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himself and all California aggrieved employees

LOS ANGELES COUNTY SUPERIOR COURT**STATE OF CALIFORNIA****CIVIL COMPLEX – MOSK COURTHOUSE**

ZEESHAN KHAN, on behalf of himself and all
 others aggrieved,

Plaintiff,

v.

DISCOVER ENTERTAINMENT INC. doing
 business as SYN N'S GENTLEMAN CLUB,
 and LONG KIM HOUT, an individual;
 TAWNEY HOUT, an individual; ANDY SO,
 an individual
 DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 22STCV00037

COMPLAINT FOR:

- 1. Failure to Pay All Wages Earned (California Labor Code Section 204);**
- 2. Failure to Pay Minimum Wages (California Labor Code Sections 1194(a) and 1197);**
- 3. Failure to Pay Overtime Wages (California Labor Code Sections 510, 1194(a), and 1198);**
- 4. Failure to Provide Accurate, Itemized Wage Statements (California Labor Code Section 226(a));**
- 5. Failure to Provide Meal Periods (California Labor Code Sections 226.7 and 512(a));**
- 6. Failure to Provide Rest Breaks (California Labor Code Section 226.7);**
- 7. Failure to Maintain Records (California Labor Code Section 1174(d));**

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8. Failure to Reimburse Business Expenses (California Labor Code Section 2802);

9. Failure to Pay All Wages Upon Termination (California Labor Code Sections 201-203);

10. Unfair Business Practice (CA Business & Professions Code Section 17200, et seq.)

11. Unlawful Tip Pooling

12. Misclassification of Independent Contractor Status

13. Private Attorney General Act Violation

[UNLIMITED CIVIL]

[JURY TRIAL DEMANDED]

1 Plaintiff Zeeshan Khan (hereinafter “Plaintiff” or “Plaintiff Khan”), on behalf of himself
2 and all other aggrieved employees in California, alleges and states as follows:

3 **JURISDICTION AND VENUE**

4 1. This action is brought pursuant to the California Private Attorneys General Act, -
5 Cal. Labor Code sections 2698, et seq. The penalties and other remedies sought by Plaintiff exceeds
6 the minimal jurisdiction limits of the Superior Court and will be established according to proof at
7 trial. The amount in controversy for Plaintiff, including claims for compensatory damages and
8 attorneys’ fees is less than \$75,000.00. It is believed that the total sum owed to the Aggrieved
9 Employees (“Aggrieved Employees” is defined for all purposes herein as all non-exempt
10 employees of Defendant DISCOVER ENTERTAINMENT doing business as SYN’N’S
11 GENTLEMAN’S CLUB. (“Defendant”) alleged herein is less than \$5,000,000.00, based upon the
12 anticipated size of the Aggrieved Employees and the amount in controversy for each member of
13 the Aggrieved Employees.

14 2. This Court has jurisdiction over this action and the matters alleged herein pursuant
15 to the grant of original jurisdiction set forth in Article VI, Section 10 of the California Constitution.
16 The statutes under which this action is brought do not specify any other basis for jurisdiction.

17 3. This Court has jurisdiction over Defendant, because, upon information and belief,
18 Defendant is either a citizen of California, has sufficient minimum contacts in California, or
19 otherwise intentionally avails itself of the California market so as to render the exercise of
20 jurisdiction over it by this Court consistent with traditional notions of fair play and substantial
21 justice.

22 4. Venue is proper in this Court, because, upon information and belief, the named
23 Defendant resides, transacts business, or has offices in this county, and the acts or omissions alleged
24 herein took place in this county.

25 **THE PARTIES, DOE DEFENDANTS & JURY TRIAL DEMAND**

26 5. At all times relevant herein, Plaintiff Zeeshan Khan was, and is, an individual
27 residing in Los Angeles County, State of California.

28 6. Plaintiff is informed and believes, and based thereon alleges, that at all times

relevant herein, DISCOVER ENTERTAINMENT, INC. (hereinafter “Defendant” or “SYNN”), was, and is, a California Corporation engaged in live entertainment of nude or semi-nude dancers, among other activities, also engages in the food and beverage hospitality in conjunction with its dancing entertainment in Los Angeles County, California.

7. Plaintiff is informed and believes, and based thereon alleges, that at all times relevant herein, LONG KIM HOUT (“HOUT”), an individual, is a resident of Los Angeles County, California. HOUT is personally liable under Labor Code section 558.1 for all causes of action in this Complaint.

8. Plaintiff is informed and believes, and based thereon alleges, that at all times relevant herein, TAWNEY HOUT, (“T. HOUT”) an individual, is a resident of Los Angeles County, California. T HOUT is personally liable under Labor Code Section 558.1 for all causes of action in this Complaint.

9. Plaintiff is informed and believes, and based thereon alleges, that at all times relevant herein, ANDY SO (“SO”) an individual, is a resident of Los Angeles County, California. SO is personally liable under Labor Code Section 558.1 for all causes of action in this Complaint.

10. Plaintiff is unaware of the true names and capacities of Defendants named herein as DOES 1 through 100, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege such names and capacities when the same has been ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the fictitiously named Defendants stated herein bears a legal responsibility to Plaintiff similar to that of the named Defendant herein.

11. At all times mentioned herein, Defendants DOES 1 through 100, inclusive, were the agents, servants, and employees of their Co-Defendants, and in doing the things herein alleged were acting in the scope of their authority as such agents, servants, and employees, and with the permission and consent of their Co-Defendants.

12. All Defendants and DOES 1-100 are hereafter collectively referred to as Defendants.

13. Plaintiff hereby demands a trial by jury.

FACTS COMMON TO ALL CAUSES OF ACTION

1 14. Plaintiff is informed and believes, and based thereon alleges, that Defendant is
2 engaged in the business of contracting for semi-nude entertainment with various performers. Under
3 these contracts, the performers may determine their own schedules upon SYNN's approval (but
4 agree to work a minimum set shift any day they decide to work unless they advise a SYNN
5 employee of their early clock-out); set prices for their private performances (provided that they
6 comply with the club's established minimum charge or in the alternative set by SYNN); control the
7 artistic aspects of their performances (though the club D.J. chooses the music they dance to, and
8 they must obey club rules as to body positioning and physical contact with customers); and perform
9 at other venues should they wish to. The performers also agree to abide by certain "house rules,"
10 including a minimum standard of coverage by their costumes and a minimum heel height; payment
11 of a "house fee," which ranges in amount, any night they work; and performing at least two dances
12 per shift on the club stage unless they pay an "off-stage" fee. SYNN pays no wages to the
13 performers; their income is dependent upon tips and dancing fees paid by SYNN patrons at their
14 various locations. These work duties and associated gratuity tips are consistent with Industrial Wage
15 Commission ("IWC") Orders Nos. 5 and 10 wherein Plaintiff alleges willful misclassification
16 consistent Cal. Labor Code Section 226.8.

17 15. Upon information and belief SYNN provides its patrons with food and beverage
18 hospitality consistent with their liquor license. These supplemental services require the employment
19 of server staff including, but not limited to waiters, bartenders, chefs, and food preparations
20 specialists. These work duties are consistent with IWC Order No. 5.

21 16. To maintain orderly conduct of the patrons and protection of the dancers and server
22 staff, SYNN maintains a staff of inhouse security to maintain order and safety. These work duties
23 are consistent with IWC Order No. 4.

24 17. Plaintiff worked for Defendants during the relevant time as a non-exempt in-house
25 security guard. Like all other in-house security guards employed by Defendants, Plaintiff's job
26 responsibilities generally encompassed oversight of patron comportment, dancer safety and escort
27 between venues, monitoring of VIP private experiences for off-stage performances as chaperon to
28 ensure legal regulatory compliance. In light of all these detailed duties, Plaintiff was forced to work

1 off clock off, but still work, stay late, or escort all dancers to safety or their automobile.

2 18. As a further result, upon information and belief, there was a further unlawful
3 conditioning of the work week whereby Defendants maintained a Tuesday through Monday
4 business schedule despite being scheduled during ordinary shift during the 11:00 a.m. to the
5 following 2:00 a.m. operational time was condensed to six-day work week despite being on a seven-
6 day calendar week which carried forward work hours into the following day in an effort to avoid
7 overtime in a seven-day calendar period. Resultantly, Plaintiff Khan and Aggrieved Employees are
8 owed wages for earned and unpaid hours worked as the pay stubs nor the timecards failed to reflect
9 accurately the time worked.

10 19. As a result, Plaintiff and Aggrieved Employees were also suffered and permitted to
11 work significantly in excess of the 40 hours per week and regularly worked seven days per week
12 without receiving any days off each week.

13 20. During all times relevant to this action, Defendants maintained uniform
14 timekeeping, scheduling, and payroll processes and procedures for all of its employees. Plaintiff is
15 informed and believes, and based thereon alleges, that Defendant also maintained uniform work
16 rules and procedures for all of its dancers, security guards, waiters, bartenders, chefs and food
17 preparation specialists.

18 21. At all times relevant to this action, Defendants failed to properly compile, account
19 for, and pay Plaintiff and the Aggrieved Employees for the hours worked due to the following
20 uniform practices:

21 **Rounding:** Throughout the relevant time period, Defendant maintained a policy and
22 practice of regularly rounding employee work time to the closes quarter hour, to the overall
23 detriment of aggrieved employees, thereby unlawfully failing to pay Defendant's non-exempt
24 employees for all hours worked.

25 **Off-the-Clock Time:** Defendant instructed Plaintiff and aggrieved employees to perform
26 off-the-clock work including, but not limited to, maintenance day to day operations of the night
27 club venue outside the usual operating hours of 11:00 a.m. to 2:00 a.m. or during normal business
28 hours or both.

1 **Failure to Pay Accurate Overtime:** Plaintiff alleges that several of Defendants' practices
2 resulted in the failure to pay all overtime compensation owed. Plaintiff regularly worked in excess
3 of forty (40) hours in a work week and on the seventh consecutive day of the work week without
4 receiving mandatory overtime and/or double time pay. Plaintiff also alleges that Defendants'
5 managers and supervisors edited Aggrieved Employee member time records to avoid payment of
6 overtime and/or double time or carried forward hours to restart the count in a six-day workweek
7 over seven-day calendar period. Defendant's rounding practices and failure to account for time
8 spent on non-usual tasks also resulted in failure to pay overtime and/or double time wages when
9 escorting or supervising dancers; misclassification of dancers as independent contractors; or
10 otherwise failing to calculate all work completed for supplemental kitchen, server, and bartender
11 staff.

12 22. At all times relevant to this action, Defendants failed to provide Plaintiffs and the
13 Aggrieved Employees with all mandatory meal periods and/or rest breaks. Plaintiff is informed
14 and believes, and based thereon alleges, that Defendant did not pay hourly non-exempt employees
15 one (1) hour of wages for every meal and/or rest period that was not provided or permitted by the
16 Company.

17 23. At all times relevant to this action, Plaintiff and Aggrieved Employees received an
18 earnings statement with each of his pay checks. These earning statements, however, did not
19 accurately reflect the hours worked during the pay period, did not set forth the correct hourly rates
20 of pay, and did not provide information necessary for Plaintiff and Aggrieved Employees to confirm
21 that he received payment of all wages owed. Plaintiff is informed and believes that all truck drivers
22 in California received wage statements that lacked these mandatory categories of information.

23 24. At all times Plaintiff and Aggrieved Employees could not submit business expenses
24 that enabled Defendants to pass along the costs of business to the Plaintiff and Aggrieved
25 Employees.

26 25. Plaintiff is informed and believes, and based thereon alleges, that at all times relevant
27 to this action, Defendants implemented a series of willful, systematic, and deliberate policies and
28 practices that suppressed operating costs at the expense of employee rights set forth under the

1 California Labor Code and IWC Wage Orders, 4, 5 and 10 or other Wage Orders applicable herein
2 and throughout.

3 26. Defendants' unlawful conduct includes, but is not limited to:

4 (a) Failing to pay employees for all hours worked at either their regular rate of
5 pay or the applicable minimum wage;

6 (b) Failing to pay mandatory overtime and/or double time wages;

7 (c) Failing to provide employees with mandatory meal periods;

8 (d) Failing to provide employees with mandatory rest breaks;

9 (e) Failing to pay one (1) hour of wages to employees who are not provided with
10 legally compliant meal periods and rest breaks;

11 (f) Failing to compensate Plaintiff and Aggrieved Employees' with ten (10)
12 minutes of pay for each rest break owed;

13 (g) Failing to provide Plaintiff and Aggrieved Employees with accurate and
14 complete wage statements;

15 (h) Failing to pay all wages owed at termination;

16 (i) Failing to maintain full, complete, and accurate payroll records, including an
17 accurate accounting of all hours worked;

18 (j) Failing to reimburse Plaintiff and Aggrieved Employees for business
19 expenses.

20 (k) Failing to delineate and account all gratuities provided to all non-managerial
21 employees and misclassified exotic dancers resulting in an unlawful tip pooling scheme that
22 included distributions to management.

23 (l) Misclassifying the exotic/nude & semi-nude dancers as independent
24 contractors in lieu of employee status.

25 27. Plaintiff is informed and believes, and based thereon alleges, that, during the
26 relevant period, Defendants' conduct resulted in systematic violations of California Labor Code
27 sections 201-203, 204, 226(a), 226.7, 226.8, 351 510, 512(a), 1174(d), 1194(a), 1197, 1197.1, 1198,
28 and 2802.

1 **1PRIVATE ATTORNEY ACT ALLEGATIONS**

2 28. Plaintiff brings this action individually, as well as on behalf of each and all
3 Aggrieved Employees in the State of California.

4 29. All claims alleged herein arise under California law for which Plaintiff seeks relief
5 authorized under California law.

6 30. Plaintiff seeks to represent all aggrieved and misclassified employees from
7 Defendants' current and former non-exempt employees, and misclassified independent contractor
8 workers who fall into any of the following:

9 (a) **Failure To Pay All Wages Earned (Rounding):** All current and former
10 non-exempt employees, who worked for Defendant in the State of California at any time during the
11 period commencing one year (1) prior to the filing of this Complaint until present who were not
12 compensated for all hours worked due to Defendants' policy and practice of rounding working
13 hours;

14 (b) **Failure To Pay All Wages Earned (Off The Clock):** All current and former
15 non-exempt employees and all others with similar job functions and/or titles who worked for
16 Defendant in the State of California at any time during the period commencing one (1) year prior
17 to the filing of this Complaint and were not compensated for all hours worked due to
18 uncompensated productive and non-productive time in the day-to-day operations of the night club
19 venue.

20 (c) **Unpaid Wages (Minimum Wage):** All current and former non-exempt
21 employees who worked for Defendants in the State of California at any time during the period
22 commencing one (1) year prior to the filing of this Complaint and were not paid at least the
23 applicable minimum wage for all hours worked.

24 (d) **Unpaid Wages (Overtime/Double Time):** All current and former non-
25 exempt employees who worked for Defendants in the State of California at any time during the
26 period commencing one (1) year prior to the filing of this Complaint were not paid all overtime
27 and/or double time wages earned;

28 (e) **Wage Statement:** All current and former non-exempt employees who

1 worked for Defendants in the State of California during the period commencing one (1) year prior
2 to the filing of this Complaint and were not furnished accurate, itemized wage statements as
3 required by California Labor Code section 226(a);

4 (f) **Meal Period:** All current and employees in the State of California at any
5 time during the period commencing one (1) year prior to the filing of this Complaint and were not
6 provided legally compliant initial meal periods for a work period of five (5) or more hours and/or
7 subsequent meal periods for a work period of ten (10) or more hours;

8 (g) **Rest Break:** All current and employees in the State of California at any time
9 during the period commencing one (1) year prior to the filing of this Complaint and were not
10 authorized and permitted to take all legally required rest breaks;

11 (h) **Failure to Maintain Payroll Records:** All current and former non-exempt
12 employees and all others with similar job functions and/or titles who worked for Defendant during
13 the period commencing one (1) year prior to the filing of this Complaint for whom Defendant failed
14 to maintain full, complete, and accurate payroll records as required by California Labor Code
15 section 1174(d);

16 (i) **Reimbursement:** All current and former employees who worked for
17 Defendants in the State of California at any time during the period commencing one (1) year prior
18 to the filing of this Complaint and did not receive reimbursement for all necessary expenditures or
19 losses incurred in direct consequence of the discharge of their duties as required by California Labor
20 Code section 2802;

21 (j) **UCL/Bus. & Prof. C. Section 17200:** All current and former non-exempt
22 employees, who worked for Defendants in the State of California at any time during (1) year prior
23 to the filing of this Complaint and are entitled to restitution plaintiffs with restitution, in the form
24 of backpay that was unlawfully withheld from Plaintiff and Aggrieved Employees wages;
25 restitution tips that the Defendants unlawfully paid to managers; for Defendant's unlawful business
26 practices, including, but not limited to, failure to pay all wages earned, failure to pay minimum
27 wages, failure to pay overtime and/or double time wages, failure to provide lawful meal periods,
28 failure to authorize and permit lawful rest breaks, and failure to reimburse for all business

1 expenditures incurred by Plaintiff and Employees in direct consequence of the discharge of their
2 duties.

3 (k) **Misclassification of Exotic/Nude & Semi Nude Dancers:** All current and
4 former employees who worked for Defendants in the State of California at any time during the
5 period commencing one (1) year prior to the filing of this Complaint and who were dancers and
6 misclassifies as independent contractors despite controlling and supervising dancers' day-to-day
7 work. Defendants' willful and intentional pattern and practice of misclassifying the dancers'
8 employment, and other employees, violated Labor Code section 226.8 resulting non-payment of
9 overtime compensation to the Aggrieved Employees and dancers, who were not provided rest and
10 meal periods, and were not provided accurate wage statements.

11 (l) **Illegal Tip Pooling:** All current and former employees who worked for
12 Defendants in the State of California at any time during the period commencing one (1) year prior
13 to the filing of this Complaint and did not receive all gratuities made from patrons. Under Labor
14 Code section 351, an employee's tips are his or her own. Tip pooling is sometimes permitted, but
15 only amongst employees who customarily and regularly receive tips. This does not include
16 management or the employers themselves. Plaintiff and Aggrieved Employees earn tips as part of
17 their job duties. Defendants forced Plaintiff to pool tips among themselves and with management
18 or otherwise non equitable accounting and distribution practice.

19 **FIRST CAUSE OF ACTION**

20 **(Violation of California Labor Code Section 204(a)**

21 **Failure to Pay All Wages Earned for All Hours Worked – Against all Defendants)**

22 31. Plaintiff refers to and incorporates herein by reference each previous paragraph as
23 though fully set forth herein.

24 32. California Labor Code section 204(a) provides that all wages earned by any person
25 in any employment are due and payable twice during each calendar month, on days designated in
26 advance by the employer as the regular paydays.

27 33. At all times relevant to this action, Defendants violated California Labor Code
28 section 204 by failing to compensate Plaintiff and Aggrieved Employees hours worked as a result

1 of Defendant's practices of "rounding" non-exempt employee hours, editing employee time
2 records, and requiring employees to perform off-the-clock work after the conclusion of their shift.

3 34. Defendant acted intentionally, oppressively, and maliciously toward Plaintiff and
4 Aggrieved Employees, with a conscious disregard of their rights, or the consequences to them, with
5 the intent of depriving them of property and legal rights and otherwise causing them injury.

6 35. As a proximate cause of the aforementioned violations, Plaintiff and Aggrieved
7 Employees have been damaged in an amount according to proof at time of trial, but in an amount
8 in excess of the jurisdiction of this Court. Plaintiff and Aggrieved Employees are entitled to recover
9 the unpaid balance of wages owed, penalties, including penalties available pursuant to California
10 Labor Code section 558, plus interest, and reasonable attorneys' fees and costs of suit according to
11 California Labor Code section 218.5.

12 **SECOND CAUSE OF ACTION**

13 **(Violation of California Labor Code Sections 1194 and 1197**

14 **Failure to Pay Minimum Wage – Against all Defendants)**

15 36. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
16 though fully set forth herein.

17 37. California Labor Code section 1194 authorizes employees who received less than
18 the legal minimum wage to recover the unpaid balance of minimum wages owed, interest,
19 reasonable attorney's fees, and costs of suit.

20 38. At all times relevant to this action, Defendants failed to pay at least the applicable
21 minimum wage for all hours worked as a result of Defendants' practices of "rounding" non-exempt
22 employee hours, editing employee time records, and requiring employees to perform off-the-clock
23 work after the conclusion of their shift.

24 39. Defendants acted intentionally, oppressively, and maliciously toward Plaintiffs and
25 Aggrieved Employees, with a conscious disregard of their rights, or the consequences to them, with
26 the intent of depriving them of property and legal rights and otherwise causing them injury.

27 40. As a proximate cause of the aforementioned violations, Plaintiff and aggrieved
28 Employees have been damaged in an amount according to proof at time of trial, but in an amount

1 in excess of the jurisdiction of this Court. Plaintiff and Aggrieved Employees are entitled to recover
2 the unpaid balance of wages owed, penalties, including penalties available pursuant to California
3 Labor Code sections 558 and 1197.1(a) (1–2), liquidated damages pursuant to California Labor
4 Code section 1194.2(a), plus interest, and reasonable attorneys’ fees and costs of suit according to
5 California Labor Code section 1194, et seq.

6 **THIRD CAUSE OF ACTION**

7 **(Violation of California Labor Code Sections 510, 1194(a), and 1198**

8 **Failure to Pay Overtime/Double Time Wages – Against all Defendants)**

9 41. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 36 as
10 though fully set forth herein.

11 42. California Labor Code section 510 requires an employer to compensate its
12 employees at a rate of no less than one and one-half (1.5) times their regular rate of pay for any
13 work: in excess of eight (8) hours in one (1) workday, in excess of forty (40) hours in any one (1)
14 workweek, and during the first eight (8) hours worked on the seventh (7th) day of work in any one
15 (1) workweek.

16 43. California Labor Code section 510 requires an employer to compensate its
17 employees at a rate of no less than two (2) times their regular rate of pay for any work: in excess of
18 twelve (12) hours in one (1) workday, and in excess of eight (8) hours on the seventh (7th) day of
19 work in any one (1) workweek.

20 44. At all times relevant herein, Plaintiff and Aggrieved Employees worked hours in
21 excess of eight (8) hours in one (1) workday, in excess of forty (40) hours in any one (1) workweek,
22 and/or during the first eight (8) hours worked on the seventh (7th) day of work in any one (1)
23 workweek, without receiving compensation at a rate of no less than one and one-half (1.5) times
24 their regular rate of pay.

25 45. At all times relevant herein, Plaintiff and Aggrieved Employees worked hours in
26 excess of twelve (12) hours in one (1) workday and in excess of eight (8) hours on the seventh (7th)
27 day of work in any one (1) workweek, without receiving compensation at a rate of no less than two
28 (2) times their regular rate of pay.

46. Defendants acted intentionally, oppressively, and maliciously toward Plaintiff and Aggrieved Employees, with a conscious disregard of their rights, or the consequences to them, with the intent of depriving them of property and legal rights and otherwise causing them injury.

47. As a proximate cause of the aforementioned violations, Plaintiff and Aggrieved Employees have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court. Plaintiff and Aggrieved Employees are entitled to recover the unpaid balance of wages owed, penalties, including penalties available pursuant to California Labor Code section 558, plus interest, and reasonable attorneys' fees and costs of suit according to California Labor Code section 1194, et seq.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code Section 226(a))

Failure to Provide Accurate, Itemized Wage Statements – Against all Defendants)

48. Plaintiff refers to and incorporates herein by reference each of the previous paragraphs as though fully set forth herein.

49. California Labor Code section 226(a) provides that every employer shall, semi-monthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing gross wages earned.

50. Plaintiff is informed and believes, and based thereon alleges, that throughout the relevant time period, Defendant repeatedly failed to furnish Plaintiff and Aggrieved Employees with accurate, itemized wage statements in writing showing all hours worked, all wages earned, and applicable rates of pay.

51. As a result of Defendants' conduct, Plaintiff and Aggrieved Employees have been damaged and are entitled to recover, for each Aggrieved Employee the greater of actual damages or \$50.00 for the initial pay period in which a violation occurred and \$100.00 for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000.00, in an amount to be determined at trial.

52. In addition, as a direct result of the conduct of Defendants, and each of them, as set forth above, Plaintiff and Aggrieved Employees were forced to incur substantial attorneys' fees and costs which are recoverable under California Labor Code section 226(e) in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code Sections 226.7 and 512(a))

Failure to Provide Meal Periods – Against all Defendants)

53. Plaintiff refers to and incorporates herein by reference paragraphs each of the previous paragraphs as though fully set forth herein.

54. At all times relevant herein, the applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff and Aggrieved Employees.

55. At all times set forth herein, California Labor Code section 226.7 provided and provides that no employer shall require an employee to work during any lawfully mandated meal period.

56. At all times set forth herein, California Labor Code section 512(a) provided and provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

57. At all times set forth herein, California Labor Code section 512(a) further provided and provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (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.

58. At all times relevant herein, Plaintiff and Aggrieved Employees have worked more than five (5) hours in a workday.

59. At all times relevant herein, Plaintiff and Aggrieved Employees have worked more than ten (10) hours in a workday.

60. Defendant failed to provide Plaintiff and Aggrieved Employees with uninterrupted, work-free, thirty (30) minute meal periods for shifts in excess of five (5) hours worked per day and failed to compensate employees for missed initial meal periods as required by law.

61. Defendant failed to provide Plaintiff and Aggrieved Employees with a second uninterrupted, work-free, thirty (30) minute meal period for shifts in excess of ten (10) hours worked per day and failed to compensate them for missed subsequent meal periods as required by law.

62. During the relevant time period, Defendants willfully required Plaintiff and Aggrieved Employees to work during meal periods and failed to compensate Plaintiff and Aggrieved Employees for work performed during meal periods.

63. During the relevant time period, Defendants failed to pay Plaintiff and Aggrieved Employees the full meal period premium due pursuant to California Labor Code Section 226.7.

64. Defendants' conduct violates California Labor Code sections 226.7 and 512(a).

65. Pursuant to California Labor Code Section 226.7, Plaintiff and Aggrieved Employees are entitled to recover from Defendant one (1) additional hour of pay at the employees' regular hourly rate of compensation for each work day that the meal period was not provided.

66. As a proximate cause of the aforementioned violations, Plaintiff and Aggrieved Employees have been damaged in an amount to be determined at trial, but in an amount in excess of the jurisdiction of this Court.

67. As a proximate cause of the aforementioned violations, Plaintiff and Aggrieved Employees have been damaged in an amount to be determined at trial, but in an amount in excess of the jurisdiction of this Court. Plaintiff and Aggrieved Employees are entitled to recover the unpaid balance of wages owed, penalties, including penalties available pursuant to California Labor Code sections 226.7 and 558, plus interest.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code Section 226.7)

Failure to Provide Rest Breaks – Against all Defendants)

68. Plaintiff refers to and incorporates herein by reference to each of the previous paragraphs as though fully set forth herein.

69. At all times relevant herein, the applicable IWC Wage Order and California Labor Code section 226.7 was applicable to Plaintiff and Aggrieved Employees.

70. At all times set forth herein, California Labor Code section 226.7 provided and provides that employers may not require their employees to work during a legally mandated rest period.

71. At all times set forth herein, the applicable IWC Wage Order required and requires every employer subject to the Wage Orders to authorize and permit rest periods at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

72. California Labor Code section 226.7 further provides that if an employer fails to provide an employee with a legally mandated rest period, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

73. At all times relevant herein, Plaintiff and Aggrieved Employees have regularly worked shifts of a length of four (4) hours or a major fraction thereof or longer.

74. Defendant failed to authorize and permit Plaintiff and Aggrieved Employees to take rest periods as required by law and failed to compensate employees for paid rest breaks.

75. During the relevant time period, Defendant failed to pay Plaintiff and Aggrieved Employees the full rest period premium due pursuant to California Labor Code section 226.7.

76. Defendant's conduct violates California Labor Code section 226.7.

77. Pursuant to California Labor Code section 226.7, Plaintiff and Aggrieved Employees are entitled to recover from Defendant one (1) additional hour of pay at the employees' regular hourly rate of compensation for each workday that a rest period was not provided.

78. As a proximate cause of the aforementioned violations, Plaintiff and Aggrieved Employees have been damaged in an amount to be determined at trial, but in an amount in excess of the jurisdiction of this Court. Plaintiff and the Aggrieved Employees are entitled to recover the

1 unpaid balance of wages owed, penalties, including penalties available pursuant to California Labor
2 Code sections 226.7 and 558, plus interest.

3 **SEVENTH CAUSE OF ACTION**

4 **(Violation of California Labor Code Section 1174(d)**

5 **Failure to Maintain Payroll Records – Against all Defendants)**

6 79. Plaintiff refers to and incorporates herein by reference each of the previous
7 paragraphs as though fully set forth herein.

8 80. California Labor Code section 1174(d) provides that every employer shall keep, for
9 no less than three (3) years, payroll records showing the accurate hours worked daily by and the
10 wages paid to employees.

11 81. Plaintiff and Aggrieved Employees were employed by Defendant as a non-exempt
12 employee.

13 82. However, throughout this time period, Defendant repeatedly failed, and continues
14 to fail, to maintain full, complete, and accurate payroll records showing the hours that Plaintiff and
15 Aggrieved Employees actually worked and the total wages that they were paid.

16 83. As such, Plaintiff and Aggrieved Employees are entitled to recover civil penalties
17 from Defendant pursuant to California Labor Code section 1174.5.

18 **EIGHTH CAUSE OF ACTION**

19 **(Violation of California Labor Code Section 2802**

20 **Failure to Reimburse Business Expenses – Against All Defendants)**

21 84. Plaintiff refers to and incorporates herein by reference each of the previous
22 paragraphs as though fully set forth herein.

23 85. California Labor Code section 2802 requires employers to indemnify employees for
24 all necessary expenditures or losses incurred by employees in direct consequence of the discharge
25 of their duties.

26 86. Plaintiff and Aggrieved Employees have incurred expenses for supplies or utilities
27 related to the operational business expenses and sundries of the nightclub venues.

28 87. Defendants have to indemnify or reimburse Plaintiff Aggrieved Employees for the

1 expenses alleged herein.

2 88. Plaintiff and Aggrieved Employees are entitled to recover from Defendant's
3 restitution equal to all unreimbursed expenses during the relevant time period, as well as all
4 reasonable costs, including, but not limited to, attorneys' fees, that were incurred enforcing their
5 rights to reimbursement pursuant to California Labor Code section 2802.

6 **NINTH CAUSE OF ACTION**

7 **(Violation of California Labor Code Sections 201-203**

8 **Failure to Pay All Wages Upon Termination – Against all Defendants)**

9 89. Plaintiff refers to and incorporates herein by reference each of the previous
10 paragraphs as though fully set forth herein.

11 90. Pursuant to California Labor Code sections 201-203, if an employer discharges an
12 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

13 91. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and
14 Aggrieved Employees resigned or were terminated from their employment with Defendants and
15 have not received compensation for all wages owed at the time of termination.

16 92. Defendants, however, willfully failed to pay Plaintiff and Aggrieved Employees
17 wages that were due and owed within the time limits set forth in California Labor Code sections
18 201-203.

19 93. Therefore, Plaintiff and Aggrieved Employees are entitled to restitution and
20 penalties as provided by California Labor Code section 203.

21 **TENTH CAUSE OF ACTION**

22 **(Violation of California Business and Professions Code Section 17200**

23 **Unfair Business Practice – Against All Defendants)**

24 94. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
25 though fully set forth herein.

26 95. California Business and Professions Code section 17200, et seq., prohibits acts of
27 unfair competition which means and includes "any unlawful, unfair, or fraudulent business act or
28 practice."

96. Within the four (4) years preceding the filing of this action, Defendants have engaged in unlawful, unfair, and/or fraudulent business acts and/or practices by engaging in the conduct set forth above. These business acts and practices violated numerous provisions of the law, including, but not limited to, the California Labor Code, California Wage Orders, and California public policy. Plaintiff reserves the right to identify additional violations of law as further investigation warrants.

97. Defendants' acts and practices, as detailed above, constitute acts of unfair competition. Defendants' have engaged in an unlawful, unfair, and/or fraudulent business act and/or practices within the meaning of California Business and Professions Code section 17200, et seq.

98. By reason of Defendants' fraudulent, deceptive, unfair, and other wrongful conduct, as alleged herein, Defendant' have violated California Business and Professions Code section 17200, et seq., by consummating an unlawful, unfair, and fraudulent business practice designed to deprive Plaintiff and Aggrieved Employees, and members of the general public of their legal rights.

99. Such conduct is ongoing and continues to this date.

100. By reason of the foregoing, Plaintiff and Aggrieved Employees, and members of the general public have suffered, and continue to suffer, damages, and are therefore entitled to the relief available under California Business and Professions Code section 17200, et seq., including, but not limited to, restitution, disgorgement, and injunctive relief.

101. As such, Plaintiff, on behalf of himself , the Aggrieved Employees, and the general public, seeks a temporary, preliminary, and/or permanent order from this Court prohibiting Defendants from continuing to engage in the unlawful, unfair, and/or fraudulent business acts or practices set forth in this Complaint, in addition to disgorgement and restitution by Defendant so all persons with a vested interest therein who have been adversely affected by the practices at issue.

ELVENTH CAUSE OF ACTION

(Violation of California Labor Code section 226.8 – Against All Defendants)

102. Plaintiff refers to and incorporates herein by reference the previous paragraphs as though fully set forth herein.

103. Labor Code section 226.8., prohibits acts of misclassification of employees as independent contractors.

104. Within the four (4) years preceding the filing of this action, Defendants have engaged as misclassification of exotic, nude, and seminude dancers as independent contractors

105. Defendants willfully misclassified Aggrieved Employees as independent contractors despite controlling and supervising their day-to-day work.

106. Such conduct is ongoing and continues to this date.

107. By reason of the foregoing, Plaintiff through Aggrieved Employees, and members of the public have suffered, and continue to suffer, damages, and are therefore entitled to the relief available including, but not limited to, restitution, disgorgement, and injunctive relief.

108. As such, Plaintiff, of behalf of the Aggrieved Employees, and the general public, seeks a temporary, preliminary, and/or permanent order from this Court prohibiting Defendants from continuing to engage in will misclassification of its dancers, in addition to disgorgement and restitution by Defendant so all persons with a vested interest therein who have been adversely affected by the practices at issue.

TWELFTH CAUSE OF ACTION

(Illegal Tip Pooling – Against All Defendants)

109. Plaintiff refers to and incorporates herein by reference the previous paragraphs as though fully set forth herein.

110. Labor Code section 351 prohibits acts of illegal tip pooling comingling with non-managerial staff.

111. Within the four (4) years preceding the filing of this action, Defendants have engaged in misappropriation of all tip gratuities belonging to employees.

112. Under California law, an employee's tips are his or her own. Tip pooling is sometimes permitted, but only among employees who customarily and regularly receive tips. This does not include management or the employers themselves.

113. Plaintiff and Aggrieved Employees earn tips as part their duties from patrons. Defendants forced Plaintiff and Aggrieved Employees to pool tips among themselves and with

1 management.

2 114. As a result of these illegal practices, Plaintiff and Aggrieved Employees lost tips
3 due to them under California law. They are allowed to recover unpaid tips, as well as reasonable
4 attorneys' fees and costs of the action, including pre-judgment interest.

5 **THIRTEENTH CAUSE OF ACTION**

6 **(Private Attorney General's Act – Against All Defendants)**

7 115. Plaintiff hereby incorporates by reference the previous paragraphs as if fully set
8 forth herein and for a cause of action alleges as follows:

9 116. Under the Private Attorneys General Act of 2004, Labor Code §§ 2698-2699.5, an
10 aggrieved employee, on behalf of himself or herself and other current or former employees, may
11 recover penalties under any provision of the Labor Code that provides for civil penalties. These
12 penalties are in addition to any other relief available under the Labor Code.

13 117. As set forth above, Plaintiff is informed and believes, and based thereon alleges,
14 that, during the relevant period, Defendants' conduct resulted in systematic violations of California
15 Labor Code sections 201-203, 204, 226(a), 226.7, 226.8, 351 510, 512(a), 1174(d), 1194(a), 1197,
16 1197.1, 1198, and 2802.

17 118. The Plaintiff has provided written notice by certified mail to the Labor & Workforce
18 Development Agency ("LWDA") and to Defendant of the legal claims and theories of this case.
19 Sixty-Five days have passed since the postmark date of the written notice to the LWDA, and
20 Plaintiff has not received notification from the LWDA that it intends to investigate the alleged
21 violations. Accordingly, Plaintiff has exhausted administrative remedies as required by Labor Code
22 § 2699.3.

23 119. Plaintiffs allege that Defendant's uniform and consistent policies and practices have
24 resulted in the systematic violation of the labor code sections alleged as follows:

25 (a) **Failure To Pay All Wages Earned (Rounding):** Defendants did not
26 compensate employees for all hours worked due to Defendants' policy and practice of rounding
27 working hours;

28 (b) **Failure To Pay All Wages Earned (Off The Clock):** Defendant did not

1 compensate for all hours worked due to uncompensated productive and non-productive time in the
2 day-to-day operations of the night club venue.

3 (c) **Unpaid Wages (Minimum Wage):** Defendants failed to pay employees at
4 least the applicable minimum wage for all hours worked;

5 (d) **Unpaid Wages (Overtime/Double Time):** Defendants failed to pay all
6 overtime and/or double time wages earned;

7 (e) **Wage Statement:** Defendants failed to furnish accurate, itemized wage
8 statements as required by California Labor Code section 226(a);

9 (f) **Meal Period:** Defendants did not provide legally compliant initial meal
10 periods for a work period of five (5) or more hours and/or subsequent meal periods for a work
11 period of ten (10) or more hours;

12 (g) **Rest Break:** Defendants did not authorize or permit employees to take all
13 legally required rest breaks;

14 (h) **Failure to Maintain Payroll Records:** Defendant failed to maintain full,
15 complete, and accurate payroll records as required by California Labor Code section 1174(d);

16 (i) **Reimbursement:** Defendants failed to give reimbursement for all necessary
17 expenditures or losses incurred in direct consequence of the discharge of their duties as required by
18 California Labor Code section 2802;

19 (j) **UCL/Bus. & Prof. C. Section 17200:** Defendants failed to provide
20 restitution, in the form of backpay that was unlawfully withheld from Plaintiff and Aggrieved
21 Employees wages; restitution in tips that the Defendants unlawfully paid to managers; for
22 Defendant's unlawful business practices, including, but not limited to, failure to pay all wages
23 earned, failure to pay minimum wages, failure to pay overtime and/or double time wages, failure
24 to provide lawful meal periods, failure to authorize and permit lawful rest breaks, and failure to
25 reimburse for all business expenditures incurred by Plaintiff and Employees in direct consequence
26 of the discharge of their duties.

27 (k) **Misclassification of Exotic/Nude & Semi Nude Dancers:** Defendants
28 misclassified dancers/entertainer as independent contractors despite controlling and supervising

dancers' day-to-day work. Defendants' willful and intentional pattern and practice of misclassifying the dancers' employment, and other employees, in violation Labor Code section 226.8 resulting non-payment of overtime compensation to the Aggrieved Employees and dancers, who were not provided rest and meal periods, and were not provided accurate wage statements.

(l) **Illegal Tip Pooling:** Defendants forced Plaintiff to pool tips among themselves and with management or otherwise non equitable accounting and distribution practice inconsistent with Labor Code section 351.

120. As a direct result of Defendant's conduct as described, Plaintiff is entitled to recover, on her own behalf and on behalf of others similarly situated, the maximum civil penalties permitted by the Private Attorneys General Act from Defendants for all violations of California Labor Code sections 201-203, 204, 226(a), 226.7, 226.8, 351 510, 512(a), 1174(d), 1194(a), 1197, 1197.1, 1198, and 2802, as well as reasonable attorney's fees and costs.

WHEREFORE, Plaintiff pray for judgment as follows:

ON THE FIRST CAUSE OF ACTION (FAILURE TO PAY WAGES):

1. That the Court declare, adjudge, and decree that Defendant violated California Labor Code section 204;
2. For wages and such general and special damages as may be appropriate;
3. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due until paid in full; and
4. For reasonable attorneys' fees and for costs of suit incurred herein.

ON THE SECOND CAUSE OF ACTION (MINIMUM WAGE):

1. That the Court declare, adjudge, and decree that Defendant violated California Labor Code sections 1194(a) and 1197;
2. For unpaid minimum wages and such general and special damages as may be appropriate;
3. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due until paid in full;
4. For liquidated damages in an amount equal to the minimum wages unlawfully

withheld pursuant to California Labor Code section 1194.2(a);

5. For civil penalties pursuant to California Labor Code section 1197.1(a)(1–2);

6. For civil penalties pursuant to California Labor Code section 558; and

7. For reasonable attorneys’ fees and for costs of suit incurred herein.

ON THE THIRD CAUSE OF ACTION (OVERTIME/DOUBLE TIME):

1. That the Court declare, adjudge, and decree that Defendant violated California Labor Code sections 510, 1194(a), and 1198;

2. For unpaid overtime and/or double time wages and such general and special damages as may be appropriate;

3. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due until paid in full;

4. For civil penalties pursuant to California Labor Code section 558; and

5. For reasonable attorneys’ fees and for costs of suit incurred herein.

ON THE FOURTH CAUSE OF ACTION (WAGE STATEMENTS):

1. That the Court declare, adjudge, and decree that Defendant violated California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and Aggrieved Employees, and willfully failed to provide accurate, itemized wage statements thereto;

2. For all actual, consequential, and incidental losses and damages according to proof;

3. For statutory penalties pursuant to California Labor Code section 226(e);

4. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h); and

5. For reasonable attorneys’ fees and for costs of suit incurred herein.

ON THE FIFTH CAUSE OF ACTION (MEAL PERIODS):

1. That the Court declare, adjudge, and decree that Defendant violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and Aggrieved Employees ;

2. That the Court make an award to Plaintiff and Aggrieved Employees of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;
3. For all actual, consequential, and incidental losses and damages, according to proof;
4. For premiums pursuant to California Labor Code section 226.7(c);
5. For pre-judgment interest on any unpaid wages from the date such amounts were due; and
6. For reasonable attorneys' fees and for costs of suit incurred herein.

ON THE SIXTH CAUSE OF ACTION (REST PERIODS):

1. That the Court declare, adjudge, and decree that Defendant violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to authorize and permit all rest periods (including second rest periods) to Plaintiff and Aggrieved Employees ;
2. That the Court make an award to Plaintiff and Aggrieved Employees of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided during the Aggrieved Employees Period;
3. For all actual, consequential, and incidental losses and damages, according to proof;
4. For premiums pursuant to California Labor Code section 226.7(c);
5. For pre-judgment interest on any unpaid wages from the date such amounts were due; and
6. For reasonable attorneys' fees and for costs of suit incurred herein.

ON THE SEVENTH CAUSE OF ACTION (RECORD KEEPING):

1. That the Court declare, adjudge, and decree that Defendant violated California Labor Code section 1174(d) by failing to maintain full, complete, and accurate payroll records; and
2. For civil penalties in the amount of \$500.00 for and to Plaintiff and each Aggrieved Employees pursuant to California Labor Code section 1174.5.

ON THE EIGHTH CAUSE OF ACTION (REIMBURSEMENT):

1. That the Court declare, adjudge, and decree that Defendant violated California Labor Code section 2802 by failing to indemnify or reimburse employees for business expenses;
2. For an award of unreimbursed expenses to Plaintiff and all Aggrieved Employees in an amount to be proven at trial; and
3. For reasonable attorneys' fees and for costs of suit incurred herein.

ON THE NINTH CAUSE OF ACTION (WAITING TIME):

1. That the Court declare, adjudge, and decree that Defendant violated California Labor Code sections 201, 202, and 203 and is subject to penalties pursuant to California Labor Code section 203;
2. For an award of penalties pursuant to California Labor Code section 203 to Plaintiff and all Aggrieved Employees in an amount to be determined at trial;
3. For reasonable attorneys' fees and for costs of suit incurred herein.

ON THE TENTH CAUSE OF ACTION (UNFAIR BUSINESS PRACTICE):

1. For restitution of all profits and gains resulting from Defendant's unfair, unlawful, and/or fraudulent business acts and/or practices to Plaintiff and all persons with a vested interest therein who have been adversely affected by the practices at issue;
2. For an injunction permanently enjoining Defendant from continuing to engage in any further acts of unfair, unlawful, and/or fraudulent business acts and/or practices; and
3. For reasonable attorneys' fees and for costs of suit incurred herein.

ON THE ELEVENT CAUSE OF ACTION (ILLEGAL TIP POOLING):

1. For restitution of all profits and gains resulting from Defendant's unfair, unlawful, and/or fraudulent tip pooling and/or practices to Plaintiff and all persons with a vested interest therein who have been adversely affected by the practices at issue;
2. For an injunction permanently enjoining Defendants' from continuing to engage in any further acts of unfair, unlawful, and/or fraudulent business acts and/or practices; and

- 1 3. For reasonable attorneys' fees and for costs of suit incurred herein.

2 **ON THE TWELFTH CAUSE OF ACTION (MISCLASSIFICATION):**

- 3 1. For restitution of all wages due for hour hours worked, penalties and gains resulting
4 from Defendants' independent contractor misclassification practices to all persons
5 with a vested interest therein who have been adversely affected by the practices at
6 issue;
- 7 2. For an injunction permanently enjoining Defendant from continuing to engage in
8 any further acts of independent contractor misclassification practices; and
- 9 3. For reasonable attorneys' fees and for costs of suit incurred herein.

10 **ON THE THIRTEENTH CAUSE OF ACTION (PAGA):**

- 11 1. That Plaintiff and other current or former employees be awarded penalties under
12 Labor Code § 2699 for all of Defendant's violations of Labor Code §§ 201-203, 204,
13 226(a), 226.7, 226.8, 351 510, 512(a), 1174(d), 1194(a), 1197, 1197.1, 1198, and
14 2802.
- 15 2. An award of such other and further equitable and legal relief as this Court may deem
16 appropriate;
- 17 3. For an award to Plaintiff of costs of suit incurred herein and reasonable attorneys'
18 fees pursuant to Labor Code § 2699(g)(1); and

18 **AS TO ALL CAUSES OF ACTION:**

- 19 1. For an award of reasonable attorneys' fees, costs, expert costs, and expenses
20 pursuant to statutory and common law; and
- 21 2. For such other and further relief as this Court may deem just, fair, and proper.
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1 DATED: December 30, 2021

2 Respectfully Submitted,
3 **HARMOUSH & RESHIDI LAW GROUP**

4 
5 Samy Harmoush
6 Kimberly Cole
7 Attorneys for Plaintiff
8 Zeeshan Khan on behalf of himself and all
9 other aggrieved employees in the State of
10 California
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