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7 Attorneys for Plaintiff,  
SIMONETTE VILLENA  
8 (Additional Counsel on Following Page)

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF SAN DIEGO**  
11 **(UNLIMITED JURISDICTION)**

12 SIMONETTE VILLENA, on behalf of  
herself, and as an “aggrieved employee”  
13 on behalf of other “aggrieved employees”  
under the Labor Code Private Attorneys  
14 General Act of 2004,

15 *Plaintiffs,*

16 vs.

17 KNIGHTS KEARNY VILLA, INC., a  
18 California corporation dba EXPOSE; and  
19 DOES 1-50, inclusive,

20 *Defendants.*  
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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**05/13/2021** at 11:32:00 AM

Clerk of the Superior Court  
By Keira McCray, Deputy Clerk

Case No.: 37-2021-00020246-CU-OE-CTL

**FIRST AMENDED COMPLAINT FOR  
VIOLATIONS OF THE LABOR CODE AND  
CIVIL PENALTIES UNDER THE LABOR  
CODE PRIVATE ATTORNEYS GENERAL  
ACT OF 2004, LABOR CODE §§ 2698, ET  
SEQ.**

**JURY TRIAL DEMANDED**



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1 Plaintiff SIMONETTE VILLENA (hereafter “Plaintiff”), on behalf of herself, the State  
2 of California, and other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action against Defendants KNIGHTS  
5 KEARNY VILLA, INC. dba EXPOSE, and DOES 1-50 (collectively “Defendants”) for alleged  
6 violations of the California Labor Code and Industrial Welfare Commission Order No. 5-2001  
7 (hereafter “the Wage Order”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to  
9 her, the State of California, and all individuals Defendants employed or contracted with in  
10 California as employees paid by commission, piece rate employees, or independent contractors,  
11 including exotic dancers and workers in comparable positions (“the Aggrieved Employees”), for  
12 civil penalties and other related relief. These claims are based on Defendants’ alleged failures to  
13 (1) properly classify all Aggrieved Employees as employees instead of independent contractors,  
14 (2) pay all wages for all hours worked at the correct rates of pay, (3) provide all meal and rest  
15 periods, (4) separately compensate the Aggrieved Employees for rest and recovery time, (5)  
16 provide accurate written wage statements, and (6) timely pay final wages upon termination of  
17 employment. Defendants also required financial patronage from the Aggrieved Employees to  
18 allow them to work. Accordingly, Plaintiff now seeks to recover civil penalties and related relief  
19 through this representative action.

20 **II. JURISDICTION**

21 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff  
22 and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in controversy.

23 4. There is no basis for federal question subject matter jurisdiction in this case.  
24 Specifically, Plaintiff asserts claims on behalf of herself, the State of California, and Aggrieved  
25 Employees that solely arise under California law, rather than federal law.

26 5. There is also no basis for federal diversity jurisdiction in this case.

27 6. Venue is proper in San Diego County pursuant to California Code of Civil  
28 Procedure § 395(a) and § 395.5 in that liability arose in San Diego County because at least some



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1 of the transactions that are the subject matter of this Complaint occurred therein and/or because  
2 each defendant is found, maintains offices, transacts business, and/or has an agent therein.

### 3 III. PARTIES

4 7. Plaintiff SIMONETTE VILLENA is a resident of California. Defendants  
5 contracted with Plaintiff to perform various services, including exotic dancing, from about  
6 November 12, 2019 until approximately March of 2020 when Plaintiff's employment ended. At  
7 all relevant times, Plaintiff was an "employee" within the meaning of Title 8 California Code of  
8 Regulations Section 11050 and an "aggrieved employee" within the meaning of Labor Code  
9 Section 2699(c)".

10 8. Defendant KNIGHTS KEARNY VILLA, INC. dba EXPOSE is a corporation  
11 organized and existing under the laws of California and therefore a citizen of California based on  
12 Plaintiff's information and belief. This Defendant does business as Expose.

13 9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of  
14 participation in the conduct alleged herein, of the Defendants sued as DOES 1-50, inclusive, but  
15 is informed and believes and thereon alleges that said Defendants are legally responsible for the  
16 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.  
17 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants  
18 when ascertained.

19 10. Plaintiff is informed and believes and thereon alleges that, at all relevant times  
20 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the  
21 remaining Defendants, and in doing the things hereinafter alleged were acting within the course  
22 and scope of such agency or employment and with the approval and ratification of each of the  
23 other Defendants.

24 11. At all relevant times, in perpetrating the acts and omissions alleged herein,  
25 Defendants, and each of them, acted pursuant to and in furtherance of a policy and/or practice, or  
26 lack thereof, which resulted in Defendants not paying Plaintiff and other Aggrieved Employees  
27 in accordance with applicable law as alleged herein.

28 12. Plaintiff is informed and believes and thereon alleges that each and every one of



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1 the acts and omissions alleged herein was performed by and/or attributable to all Defendants, each  
2 acting as agents, employees, and/or under the direction and control of each of the other  
3 Defendants, and that said acts and failures to act were within the course and scope of said agency,  
4 employment, and/or direction and control.

5 13. **THE AGGRIEVED EMPLOYEES:** The “Aggrieved Employees” are all  
6 individuals Defendants employed or contracted with in California as employees paid hourly, by  
7 commission, piece rate employees, or independent contractors, including exotic dancers, and  
8 workers in comparable positions, during the period of February 19, 2020 to the present (“the  
9 PAGA Period”).

10 14. Plaintiff is informed and believes and thereon alleges that at all relevant times  
11 herein, all Defendants were the agents, employees and/or servants, masters or employers of the  
12 remaining defendants, and in doing the things hereinafter alleged, were acting within the course  
13 and scope of such agency or employment, and with the approval and ratification of each of the  
14 other Defendants.

15 15. At all relevant times, in perpetrating the acts and omissions alleged herein,  
16 Defendants, and each of them, acted pursuant to and in furtherance of a policy and/or practice, or  
17 lack thereof, which resulted in Defendants not paying Plaintiff and other Aggrieved Employees  
18 in accordance with applicable California labor laws as alleged herein.

#### 19 **IV. FACTUAL ALLEGATIONS**

20 16. At all relevant times, Plaintiff and the Aggrieved Employees have been employees  
21 of Defendants and entitled to the benefits and protections of California Labor Code sections 510,  
22 1194, 1197, 1198, and the Wage Order.

23 17. At all relevant times, Defendants directed and controlled Plaintiff and the  
24 Aggrieved Employees in all aspects of their work performance. Defendants required Plaintiff and  
25 the Aggrieved Employees to perform exotic dancing on stage. Defendants required Plaintiff and  
26 the Aggrieved Employees to arrive at work at fixed times. Defendants required Plaintiff and the  
27 Aggrieved Employees to perform private exotic dances for Defendants’ customers. Defendants  
28 fixed the price at \$20 for each said dance and \$100 for each private “VIP” dance without input



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1 from Plaintiff or the Aggrieved Employees. Defendants did not allow Plaintiff and the Aggrieved  
2 Employees to charge more or less for said dances. For the stage dances, Defendants required that  
3 Plaintiff and the Aggrieved Employees collect the Dance Fees from patrons and keep them in  
4 “Dance Revenue Boxes,” which were issued and controlled by Defendants’ management. For the  
5 private VIP dances, Defendants’ customers paid said price directly to Defendants. Defendants  
6 decided that they would retain 30% of all Dance Revenue attributable to each dancer per shift. At  
7 the end of each shift, Defendants management would calculate each dancer’s total “Dance  
8 Revenue”, remove its share of the Dance Revenue, and turn over the balance to each dancer as  
9 their wages for the given shift. As such, Defendants compensated Plaintiff and the Aggrieved  
10 Employees with only a percentage of the “Dance Revenue” from their performances. Plaintiff and  
11 the Aggrieved Employees did not receive any other compensation for their work for Defendants.

12 18. Additionally, Defendants operate as an adult entertainment establishment and the  
13 work Plaintiff and the Aggrieved Employees performed was wholly within Defendants’ usual  
14 course of business of exotic dancing and adult entertainment. Defendants retained Plaintiff and  
15 the Aggrieved Employees to perform exotic dances, privately and on stage, for Defendants’  
16 patrons, at worksites that Defendants designated such as Expose. Defendants knew or should have  
17 known their actions of misclassifying employees as independent contractors violated California  
18 law.

19 19. At all relevant times, Defendants required expected Plaintiff and the Aggrieved  
20 Employees to remain inside Defendants’ establishment in San Diego throughout their work shifts.  
21 Defendants also interrupted, delayed, or shortened Plaintiff’s and the Aggrieved Employees’ rest  
22 and meal periods so that they did not receive ten-minute paid rest periods or thirty-minute meal  
23 periods free of duty. Defendants only allowed payments to Plaintiff and the Aggrieved Employees  
24 for work periods, not periods of rest and recovery.

25 20. At all relevant times, Defendants demanded monetary payments from Plaintiff and  
26 the Aggrieved Employees to work a shift within the establishment. In essence, Defendants  
27 required Plaintiff and the Aggrieved Employees to patronize them. As a result of these payments  
28 to Defendants, Plaintiff and the Aggrieved Employees at times earned less than the California



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1 minimum hourly wage during their shifts.

2 21. At all relevant times, Defendants did not record the start and stop times of the daily  
3 work periods of Plaintiff and the Aggrieved Employees, nor did they record the times meal  
4 periods began and ended. Furthermore, Defendants did not issue itemized wages statements to  
5 Plaintiff and the Aggrieved Employees.

6 22. At all relevant times, Plaintiff and the Aggrieved Employees worked for  
7 Defendants in excess of 40 hours per week and 8 hours per day. Plaintiff and the Aggrieved  
8 Employees worked for Defendants in excess of 12 hours per day and all 7 days in the same  
9 workweek. In spite of this, Defendants did not pay any overtime or doubletime premium rates to  
10 Plaintiff and the Aggrieved Employees for any such overtime and doubletime hours.

11 23. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'  
12 unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

- 13 A. Misclassified as independent contractors;
- 14 B. Not paid for all hours worked at the correct rates of pay, including  
15 minimum, overtime, and doubletime hours
- 16 C. Not provided with all rest breaks and timely meal periods;
- 17 D. Not paid one hour's pay for each workday in which Defendants failed to  
18 provide them with one or more timely rest periods;
- 19 E. Not separately compensated for rest and recovery periods and  
20 nonproductive work time;
- 21 F. Not paid one hour's pay for each workday in which Defendants failed to  
22 provide them with one or more timely meal periods;
- 23 G. Required to patronize Defendants to work a shift within the establishment;
- 24 H. Not provided with accurate and complete wage statements; and
- 25 I. Not timely paid all earned and unpaid wages during their employment with  
26 Defendants and at the time such employment ended.

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1 Defendants. Defendants engaged, suffered, and permitted Plaintiff and the Aggrieved Employees  
2 to work. Defendants were clearly aware that Plaintiff and the other Aggrieved Employees worked  
3 for them and had the power to prevent Plaintiff and the Aggrieved Employees from working.  
4 Defendants also exercised control over Plaintiff and the other Aggrieved Employees' wages,  
5 hours, and working conditions. Further, Defendants had the right to control and exercised such  
6 control over the manner in which Plaintiff and the other Aggrieved Employees performed their  
7 work for Defendants. Plaintiff and the Aggrieved Employees worked at Defendants' direction,  
8 and their opportunity for profit or loss did not depend in any way upon their skills. Plaintiff and  
9 the other Aggrieved Employees required no special skill to render their services for Defendants.  
10 The services they rendered were at all times an integral part of Defendants' business. The  
11 relationship between Plaintiff and the other Aggrieved Employees, on one hand, and Defendants,  
12 on the other, was terminable at will without cause. Despite these circumstances, Defendants  
13 willfully misclassified Plaintiff and the other Aggrieved Employees as independent contractors.  
14 Defendants knew or should have known their actions of misclassifying employees as independent  
15 contractors violated California law.

16 28. Defendants misclassified Plaintiff and the Aggrieved Employees as independent  
17 contractors and engaged in a pattern and/or practice of so doing. Through their misclassification  
18 of Plaintiff and the other Aggrieved Employees, Defendants have engaged in a pattern and  
19 practice of willful misclassification of their employees as independent contractors for their own  
20 financial benefit. Each person or entity referenced above collectively as Defendants advised the  
21 other to treat Plaintiff and the Aggrieved Employees at issue in this case as independent  
22 contractors.

23 **B. FAILURE TO PAY ALL WAGES FOR ALL HOURS WORKED AT THE**  
24 **CORRECT RATES OF PAY**

25 29. Section 2 of the Wage Order defines "hours worked" as "the time during which an  
26 employee is subject to the control of an employer, and includes all the time the employee is  
27 suffered or permitted to work, whether or not required to do so." As the California Supreme Court  
28 has explained, this definition is disjunctive, meaning time can be an "hour worked" if either (a)  
the employee is subject to the employer's control, or (b) the employer suffers or permits the



1 employee to work during that time, whether or not the employee is required to do so. *Mendiola*  
2 *v. CPS Sec. Solutions, Inc.* (2015) 60 Cal. 4th 833, 838 (citing *Morillion v. Royal Packing Co.*  
3 (2000) 22 Cal.4th 575, 582-83).

4 30. In relevant part, Section 3 of the Wage Order states,

5 (A) Daily Overtime - General Provisions

6 (1) The following overtime provisions are applicable to  
7 employees 18 years of age or over and to employees 16 or 17  
8 years of age who are not required by law to attend school and  
9 are not otherwise prohibited by law from engaging in the subject  
10 work. Such employees shall not be employed more than eight  
11 (8) hours in any workday or more than 40 hours in any  
12 workweek unless the employee receives one and one-half ( $1\frac{1}{2}$ )  
13 times such employee's regular rate of pay for all hours worked  
14 over 40 hours in the workweek. Eight (8) hours of labor  
constitutes a day's work. Employment beyond eight (8) hours in  
any workday or more than six (6) days in any workweek is  
permissible provided the employee is compensated for such  
overtime at not less than:

15 (a) One and one-half ( $1\frac{1}{2}$ ) times the employee's regular rate of  
16 pay for all hours worked in excess of eight (8) hours up to and  
17 including 12 hours in any workday, and for the first eight (8)  
18 hours worked on the seventh (7th) consecutive day of work in a  
workweek; and

19 (b) Double the employee's regular rate of pay for all hours worked  
20 in excess of 12 hours in any workday and for all hours worked in  
21 excess of eight (8) hours on the seventh (7<sup>th</sup>) consecutive day of  
work in a workweek.

22 31. Section 4 of the Wage Order requires an employer to pay non-exempt employees  
23 at least the minimum wage set forth therein for all hours worked, which consist of all hours that  
24 an employer has actual or constructive knowledge that employees are working.

25 32. Labor Code section 226.2 states:

26 (a) For employees compensated on a piece-rate basis during a pay period, the  
27 following shall apply for that pay period:

28 (1) Employees shall be compensated for rest and recovery periods and other



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1 nonproductive time separate from any piece-rate compensation.

2 ...

3 (3) (A) Employees shall be compensated for rest and recovery periods at a regular  
4 hourly rate that is no less than the higher of:

5 (i) An average hourly rate determined by dividing the total compensation for the  
6 workweek, exclusive of compensation for rest and recovery periods and any  
7 premium compensation for overtime, by the total hours worked during the  
8 workweek, exclusive of rest and recovery periods.

8 (ii) The applicable minimum wage.

9 33. In relevant part, California Labor Code § 510 states,

10 Any work in excess of eight hours in one workday and any work in excess  
11 of 40 hours in any one workweek and the first eight hours worked on the  
12 seventh day of work in any one workweek shall be compensated at the rate  
13 of no less than one and one-half times the regular rate of pay for an  
14 employee. Any work in excess of 12 hours in one day shall be compensated  
15 at the rate of no less than twice the regular rate of pay for an employee. In  
16 addition, any work in excess of eight hours on any seventh day of a  
17 workweek shall be compensated at the rate of no less than twice the regular  
18 rate of pay of an employee.

16 34. Labor Code section 1194 invalidates any agreement between an employer and an  
17 employee to work for less than the minimum wage required under the applicable Wage Order.

18 35. Labor Code section 1197 makes it unlawful for an employer to pay an employee  
19 less than the minimum wage required under the applicable Wage Order for all hours worked  
20 during a payroll period.

21 36. Labor Code section 1198 makes it unlawful for an employer to employ an  
22 employee under conditions that violate the Wage Order.

23 37. In conjunction, these provisions of the Labor Code require employers to pay non-  
24 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours  
25 worked, including unrecorded hours when the employer knew or reasonably should have known  
26 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22  
27 Cal.4th 575, 585.)  
28



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1           38.     At all relevant times, Defendants required Plaintiff and the Aggrieved Employees  
2 to pay them at the beginning of each shift to allow Plaintiff and the Aggrieved Employees to  
3 work, retained 30% of all Dance Revenue that Plaintiff and the Aggrieved Employees collected  
4 from patrons for the dances they performed, and did not allow Plaintiff and the Aggrieved  
5 Employees to leave the premises during meal periods. Moreover, Defendants failed to separately  
6 pay Plaintiff and the Aggrieved Employees for rest and recovery periods and for nonproductive  
7 work time. Defendants only paid Plaintiff and the Aggrieved Employees a rate they set for dances.  
8 As such, Defendants failed to pay minimum, overtime and doubletime wages to Plaintiff and the  
9 Aggrieved Employees for all hours worked.

10           39.     Plaintiff is informed and believes that, at all relevant times, Defendants maintained  
11 a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate the  
12 Aggrieved Employees for all hours worked at the correct rate of pay as required by California  
13 law.

14     **C.     UNPROVIDED REST PERIODS**

15           40.     Labor Code § 1198 states,

16                     "The maximum hours of work and the standard conditions of labor fixed  
17 by the commission shall be the maximum hours of work and the standard  
18 conditions of labor for employees. The employment of any employee for  
19 longer hours than those fixed by the order or under conditions of labor  
prohibited by the order is unlawful."

20           41.     In relevant part, Section 12 of the Wage Order states:

21                     Rest Periods:

22                     (A)     Every employer shall authorize and permit all employees to  
23 take rest periods, which insofar as practicable shall be in the middle  
24 of each work period. The authorized rest period time shall be based  
25 on the total hours worked daily at the rate often (10) minutes net  
26 rest time per four (4) hours or major fraction thereof. However, a  
27 rest period need not be authorized for employees whose total daily  
28 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.

(B)     If an employer fails to provide an employee a rest period in



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1 accordance with the applicable provisions of this Order, the  
2 employer shall pay the employee one (1) hour of pay at the  
3 employee's regular rate of compensation for each work day that the  
4 rest period is not provided.

5 42. In addition, Labor Code Section 226.7 states

6 (b) An employer shall not require an employee to work during a meal  
7 or rest or recovery period mandated pursuant to an applicable statute, or  
8 applicable regulation, standard, or order of the Industrial Welfare  
9 Commission, the Occupational Safety and Health Standards Board, or the  
10 Division of Occupational Safety and Health.

11 (c) If an employer fails to provide an employee a meal or rest or  
12 recovery period in accordance with a state law, including, but not limited  
13 to, an applicable statute or applicable regulation, standard, or order of the  
14 Industrial Welfare Commission, the Occupational Safety and Health  
15 Standards Board, or the Division of Occupational Safety and Health, the  
16 employer shall pay the employee one additional hour of pay at the  
17 employee's regular rate of compensation for each workday that the meal or  
18 rest or recovery period is not provided.

19 43. Pursuant to the Labor Code and the Wage Order, Defendants were required to  
20 compensate Plaintiff and the Aggrieved Employees separately for paid rest periods of at least  
21 10 minutes for each four-hour period of work or major fraction thereof.

22 44. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees  
23 to work periods of over four continuous hours without a paid, continuous ten-minute rest break  
24 free of duties and restrictions. Defendants interrupted, delayed, or shortened Plaintiff's and the  
25 Aggrieved Employees' rest periods so that they did not receive ten-minute paid rest periods free  
26 of duty. Defendants also prohibited Plaintiff and the Aggrieved Employees from leaving the  
27 premises for rest breaks. Defendants only allowed payments to Plaintiff and the Aggrieved  
28 Employees for work periods, not periods of rest and recovery.

45. Plaintiff is informed and believes that, at relevant times within the applicable  
limitations period, Defendants have maintained a policy, practice, or a lack of a policy which  
resulted in Defendants not providing the Aggrieved Employees with additional wages for all rest  
breaks not provided to them as required by California Labor Code § 226.7.



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1 **D. UNPROVIDED MEAL PERIODS**

2 46. Labor Code § 1198 states,

3 “The maximum hours of work and the standard conditions of labor fixed  
4 by the commission shall be the maximum hours of work and the standard  
5 conditions of labor for employees. The employment of any employee for  
6 longer hours than those fixed by the order or under conditions of labor  
7 prohibited by the order is unlawful.”

8 47. In relevant part, Labor Code Section 512 states

9 “An employer may not employ an employee for a work period of more than  
10 five hours per day without providing the employee with a meal period of  
11 not less than 30 minutes, except that if the total work period per day of the  
12 employee is no more than six hours, the meal period may be waived by  
13 mutual consent of both the employer and employee. An employer may not  
14 employ an employee for a work period of more than 10 hours per day  
15 without providing the employee with a second meal period of not less than  
16 30 minutes, except that if the total hours worked is no more than 12 hours,  
17 the second meal period may be waived by mutual consent of the employer  
18 and the employee only if the first meal period was not waived.”

19 48. In relevant part, Section 11 of the Wage Order states:

20 Meal Periods:

21 (A) No employer shall employ any person for a work period of more  
22 than five (5) hours without a meal period of not less than 30  
23 minutes, except that when a work period of not more than six (6)  
24 hours will complete the day’s work the meal period may be waived  
25 by mutual consent of the employer and the employee...

26 (B) If an employer fails to provide an employee a meal period in  
27 accordance with the applicable provisions of this order, the  
28 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.

49. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the  
Aggrieved Employees were entitled to be provided with uninterrupted meal periods of at least 30  
minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512,  
they were also entitled to a second 30-minute meal period when they worked more than ten (10)  
hours in a workday.



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1           50. Defendants interrupted, delayed, or shortened Plaintiff's and the Aggrieved  
2 Employees' meal periods so that Plaintiff and the Aggrieved Employees did not receive 30-  
3 minute meal periods free of duty. Defendants also restricted the meal periods of Plaintiff and the  
4 Aggrieved Employees because they expected Plaintiff and the Aggrieved Employees to remain  
5 inside Defendants' establishment in San Diego for such meal periods.

6           51. Plaintiff is informed and believes and thereon alleges that, at relevant times within  
7 the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a  
8 policy which resulted in Defendants not providing the Aggrieved Employees with additional  
9 wages for all meal periods not provided to them as required by California Labor Code § 226.7.

10 **E. INCOMPLETE AND INACCURATE WAGE STATEMENTS**

11           52. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved  
12 Employees were entitled to receive, semimonthly or at the time of each payment of wages, an  
13 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable  
14 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at  
15 each hourly rate by the employee.

16           53. Pursuant to California Labor Code section 226(e), an employee is deemed to suffer  
17 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer  
18 injury if the employer fails to provide accurate and complete information as required by California  
19 Labor Code section 226(a) and the employee cannot "promptly and easily determine" from the  
20 wage statement alone one or more of the following:

21           A. The amount of the gross wages or net wages paid to the employee during  
22 the pay period or any of the other information required to be provided on the itemized wage  
23 statement pursuant to California Labor Code section 226(a);

24           B. Which deductions the employer made from gross wages to determine the  
25 net wages paid to the employee during the pay period;

26           C. The name and address of the employer and, if the employer is a farm labor  
27 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name  
28 and address of the legal entity that secured the services of the employer during the pay period;



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1 and

2 D. The name of the employee and only the last four digits of his or her social  
3 security number or an employee identification number other than a social security number.

4 54. “Promptly and easily determine,” as stated in California Labor Code section  
5 226(e), means a reasonable person would be able to readily ascertain the information without  
6 reference to other documents or information.

7 55. As alleged herein, as a result of Defendants’ willful misclassification of Plaintiff  
8 and the other Aggrieved Employees, Defendants failed to properly itemize in written wage  
9 statements for Plaintiff and the Aggrieved Employees their gross and net wages earned, total  
10 hours worked, hourly rate of pay, and corresponding number of hours worked at each hourly rate.

11 56. Defendants’ failure to provide Plaintiff and the other Aggrieved Employees with  
12 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and  
13 the other Aggrieved Employees with accurate wage statements but intentionally failed to provide  
14 them with itemized wage statements. That Defendants’ conduct was knowing and intentional is  
15 evident in that Defendants misclassified Plaintiff and the other Aggrieved Employees as  
16 independent contractors despite that Defendants exercised control over Plaintiff and the other  
17 Aggrieved Employees’ wages, hours, and working conditions. Moreover, Defendants did this  
18 knowing that the work Plaintiff and the other Aggrieved Employees performed was wholly within  
19 the scope of Defendants’ usual course of business of exotic dancing and adult entertainment.  
20 Defendants did this to circumvent California employment law to cheat Plaintiff and the other  
21 Aggrieved Employees out of the money they rightfully earned through their labor. Thus,  
22 Defendants’ conduct was knowing and intentional.

23 57. As a result of not being provided with wage statements by Defendants, Plaintiff  
24 and the other Aggrieved Employees have suffered injury. Their legal rights to receive accurate  
25 wage statements were violated and they were misled about the amount of wages they had actually  
26 earned and were owed. In addition, the absence of wage statements prevented immediate  
27 challenges to Defendants’ unlawful pay practices, has required discovery and mathematical  
28 computations to determine the amounts of wages owed, has caused difficulty and expense in



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1 attempting to reconstruct time and pay records, and/or has led to the submission of inaccurate  
2 information about wages to state and federal government agencies. Further, Plaintiff and the other  
3 Aggrieved Employees were not able to ascertain whether Defendants complied with their  
4 obligations under California Labor Code sections 226(a).

5 **F. UNTIMELY FINAL WAGES**

6 58. Labor Code § 201 provides that all earned and unpaid wages of an employee who  
7 is discharged are due and payable immediately at the time of discharge.

8 59. Labor Code § 202 provides that all earned and unpaid wages of an employee who  
9 quits after providing at least 72-hours notice before quitting are due and payable at the time of  
10 quitting and that all earned and unpaid wages of an employee who quits without providing at least  
11 72-hours notice before quitting are due and payable within 72 hours.

12 60. By failing to pay wages to Plaintiff and the Aggrieved Employees, Defendants  
13 failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or  
14 § 202.

15 **G. UNTIMELY WAGES DURING EMPLOYMENT**

16 61. Labor Code § 204 states

17 (a) All wages, other than those mentioned in Section 201, 201.3, 202,  
18 204.1, or 204.2, earned by any person in any employment are due  
19 and payable twice during each calendar month, on days designated  
20 in advance by the employer as the regular paydays. Labor  
21 performed between the 1st and 15th days, inclusive, of any calendar  
22 month shall be paid for between the 16th and the 26th day of the  
23 month during which the labor was performed, and labor performed  
24 between the 16th and the last day, inclusive, of any calendar month,  
25 shall be paid for between the 1st and 10th day of the following  
26 month. ...

27 (b) (1) Notwithstanding any other provision of this section, all  
28 wages earned for labor in excess of the normal work period shall  
be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of  
subdivision (a) of Section 226 relating to total hours worked by the  
employee, if hours worked in excess of the normal work period  
during the current pay period are itemized as corrections on the  
paystub for the next regular pay period. Any corrections set out in



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a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

62. Defendants failed to provide Plaintiff and the Aggrieved Employees all wages owed, including, but not limited to, all minimum, overtime and doubletime wages at the legal rates of pay for all minimum, overtime and doubletime hours worked. As a result, Defendants failed to pay Plaintiff and the Aggrieved Employees all wages within the time periods set by California Labor Code § 204.

**H. REQUIRING PATRONAGE**

63. In relevant part, California Labor Code § 450 states:

(A) No employer, or agent or officer thereof, or other person, may compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value.

64. At all relevant times during the applicable limitations period, Defendants required Plaintiff and other Aggrieved Employees to pay Defendants as a necessary condition of employment each work shift. As a result, Defendants required Plaintiff and other Aggrieved Employees to patronize Defendants in violation of California Labor Code § 450.

**I. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

65. Labor Code § 1174 states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees



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employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

66. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

67. Section 7 of Wage Order states,

(a) Every employer shall keep accurate information with respect to each employee including the following:

1. Full name, home address, occupation and social security number.
2. Birth date, if under 18 years, and designation as a minor.
3. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
4. Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
5. Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
6. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

68. Defendants willfully failed to maintain the records required by Labor Code § 1174 and the Wage Order. Defendants did not maintain payroll records of all hours worked by Plaintiff and the Aggrieved Employees and all wages earned at the correct rates.

**J. CIVIL PENALTIES SOUGHT**

69. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 450, 510, 512, 1174, 1194, 1197, and 1198.



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1           70.     California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on  
2 behalf of him or herself and other current or former employees, to bring a civil action to recover  
3 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

4           71.     Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved  
5 Employees are entitled to recover civil penalties for each of the Defendants' violations of  
6 California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 450, 510, 512, 1174,  
7 1194, 1197, and 1198 during the applicable limitations period in the following amounts:

8                 A.     For violations of California Labor Code § 204, one hundred dollars  
9 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars  
10 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts  
11 established by California Labor Code § 210).

12                B.     For violations of California Labor Code § 226(a), two hundred fifty dollars  
13 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)  
14 for each Aggrieved Employee for each subsequent violation (penalty amounts established by  
15 California Labor Code § 226.3).

16                C.     For violations of California Labor Code §§ 510 and 512, fifty dollars  
17 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for  
18 each Aggrieved Employee for each subsequent violation (penalty amounts established by  
19 California Labor Code § 558).

20                D.     For violations of California Labor Code § 226.8, twenty-five thousand  
21 dollars (\$25,000.00) for each aggrieved employee for each violation of California Labor Code  
22 section 226.8 as part of a pattern or practice in addition to any other penalties or fines permitted  
23 by law (penalties set by Labor Code section 226.8(c)); or alternatively, fifteen thousand dollars  
24 (\$15,000.00) for each aggrieved employee for each violation of California Labor Code section  
25 226.8 in addition to any other penalties or fines permitted by law (penalties set by Labor Code  
26 section 226.8(b)).

27                E.     For violations of California Labor Code § 1197, one hundred dollars  
28 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred



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1 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period  
2 (regardless of whether the initial violations were intentionally committed) (penalty amounts  
3 established by California Labor Code § 1197.1).

4 F. For violations of California Labor Code §§ 201, 202, 203, 226.2, 226.7,  
5 450, 1194, and 1198 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period  
6 for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay  
7 period for each subsequent violation (penalty amounts established by California Labor Code §  
8 2699(f)(2)).

9 G. For the violations of California Labor Code § 1174, \$500 for each  
10 Aggrieved Employee for each violation of California Labor Code § 1174 (penalty amounts  
11 established by California Labor Code § 1174.5).

12 **K. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

13 72. Plaintiff has complied with the procedures for bringing suit specified in California  
14 Labor Code § 2699.3. By letter dated February 19, 2021, Plaintiff gave written notice by certified  
15 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific  
16 provisions of the California Labor Code alleged to have been violated, including the facts and  
17 theories to support the alleged violations. A true and correct copy of Plaintiff’s notice to the  
18 LWDA dated February 19, 2021 is attached hereto as **Exhibit A**. The LWDA has not responded  
19 to Plaintiff’s letter.

20 73. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved  
21 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in  
22 connection with their claims for civil penalties.

23 **VI. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays for  
25 relief and judgment against Defendants as follows:

- 26 A. Civil penalties;  
27 B. Costs of suit; and  
28 C. Reasonable attorneys’ fees.



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**DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: May 12, 2021

By   
\_\_\_\_\_  
DAVID SPIVAK  
MARALLE MESSRELIAN  
Attorneys for Plaintiff, SIMONETTE  
VILLENNA, and the Aggrieved Employees



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# **EXHIBIT A**



SPIVAK LAW

**\*SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL\***

February 19, 2021

Attn: PAGA Administrator  
Labor and Workforce Development Agency  
Attn: PAGA Administrator  
<http://dir.tflaforms.net>  
*Via Electronic Submission*

RE: *Simonette Villena / Expose*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*, Simonette Villena (hereafter “Villena”) provides notice on behalf of herself and of all individuals currently and formerly employed or contracted with in California as employees paid hourly, by commission, piece rate employees, or independent contractors, including exotic dancers (hereafter “the Aggrieved Employees”) for Knights Kearny Villa, Inc., a California corporation d/b/a Expose, and Dino Palmiotto, an individual (hereafter, collectively “Expose”) of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 450, 510, 512, 558.1, 1174, 1194, 1197, 1198, and 2753.

At all relevant times, Expose has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Villena and the Aggrieved Employees are “employees” within the meaning of the Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), paragraph 2.F, and “aggrieved employees” within the meaning of California Labor Code § 2699(c).

### **Statement of Facts**

Villena began working for Expose in San Diego, California as a dancer on or about November 12, 2019. Expose contracted with Villena to perform various services, including exotic dancing, from this date when their relationship began to approximately March of 2020. Expose misclassified Villena and other Aggrieved Employees as independent contractors. Expose employed Villena as a non-exempt exotic dancer that Expose paid per each dance she performed during her work shifts. Villena continuously worked for Expose as a dancer until approximately March of 2020 when Expose ended her employment for objecting to sexual harassment by an Expose manager (subject of a complaint to the Department of Fair Employment and Housing).

At all relevant times, Villena and the Aggrieved Employees were employees of Expose. Expose directed and controlled Villena and the Aggrieved Employees in all aspects of their work performance. Expose required Villena and the Aggrieved Employees to perform exotic dancing on stage. Expose required Villena and the Aggrieved Employees to arrive for work at fixed times. Expose required Villena and the Aggrieved Employees to perform private exotic dances for Expose's customers. Expose fixed the "Dance Fees" at \$20 for each said dance and \$100 for each private "VIP" dance without input from Villena and the Aggrieved Employees. Expose did not allow Villena and the Aggrieved Employees to charge more or less for said dances. For the stage dances, Expose required that Villena and the Aggrieved Employees collect the Dance Fees from patrons and keep them in "Dance Revenue Boxes," which were issued and controlled by Expose's management. For the private VIP dances, Expose's customers paid said price directly to Expose. Expose decided that it would retain 30% of all Dance Revenue attributable to each dancer per shift. At the end of each shift, Expose management would calculate each dancer's total "Dance Revenue", remove its share of the Dance Revenue, and turn over the balance to each dancer as their wages for the given shift. As such, Expose compensated Villena and the Aggrieved Employees with only a percentage of the "Dance Revenue" from their performances. Villena and the Aggrieved Employees did not receive any other compensation for their work for Expose.

At all relevant times, Expose expected Villena and the Aggrieved Employees to remain inside Expose' establishment in San Diego throughout their work shifts. Expose also interrupted, delayed, or shortened their rest breaks and meal periods so that Villena and the Aggrieved Employees did not receive ten minute paid rest periods or 30 minute meal periods free of duty. Expose did not record the times meal periods began and ended.

At all relevant times, Expose required Villena and the Aggrieved Employees to work periods of over four continuous hours without a paid, continuous 10-minute rest break free of duties and restrictions. Expose only allowed payments to Villena and the Aggrieved Employees for work periods, not periods of rest and recovery.

Additionally, Expose demanded monetary payments from Villena and the Aggrieved Employees to work a shift within the establishment. In essence, Expose required Villena and the Aggrieved Employees to patronize Expose. As a result of these payments to Expose, Villena and the Aggrieved Employees at times earned less than the California minimum hourly wage during their shifts.

Villena and the Aggrieved Employees worked for Expose in excess of 40 hours per week and 8 hours per day. Villena and the Aggrieved Employees worked for Expose in excess of 12 hours per day and all 7 days in the same workweek. In spite of this, Expose did not pay an overtime or doubletime premium rates to Villena and the Aggrieved Employees for any such overtime and doubletime hours. Furthermore, Expose did not issue itemized wages statements to Villena and the Aggrieved Employees.

For the reasons herein, Villena alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and the Aggrieved Employees:

- a) Expose misclassified Villena and the Aggrieved Employees as independent contractors;
- b) Expose failed to authorize and permit Villena and the Aggrieved Employees to take rest periods;

- c) Expose failed to provide Villena and the Aggrieved Employees with all meal periods;
- d) Expose failed to compensate Villena and the Aggrieved Employees at one hour's pay for each work day with one or more unprovided rest breaks;
- e) Expose failed to separately compensate Villena and the Aggrieved Employees for rest and recovery time and for work other than the private dances they performed for Expose' patrons;
- f) Expose failed to compensate Villena and the Aggrieved Employees at one hour's pay for each work day with one or more unprovided meal periods;
- g) Expose failed to pay Villena and the Aggrieved Employees minimum wages for all hours worked;
- h) Expose required financial patronage from Villena and the Aggrieved Employees to allow them to work;
- i) Expose failed to pay Villena and the Aggrieved Employees one and one-half times the State minimum wage for all hours worked over eight hours in one workday, over 40 hours in one workweek, and/or up to eight hours on the seventh consecutive workday in a workweek;
- j) Expose failed to pay Villena and the Aggrieved Employees double the State minimum wage for all hours worked over twelve hours in one workday and/or over eight hours on the seventh consecutive workday in a workweek;
- k) Expose failed to provide Villena and the Aggrieved Employees with accurate wage statements; and
- l) Expose failed to timely pay Villena and the Aggrieved Employees all earned and unpaid wages during, and at the conclusion of, their employment with Expose.

Accordingly, Villena now seeks civil penalties on behalf of herself and the Aggrieved Employees based on Expose alleged violations of the California Labor Code and the Wage Order.

### **Wage Order 5**

Wage Order 5 applies to “all persons in the public housekeeping industry.” *Id.*, § 1. The phrase “public housekeeping industry” includes Expose’ night clubs/bars/cocktail lounges like those where Expose employed Villena and the other Aggrieved Employees. *Id.*, § 2(P)(1). At all relevant times during the applicable limitations period, Expose employed Villena as a non-exempt employee. Accordingly, Villena and the Aggrieved Employees are entitled to the protections of the Wage Order.

### **Willful Independent Contractor Misclassification** **(Lab. Code § 226.8)**

Labor Code section 226.8 states:

- (a) It is unlawful for any person or employer to engage in any of the following activities:
  - (1) Willful misclassification of an individual as an independent contractor.
  - (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.
- (b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has

engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.

- (c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

“Willful misclassification means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” (*Id.*, § (i)(4).)

At all relevant times, Villena and the other Aggrieved Employees were employees of Expose. Expose engaged, suffered, and permitted Villena and the Aggrieved Employees to work. Expose was clearly aware that Villena and the other Aggrieved Employees worked for it and had the power to prevent them from working. Expose also exercised control over Villena and the other Aggrieved Employees’ wages, hours, and working conditions. Further, Expose had the right to control and exercised such control over the manner in which Villena and the other Aggrieved Employees performed their work for Expose. They worked at Expose’s direction, and their opportunity for profit or loss did not depend in any way upon their skills. Villena and the other Aggrieved Employees required no special skill to render their services for Expose. The services they rendered were at all times wholly within Expose’s usual course of business of exotic dancing and adult entertainment. The relationship between Villena and the other Aggrieved Employees, on one hand, and Expose, on the other, was terminable at will without cause. Despite these circumstances, Expose willfully misclassified

Villena and the other Aggrieved Employees as independent contractors. It has engaged in a pattern and/or practice of doing so.

Accordingly, Villena seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

1. \$25,000.00 for each Aggrieved Employee for each violation of California Labor Code section 226.8 as part of a pattern or practice (based on Expose's pattern and/or practice of committing such violations) in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(c)); or alternatively,
2. \$15,000.00 for each Aggrieved Employee for each violation of California Labor Code section 226.8 in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(b)).

**Failure to Provide Rest Breaks and Meal Periods**  
**(Lab. Code §§ 226.7, 512, and 1198)**

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

- (A) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee

with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

- (B) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees.

In relevant part, Section 11 of the Wage Order states:

- (A) 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, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (B) 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 work day that the meal period is not provided.

In relevant part, Section 12 of the Wage Order states:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours 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 (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

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

Regarding timing of the first meal period, *Brinker* states “in the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break should fall on either side of the meal break.” *Brinker*, 53 Cal.4th at 1031-1032; *Godfrey v. Oakland Port Services Corp.* (2014) 230 Cal.App.4th 1267, 1275, reh’g denied (Dec. 1, 2014), review denied (Feb. 11, 2015); Dept. Industrial Relations, DLSE Opinion Letter No. 2001.09.17 (Sept. 17, 2001) at p. 4. (“As a general matter, the first rest period should come sometime before the meal break...”). This only makes sense based on the language of the meal period law. An employer must “employ” an employee before a meal period is due. An employer who requires an employee

to clock out for a meal period upon arrival for work has yet to “employ” the employee at all for the day.

Expose has intentionally and improperly failed to provide Villena and the Aggrieved Employees all rest breaks and/or meal periods, including, but not limited to, two 30-minute meal periods on workdays of over 10 hours. As a result, Expose violated California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Villena seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 226.7 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 226.7 occurred (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 512 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 512 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 1198 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1198 occurred (penalties set by California Labor Code § 2699(f)(2)).

**Failure to Pay Wages For All Hours Worked At The Correct Rates of Pay**  
**(Lab. Code §§ 510, 1194, 1197, and 1198)**

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” Labor Code § 1198

prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Section 4 of Wage Order states,

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, section 2(K) of the Wage Order states, “Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

Under California Labor Code § 510,

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half ( $1\frac{1}{2}$ ) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ( $1\frac{1}{2}$ ) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7<sup>th</sup>) consecutive day of work in a workweek; and
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7<sup>th</sup>) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth ( $1/40$ ) of the employee's weekly salary.

Because Expose required Villena and the Aggrieved Employees to pay it at the beginning of each shift to allow them to work, required them to return a portion of the Dance Revenues for the dances they performed, and because Expose did not allow Villena and the Aggrieved Employees to leave the premises during meal periods, Expose failed to pay minimum, overtime and doubletime wages to Villena and the Aggrieved Employees for all hours worked. Accordingly, Villena seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 510 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 510 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee per pay period in which initial violations of § 1194 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1194 occurred (penalties set by Labor Code § 2699(f)(2)).
3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages and liquidated damages (penalties set by California Labor Code section 1197.1); and
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

**Failure to Separately Compensate for Rest and Recovery Periods**  
**(Lab. Code § 226.2)**

In relevant part, Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
  - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

...

(3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:

(i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.

As described above, Expose failed to separately pay Villena and the Aggrieved Employees for rest and recovery periods and for nonproductive work time. It only paid them a percentage of the rate it set for dances. Accordingly, on behalf of herself and the Aggrieved Employees, Villena seeks against Expose civil penalties as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.2, subdivisions (a)(1) and (a)(4) and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

**Failure To Provide Accurate Wage Statements**  
**(Lab. Code § 226)**

California Labor Code § 226 require employers to furnish employees with an accurate itemized statement in writing showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,

- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As alleged herein, Expose failed to provide Villena and the Aggrieved Employees with itemized wage statements. Expose failed to properly itemize in writing each employee's gross wages earned, net wages earned, and other requirements of California Labor Code § 226. As a result, Expose has violated California Labor Code § 226. Accordingly, Villena seeks civil penalties on behalf of herself and the Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

**Failure to Timely Pay Wages During Employment**  
**(Lab. Code § 204)**

California Labor Code § 204 states all wages (other than those mentioned in Labor Code §§ 201 and 202) 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As alleged herein, Expose failed to provide Villena and the Aggrieved Employees all wages owed, including, but not limited to, all minimum, overtime and doubletime wages at the legal rates of pay for all minimum, overtime and doubletime hours worked. As a result, Expose failed to pay Villena and the

Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, Expose has violated California Labor Code § 204. Accordingly, Villena seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. For all initial violations of Labor Code § 204 that are deemed to be neither willful nor intentional, \$100.00 for each Aggrieved Employee per pay period for each violation (penalties set by California Labor Code § 210);
2. For all initial violations of Labor Code § 204 that are deemed to be either willful or intentional, \$200.00 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, per pay period for each violation (penalties set by California Labor Code § 210); and

For all subsequent violations of Labor Code § 204, regardless of whether the initial violation of Labor Code § 204 is deemed to be either willful or intentional, \$200.00 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, per pay period for each violation (penalties set by California Labor Code § 210).

**Failures to Timely Pay Wages Upon Termination**  
**(Lab. Code §§ 201-203)**

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

By failing to pay wages to Villena and other Aggrieved Employees as set forth above, Expose is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and other Aggrieved Employees, Villena seeks civil penalties from Expose as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

**Requiring Patronage**  
**(Lab. Code § 450)**

In relevant part, California Labor Code § 450 states:

- (A) No employer, or agent or officer thereof, or other person, may compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of any thing of value.

At all relevant times during the applicable limitations period, Expose required Villena and other Aggrieved Employees to pay Expose as a necessary condition of employment each work shift. As a result, Expose required Villena and other Aggrieved Employees to patronize Expose in violation of California Labor Code § 450. Accordingly, Villena seeks civil penalties on behalf of herself and other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 450 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violation of § 450 occurred (penalties set by California Labor Code § 2699(f)(2)).

**Failure To Maintain Accurate Employment Records**  
**(Lab. Code §§ 1175 and 1198)**

Labor Code § 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete

records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Expose willfully failed to maintain the records required by § 1174 and the Wage Order. Expose did not maintain payroll records of all hours worked by Villena and the Aggrieved Employees and all wages earned at the correct rates. Accordingly, Villena seeks civil penalties from Expose on behalf of herself and the Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

**Individual Liability**  
**(Labor Code § § 558.1 and 2753)**

In relevant part, California Labor Code § 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

In relevant part, California Labor Code § 2753 states:

- (a) A person who, for money or other valuable consideration, knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for that individual shall be jointly and severally liable with the employer if the individual is found not to be an independent contractor.

Section 17 of the Wage Order states:

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the division.

At all relevant times herein, Dino Palmiotto owned and operated Knights Kearny Villa, Inc. and employed Villena and the Aggrieved Employees. Dino Palmiotto was the CEO and "owner," "managing agent," and sole director of Knights Kearny Villa, Inc. Dino Palmiotto directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, or working conditions of Villena and the Aggrieved Employees and caused the violations to the Labor Code and Wage Order described above.

### **Conclusion**

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



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cc: Simonette Villena  
Walter Haines, Esq.

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