete's prospective economic advantage by taking points from Navarrete which had economic
17 value to her. ECI did this with knowledge of Navarrete's prospective economic advantage and the
18 intent to interfere with it.

19 27. Even if there did not exist a prospective business relationship between Navarrete and
20 Salon Centric, Navarrete nonetheless had a property interest in the points she accrued by selling Salon
21 Centric products, and ECI wrongfully converted those points.

22 28. At no point since Navarrete's separation of employment has she been paid all wages due
23 and owing, *supra*.

24 29. The foregoing list of misconduct is a partial list only and set forth by way of example.
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30. On October 9, 2020, Navarrete provided written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendants regarding the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support those alleged violations. **(Exhibit 1.)**

31. As of the filing of this Complaint, more than 65 calendar days after Navarrete's written notice, the LWDA has not provided written notice that it intends to investigate Navarrete's allegations. Accordingly, Navarrete has satisfied the administrative prerequisites under Labor Code section 2699.3 to bring a civil action to recover civil penalties against Defendants in addition to other remedies, for violations of the California Labor Code.

CLASS ACTION ALLEGATIONS

32. Navarrete seek to maintain this action as a class action as to the First through Ninth Causes of Action, on behalf of herself and all others similarly situated, pursuant to Code of Civil Procedure 382. The class which Navarrete seeks to represents consists of the following:

33. The class (“the Class”) that Plaintiff seeks to represent is defined as follows:

- a. All persons who worked for Defendants in California as barbers, hairstylists, estheticians, massage therapists, nail technicians, or any similar occupation, at any time between October 5, 2016 and continuing to a date as determined by the Court (the “Personal Services Class”).
- b. All persons who worked for Defendants in California as barbers, hairstylists, estheticians, massage therapists, nail technicians, or any similar position, and who worked at least one workday of four hours or more, at any time between October 5, 2016 and continuing to a date as determined by the Court (the “Rest and Meal Period Class”).
- c. All persons who worked for Defendants in California as barbers, hairstylists, estheticians, massage therapists, nail technicians, or any similar position for the

1 provision of personal services, and who ceased working for Defendants at any time
2 between October 5, 2017 and continuing to a date as determined by the Court (the
3 “Waiting Time Penalty Class”).

4 d. All persons who worked for Defendants in California as barbers, hairstylists,
5 estheticians, massage therapists, nail technicians, or any similar position for the
6 provision of personal services, and who were employed by Defendants at any time
7 between October 5, 2019 and continuing to a date as determined by the Court (the
8 “Wage Statement Class”).

9 34. The Class is so numerous that joinder of all members is impracticable, and the
10 disposition of their claims in a class action is a benefit to the parties and to the Court. Navarrete is
11 informed and believes, and based thereon alleges, that Defendants employ more than 70 employees
12 who satisfy the class definition. Although the exact number and identity of class members is not
13 presently known, they can be identified in Defendants’ records through coordinated discovery pursuant
14 to this class action.

15 35. This action may be maintained as a class because the questions of law and fact which are
16 common to class members clearly predominate over any questions affecting only individual members
17 and because a class action is superior to other available methods for adjudicating the controversy.

18 36. There are numerous common questions of law and fact arising out of Defendants’
19 conduct. This class action focuses on Defendants’ systematic misclassification of employees as
20 independent contractors, and the multiple, additional violations of the Labor Code that ensued.

21 37. Furthermore, common questions of fact and law predominate over any questions
22 affecting only individual members of the class. The predominating common or class-wide questions of
23 law and fact include the following:

24 a. Whether Defendants misclassified its employees as independent contractors, and
25 willfully;
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- b. Whether Defendants failed to pay its employees the minimum wage and overtime wages as earned;
- c. Whether Defendants failed to provide its employees with rest and meal breaks;
- d. Whether Defendants failed to furnish its employees with itemized wage statements;
- e. Whether Defendants failed to indemnify and reimburse its employees for all work-related expenditures;
- f. Whether Defendants failed to provide its employees with paid sick leave; and
- g. Whether Defendants failed to pay its employees all wages due upon cessation of employment.

38. Navarrete's claims are typical of the claims of the members of the Class as a whole, all of whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the alleged violations of Defendants. Navarrete's claims are typical of those of the Class because Defendants subjected Navarrete and each member of the Class to the same violations alleged herein.

39. The defenses of Defendants, to the extent that such defenses apply, are applicable generally to the whole Class and are not distinguishable as to the proposed class members.

40. Navarrete will fairly and adequately protect the interests of all members of the Class, and has retained attorneys with extensive experience in litigation, including class and representative actions. Navarrete has no interests that conflict with those of the Class. Navarrete is able to fairly and adequately protect the interests of all members of the class because it is in their best interest to prosecute the claims alleged herein in order to obtain the full compensation due themselves and the other class members.

41. A class action is superior to any other method available for fairly and efficiently adjudicating the controversy because 1) joinder of individual class members is not practicable, 2) litigating the claims of individual class members would be unnecessarily costly and burdensome and

1 would deter individual claims, 3) litigating the claims of individual class members would create a risk
2 of inconsistent or varying adjudications that would establish incompatible standards of conduct for
3 Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to
4 bring individual claims, 5) class members would be discouraged from pursuing individual claims
5 because the damages available to them are relatively small, and 6) public policy encourages the use of
6 the class actions to enforce employment laws and protect individuals who, by virtue of their
7 subordinate position, are particularly vulnerable.

8 42. Judicial economy will be served by maintenance of this lawsuit as a class action. To
9 process numerous virtually identical individual cases will significantly increase the expense on the
10 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
11 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action by
12 this Court and doing so will provide multiple benefits to the litigating parties including, but not limited
13 to, efficiency, economy, and uniform adjudication with consistent results.

14 43. Notice of a certified class action and any result or resolution of the litigation can be
15 provided to class members by mail, email, publication, or such other methods of notice as deemed
16 appropriate by the Court.

17 **FIRST CAUSE OF ACTION**
18 **FAILURE TO PAY MINIMUM WAGE**
19 **(Lab. Code § 1182 *et seq.*)**

20 **By Plaintiff and the Personal Services Class Against Defendants**

21 44. Plaintiff hereby realleges and incorporates by reference each and every allegation set
22 forth above as though fully set forth herein, except as said paragraphs are

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

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

7 47. Pursuant to Labor Code section 1197, the minimum wage for employees fixed by
8 the commission is the minimum wage to be paid to employees, and the payment of a less wage that
9 the minimum so fixed is unlawful.

10 48. Labor Code section 1198 provides that the maximum hours of work and the
11 standard conditions of work fixed by the commission shall be the maximum hours of work and the
12 standard conditions of labor for employees. The employment of any employee for longer hours
13 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

14 49. During the relevant time period, Defendants failed to pay Plaintiff the minimum
15 wage for each hour worked.

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

21 51. Wherefore, Plaintiff and the Class has been damaged as set forth above and requests
22 relief as hereafter provided.

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SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME
(Lab. Code § 510 & 1198)

By Plaintiff and the Personal Services Class Against Defendants

52. 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.

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

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

55. During the relevant time period, Plaintiff regularly worked overtime.

56. During the relevant time period, Defendants intentionally and willfully failed to pay the proper overtime wages due to Plaintiff.

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

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THIRD CAUSE OF ACTION
FAILURE TO PROPERLY CALCULATE AND PAY SICK LEAVE
(Lab. Code, §§ 218, 233, 246 *et seq.*)
By Plaintiff and the Personal Services Class Against Defendants

58. 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.

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

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

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

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

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

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

1 65. Wherefore, Plaintiff and the Class have been injured as set forth above and requests
2 relief as hereafter provided.

3 **FOURTH CAUSE OF ACTION**
4 **FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS**
5 **(Lab. Code, §§ 226.7, 512)**
6 **By Plaintiff and the Rest and Meal Break Class Against Defendants**

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

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

- 12 a. No employer shall require any employee to work during any meal or rest
13 period mandated by an applicable order of the Industrial Welfare
14 Commission.
15 b. If an employer fails to provide an employee a meal period or rest period in
16 accordance with an applicable order of the Industrial Welfare Commission,
17 the employer shall pay the employee one additional hour of pay at the
18 employee's regular rate of compensation for each work day that the meal or
19 rest period is not provided.

20 68. Labor Code section 512(a) and the applicable wage order provide that an employer
21 may not employ a person for a work period of more than five hours per day without providing that
22 employee a meal period of not less than thirty minutes, except that if the total work period per day
23 is no more than six hours, the meal period may be waived by mutual consent of both the employer
24 and employee. An employer may not employ a person for a work period of more than ten hours
25 per day without providing an employee with a second meal period of not less than thirty minutes,
26 except that if the total work period per day of the employee is no more than twelve hours, the meal

1 period may be waived by mutual consent of both the employer and the employee, and if the first
2 meal period was not waived.

3 69. During the relevant time period, Plaintiff was not provided with meal breaks as
4 required by law and did not receive an additional hour of premium pay for each missed meal
5 period.

6 70. Wherefore, Plaintiff and the Class have been injured and requests relief as
7 hereinafter provided.

8 **FIFTH CAUSE OF ACTION**
9 **FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS**
10 **(Lab. Code, § 226.7)**
11 **By Plaintiff and the Rest and Meal Break Class Against Defendants**

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

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

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

25 73. Section 11 of the applicable IWC Wage Order provides:

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

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

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

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

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

23 75. Wherefore, Plaintiff and the Class have been injured and requests relief as
24 hereinafter provided.

25 **SIXTH CAUSE OF ACTION**
26 **FAILURE TO PAY ALL WAGES DUE AT END OF EMPLOYMENT**
27 **(Lab. Code, § 201, *et seq.*)**
28 **By Plaintiff and the Waiting Time Penalty Class Against Defendants**

76. 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.

77. 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.

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

4 79. As set forth above, Plaintiff was not timely paid all of her earned but unpaid wages or
5 meal and rest break premiums when her employment with Defendants ended.

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

8 **SEVENTH CAUSE OF ACTION**
9 **FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS**
10 **(Lab. Code, § 226(a))**
 By Plaintiff and the Wage Statement Class Against Defendants

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

14 82. Pursuant to Labor Code section 226(a) “every employer shall, semimonthly or at the
15 time of each payment of wages, furnish each of his or her employees, either as a detachable part of the
16 check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by
17 personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
18 total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable
19 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the
20 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
21 last four digits of his or her social security number or an employee identification number, (8) the name
22 and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during
23 the pay period and corresponding number of hours worked at each hourly rate by the employee and, if
24 the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each
25 temporary services assignment.”

1 83. 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 84. 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 85. As set forth above, Defendants intentionally and willfully failed to furnish accurate
19 itemized wage statements which complied with Labor Code section 226.

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

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EIGHTH CAUSE OF ACTION
FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
(Lab. Code, § 2802.)

By Plaintiff and the Personal Services Class Against Defendants

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

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

89. Nonetheless, as set forth above, Defendants failed to reimburse Plaintiff for all incurred business expenses, including but not limited to advertising costs, repairing and upkeeping equipment and premises, and paying costs of insurance.

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

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

NINTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(Bus. & Prof. Code, § 17200, *et seq.*)

By Plaintiff and the Personal Services Class Against Defendants

92. 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.

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1 93. The statutory violations, as alleged above, are unfair business practices within the
2 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq*), and
3 include, but are not limited to, failing to properly calculate and pay overtime and sick wages.

4 94. Wherefore, Plaintiff has been damaged as set forth above and requests relief as hereafter
5 provided.

6 **TENTH CAUSE OF ACTION**
7 **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**
8 **By Plaintiff Against Defendants**

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

12 96. The California Supreme Court has long held that a stranger to a contract may be
13 liable in tort for intentionally interfering with the performance of the contract if there exists:

- 14 i. A valid contract between Plaintiff and a third party;
- 15 ii. Defendant's knowledge of this contract;
- 16 iii. Defendant's intentional acts designed to induce a breach or disruption of the
17 contractual relationship;
- 18 iv. Actual breach or disruption of the contractual relationship; and
- 19 v. Resulting damage.

20 *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal. 3d 1118, 1126.

21 97. Further, the Court has held that "Plaintiff need not allege an actual or inevitable
22 breach of contract in order to state a claim for disruption of contractual relations. We have
23 recognized that interference with the plaintiff's performance may give rise to a claim for
24 interference with contractual relations if plaintiff's performance is made more costly or more
25 burdensome. Other cases have pointed out that while the tort of inducing breach of contract
26

1 requires proof of a breach, the cause of action for interference with contractual relations is distinct
2 and requires only proof of interference.” (*Id.* at 1129, internal citations omitted.)

3 98. Nevertheless, as set forth above, Defendants intentionally interfered with Plaintiff’s
4 contractual relationship with Salon Centric in violation of California law.

5 99. The acts taken toward Plaintiff were carried out by and/or ratified by Defendants
6 and/or managing agents/employees of Defendants acting in an oppressive, fraudulent and malicious
7 manner in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

8 100. As a direct and proximate result of Defendants’ conduct, Plaintiff has been harmed
9 and requests relief as hereafter provided.

10 **ELEVENTH CAUSE OF ACTION**
11 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**
12 **By Plaintiff Against Defendants**

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

16 102. As set forth above, Plaintiff had an existing business relationship with Salon
17 Centric.

18 103. As set forth above, there was a probability of future economic benefit from
19 Plaintiff’s business relationship with Salon Centric.

20 104. Nonetheless, Defendants interfered with the business relationship between Plaintiff
21 and Salon Centric by diverting earned “points” which had monetary value and were the property of
22 Plaintiff.

23 105. Defendants knew of and intended to interfere with Plaintiff’s prospective economic
24 advantage, and their conduct fell outside the boundaries of fair competition.

1 106. The acts taken toward Plaintiff were carried out by and/or ratified by Defendants
2 and/or managing agents/employees of Defendants acting in an oppressive, fraudulent and malicious
3 manner in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

4 107. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed
5 and requests relief as hereafter provided.

6 **TWELFTH CAUSE OF ACTION**

7 **CONVERSION**

8 **By Plaintiff Against Defendants**

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

12 109. As set forth above, Plaintiff had a property interest in the points she earned and
13 accrued by selling Salon Centric products during her employment with Defendants.

14 110. Nonetheless, Defendants wrongfully converted Plaintiff's accrued points.

15 111. The acts taken toward Plaintiff were carried out by and/or ratified by Defendants
16 and/or managing agents/employees of Defendants acting in an oppressive, fraudulent and malicious
17 manner in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

18 112. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed
19 and requests relief as hereafter provided.

20 **THIRTEENTH CAUSE OF ACTION**

21 **PRIVATE ATTORNEYS GENERAL ACT**

22 **(Lab. Code, § 2698, *et seq.*)**

23 **By Plaintiff Against Defendants**

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

1 114. Pursuant to Labor Code § 2699(a), any provision of the Labor Code which provides
2 for a civil penalty to be assessed and collected by the LWDA for violations of the Labor Code may,
3 as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf
4 of himself or herself and other current or former employees pursuant to the procedures outlined in
5 Labor Code § 2699.3.

6 115. Plaintiff was employed by Defendants and the alleged violations were committed
7 against him during his time of employment. Plaintiff is therefore an aggrieved employee as
8 defined by Labor Code § 2699(c). Other current and former employees are also aggrieved
9 employees in that one or more of the alleged violations were also committed against them during
10 their time of employment with Defendants.

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

15 117. Wherefore, Plaintiff has been aggrieved and requests relief as hereafter provided.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

18 **As to the First Through Ninth Causes of Action:**

- 19 1. That this Court certify the Class;
- 20 2. That this Court award injunctive relief, including that available under Labor Code
21 sections 226(h) and 248.5(e), as well as Business and Professions Code section 17203;
- 22 3. That this Court award unpaid wages as well as restitutionary relief;
- 23 4. That this Court award penalties including, but not limited to, those available under
24 Labor Code sections 203 and 226;

5. 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;
6. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
7. That this Court award such other and further relief as the court deems just and proper.

As to the Tenth, Eleventh, and Twelfth Causes of Action:

1. For compensatory damages, both general and special;
2. For punitive damages;
3. For equitable relief;
4. For costs of suit;
5. That this Court award 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. That this Court award such other and further relief as the court deems just and proper.

As to the Thirteenth Cause of Action:

1. For civil penalties, including but not limited to those available under Labor Code sections 210, 226.3, 558, 1197.1, and 2699(f);
2. For injunctive relief;
3. For statutory attorney's 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

1 5. For such other and further relief as the court deems just and proper.

2 ///

3 **DATED:** December 15, 2020

MAYALL HURLEY P.C.

4 By _____



ROBERT J. WASSERMAN

JOHN P. BRISCOE

RACHEL ALLGAIER

Attorneys for Plaintiff

Exhibit 1

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OF COUNSEL
J. ANTHONY ABBOTT

October 9, 2020

SUBMITTED ELECTRONICALLY

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

SENT VIA CERTIFIED MAIL

Endo Crew, Inc.
1010 N. Central Ave.
Tracy, CA 95376

Re: Elisa Navarrete

To whom it may concern:

This firm represents Elisa Navarrete in connection with her prior employment with Endo Crew, Inc. dba Versaille Salon and Day Spa in Tracy, California (hereinafter referred to as "ECI"). In accordance with California Labor Code section 2699.3, this letter shall serve as Ms. Navarrete's written notice to the Labor and Workforce Development Agency ("LWDA") and ECI regarding the following violations, and facts and theories supporting those violations, on Ms. Navarrete's behalf and, as a proxy for the LWDA, on behalf of current and other former California employees of ECI.

Ms. Navarrete was hired by ECI in or around 2013 as a stylist. Her employment with ECI ended on or around February 29, 2020.

At all times during her employment with ECI, she was willfully, and erroneously, misclassified as an independent contractor. However, she was never free from the control and direction of ECI; she was required to adhere to its policies, procedures, and rules (and she and other employees were reprimanded, quite sternly, if they failed to do so). By way of example, Ms. Navarrete's clients were required to make appointments by calling ECI's front desk. Ms. Navarrete was further required to charge a minimum rate for all stylings, and did not have the ability to set or negotiate her own rates for the services she performed. Ms. Navarrete was also required to perform stylings during standard business hours and could not do so on Sundays or

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Mondays. Furthermore, Ms. Navarrete did not perform work that was outside the usual scope of ECI's business. Additionally, Ms. Navarrete was not customarily engaged in an independently established trade, occupation, or business of the same nature as the work she performed for ECI. Ms. Navarrete was also encouraged to sell ECI's hair products (and was paid commissions for such sales). By willfully and erroneously misclassifying Ms. Navarrete as an independent contractor, ECI violated Labor Code section 226.8, subdivision (a)(1).

In accordance with the fiction that Ms. Navarrete was an independent contractor, she was not paid *any* hourly wage by ECI for her services, even though she typically worked anywhere from 60-80 hours per week (also frequently working in excess of twelve hours in a workday). By failing to pay Ms. Navarrete the minimum wage for all hours worked, ECI violated Labor Code sections 1182.12 and 1197. By failing to pay overtime and doubletime wages earned, ECI violated Labor Code section 510.

Furthermore, Ms. Navarrete is and was licensed pursuant to the Barbering and Cosmetology Act and was paid commissions for selling ECI's products. However, she was not paid those wages at least twice during each calendar month on a day designated in advance by the employer as the regular payday; instead, she was paid commissions at quarterly meetings. Accordingly, ECI violated Labor Code section 204.11.

Also in accordance with the fiction that she was an independent contractor, Ms. Navarrete paid rent to ECI (\$265 per week, plus \$150 per quarter) for the "privilege" of using ECI's premises for her hairstyling services. She was also required to pay ECI \$150 per year for ECI's own advertising. However, she is informed and believes that no advertising was actually done, at least not with the money that she (and other employees) paid to ECI for that purpose. Ms. Navarrete was also required to pay money for wear and tear on ECI's equipment (e.g., seats). By failing to indemnify Ms. Navarrete for all necessary expenditures or losses incurred in direct consequence of the discharge of her duties, ECI violated Labor Code section 2802. Furthermore, ECI collected from Ms. Navarrete part of wages paid so as to pay for advertising and other purposes, resulting in violations of Labor Code section 221.

Also in accordance with the fiction that she was an independent contractor, Ms. Navarrete was not provided with the opportunity to take a ten-minute rest period, free of duty, for every four hours worked. Ms. Navarrete similarly was not provided with the opportunity to take a thirty-minute meal period, free of duty, for every five hours worked. Ms. Navarrete was also not paid an hour of pay at her regular rate of compensation for every rest and meal period that was unlawfully denied her. Accordingly, ECI violated Labor Code sections 226.7 and 512.

Furthermore, and due to her erroneous misclassification as an independent contractor, Ms. Navarrete was not provided with itemized wage statements, in violation of Labor Code section 226(a). On information and belief, and due to the misclassification, ECI further failed to maintain copies of compliant, itemized wage statements, or a computer-generated record showing all required information, in a further violation of Labor Code section 226(a). By failing

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to keep payroll records showing hours worked and wages paid, ECI also violated Labor Code section 1174(d).

Additionally, because she was misclassified as an independent contractor, Ms. Navarrete was not provided with paid sick leave, in violation of Labor Code section 246.

Because Ms. Navarrete was regularly denied all wages due and owing, *supra*, she was not paid all wages due upon each pay period, in violation of Labor Code section 204. Further, because Ms. Navarrete was regularly denied all wages due and owing, *supra*, she was not paid all wages due and owing upon cessation of employment, in violation of Labor Code sections 201 and 202.

The foregoing violations of the Labor Code, and each of them, were committed against current and other former employees of ECI in California, and within the last year.

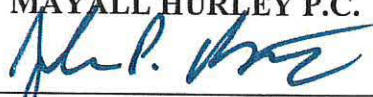
If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Ms. Navarrete intends to amend her civil complaint against ECI 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



JOHN P. BRISCOE