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10 Attorneys for Plaintiff Robert Ewings

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF LOS ANGELES

13 ROBERT EWINGS, an individual,

14 Plaintiff,

15 vs.

16 CC SANTA MONICA LLC, a limited
17 liability company; and DOES 1-100,
18 inclusive,

19 Defendants.

Case No.: 20STCV40336

FIRST AMENDED COMPLAINT

1. FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS
2. FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS
3. FAILURE TO FURNISH COMPLETE AND ACCURATE WAGE STATEMENTS
4. FAILURE TO PAY ALL WAGES DUE UPON CESSATION OF EMPLOYMENT
5. UNFAIR COMPETITION
6. PRIVATE ATTORNEYS GENERAL ACT

20 Plaintiff Robert Ewings brings this action against CC Santa Monica LLC, a limited
21 liability company; and Does 1 through 100, for violations of the Labor Code.

22 PARTIES

23 1. Robert Ewings ("Ewings" or "Plaintiff") at all times relevant herein was employed
24 in Los Angeles County, California and was an "employee" as defined by the California Labor
25 Code.

FILED
Superior Court of California
County of Los Angeles

02/09/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: J. Arceo Deputy

2. CC Santa Monica LLC (“CCSM”) is a California limited liability company formed under the laws of California and, at all times relevant herein, was an “employer” as defined by the California Labor Code.

3. CCSM and Does 1-100 are collectively referred to as Defendants.

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

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

JURISDICTION AND VENUE

6. Venue is proper in this Court because the unlawful acts alleged herein took place in Los Angeles County and Ewings' place of employment with Defendants was, at all times relevant herein, located within Los Angeles County.

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GENERAL ALLEGATIONS

7. Ewings was hired in or around June 2015 to work as a “door host”/security at CCSM’s Santa Monica location.

8. On or around March 15, 2020, CCSM closed its doors in response to the COVID-19 pandemic, and Ewings was effectively terminated.

9. At all times during his employment with CCSM, Ewings was paid on an hourly basis and was entitled to meal and rest periods under the California Labor Code and applicable IWC Wage Orders.

10. Throughout his employment with CCSM, Ewings was regularly not authorized or permitted to take his meal period until at least fifteen to twenty minutes after his fifth hour of work, in violation of Labor Code sections 226.7 and 512. Although Ewings was not provided with a timely meal period approximately three (3) days per week, he was only provided with an hour of pay at his regular rate of compensation (“premium pay”) on average, less than one late meal period for every two weeks worked.

11. Additionally, Ewings was not provided a ten-minute rest period, free of duty, for every four hours worked. Ewings regularly worked eight-hour shifts, however, due to the demands of the position and lack of relief, he was not authorized or permitted to take his rest periods. Furthermore, Ewings was never paid premium pay for each rest period which was unlawfully denied him, in violation of Labor Code section 226.7.

12. Because Ewings was not paid premium pay for all untimely meal periods and denied rest periods, *supra*, the wage statements issued to him do not accurately reflect the gross wages earned and the net wages earned, in violation of Labor Code section 226, subdivisions (a)(1) and (5), respectively.

13. Additionally, because Ewings was regularly denied premium pay for untimely meal periods and denied rest periods, *supra*, he has not been paid all wages due upon each pay period, in violation of Labor Code section 204. Further, because Ewings was regularly denied all wages due and owing upon each pay period, he was not paid all wages due and owing upon cessation of

1 employment, in violation of Labor Code section 201. At no point since his termination has Ewings
2 been paid all wages due and owing.

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

5 15. On October 2, 2020, Ewings provided written notice to the Labor and Workforce
6 Development Agency ("LWDA") and CCSM regarding the specific provisions of the Labor Code
7 alleged to have been violated, including the facts and theories to support those alleged violations.
8 **(Exhibit 1.)**

9 16. As of the filing of this Complaint, more than 65 calendar days after Ewings' initial
10 written notice, the LWDA has not provided written notice that it intends to investigate any of
11 Ewings' allegations as set forth above. Accordingly, Ewings has satisfied the administrative
12 prerequisites under Labor Code section 2699.3 to bring a civil action to recover civil penalties
13 against Defendants, in addition to other remedies, for violations of the California Labor Code.

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

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

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

- 23 a. No employer shall require any employee to work during any meal or rest period
24 mandated by an applicable order of the Industrial Welfare 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, the
27 employer shall pay the employee one additional hour of pay at the employee's
28

1 regular rate of compensation for each work day that the meal or rest period is
2 not provided.

3 19. Section 12 of the applicable IWC Wage Order provides:

4 “(A) Every employer shall authorize and permit all employees to take rest
5 periods, which insofar as practicable shall be in the middle of each work
6 period. The authorized rest period time shall be based on the total hours
7 worked daily at the rate of ten (10) minutes net rest time per four (4) hours
8 or major fraction thereof. However, a rest period need not be authorized for
employees whose total daily work time is less than three and one-half (3
1/2) hours. Authorized rest period time shall be counted as hours worked
for which there shall be no deduction from wages.”

9
10 20. During the relevant time period, Plaintiff was not provided with rest breaks as required
11 by law and did not receive an additional hour of premium pay for each missed rest break.

12 21. Wherefore, Plaintiff has been injured as set forth above and requests relief as
13 hereinafter provided.

14 **SECOND CAUSE OF ACTION**
15 **FAILURE TO PROVIDE TIMELY MEAL PERIODS OR PAY PREMIUMS**
16 **(Lab. Code, §§ 226.7, 512)**
17 **Against Defendants**

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

21 23. Labor Code § 226.7 requires employers to provide employees meal breaks as mandated
22 by Order of the Industrial Welfare Commission. It states:

- 23 a. No employer shall require any employee to work during any meal or rest period
24 mandated by an applicable order of the Industrial Welfare 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, the
27 employer shall pay the employee one additional hour of pay at the employee's

1 regular rate of compensation for each work day that the meal or rest period is not
2 provided.

3 24. Labor Code § 512(a) and the applicable Wage Order(s) provide that an employer may
4 not employ a person for a work period of more than 5 hours per day without providing that employee a
5 meal period of not less than 30 minutes, except that if the total work period per day is not more than
6 six hours, the meal period may be waived by mutual consent of both the employer and employee. An
7 employer may not employ a person for a work period of more than 10 hours per day without providing
8 an employee with a second meal period of not less than 30 minutes, except that if the total work period
9 per day of the employee is no more than twelve (12) hours, the meal period may be waived by mutual
10 consent of both the employer and employee, and if the first meal period was not waived.

11 25. During the relevant time period, Plaintiff was not provided with compliant meal breaks,
12 nor did he receive an additional hour of premium pay for each non-compliant meal break.

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

15 **THIRD CAUSE OF ACTION**
16 **FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS**
17 **(Lab. Code, § 226, subd. (a))**
18 **Against Defendants**

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

22 28. Pursuant to Labor Code section 226, subdivision (a), "every employer shall,
23 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a
24 detachable part of the check, draft, or voucher paying the employee's wages, or separately when the
25 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross
26 wages earned, (2) total hours worked by the employee . . . , (3) the number of piece-rate units earned
27 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net
28 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the

1 employee and only the last four digits of his or her social security number or an employee
2 identification number, (8) the name and address of the legal entity that is the employer . . . , (9) all
3 applicable hourly rates in effect during the pay period and corresponding number of hours worked at
4 each hourly rate by the employee and, if the employer is a temporary services employer . . . , the rate of
5 pay and the total hours worked for each temporary services assignment.”

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

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

23 31. During the relevant time period, Defendants intentionally and willfully failed to furnish
24 accurate itemized wage statements in violation of Labor Code section 226, subdivision (a).

25 32. Wherefore, Plaintiff has been injured as set forth above and requests relief as
26 hereinafter provided.

27 ///

1 **FOURTH CAUSE OF ACTION**
2 **FAILURE TO PAY WAGES UPON CESSATION OF EMPLOYMENT**
3 **(Lab. Code, § 201)**
4 **Against Defendants**

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

8 34. Labor Code section 201 requires an employer to pay an employee all wages earned
9 and unpaid at the time the employer discharges the employee. Labor Code section 202 requires an
10 employer to pay the employee all wages due no later than 72 hours after the employee quits his
11 employment.

12 35. Labor Code section 203 provides: "If an employer willfully fails to pay, without
13 abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
14 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
15 from the due date thereof at the same rate until paid or until an action therefor is commenced; but
16 the wages shall not continue for more than 30 days".

17 36. During the relevant time period, Defendants failed to pay Plaintiff all earned but
18 unpaid wages upon cessation of employment.

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

21 **FIFTH CAUSE OF ACTION**
22 **UNFAIR BUSINESS PRACTICES**
23 **(Bus. & Prof. Code, §§ 17200 et seq.)**
24 **Against Defendants**

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

28 39. The statutory violations, as alleged above, are unfair business practices within the
meaning of the Unfair Competition Law (Business and Professions Code sections 17200 et seq.),

1 and include, but are not limited to failing to provide non-exempt California employees compliant
2 rest and meal breaks.

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

5 **SIXTH CAUSE OF ACTION**
6 **PRIVATE ATTORNEYS GENERAL ACT**
7 **(Lab. Code, § 2698 *et seq.*)**
8 **Against Defendants**

9 115. 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.

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

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

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

27 119. Pursuant to California Labor Code section 2699, subdivision (g), an aggrieved
28 employee may recover the civil penalty on behalf of himself or herself and other current or former

1 employees against whom one or more of the alleged violations was committed. Furthermore, any
2 employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees
3 and costs.

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

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

8 **As to the First through Fifth Causes of Action:**

- 9 1. That this Court award injunctive relief, including that available under Labor Code
10 section 226(h);
- 11 2. That this Court award actual, compensatory, special, and general damages;
- 12 3. That this Court award statutory penalties including, but not limited to, those available
13 under Labor Code sections 203 and 226(e);
- 14 4. That this Court award statutory attorneys' fees and costs, including those available
15 under Labor Code sections 226, subdivisions (e)(1) and (h), as well as Code of Civil
16 Procedure section 1021.5;
- 17 5. That this Court award prejudgment and post-judgment interest according to any
18 applicable provision of law or as otherwise permitted by law; and
- 19 6. That this Court award such other and further relief as the court deems just and proper.

20 **As to the Sixth Cause of Action:**

- 21 1. For civil penalties, including but not limited to those available under Labor Code
22 sections 226.3, 558, and 2699(f);
 - 23 2. For injunctive relief;
 - 24 3. For statutory attorneys' fees and costs, including but not limited to those available
25 under Labor Code section 2699(g);
- 26
27
28

1 4. For prejudgment and post-judgment interest according to any applicable provision
2 of law or as otherwise permitted by law, including those available under Civil Code
3 sections 3287(a) and 3289(b); and

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

5 ///

6 **DATED:** February 9, 2021

MAYALL HURLEY P.C.

7 By _____

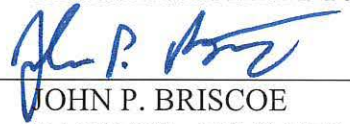

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Attorneys for Plaintiff
ROBERT EWINGS

Exhibit 1

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OF COUNSEL
J. ANTHONY ABBOTT

October 2, 2020

SUBMITTED ELECTRONICALLY

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

SENT VIA CERTIFIED MAIL

CC Santa Monica LLC
8272 W. Sunset Blvd., Ste. D
West Hollywood, CA 90046

Re: Robert Ewings

To whom it may concern:

This firm represents Robert Ewings in relation to his former employment with CC Santa Monica LLC (dba Cabo Cantina). In accordance with California Labor Code section 2699.3, this letter shall serve as Mr. Ewings' written notice to the Labor and Workforce Development Agency ("LWDA") and CC Santa Monica LLC regarding the following violations, and facts and theories supporting those violations, on Mr. Ewings' behalf and, as a proxy for the LWDA, on behalf of current and other former California employees of CC Santa Monica LLC.

Mr. Ewings worked for CC Santa Monica LLC from in or around June 2015 until on or around March 15, 2020. Throughout his employment, Mr. Ewings was regularly not authorized or permitted to take his meal break until at least fifteen to twenty minutes *after* his fifth hour of work, in violation of Labor Code section 512. Further, although Mr. Ewings was not authorized or permitted to take his meal period until after his fifth hour of work approximately three times per week, he was only provided with an hour of pay at his regular rate of compensation ("premium pay") for less than one late meal period for every two weeks worked, in violation of Labor Code section 226.7.

Additionally, Mr. Ewings was not provided a ten-minute rest period, free of duty, for every four hours worked. Mr. Ewings regularly worked eight-hour shifts; however, due to the demands of the position and lack of relief, he was not authorized or permitted to take his rest breaks. Furthermore, Mr. Ewings was *never* paid an hour of pay at his regular rate of

Labor and Workforce Development Agency
CC Santa Monica LLC
Re: Robert Ewings
October 2, 2020
Page 2 of 3

compensation ("premium pay") for the rest periods which were unlawfully denied him. Accordingly, CC Santa Monica LLC further violated Labor Code section 226.7.

Because Mr. Ewings was not paid premium pay for every rest and meal period that was not provided in accordance with the Labor Code and applicable Wage Orders of the Industrial Welfare Commission, *supra*, the wage statements issued to him did not accurately reflect the gross wages earned and the net wages earned, in violation of Labor Code section 226, subdivisions (a)(1) and (5).

Additionally, because Mr. Ewings was regularly denied premium pay for denied rest periods and late meal periods, *supra*, he was not paid all wages due upon each pay period, in violation of Labor Code section 204. For the same reasons, he was not paid all wages due and owing upon cessation of employment, in violation of Labor Code section 201.

As demonstrated above, CC Santa Monica LLC violated the Labor Code as against Mr. Ewings and current and other former employees of CC Santa Monica LLC in California, and within the last year, as follows:

1. Failure to provide compliant rest periods or premium pay, in violation of Labor Code section 226.7.
2. Failure to provide compliant meal periods or premium pay, in violation of Labor Code sections 226.7 and 512.
3. Failure to furnish accurate itemized wage statements, in violation of Labor Code section 226, subdivision (a).
4. Failure to pay all wages due upon each pay period, in violation of Labor Code section 204.
5. Failure to pay all wages due and owing upon cessation of employment, in violation of Labor Code section 201.

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, Mr. Ewings intends to file a civil complaint against CC Santa Monica LLC pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code, § 2698 *et seq.*), on his 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.

Labor and Workforce Development Agency
CC Santa Monica LLC
Re: Robert Ewings
October 2, 2020
Page 3 of 3

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