

Assigned for all purposes to: Santa Monica Courthouse, Judicial Officer: Elaine Mandel

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SHLOMI HILLEL

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES
Central District**

21SMCV00438

SHLOMI HILLEL, individually and in his
representative capacity,

Plaintiff,

v.

BRIGHTON SALON, LLC, a California
limited liability corporation; NUREET
COHEN, an individual; DAVID COHEN, an
individual; and DOES 1-10, inclusive,

Defendants.

Case No.:

COMPLAINT FOR:

1. Failure to Pay Minimum Wage (Labor Code §§ 1194, 1194.2 1197)
2. Failure to Pay Overtime Wages (Labor Code §§ 510, 1194)
3. Meal Break Violations (Labor Code §§ 226.7, 512)
4. Rest Break Violations (Labor Code § 226.7)
5. Unlawful Deductions and Failure to Remit Gratuities (Labor Code §§ 221 and 351)
6. Late Payment of Wages (Labor Code §§ 204, 210)
7. Failure to Timely Pay Wages at Separation (Labor Code §§ 201, 203)
8. Wage Statement and Record Keeping Violations (Labor Code §§ 226, 1174, 1198.5)
9. Failure to Reimburse Necessary Business Expenses (Labor Code § 2802)
10. Retaliation (Labor Code §§ 98.6, 1102.5)
11. Wrongful Termination in Violation of Public Policy
12. Defamation

13. Violation of the Ralph Civil Rights Act of 1976 (Civil Code § 51.7)
14. Intentional Infliction of Emotional Distress
15. Unfair Business Practices (Business & Professions Code § 17200 *et seq.*)
16. Violation of the Private Attorneys General Act (Labor Code § 2698 *et seq.*)

[JURY TRIAL DEMANDED]

Plaintiff Shlomi Hillel, individually and in his representative capacity, hereby complains and alleges as follows:

INTRODUCTION

1. This action is brought by Shlomi Hillel (“Plaintiff”), both individually and in a representative capacity, against Brighton Salon, LLC (“Brighton Salon”), Nureet Cohen (“Mrs. Cohen”), David Cohen (“Mr. Cohen”), and Does 1-10, inclusive (collectively, “Defendants”) to recover individual damages Plaintiff incurred while employed by Defendants, and to recover civil penalties proscribed by the California Labor Code on behalf of all of Defendants’ aggrieved employees pursuant to the Private Attorneys General Act of 2004 (“PAGA”) (California Labor Code § 2698 *et seq.*).

2. As detailed below, Defendants engaged in a pattern or practice of willfully misclassifying Plaintiff and other aggrieved employees of the hair salon as independent contractors and routinely deprived them of minimum wages, overtime and double time wages, failed to provide them with proper meal or rest breaks, failed to remit all gratuities and earned commissions, frequently paid them late, failed to pay all of their wages due upon separation, and failed to provide them with accurate, itemized wage statements, all in violation of various provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 2-2001. Plaintiff is also alleging claims for retaliation, wrongful termination in violation of public policy, defamation, violation of the Ralph Civil Rights Act of 1976, and intentional infliction of

1 emotional distress, all of which stem from Defendants' actions once Plaintiff notified them that
2 he planned to pursue the above Labor Code violations.

3 **PARTIES**

4 3. Plaintiff Shlomi Hillel is an individual residing in Los Angeles County,
5 California.

6 4. Brighton Salon is a California limited liability corporation with its principal
7 place of business in Los Angeles County, located at 9409 Brighton Way, Beverly Hills, CA
8 90210. At all material times alleged herein, Brighton Salon was the "employer" of Plaintiff and
9 the other aggrieved employees, and Plaintiff and the other aggrieved employees were
10 "employees" of Brighton Salon, as such terms are defined by the California Labor Code and
11 California Wage Orders.

12 5. Nureet Cohen and David Cohen are married individuals that reside in Los
13 Angeles County, California. Plaintiff is informed and believe and thereon alleges that Nureet
14 Cohen and David Cohen are owners, members, and/or partners of Brighton Salon and have
15 operational control over all of Brighton Salon's activities. At all relevant times herein, Nureet
16 Cohen and David Cohen exercised the power to (and also delegated to managers and
17 supervisors the power to) (i) fire and hire employees, (ii) supervise and control employee work
18 schedules, (iii) determine the rates and method of pay, (iv) maintain employment records, and
19 (v) otherwise affect the quality, terms, and conditions of employment for Plaintiff and other
20 employees at Brighton Salon. Nureet Cohen and David Cohen had authority over all employee-
21 related decisions, including payroll, personnel, and wage and hour policies concerning Plaintiff
22 and other aggrieved employees. In addition to all other bases for personal liability, Nureet
23 Cohen and David Cohen are personally liable for specified damages hereunder pursuant to
24 California Labor Code § 558.1 because they were the owners, directors, officers, or managing
25 agents of Brighton Salon who violated or caused to be violated the Labor Code provisions
26 alleged herein.

27 6. Plaintiff is ignorant of the true names of the defendants sued herein as Does 1-
28 10, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend

1 this Complaint to insert the true names and capacities of the Doe Defendants when they are
2 ascertained. Plaintiff is informed and believes, and thereon alleges, that Does 1-10, inclusive,
3 and each of them, are responsible in some manner for the occurrences alleged in this Complaint,
4 and the things complained about in this Complaint were proximately caused by the conduct
5 alleged herein. Plaintiff is informed and believes, and thereon alleges, that the Does 1-10,
6 inclusive, and each of them, are now, and at all material times alleged herein were, the agents,
7 servants, employees, partners, and/or representatives of each of their remaining co-Defendants,
8 and were at all times alleged herein, acting within the course, scope, and purpose of such
9 relationship(s) with the knowledge, consent, and/or ratification of each of their remaining co-
10 Defendants.

11 **JURISDICTION AND VENUE**

12 7. This Court has jurisdiction over this action the controversy arises under the laws
13 of the State of California.

14 8. Venue is proper in Los Angeles County pursuant to California Code of Civil
15 Procedure section 395 *et seq.* because Defendants reside in said county and the events described
16 herein occurred in said county.

17 **GENERAL ALLEGATIONS**

18 9. Brighton Salon is a high-end hair salon located in Beverly Hills, California,
19 which is owned and operated by husband and wife David Cohen and Nureet Cohen. Plaintiff
20 was hired to work as a licensed apprentice hairstylist for Brighton Salon in or around March
21 2018 through an apprenticeship program of the California Board of Barbering and Cosmetology
22 in which Plaintiff worked under the guidance and supervision of the salon's hairstylists while
23 studying to become a licensed cosmetologist. Despite being an apprentice throughout his
24 employment, Plaintiff was permitted to service his own clients like the other licensed stylists.

25 10. At all relevant times alleged herein, Defendants improperly classified Plaintiff
26 and other aggrieved employees (including, to Plaintiff's knowledge, all of Brighton Salon's
27 other hairstylists) as independent contractors when in fact they were all undoubtedly employees
28 under established California law.

1 11. As an “apprentice,” Brighton Salon necessarily retained and exercised the right
2 to supervise and control Plaintiff’s work and provide him with training. This was the central
3 purpose and an explicit requirement of his cosmetology apprenticeship program, as set forth in
4 Cal. Business & Professions Code §§ 7332, et al. and 16 Cal. Code Regulations. §§ 913, et al.

5 12. Defendants also exercised significant control over all of the salon’s other
6 misclassified hairstylists, even though they were licensed cosmetologists. For instance,
7 Defendants scheduled appointments for Plaintiff and the other stylists, assigned them clients to
8 service, required they attend regular staff meetings and trainings, and controlled all of their
9 payment practices by requiring clients to pay the salon directly instead of paying their
10 respective hairstylist. In turn, the salon paid its hairstylists (apart from Plaintiff) a commission
11 percentage of their client billings, whereas Plaintiff was paid a flat, bi-weekly salary, plus tips
12 from his clients and a small commission on products sold. Plaintiff and the other stylists were
13 required to provide their own scissors, trimmers, and tools, but Defendants supplied all of the
14 hair product to be used on the clients. Defendants also scheduled Plaintiff’s hours and days of
15 work.

16 13. Defendants strictly imposed various policies, instructions, and work rules on
17 Plaintiff and the other aggrieved employees, disobedience of which would result in various
18 forms of discipline, including reprimands, warnings, and suspensions. Defendants maintained
19 the right to terminate all hairstylists on an at-will basis, and in practice did exercise this right.

20 14. Plaintiff was not engaged in a separate business or profession as the salon, but
21 instead performed work that was directly in Defendants’ line of business: providing hairstyling
22 and cosmetology services to the salon’s clients. Plaintiff worked exclusively for Defendants on
23 a long-term, consistent basis, typically working between five to seven days per week and eight
24 or more hours per shift. Throughout his employment with Brighton Salon, Plaintiff was
25 dependent on Defendants for his livelihood.

26 15. Based on the foregoing, Plaintiff is informed and believes, and thereon alleges,
27 that Defendants engaged in a pattern or practice of willfully misclassifying Plaintiff and the
28

1 other hairstylists as independent contractors, in violation of Labor Code § 226.8, all in an effort
2 to minimize costs and unduly maximize profits at the expense of their primary workforce.

3 16. Through their unlawful misclassification scheme, Defendants deprived Plaintiff
4 and other aggrieved employees of an array of basic workplace protections, including failing to
5 maintain workers' compensation insurance coverage for them, failing to withhold appropriate
6 taxes from their paychecks, and failing to pay contributions for unemployment insurance or
7 disability insurance benefits on their behalf.

8 17. Plaintiff regularly worked over eight hours per workday, 40 hours per workweek,
9 and/or seven consecutive days in a workweek, yet he was never paid any overtime
10 compensation beyond his flat, bi-weekly salary.

11 18. Plaintiff was also required to work "off-the-clock" at various times throughout
12 his employment, including while attending mandatory staff meetings and training sessions after
13 business hours. He was not paid minimum wage or any additional compensation for such "off-
14 the-clock" work.

15 19. As noted above, Defendants required clients to pay the salon directly for services
16 Plaintiff rendered, so consequently tips left for him were often paid by credit card to the salon.
17 Defendants frequently withheld all or a portion of these tips from Plaintiff, as well as portions
18 of commissions earned from product sales.

19 20. Defendants did not have any policies regulating or providing for meal and rest
20 breaks, as required by law. In practice, Plaintiff was regularly not permitted to take 30-minute,
21 duty-free meal breaks due to the busy schedule of back-to-back clients and pressure from
22 management. On these occasions, Plaintiff was either not provided a meal break at all during his
23 workday, was not relieved of all duties during his meal break, was not permitted to take a meal
24 break before the end of his fifth hour of work, or was not provided a second meal break when
25 working more than 10 hours per workday. Plaintiff did not agree to or sign any type of written
26 "on-duty meal period" agreement, and he did not agree to waive any second meal periods on
27 shifts of more than 10 hours. Defendants failed to pay Plaintiff meal period premiums on shifts
28 that he was not provided with a compliant meal period.

1 21. Defendants also regularly failed to authorize or permit Plaintiff from taking one or
2 more statutory 10-minute rest break per workday and failed to pay Plaintiff rest period premiums
3 on shifts that he was not provided with a compliant rest period.

4 22. Throughout his employment, Defendants paid Plaintiff either by a straight
5 company check or cash; he never received an itemized wage statement that detailed the accurate
6 amount of wages earned, hours worked, rates in effect, and all required deductions and
7 withholdings, as required by Labor Code § 226.

8 23. Further, Defendants regularly failed to pay Plaintiff and the other aggrieved
9 employees their earned wages when they became due on regularly scheduled paydays
10 throughout their employment, in violation of Labor Code § 204, and also at the time of his
11 involuntary separation, in violation of Labor Code § 201.

12 24. As a result of Defendants' unlawful misclassification, Plaintiff was also deprived
13 of other fundamental employment rights, including the right to mandated sick pay in violation
14 of Labor Code § 246, the right to have accurate time and payroll records maintained in violation
15 of Labor Code § 1174, the right to have personnel records maintained and provided upon
16 written request in violation of Labor Code § 1198.5, the right to written notice under the Wage
17 Theft Protection Act of 2011 in violation of Labor Code § 2810.5, and the right to
18 reimbursement for all out-of-pocket business expenses incurred for the benefit of the employer,
19 including tools and vehicle mileage incurred on Defendants' behalf, in violation of Labor Code
20 2802.

21 25. In addition to the many wage and hour violations alleged above, Defendants
22 commenced a long, spiteful course of unlawful retaliation against Plaintiff after he began
23 complaining to Nureet Cohen about unpaid wages and being misclassified as an independent
24 contractor around the time the salon temporarily closed down due to COVID-19 pandemic in
25 March 2020.

26 26. After months of not being able to resolve the matter on his own, Plaintiff
27 informed Mrs. Cohen on or about June 12, 2020 that he was going to retain legal counsel and
28 pursue his wage and hour claims against the salon. In response, Mrs. Cohen, in an explicit-laden

1 diatribe, threatened to take various extreme and unlawful measures if Plaintiff did not agree to
2 drop his claims immediately, including (1) threatening to make a false report to the U.S.
3 Citizenship & Immigration Services regarding Plaintiff's immigration status, (2) threatening to
4 undermine Plaintiff's apprentice licensure and standing with the California Board of Barbering
5 and Cosmetology, and (3) threatening to sabotage a personal injury claim Plaintiff had pending
6 with Lyft, Inc. and its insurer (collectively, "Lyft") from a car accident he was involved in.

7 27. On information and belief, when Plaintiff did not agree to drop his legal claims
8 against Defendants, Mrs. Cohen followed through on at least one of her threats by reporting to
9 Lyft, and/or by having one of her or Defendants' agents report to Lyft on her and/or
10 Defendants' behalf, among other things, that Plaintiff's car accident was fake and that he lied
11 about his injuries sustained in the accident and his pre-existing conditions. Plaintiff is informed
12 and believes, and thereon alleges, that these knowingly false statements were extremely
13 damaging to Plaintiff and caused Lyft to deny his personal injury claim. The matter is now in
14 litigation.

15 28. Defendants later involuntarily terminated Plaintiff's employment and did not
16 have him come back to the salon after it re-opened.

17 29. Plaintiff is informed and believes, and thereon alleges, that Defendants retaliated
18 against Plaintiff, as alleged herein, as a direct and proximate result of his complaining about
19 unpaid wages and other protected activity, in violation of Labor Code §§ 98.6 and 1102.5

20 **FIRST CAUSE OF ACTION**

21 **(Failure to Pay Minimum Wages - Labor Code §§ 1197, 1194, 1194.2)**
22 **(Against all Defendants)**

23 30. Plaintiff incorporates by reference each and every allegation of this Complaint.

24 31. Labor Code §1197 provides that "The minimum wage for employees fixed by
25 the commission is the minimum wage to be paid to employees, and the payment of a less wage
26 than the minimum so fixed is unlawful."

27 32. Plaintiff is informed and believes, and thereon alleges, that as a result of
28 Defendants' routine and systematic practice of paying him a fixed salary, regardless of the

1 amount of hours worked, Plaintiff was not paid for all of his hours and therefore did not receive
2 minimum wage for all hours worked, as required by Labor Code § 1197.

3 33. As a direct and proximate result of Defendants' conduct in violation of Labor
4 Code § 1197, Plaintiff has suffered, and continues to suffer, losses related to the use and
5 enjoyment of wages and lost interest on such wages all to his damage in amounts according to
6 proof at trial.

7 34. As a direct and proximate result of Defendants' conduct in violation of Labor
8 Code § 1197, Plaintiff is entitled to recover his unpaid minimum wages plus interest, attorney
9 fees, and costs of suit, pursuant to Labor Code §1194, and liquidated damages equal to the
10 unpaid minimum wages, pursuant to Labor Code §1194.2, all in amounts according to proof at
11 trial.

12 **SECOND CAUSE OF ACTION**

13 **(Failure to Pay Overtime and Double Time Wages - Labor Code §§ 510, 1194)**
14 **(Against all Defendants)**

15 35. Plaintiff incorporates by reference each and every allegation of this Complaint.

16 36. Labor Code § 510, states in part:

17 "Any work in excess of eight hours in one workday and any work in
18 excess of 40 hours in one workweek and the first eight hours worked on
19 the seventh day of work in any one workweek shall be compensated at the
20 rate of no less than one and one-half times the regular rate of pay for an
21 employee. Any work in excess of 12 hours in one day shall be
22 compensated at the rate of no less than twice the regular rate of pay of an
23 employee. In addition, any work in excess of eight hours on any seventh
24 day of a workweek shall be compensated at the rate of no less than twice
25 the regular rate of pay of an employee."

26 37. Defendants violated Labor Code § 510 and IWC Wage Order 2-2001, Section 3
27 by failing to pay Plaintiff overtime compensation when he worked beyond eight hours in a
28 workday, 40 hours in a workweek, and/or for the first eight hours worked on the seventh
consecutive days in a workweek. Defendants also violated Labor Code § 510 and IWC Wage
Order 2-2001, Section 3 by failing to pay Plaintiff double time compensation when he worked

beyond 12 hours in a workday or beyond eight hours on the seventh consecutive day in a workweek.

38. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered, and continues to suffer, losses related to the use and enjoyment of the unpaid wages and lost interest on such wages. Pursuant to Labor Code § 1194, Plaintiff is entitled to recover the unpaid overtime or double time wages, including interest thereon, reasonable attorney fees, and costs of suit, in amounts according to proof at trial.

THIRD CAUSE OF ACTION

(Meal Break Violations - Labor Code § 226.7, 512) (Against all Defendants)

39. Plaintiff incorporates by reference each and every allegation of this Complaint.

40. IWC Wage Order 2-2001, Section 11 provides in part:

"No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes.... [or] a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes...If an employer fails to provide an employee a meal 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 meal period is not provided."

41. Defendants violated Labor Code § 226.7, 512, and IWC Wage Order 2-2001, Section 11 by failing to provide Plaintiff with proper meal periods in accordance with the law. Defendants also systematically failed to pay premium pay to Plaintiff for his missed meal periods, in violation of Labor Code § 226.7 and IWC Wage Order 2-2001, Section 11(D).

42. Pursuant to Labor Code § 226.7, 512, and IWC Wage Order 2-2001, Section 11(D), Plaintiff is informed and believes, and thereon alleges, that he is entitled to recover from Defendants damages equal to one hour of pay at his regular rate of pay for each workday that a statutory meal period was not provided, in amounts according to proof at trial

FOURTH CAUSE OF ACTION

(Rest Break Violations - Labor Code § 226.7) (Against all Defendants)

43. Plaintiff incorporates by reference each and every allegation of this Complaint.

1 44. IWC Wage Order 2-2001, Section 12 requires employers to authorize and permit
2 all employees to take a ten-minute rest break for every four hours of work or major fraction
3 thereof. Employers must pay an employee one hour of pay for each workday that a proper rest
4 period is not provided. Labor Code § 226.7; IWC Wage Order 2-2001, Section 12(B).

5 45. Defendants systematically prevented him from being able to take rest breaks in
6 accordance with IWC Wage Order 2-2001, Section 12, despite regularly working more than
7 three and one-half hours per workday. Defendants also systematically failed to pay premium
8 pay to Plaintiff for his missed rest breaks, in violation of Labor Code § 226.7 and IWC Wage
9 Order 2-2001, Section 12(B).

10 46. Pursuant to Labor Code § 226.7 and IWC Wage Order 2-2001, Section 12,
11 Plaintiff is entitled to recover from Defendants damages equal to one hour of pay at his regular
12 rate of pay for each workday that a rest period was not provided, in an amount according to
13 proof at trial.

14 **FIFTH CAUSE OF ACTION**
15 **(Unlawful Deductions and Failure to Remit Gratuities – Labor Code §§ 221, 351)**
16 **(Against all Defendants)**

16 47. Plaintiff incorporates by reference each and every allegation of this Complaint.

17 48. Labor Code § 221 makes it unlawful for an employer to collect or receive from
18 an employee any part of wages theretofore paid. Similarly, Labor Code § 351 makes it unlawful
19 for an employer to collect, take, or receive any gratuity or a part thereof that is left or paid to an
20 employee by a patron.

21 49. Defendants regularly violated Labor Code §§ 221 and 351 by withholding earned
22 commissions and failing to remit to Plaintiff all of the gratuities that were left for him from his
23 clients but paid directly to the salon.

24 50. As a direct and proximate result of Defendants' violations of Labor Code §§ 221
25 and 351, Defendants are liable to Plaintiff for the unlawfully withheld or collected commissions
26 and gratuities owed to Plaintiff, in amounts according to proof at trial.

27 **SIXTH CAUSE OF ACTION**
28 **(Late Payment of Wages - Labor Code § 204, 210)**

(Against all Defendants)

51. Plaintiff incorporates by reference each and every allegation of this Complaint.

52. Labor Code § 204(a) provides, “All wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

53. Defendants violated Labor Code § 204(a) each and every pay period throughout Plaintiff’s employment by willfully failing to pay him all of his earned wages, including overtime and double time premiums, when they became due and payable. Further, the wage payment Plaintiff did receive were frequently days or even weeks late.

54. As a direct and proximate result of Defendants’ willful violation of Labor Code § 204, Defendants are liable for penalties for failing to timely pay all wages, including statutory penalties to Plaintiff under Labor Code § 210 equal to two hundred dollars (\$200) for each failure to pay, plus 25 percent of the amount unlawfully withheld, in amounts according to proof at trial.

SEVENTH CAUSE OF ACTION

(Failure to Timely Pay Wages at Separation - Labor Code §§ 201, 203)

(Against all Defendants)

55. Plaintiff incorporates by reference each and every allegation of this Complaint.

56. Labor Code § 201 provides, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

57. Defendants violated Labor Code § 201 by failing to pay Plaintiff all of his earned and unpaid wages, including overtime and double time wages, at the time Defendants involuntarily terminated Plaintiff’s employment.

58. As a direct and proximate result of Defendants’ failure to pay Plaintiff in accordance herein, Defendants are liable for the full waiting time penalty allowable under Labor Code § 203 in the amount of one day’s worth of Plaintiff’s wages at his regular rate of pay, multiplied by 30, according to proof at trial.

EIGHTH CAUSE OF ACTION

(Wage Statement and Record Keeping Violations - Labor Code §§ 226, 1174, 1198.5)

(Against all Defendants)

1 59. Plaintiff incorporates by reference each and every allegation of this Complaint.

2 60. Labor Code § 226 requires employers to provide employees with accurate
3 itemized statements showing (1) gross wages earned, (2) total hours worked by the employee,
4 (3) the number of piece units and rates if applicable, (4) all deductions, (5) net wages earned, (6)
5 the inclusive date of the period for which the employee is paid, (7) the name of the employee
6 and his or her social security number, (8) the name and address of the legal entity that is the
7 employer, and (9) all applicable hourly rates in effect and the corresponding number of hours
8 worked.

9 61. Labor Code § 1174 requires employers to keep payroll records for all employees
10 showing hours worked daily and wages paid and maintain such records for a period of three
11 years. Similarly, Labor Code § 1198.5 requires employers to keep and maintain personnel
12 records for all employees and to provide such records to an employee within 30 days of
13 receiving a written request for such records. Pursuant to Labor Code § 1198.5(K), an employer
14 is liable for a statutory penalty of \$750 if it fails to permit an employee to inspect or copy his or
15 her personnel records per statute.

16 62. At all material times alleged herein, Defendants failed to provide Plaintiff with
17 accurate, timely, itemized wage statements and records as required by Labor Code § 226.

18 63. Defendants also failed to keep or maintain proper payroll records or personnel
19 records for Plaintiff, as required by Labor Code §§ 1174 and 1198.5. On June 17, 2020, Plaintiff
20 made a written request for a copy of his personnel records; they have not been provided to date.

21 64. As a direct and proximate result of Defendants' willful, unlawful conduct as set
22 forth above, Plaintiff is informed and believes, and thereon alleges, that he is entitled to
23 penalties for failure to maintain and provide itemized statements of employees pay and payroll
24 records, in violation of Labor Code §§ 226(e), 226.3, 1174, and 1174.5, and penalties, including
25 a statutory penalty of \$750, for failing to maintain or provide personnel records in violation of
26 Labor Code § 1198.5, all in amounts according to proof at trial.

27
28 **NINTH CAUSE OF ACTION**

(Failure to Reimburse Business Expenses - Labor Code § 2802)
(Against all Defendants)

65. Plaintiff incorporates by reference each and every allegation of this Complaint.

66. Labor Code § 2802 provides that, “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

67. Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff’s out-of-pocket expenses incurred for the benefit of Defendants, including all of his tools and mileage reimbursements when he was required to drive his personal vehicle for work purposes.

68. As a direct and proximate result of Defendants’ violations of Labor Code § 2802 as set forth above, Plaintiff is entitled to reimbursement for these necessary business expenditures and any other necessary expenditures incurred for the benefit of Defendants, as well as his reasonable attorney fees and costs incurred, all in amounts according to proof at trial.

TENTH CAUSE OF ACTION
(Retaliation - Labor Code §§ 98.6, 1102.5)
(Against all Defendants)

69. Plaintiff incorporates by reference each and every allegation of this Complaint.

70. Labor Code § 98.6(a) provides, “A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter...or because of the exercise by the employee...of any rights afforded him or her.”

71. Labor Code § 1102.5(b) provides, “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information...to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance...if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute.”

72. Defendants violated Labor Code §§ 98.6 and 1102.5 by threatening Plaintiff’s livelihood, his immigration status, and his personal injury claim, by defaming him, and then by

1 terminating his employment in retaliation for engaging in protected activity and exercising his
2 rights under the Labor Code, as alleged herein.

3 73. As a direct and proximate result of Defendants' unlawful retaliation in violation
4 of Labor Code §§ 98.6 and 1102.5, Plaintiff has suffered and continues to suffer humiliation,
5 severe emotional distress, and mental and physical pain and anguish all to his damage, and he
6 has suffered general and special damages (including, but not limited to, loss of earnings and
7 future earning capacity, loss of income and benefits from a personal injury claim, attorneys'
8 fees, costs of suit, and other pecuniary loss not presently ascertained), all in sums according to
9 proof at trial.

10 74. Defendants' unlawful retaliation as set forth above was done intentionally and in
11 a malicious, fraudulent, and oppressive manner, thereby entitling Plaintiff to punitive damages.

12 75. As a further result of Defendants' violation of Labor Code §§ 98.6 and 1102.5,
13 Defendants are liable for civil penalties under 98.6(b)(3) and 1102.5(f) in addition to any other
14 remedies available.

15 **ELEVENTH CAUSE OF ACTION**
16 **(Wrongful Termination in Violation of Public Policy)**
17 **(Against all Defendants)**

18 76. Plaintiff incorporates by reference each and every allegation of this Complaint.

19 77. In *Yau v. Allen*, it was stated that

20 "[T]he California Supreme Court described four categories of employee conduct
21 subject to protection under a claim of wrongful discharge in violation of
22 fundamental public policy: (1) refusing to violate a statute; (2) performing a
23 statutory obligation; (3) exercising a statutory right or privilege; and (4)
24 reporting an alleged violation of a statute of public importance."
25 *Yau v. Allen* (2014) 229 Cal. App. 4th 144, 155.

26 78. The elements of a tort claim for wrongful termination in violation of public
27 policy are as follows: (1) there must be an employer – employee relationship, (2) the employer
28 terminated the employee, (3) the termination was substantially motivated by a violation of a
public policy, (4) and the termination caused the plaintiff harm. *Yau*, 229 Cal. App. 4th at 154.

1 79. Defendants terminated Plaintiff's employment in violation of various
2 fundamental public policies underlying both state and federal law. Specifically, Plaintiff is
3 informed and believes, and thereon alleges, that his termination was substantially motivated by
4 the fact that he exercised his rights under the California Labor Code and IWC Wage Orders and
5 complained about being misclassified and pursuing unpaid wage and other Labor Code claims
6 against Defendants, in violation of Labor Code §§ 98.6 and 1102.5.

7 80. As a proximate result of Defendants' wrongful termination of Plaintiff's
8 employment in violation of fundamental public policies, Plaintiff has suffered and continues to
9 suffer humiliation, severe emotional distress, and mental and physical pain and anguish all to
10 his damage, and he has suffered general and special damages (including, but not limited to, loss
11 of earnings and future earning capacity, loss of income and benefits from a personal injury
12 claim, attorneys' fees, costs of suit, and other pecuniary loss not presently ascertained), all in
13 sums according to proof at trial.

14 81. Defendants' wrongful termination of Plaintiff's employment was done
15 intentionally and in a malicious, fraudulent, and oppressive manner, thereby entitling Plaintiff to
16 punitive damages.

17 82. Pursuant to Code of Civil Procedure §§ 1021.5 and 1032, *et seq.*, Plaintiff is also
18 entitled to recover all of his reasonable attorneys' fees and costs in amounts according to proof
19 at trial.

20 **TWELTH CAUSE OF ACTION**
21 **(Defamation - Civil Code §§ 45 and 46)**
22 **(Against all Defendants)**

23 83. Plaintiff incorporates by reference each and every allegation of this Complaint.

24 84. Plaintiff is informed and believes, and thereon alleges, that Defendants, by the
25 herein described acts, conspired to, and in fact, did negligently, recklessly, and intentionally
26 cause false and defamatory statements concerning Plaintiff to be made to third parties, including
27 to Lyft, without justification and without privilege. These statements include, but are not limited
28

1 to, accusations that Plaintiff faked a car accident involving Lyft and lied about the extent of his
2 injuries in said car accident and his pre-existing conditions.

3 85. On information and belief, the defamatory publications consisted of oral and
4 written statements, knowingly false and unprivileged communications, tending directly to injure
5 Plaintiff and Plaintiff's personal, business, and professional reputations. These false and
6 defamatory publications were and are in violation of Civil Code §§ 45, 45(a), and 46(1), (3),
7 and (5).

8 86. The published statements are libelous on their face under Civil Code §§ 45(a), as
9 they directly impute fraud on Plaintiff and injure his personal and business reputation.

10 87. At the time Defendants', or one or more of their agents at their direction,
11 published such defamatory statements, Defendants knew the statements about Plaintiff were
12 false and/or failed to take reasonable care to determine the truth or falsity of the statements, and
13 the third-party recipients knew and understood the statements to mean that Plaintiff was
14 intentionally attempting to defraud Lyft and that these statements concerning Plaintiff were
15 factual, not opinions of the publisher.

16 88. None of Defendants' defamatory publications against Plaintiff referenced above
17 are true.

18 89. As a direct and proximate result of Defendants' defamatory per se statements,
19 Plaintiff has suffered and continues to suffer humiliation, severe emotional distress, and mental
20 and physical pain and anguish all to his damage, and he has suffered general and special
21 damages (including, but not limited to, loss of earnings and future earning capacity, loss of
22 income and benefits from a personal injury claim, attorneys' fees, costs of suit, and other
23 pecuniary loss not presently ascertained), all in sums according to proof at trial.

24 90. Each of these false and defamatory per se publications were recklessly and
25 intentionally published in a malicious, fraudulent, oppressive, and deliberate attempt to vex,
26 harass, annoy and injure Plaintiff for engaging in protected activity, as alleged above, despite
27 Defendants knowing at the time of publication that the statements were false and/or having
28 serious doubts about the truth of such statements. All actions of Defendants, their agents,

1 employees, managing agents, and officers as alleged herein were known, authorized, ratified,
2 and approved by Defendants, and each of them. Plaintiff is therefore entitled to recover punitive
3 and exemplary damages from Defendants in amounts according to proof at trial.

4 **THIRTEENTH CAUSE OF ACTION**

5 **(Violation of the Ralph Civil Rights Act of 1976 (Civil Code §§ 51.7, 52(b))**
6 **(Against all Defendants)**

7 91. Plaintiff incorporates by reference each and every allegation of this Complaint.

8 92. The Ralph Civil Rights Act of 1976 (“the Ralph Act”) (Cal. Civil Code § 51.7)
9 prohibits acts of violence or threats of violence on account of certain actual or perceived
10 characteristics of a person, including immigration status, or because of a person’s position in a
11 labor dispute. For purposes of the Ralph Act, “intimidation by threat of violence” includes, but
12 is not limited to, making or threatening to make a claim or report to a peace officer or law
13 enforcement agency that falsely alleges that another person has engaged in unlawful activity or
14 in an activity that requires law enforcement intervention, knowing that the claim or report is
15 false, or with reckless disregard for the truth or falsity of the claim or report.

16 93. As alleged herein, Mrs. Cohen, in her capacity as owner of Brighton Salon,
17 intentionally threatened to report to the U.S. Citizenship & Immigration Services that Plaintiff’s
18 marriage was fraudulent and was entered into solely for purposes of obtaining favorable
19 immigration status into the country. Mrs. Cohen knew at the time that such statements were
20 false or, at minimum, acted with reckless disregard for the truth or falsity of such claims, yet she
21 intentionally made such threats in an attempt to get Plaintiff to drop his wage and hour claims
22 against Defendants.

23 94. Plaintiff’s position in a labor dispute with Defendants and immigration status
24 were the substantial motivating reasons for Mrs. Cohen’s conduct.

25 95. A reasonable person in Plaintiff’s position would have believed that Mrs. Cohen,
26 or one of her or Defendants’ agents, would carry out this threat and would have been
27 intimidated thereby, specifically because Mrs. Cohen carried out other retaliatory threats, as
28

1 alleged herein, and because her daughter called Plaintiff to inform him that she feared for his
2 liberty and immigration status if he did not agree to drop his claims against Defendants.

3 96. By threatening Plaintiff as alleged herein, Mrs. Cohen interfered with Plaintiff's
4 right to be free from discrimination or violence on the basis of his immigration status and/or
5 position in a labor dispute.

6 97. All actions of Mrs. Cohen, Defendants, and their agents, employees, managing
7 agents, and officers as alleged herein were known, authorized, ratified, and approved by
8 Defendants, and each of them.

9 98. As a direct and proximate result of Mrs. Cohen's intimidation by threats of
10 violence, as alleged herein, Plaintiff has suffered and continues to suffer humiliation, severe
11 emotional distress, and mental and physical pain and anguish all to his damage, and he has
12 suffered and continues to suffer general and special damages (including, but not limited to, loss
13 of earnings and future earning capacity, loss of other income and benefits, attorneys' fees, costs
14 of suit, and other pecuniary loss not presently ascertained).

15 99. As a direct and proximate result of Mrs. Cohen's intimidation by threats of
16 violence, in violation of Civil Code § 51.7, Plaintiff is entitled to damages under Civil Code §
17 52(b) equal to the actual damages suffered by Plaintiff, as alleged herein, as well as exemplary
18 damages, a civil penalty of \$25,000 paid to Plaintiff, and attorney fees, all in amounts according
19 to proof at trial.

20 100. Each of Mrs. Cohen's threats of violence were recklessly and intentionally made
21 in a malicious, fraudulent, oppressive, and deliberate attempt to vex, harass, annoy and injure
22 Plaintiff for engaging in protected activity, as alleged above, despite Mrs. Cohen knowing at the
23 time of publication that the statements were false and/or having serious doubts about the truth of
24 such statements. Plaintiff is therefore entitled to recover punitive and exemplary damages from
25 Defendants in amounts according to proof at trial.

26 **FOURTEENTH CAUSE OF ACTION**
27 **(Intentional Infliction of Emotional Distress)**
28 **(Against all Defendants)**

1 101. Plaintiff incorporates by reference each and every allegation of this Complaint.

2 102. On information and belief, Mrs. Cohen made the threats to Plaintiff alleged
3 herein in an intentional and malicious attempt to intimidate Plaintiff into dropping his claims
4 against Defendants and to cause him to suffer severe emotional distress, as the threatened
5 actions could severely imperil Plaintiff's personal, professional, and financial situations.
6 Further, Plaintiff is informed and believes, and thereon alleges, that Mrs. Cohen, and/or one of
7 her or Defendants' agents acting on her and/or Defendants' behalf, acted upon her threats and
8 made statements to Lyft in an intentional effort to sabotage Plaintiff's personal injury claim and
9 cause him emotional distress, and such statements and actions did have the intended effect of
10 having Lyft deny the claim and causing Plaintiff to suffer severe emotional distress.

11 103. Plaintiff is also informed and believes, and thereon alleges, that Mrs. Cohen
12 and/or Defendants' conduct as alleged herein was highly offensive, outrageous, and beyond the
13 bounds of acceptable conduct, and was done in complete disregard for Plaintiff's physical and
14 emotional well-being and safety.

15 104. All actions of Mrs. Cohen, Defendants, and their agents, employees, managing
16 agents, and officers as alleged herein were known, authorized, ratified, and approved by
17 Defendants, and each of them.

18 105. As a direct and proximate cause of Mrs. Cohen and/or Defendants' actions,
19 Plaintiff has suffered severe emotional distress and other injury, damage, loss, and harm to his
20 body and mind as alleged in herein, all in amounts according to proof at trial.

21 106. Mrs. Cohen and/or Defendants' conduct constitutes malice under Cal. Civil Code
22 § 3294 because it was in willful and conscious disregard of the rights or safety of Plaintiff and
23 fraud because the intentional misrepresentations were intended to deprive Plaintiff of property,
24 legal rights, and to otherwise cause him injury. As a result, Plaintiff is entitled to an award of
25 punitive damages against Defendants.

26 **FIFTEENTH CAUSE OF ACTION**
27 **(Unfair Business Practices - Business & Professions Code § 17200 *et seq.*)**
28 **(Against all Defendants)**

1 107. Plaintiff incorporates by reference each and every allegation of this Complaint.

2 108. Plaintiff alleges that Defendants engaged in unfair, unlawful, and fraudulent
3 business practices by: (1) willfully misclassifying Plaintiff and the other hairstylists as
4 independent contractors; (2) failing and refusing to pay Plaintiff proper compensation for any
5 and all overtime or double time hours worked; (3) failing to provide Plaintiff with proper meal
6 periods and rest breaks; (4) intentionally failing to provide Plaintiff with accurate itemized wage
7 statements; (5) failing to provide Plaintiff and the other misclassified employees with sick leave
8 pay, workers' compensation benefits, unemployment insurance benefits, and other workplace
9 protections; (6) paying Plaintiff's wages late and failing to pay all wages upon separation; and
10 (7) terminating Plaintiff in retaliation for exercising his rights under the Labor Code, as alleged
11 herein.

12 109. As a direct and proximate result of Defendants' unlawful, unfair, and/or
13 fraudulent acts and practices described herein, Defendants have received and continues to hold
14 ill-gotten gains belonging to Plaintiff. As a direct and proximate result of Defendants' unlawful
15 business practices, Plaintiff has suffered economic injuries including, but not limited to, loss of
16 wages and compensation for missed meal and rest periods.

17 110. Through Defendants' use of such unlawful, unfair, and/or fraudulent acts and
18 practices, Defendants have gained an unfair advantage over Defendants' competitors.

19 111. Accordingly, Plaintiff seeks injunctive relief including, but not limited to, orders
20 that Defendants accounts for, disgorges, and restores to Plaintiff the compensation unlawfully
21 withheld in amounts according to proof at trial.

22 **SIXTEENTH CAUSE OF ACTION**

23 **(Violation of the Private Attorneys General Act - Labor Code §§ 2698 et seq.)**
24 **(Against all Defendants)**

25 112. Plaintiff incorporates by reference each and every allegation of this Complaint.

26 113. Labor Code § 2698, *et seq.* gives any employee aggrieved by an employer's
27 violations of the Labor Code the right to file an action on behalf of all aggrieved employees for
28 the penalties established by Section 2699.

114. Plaintiff is an aggrieved employee of Defendants who was willfully misclassified and an independent contractor and deprived of minimum wages, overtime and double time pay, meal or rest breaks, prompt payment of wages, full payment of wages upon separation, and accurate and itemized wage statements, among other Labor Code violations alleged herein. Plaintiff was also a victim of unlawful retaliation by Defendants.

115. The aforementioned wrongful acts and omissions of Defendants are violations of California's Labor Code and the IWC Wage Order as set forth herein. They include, but are not limited to, violations of Labor Code §§ 98.6, 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 226.8, 246, 256, 351, 510, 512, 515, 558, 558.1, 1102.5, 1174, 1182.12 1194, 1197, 1197.1, 1198.5, 2699, 2699.3, 2699.5, 2775, and 2802.

116. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3 and has exhausted his administrative remedies thereunder. On November 24, 2020, Plaintiff electronically filed an Initial PAGA Notice with the Labor and Workforce Development Agency (“LWDA”) (LWDA Case No. LWDA-CM-813653-20), providing written notice of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, and sent a copy of the same written notice to Defendants via certified mail. Plaintiff did not receive written notification from the LWDA of the State’s intention to investigate the allegations set forth in Plaintiff’s November 24, 2020 PAGA notice.

117. Plaintiff requests all civil penalties against Defendants on as allowed under Labor Code §2699 on behalf of himself and all of Defendants' other aggrieved employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

1. For all actual, consequential, and incidental losses and damages according to proof at trial;
2. For special damages including lost wages, lost employee benefits, vacation benefits, lost income and benefits from Plaintiff's personal injury claim with Lyft, and general damages according to proof at trial;

3. For statutory penalties under all applicable Labor Code and/or employment laws and regulations;
4. For civil penalties under all applicable Labor Code and/or employment laws and regulations, pursuant to the PAGA, Cal. Labor Code § 2698, *et seq.*;
5. For injunctive relief, including restitution of all monies due to Plaintiff and disgorgement of profits from the unlawful business practices of Defendants;
6. For punitive damages;
7. For reasonable attorney's fees, in accordance with applicable provisions of law;
8. For costs of suit and interest incurred herein;
9. For such other and further relief the Court may deem appropriate.

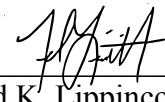
JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

Dated: March 5, 2021

LEVINE & BLIT LLP

By: _____


Ted K. Lippincott, Esq.
Attorneys for Plaintiff
SHLOMI HILLEL