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FILED
Superior Court of California
County of Los Angeles
03/08/2021

Sherri R. Carter, Executive Officer / Clerk of Court
By: C. Vaughn Deputy

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

David Johnston, an individual,

Plaintiff,

v.

Flintridge Riding Club, a California Non-Profit
Corporation; and DOES 1-20,

Defendant.

Case No: 20STCV43681

FIRST AMENDED COMPLAINT

1. **Failure to Pay Overtime Wages**
(Cal. Labor Code §§ 1194, 510);
2. **Failure to Pay Minimum Wages**
(Cal. Labor Code §§ 1194, 1197, 1191.1);
3. **Failure to Provide Meal Periods**
(Cal. Labor Code §§ 226.7, 512);
4. **Failure to Provide Rest Periods**
(Cal. Labor Code § 226.7);
5. **Failure to Reimburse Business Expenses** (Cal. Labor Code §§ 2802, 226.8);
6. **Failure to Pay Wages Due on Discharge, Layoff, or Resignation** (Cal. Labor Code §§ 201, 202, 203); and
7. **Violation of Cal. Bus. & Prof. Code §§ 17200, et seq.**
8. **Wrongful Termination**
9. **Private Attorneys General Act**

JURY TRIAL DEMANDED

1 Plaintiff David Johnston (“Plaintiff” or “Johnston”), through undersigned counsel, complain
2 and allege the following against defendants Flintridge Riding Club (“FRC”) and DOES 1-20 as
3 follows:

4 **INTRODUCTION**

5 1. FRC is a private horse-riding club located outside of Los Angeles, California.

6 2. As noted on FRC’s “About Us” page on its public website¹, FRC started in 1922
7 when “the heads of four prominent families decided to create a place to mutually enjoy fine
8 fellowship and equestrian pursuits.”

9 3. FRC touts that it is “the oldest riding club west of the Mississippi and it has evolved
10 and thrived for what will soon be a century by upholding a tradition of excellence in horse care,
11 facilities, **training and instruction.**”

12 4. Plaintiff David Johnston was hired by Defendants as a dressage trainer, working in
13 this role for nearly 10 years; his duties included but were not limited to: dressage instruction with
14 individuals and groups of FRC members, and training and riding FRC members’ horses.

15 5. Defendants hired Plaintiff as an “independent contractor,” despite the fact that
16 Defendants retained significant control over Plaintiff’s work activities and work time, and despite
17 the fact that Plaintiff’s work (providing dressage training and instruction) occurred within the usual
18 course of Defendants’ business.

19 6. In hiring Plaintiff to provide dressage instruction and training services, FRC
20 knowingly, willfully, and improperly classified Plaintiff as an independent contractor.

21 7. As a result, FRC failed to provide Plaintiff with the entitlements he was owed under
22 the California Labor Code. Among other things, FRC failed to: pay to Plaintiff minimum and
23 overtime wages; provide meal and rest periods or premiums in lieu thereof; reimburse all necessary
24 business expenses; provide accurate wage statements; and failed to timely pay final wages.

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¹ <https://flintridgeridingclub.org/about-us/>

PARTIES

8. Plaintiff David Johnston is above the age of eighteen and at all relevant times has been a resident of Los Angeles County, California.

9. Defendant Flintridge Riding Club is a California Non-Profit Corporation registered in the state of California, with its principal place of business located within Los Angeles County, California.

10. At all relevant times, Plaintiff held a position with Defendants in California, in and around the Los Angeles area.

11. Defendants have done and, on information and belief, continue to do business in the State of California.

12. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, and/or are attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control. Plaintiff is informed and believes, and thereon alleges, that at all times material hereto Defendants were and are the agents of each other.

13. Plaintiff is ignorant of the identities of defendants Does 1 through 20, inclusive, and therefore sues these defendants by such fictitious names. The Doe defendants may be individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant, employee, co-venturer, and/or co-conspirator of each of the other defendants and was at all times mentioned, acting within the scope, purpose, consent, knowledge, ratification and authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged was proximately caused by its conduct. Doe Defendants 1 through 20 and FRC are herein collectively referred to as "Defendants."

JURISDICTION AND VENUE

14. The California Labor Code and the California Unfair Competition Law authorize court actions by private parties to recover damages for violation of their provisions.

15. This Court has jurisdiction over this action pursuant to the California Constitution Article VI, § 10 and under California Code of Civil Procedure § 410.10. Jurisdiction is proper in the Superior Court of California, County of Los Angeles, because all parties resided and/or conduct business in Los Angeles County, California, at the commencement of the action.

16. This Court has specific jurisdiction over Defendants because the claims in this action stem from Defendants' specific contacts with the State of California, namely, Defendants' employment of Plaintiff.

17. Venue in Los Angeles County is proper pursuant to Code of Civil Procedure § 395(a) because a substantial part of the events giving rise to the claims alleged herein occurred in this county.

ALLEGATIONS

18. FRC is a private horse-riding club located outside of Los Angeles, California. As noted on FRC's "About Us" page on its public website², FRC started in 1922 when "the heads of four prominent families decided to create a place to mutually enjoy fine fellowship and equestrian pursuits."

19. FRC touts that it is "the oldest riding club west of the Mississippi and it has evolved and thrived for what will soon be a century by upholding a tradition of excellence in horse care, facilities, training and **instruction**."

20. As noted above and in the FRC website's "About Us" page and throughout its public facing website, FRC offers its membership various services, including but not limited to: "stabling" services; access to various facilities, including three "jumping arenas," a regulation dressage court including mirrors, a cross-country field with natural timber obstacles, water obstacles, and a hacking track, and riding trails; and various clubhouse based amenities.

² <https://flintridgeridingclub.org/about-us/>

1 21. Included in the offerings of FRC are “training and instruction” services; again, FRC’s
2 website includes a section titled “Our Instructors,” which lists the individuals who are currently
3 offering horse riding instruction at FRC, including: dressage instruction; jumper instruction; hunter
4 instruction; training for ponies; equitation instruction; and horsemanship instruction at both basic
5 and intermediate levels.

6 22. Plaintiff was hired by Defendants and began his employment as a Dressage Trainer
7 on or about February 2010; his primary duties included but were not limited to training his dressage
8 students, dressage instruction with individuals and groups of FRC members, as well as training and
9 riding students’ horses.

10 23. FRC markets itself not only as a horse riding facility, but also as a social club; on
11 information and belief, FRC’s membership, employees, and contracted workers are tasked with
12 maintaining FRC’s exclusive atmosphere.

13 24. Upon starting his employment with Defendants, Plaintiff was asked to sign an
14 agreement with FRC designating him as an “independent contractor” for the club (the “Agreement”).

15 25. The Agreement, or versions of it, was signed several times throughout Plaintiff’s
16 employment with FRC.

17 26. The Agreement included a number of provisions that enabled FRC to directly or
18 indirectly control Plaintiff’s work activities, including but not limited to: requiring Plaintiff adhere to
19 the Club Rules and Code of Conduct; prohibiting Plaintiff from providing training and instruction
20 services at “any location within 25 miles of the FRC property without the prior written consent of
21 FRC”; further controlling outside activities by empowering FRC’s Board of Directors to, “give
22 notice to [Plaintiff] that there is a possible violation of this Agreement” in the event that “member
23 complaints” are received regarding Plaintiff’s availability for instruction; requiring Plaintiff to
24 “comply with requests made by the FRC Board of Directors, its executive committees, instruction
25 committee, personnel committee, stable manager, director of operations, and such other persons or
26 committees as the FRC Board of Directors deems appropriate”; allowing “for cause” termination of
27 the Agreement for “any act that the FRC Board of Directors deems in its complete discretion to be
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1 inconsistent with the overall goals or purposes of FRC”; and empowering the Board of Directors to
2 “set guidelines regarding the scope of each trainer’s instruction program and the extent to which any
3 trainer may offer instruction or provide training to FRC members or their horses in any discipline
4 other than that described in each such trainer’s Agreement.”

5 27. The Agreement also expressly required Plaintiff to follow the instructions and
6 directions of “the FRC Board of Directors, its executive committees, instruction committee,
7 personnel committee, stable manager, director of operations, and such other persons or committees
8 as the FRC Board of Directors deems appropriate.”

9 28. On information and belief, because the membership at FRC frequently shifts in and
10 out of these roles, every member of FRC was either actively an agent of FRC in control of Plaintiff’s
11 work activities, or in the alternative, was effectively in control, as they were likely to become an
12 agent at some point in the near future by serving in one of the roles described above.

13 29. FRC further controlled the work activities of Plaintiff by engaging in an extensive
14 hiring process and requiring that Plaintiff submit a resume and interview with the club prior to
15 hiring; requiring Plaintiff conduct multiple training days with FRC members; be available 6 days a
16 week during hours proscribed by the club throughout the majority of his employment, and later to be
17 available on certain days of the week; remain on site, visible, and available to the members
18 throughout his work days, including times when Plaintiff was not actively training horses or teaching
19 FRC members; providing Plaintiff with a list of clients with which to work; requiring Plaintiff attend
20 mandatory uncompensated trainers meetings outside of his regular work/client hours; and controlling
21 how Plaintiff dressed and presented to FRC members.

22 30. Moreover, Plaintiff’s services were offered as part of FRC’s usual course of business.
23 FRC did so in the various ways, including but not limited to: in addition to repeatedly touting its
24 offering of “training and instruction” throughout the FRC website, FRC held out Mr. Johnston as
25 one of “their instructors,” prominently displaying Mr. Johnston’s professional history and credentials
26 on their website as one of the benefits to joining and training at FRC; providing “school horses” for a
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1 rental fee for use in lessons by members and trainers; and Plaintiff submitted his hourly instruction
2 rates to FRC to be provided within the FRC clubhouse by FRC personnel.

3 31. For the reasons stated above, Plaintiff was misclassified as an independent contractor
4 and should have been properly classified as a non-exempt employee.

5 32. Plaintiff's work, pay, and other terms and conditions of employment did not qualify
6 him for the administrative, professional, or executive exemptions, or any other exemption, and thus
7 Plaintiff should have been properly classified as a non-exempt employee subject to the entitlements
8 and protections of the California Labor Code.

9 33. Throughout Plaintiff's employment with Defendant, Plaintiff was subjected to
10 unwanted comments directly or indirectly addressing his sex and sexual orientation from agents
11 and/or employees of FRC and FRC members, i.e., that Plaintiff identifies as a gay man.

12 34. In addition to inappropriate comments regarding Plaintiff, Plaintiff's sex, and
13 Plaintiff's sexual orientation, Defendant discriminated against Plaintiff on the basis of his sexual
14 orientation.

15 35. During the vast majority of his employment with Defendant, Plaintiff did not discuss
16 or disclose his sexual orientation; however, in March of 2018, he began a same sex relationship with
17 his current partner. Following the beginning of this relationship, Plaintiff disclosed his sexual
18 orientation to FRC and members of FRC. Once Plaintiff's same-sex relationship became visible, he
19 no longer fit into the exclusive atmosphere cultivated by the club.

20 36. During the latter portion of Plaintiff's employment with Defendants, Plaintiff moved
21 in with his same-sex partner. Plaintiff would be dropped off by his same-sex partner prior to his first
22 lesson of the day and would be picked up by his same-sex partner after his final lesson was finished.

23 37. Following the increased visibility of Plaintiff's same sex partner, Defendant, agents
24 of Defendant, and members of FRC fabricated complaints regarding Plaintiff's training and teaching
25 capabilities, and on information and belief, shared those complaints with the Director of FRC and
26 other members of FRC, including both FRC's Board of Directors and Plaintiff's active and
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1 prospective clients. Plaintiff is informed and believes and alleges thereon that but for his same-sex
2 relationship, Defendants would not have engaged in above-described conduct.

3 38. Plaintiff heard and was greatly impacted by the harassment and discrimination he
4 suffered as a result of the increased visibility of his sexual orientation; because of Plaintiff's sexual
5 orientation as a gay man and his same sex relationship, and the discrimination he experienced as a
6 result, Plaintiff's work time was reduced significantly and Plaintiff was forced to resign from his
7 position with FRC.

8 39. As a result, Plaintiff's employment with Defendant was constructively terminated on
9 or about September 19, 2018. Plaintiff's separation from employment with Defendant was not the
10 result of Plaintiff's performance or conduct.

11 **FIRST COUNT**

12 **Failure to Pay Overtime Wages (Cal. Labor Code §§ 1194, 510)**

13 **(Against All Defendants)**

14 40. Plaintiff hereby incorporates by reference the allegations contained in the preceding
15 paragraphs of this Complaint.

16 41. Industrial Welfare Commission ("IWC") Wage Order No. 10-2001 applies to
17 Plaintiff's employment with Defendants, and no exemptions apply.

18 42. California Labor Code section 1198 makes it illegal to employ an employee under
19 conditions of labor that are prohibited by the applicable wage order. California Labor Code section
20 1198 requires that "...the standard conditions of labor fixed by the commission shall be the
21 ...standard conditions of labor for employees. The employment of any employee ...under conditions
22 of labor prohibited by the order is unlawful."

23 43. California Labor Code section 1198 and the applicable Industrial Welfare
24 Commission Wage Order provide that it is unlawful to employ persons without compensating them
25 at a rate of pay either time and one-half or two-times that person's regular rate of pay, depending on
26 the number of hours worked by the person on a daily or weekly basis.
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1 44. Specifically, the applicable IWC Wage Order provides that Defendants were required
2 to pay Plaintiff, when working more than eight (8) hours in a day or more than forty (40) hours in a
3 workweek, at the rate of time-and one-half for all hours worked in excess of eight (8) hours in a day
4 or more than forty (40) hours in a workweek.

5 45. The applicable IWC Wage Order further provides that Defendants were required to
6 pay Plaintiff, when working more than twelve (12) hours in a day, overtime compensation at a rate
7 of two (2) times their regular rate of pay.

8 46. California Labor Code section 510 codifies the right to overtime compensation at
9 one-and one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day
10 or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
11 to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12)
12 hours in a day or in excess of eight (8) hours in a day on the seventh day.

13 47. During the relevant time period, Plaintiff worked in excess of eight (8) hours in a day,
14 in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week and was
15 therefore entitled to an overtime multiplier for some of his work.

16 48. Defendants failed to pay Plaintiff an overtime multiplier for any hours worked.

17 49. In the course of engaging in these unlawful practices, Defendants willfully failed to
18 keep accurate records of all hours worked by, compensation paid to, and expenses incurred by
19 Plaintiff.

20 50. Defendants violated the law, in relevant part, by failing to compensate Plaintiff for
21 overtime wages as required by California Labor Code §§ 510, 1198; 8 C.C.R. § 11040; and the
22 applicable IWC Wage Order. Defendants have acted neither in good faith nor with reasonable
23 grounds to believe that its actions and omissions were not a violation of California law. Defendants'
24 unlawful conduct was willful because, among other reasons described herein, Defendants knew or
25 should have known that Plaintiff was misclassified as an independent contractor, that he was not
26 being paid for all overtime hours worked or under the control of Defendants in violation of
27 California law.

51. As a result of Defendants' violation of the California Labor Code and/or any applicable Wage Orders, Plaintiff has been damaged.

52. For at least three years preceding the filing of this Complaint, Plaintiff is entitled to recover unpaid overtime wages, in amounts to be proved at trial, plus liquidated damages in an amount equal to the unlawfully withheld wages plus interest, attorneys' fees, and costs pursuant to §§ 218.5, 1194, 1194.2.

53. Plaintiff is also entitled to penalties available pursuant to California Labor Code § 558.

54. Plaintiff requests all relief permitted by law.

SECOND COUNT

Failure to Pay Minimum Wages (Cal. Labor Code §§ 1194, 1197, 1197.1)

(Against All Defendants)

55. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

56. California Labor Code § 1197 provides that employers must pay at least the minimum hourly wage fixed by the Industrial Welfare Commission. The applicable IWC Wage Order provides that every employer shall pay to each employee not less than the applicable minimum wage for all hours worked, whether remuneration is measured by time, piece, commission, or otherwise.

57. California law prescribes that it is an automatic minimum wage violation when an employer fails to compensate an employee for each and every hour worked. Employees paid on piece rate must be separately compensated for non-piece work; averaging wages over the workweek to meet minimum wage obligations is not permitted under the California Labor Code. *See Gonzalez v. Downtown L.A. Motors*, 215 Cal. App. 4th 36, 49-50 (2014).

58. Defendants, by failing to pay Plaintiff at all during periods of his employment, failed to pay Plaintiff for all hours worked or under the control of Defendants. Such instances violate California Labor Code §§ 1194, 1197, 1197.1, and 1199.

59. Defendants have acted neither in good faith nor with reasonable grounds to believe that its actions and omissions were not a violation of California law. Defendants' unlawful conduct was willful because, among other reasons described herein, Defendants knew or should have known that Plaintiff was misclassified as an independent contractor, that he as not being paid for all time he worked or was under control of Defendants.

60. As a result of Defendants' violation of the California Labor Code and/or any applicable Wage Orders, Plaintiff has been damaged.

61. For at least three years preceding the filing of this Complaint, Plaintiff is entitled to recover unpaid straight time wages, in amounts to be proved at trial, plus liquidated damages in an amount equal to the unlawfully withheld wages plus interest, attorneys' fees, and costs pursuant to §§ 1194, 1194.2, and 1197.1.

62. Plaintiff is also entitled to penalties available pursuant to California Labor Code § 558.

63. Plaintiff requests all relief permitted by law.

THIRD COUNT

Failure to Provide Meal Periods (Cal. Labor Code §§ 226.7, 512)

(Against All Defendants)

64. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

65. California Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order provide that it is unlawful to employ persons for a period of more than five hours without one uninterrupted, duty-free meal period of not less than 30 minutes and a second uninterrupted, duty-free meal period of not less than 30 minutes if the employee works ten hours.

66. If the employer fails to provide the required meal period to the employee, the employer is required to pay the employee an additional hour of pay at the employee's regular rate of compensation. Cal. Labor Code §§ 226.7; 8 C.C.R. 11040(11).

67. Defendants failed to provide Plaintiff the required meal period. Plaintiff's work required him to work long hours, and as a result, on many occasions, was unable to take his required meal period.

68. Defendants failed to pay Plaintiff the additional hour of pay at the employee's regular rate of compensation as a penalty for its failure to provide the required meal period.

69. Defendants failure to provide legally compliant meal periods is willful, in that it acted neither in good faith nor with reasonable grounds to believe that its actions and omissions were not a violation of California law.

70. As a result of Defendants violation of the California Labor Code and applicable Wage Orders, Plaintiff has been damaged.

71. Plaintiff is entitled to the unpaid balance of wages owed and penalties according to California Labor Code §§ 226, 226.7, including penalties available pursuant to California Labor Code § 558.

72. Plaintiff requests all relief permitted by law.

FOURTH COUNT

Failure to Provide Rest Periods (Cal. Labor Code §§ 226.7)

(Against All Defendants)

73. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

74. California Labor Code § 226.7 and the applicable IWC Wage Order require employers to allow employees to take paid rest periods, in the middle of the work period, the length of which is set at ten minutes of net rest for every four hours of work (“or major fraction thereof”).

75. If the employer fails to provide the mandated rest period, the employer is required to pay the employee an additional hour of pay at the employee's regular rate of compensation for each day that the rest period is not provided. Cal. Code Reg. Tit. 8, Sec. 11040(12); Cal. Labor Code § 226.7.

76. Defendants failed to provide Plaintiff the required rest period.

77. Defendants failed to pay Plaintiff the additional hour of pay at the employee's regular rate of compensation as a penalty for its failure to provide the required rest period.

78. Plaintiff is entitled to recover rest period compensation under the applicable Wage Order, CCR 11040 (12), for at least the three years preceding the filing of this Complaint.

79. Plaintiff is also entitled to seek and recover reasonable attorneys' fees and costs pursuant to §§ 218.5 and 1194, and penalties pursuant to California Labor Code § 558.

80. Defendants failure to provide legally compliant rest breaks is willful, in that it acted neither in good faith nor with reasonable grounds to believe that its actions and omissions were not a violation of California law.

81. As a result of Defendants' violation of the California Labor Code and applicable Wage Orders, Plaintiff has been damaged.

82. Plaintiff requests relief as described below and as permitted by law.

FIFTH COUNT

Failure to Reimburse Necessary Business Expenses (Cal. Labor Code §§ 2802, 226.8)

(Against All Defendants)

83. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

84. Under California Labor Code § 2802, Defendants are required to indemnify Plaintiff for costs necessarily incurred as a direct consequence of the discharge of their duties as Defendants' employee.

85. Defendants require Plaintiff to provide—without reimbursement and including but not limited to—cell phone service, horse riding equipment, and other items for the purposes of performing work on behalf of Defendants’ business and for Defendants’ benefit. Defendant’s failure to indemnify Plaintiff for these expenses and losses violates California Labor Code §§ 2802, 226.8(2).

86. Defendants failed to indemnify or reimburse Plaintiff for actual, necessary expenses Plaintiff incurred in discharging his duties for Defendants.

87. As a direct and proximate cause of Defendants' actions, Plaintiff has suffered damages.

88. Plaintiff is entitled to reimbursement of necessary expenditures and losses, including reasonable costs and attorney's fees, plus interest from the date the losses were incurred for at least the three years preceding the filing of this Complaint.

89. Plaintiff is also entitled to penalties available pursuant to California Labor Code § 558.

90. Plaintiff requests relief as described below and as permitted by law.

SIXTH COUNT

Failure to Pay Wages Due on Discharge, Layoff, or Resignation (Cal. Labor Code §§ 201, 203, 204)

(Against All Defendants)

91. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

92. Under California Labor Code § 201 (discharge or lay-off), Plaintiff was a former employee of Defendants and is entitled to timely payment of all wages earned and unpaid, immediately upon termination (discharge).

93. Plaintiff was constructively terminated by Defendants.

94. Defendants' failure to pay Plaintiff for every hour worked, the minimum wage, proper overtime, in addition to unreimbursed expenses, means that Defendants also fail to make timely payment of the wages Plaintiff earned on regular paydays, in violation of California Labor Code § 204, and timely payment of the wages Plaintiff earned when they stop working for Defendants due to discharge, layoff or resignation, in violation of California Labor Code §§ 201, 202, and 203.

95. Defendant willfully refused to pay Plaintiff all wages earned and unpaid at the time of his termination in violation of its obligations under Labor Code § 201, and continues to refuse to pay Plaintiff all wages earned, including regular wages and overtime compensation.

96. Defendants' compensation system clearly violates California's Labor Law such that any belief by Defendants that wages were not owed to Plaintiff would be objectively unreasonable and in bad faith. Despite the ability to make such payment, Defendants maintained customs, policies, practices, procedures, and routines incompatible with the requirements of California Labor Code.

97. As a direct and proximate cause of Defendants actions, Plaintiff has suffered damages.

98. Plaintiff is entitled to restitution and statutory penalties (continuation wages) pursuant to California Labor Code § 203, prejudgment interest on unpaid and continuation wages pursuant to California Labor Code § 218.6 and/or California Civil Code § 3287(a), and penalties available pursuant to California Labor Code § 558.

99. Plaintiff requests relief as described below and as permitted by law.

SEVENTH COUNT

Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

(Against All Defendants)

100. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

101. California’s Business and Professions Code § 17200, et seq. prohibits acts of unfair competition, which includes any “unlawful business act or practice.”

102. The policies, acts, and practices described in this Complaint were and are an unlawful business act or practice because Defendants' (1) failure to pay wages due, (2) failure to pay overtime wages at the lawful rate, (3) failure to provide meal and rest periods as required by law, (4) failure to provide accurate and timely wage statements and (5) failure to reimburse business expenses, including but not limited to California Labor Code §§ 201, 202, 203, 210, 226.7, 226.8, 510, 512, 558, 1174, 1194, 1197, 2802 and other provisions of California common and/or statutory law. Plaintiff reserves the right to allege additional statutory and common law violations by Defendants.

1 103. These practices were and are unfair and resulted in injury to Plaintiff and the general
2 public in that Defendants' unlawful acts result in the loss to Plaintiff of wages he is rightfully owed
3 and harm to competition in the State of California thereby decreasing consumer choice.

4 104. The policies, acts, and practices described in this Complaint were and are an unlawful
5 business act or practice because any justification for Defendants' illegal and wrongful conduct were
6 and are vastly outweighed by the harm such conduct caused to Plaintiff and the members of the
7 general public.

8 105. As a direct and proximate result of Defendants' unfair business practices, Defendants
9 have reaped unfair benefits and illegal profits to which they are not rightfully entitled that rightfully
10 belongs to Plaintiff, and an unfair competitive advantage through retaining money that is due its
11 employees pursuant to state law, all at the expense of Plaintiff and members of the public.

12 106. Defendants' unlawful business practices are likely to continue.

13 107. Plaintiff is entitled to seek preliminary and permanent injunctive relief, including but
14 not limited to orders that Defendants:

- 15 a. Account for and restore to Plaintiff the compensation unlawfully withheld
16 from him for the four years preceding the filing of this Complaint;
- 17 b. Cease its unlawful practice of misclassifying trainers as independent
18 contractors and thus unlawfully denying them wages to which they are
19 entitled under the law;
- 20 c. Disgorge all illegally obtained monies from failing to pay taxes, state
21 disability insurance premiums, and unemployment taxes obtained by way of
22 Defendants' violation of California Business and Professions Code § 17200,
23 et seq., for the four years preceding the filing of this Complaint; and
- 24 d. All additional orders necessary under California Business and Professions
25 Code § 17203.

26 108. Plaintiff requests relief as described below and as permitted by law.
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1 **EIGHTH COUNT**

2 **Wrongful Termination**

3 **(Against All Defendants)**

4 109. Plaintiff re-alleges and incorporates by reference each and every allegation of the
5 preceding paragraphs as though fully set forth herein.

6 110. Plaintiff was employed by Defendant. Defendant, through its owners, directors, and
7 managing agents intentionally created or knowingly permitted working conditions to exist that were
8 so intolerable that a reasonable person in Plaintiff's position would have no reasonable alternative
9 except to resign. Plaintiff resigned because of the working conditions.

10 111. Defendant's constructive discharge of Plaintiff's employment violated the public
11 policies stated in California's Fair Employment and Housing Act.

12 112. As a direct and proximate result, Plaintiff was harmed; he has been humiliated,
13 suffered emotional pain and distress, mental anguish, loss of enjoyment of life and economic
14 damages.

15 113. Plaintiff seeks compensatory damages in an amount to be proven at trial, but in an
16 amount no less than the jurisdictional minimum. Pursuant to Civil Code § 3294, Plaintiff seeks
17 exemplary and punitive damages against Defendant for its' intentional malicious, oppressive,
18 fraudulent conduct in disregard of Plaintiff's rights.

19 **NINTH COUNT**

20 **Private Attorneys General Act**

21 *(Violation of Cal. Labor Code §§ 201-204, 223, 226, 226.7, 226.8, 512, 558, 1174, 1197, 2802 and*
22 *2810.3; penalties pursuant to 210, 216, 225.5, 226.3, 226.6, 226.8, 558, 1174.5, 1199, 2699)*

23 **(Against All Defendants)**

24 114. Plaintiff re-alleges and incorporates by reference each and every allegation of the
25 preceding paragraphs as though fully set forth herein.

26 115. On or about October 8, 2020, Plaintiff requested in writing his personnel file, wage
27 statements, and any documents signed in the course of his employment, documents employers are
28 required to provide under Cal. Lab. Code §§ 1198.5, 432, and 226.

1 116. Defendants failed to provide any records in response within 30 days in violation of
2 Cal. Lab. Code §§ 1198.5, 432, and 226.

3 117. Plaintiff, individually and on behalf of other Aggrieved Employees and the general
4 public, allege that on or about November 13, 2020, written notice was provided to the Labor and
5 Workforce Development Agency (“LWDA”) and FRC of the specific violations of the California
6 Labor Code that FRC has violated and continues to violate. An amended notice was provided to the
7 LWDA and FRC on or about November 16, 2020.

8 118. No response was provided from the LWDA to Plaintiff’s November 13, 2020 or
9 November 16, 2020 letters.

10 119. Plaintiff therefore has exhausted all administrative procedures required of him under
11 Labor Code §§ 2698, 2699 and 2699.3, and as a result, is justified as a matter of right in bringing
12 forward this cause of action.

13 120. As a result of the acts alleged above, as well as FRC’s failure to provide Plaintiff and
14 Aggrieved Employees with any wage statements, thus failing to comply with Cal. Lab. Code § 226,
15 Plaintiff and Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 because
16 FRC’s violations of numerous provisions of the California Labor Code, as alleged above.

17 121. In addition to the acts alleged above, Plaintiff further alleges that, under California
18 Labor Code § 226.8, it is unlawful for a defendant to willfully misclassify an employee as
19 independent contractor, or to charge him a fee or make deductions from his compensation for any
20 purpose, including for goods, materials, repairs, equipment maintenance, fines arising from his
21 employment.

22 122. FRC willfully violated its obligations under California law, including those under
23 California Labor Code § 226.8, by voluntarily and knowingly misclassifying Plaintiff and Aggrieved
24 Employees as independent contractors in a concerted effort to intentionally deprive Plaintiff and the
25 Aggrieved Employees of wages they were owed and to unjustly retain such monies for itself.

26 123. FRC has engaged in a pattern and practice of willfully misclassifying Aggrieved
27 Employees including its trainers as independent contractors, including Plaintiff.
28

124. FRC also willfully failed to make or maintain accurate records of all hours worked by, compensation paid to, expenses incurred by, and other payroll records related to Plaintiff and Aggrieved Employees in violation of California Labor Code § 1174 and 1174.5.

125. FRC engaged in a pattern and practice of despicable conduct in perpetrating the above-described employment scheme, which subjected Plaintiff and other Aggrieved Employees to unjust hardships in conscious disregard of their rights.

126. The State of California has a strong public policy in preventing the willful misclassifications of workers as independent contractors rather than employees. This public policy includes, among other things, requiring employers to pay their fair share of payroll taxes, provide workers with required protections, and compete fairly with other businesses who choose not to evade their responsibilities under the law.

127. In perpetrating its unlawful employment scheme, FRC intentionally concealed the true nature of the employment relationship from Plaintiff and other Aggrieved Employees.

128. FRC consciously disregarded the rights of its workers by choosing to deny them the rights and benefits afforded to acknowledged employees so that FRC could advance its own interests.

129. In perpetrating its unlawful employment scheme, FRC deceived Plaintiff and other Aggrieved Employees about the true nature of the employment relationship.

130. As a direct and proximate result, Plaintiff and Aggrieved Employees have suffered damages.

131. Pursuant to California Labor Code § 2699, Plaintiff and Aggrieved Employees should be awarded twenty-five percent (25%) of all penalties due under California law, including attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

- A. Enter judgment for Plaintiff individually as to the violations alleged herein;
- B. Award general and compensatory damages;

1 C. Award damages and/or penalties for unpaid wages and unpaid overtime pursuant to
2 California Labor Code §§ 1194, 1197, 1197.1, 204, 223, 226.7, and 512.

3 D. Award damages for deductions pursuant to California Labor Code §221;

4 E. Award damages and/or penalties pursuant to California Labor Code §§ 203(a),
5 226(e), and other provisions;

6 F. Award damages for unreimbursed business expenses as permitted under California
7 Labor Code § 2802 and the applicable Wage Order;

8 G. Award damages and/or penalties for unpaid wages under California Labor Code §
9 201 and 203.

10 H. Issue a permanent injunction pursuant to California Business & Professions Code §
11 17203 restraining and enjoining Defendants from continuing the unfair practices set forth above;

12 I. Award restitution under Business & Professions Code § 17203;

13 J. Impose penalties and amounts provided in California Labor Code §§ 210, 216, 225.5,
14 226.3, 226.6, 226.8, 558, 1174.5, 1199, 2699 and other provisions;

15 K. Award punitive damages against Defendants for its conduct as described above;

16 L. Award liquidated damages under California Labor Code § 1194.2;

17 M. Award exemplary damages under California Civil Code § 3294;

18 N. Award pre-judgment interest;

19 O. Award reasonable attorneys' fees under the California Labor Code;

20 P. Award costs of suit under the California Labor Code; and

21 Q. Grant any further relief that the Court may deem just and equitable.

22
23 **JURY TRIAL DEMAND**

24 Plaintiff demands a trial by jury for all of the claims asserted in this Complaint so triable.
25

26
27 DATED: March 8, 2021

Respectfully submitted,

1 FINKELSTEIN & KRINSK LLP

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