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10 **JESSICA PHILLIPS, individually**
11 **and in a representative capacity on**
12 **behalf of other members of the**
13 **general public similarly situated**

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN DIEGO**

16 JESSICA PHILLIPS, an individual, and on
17 behalf of other members of the general public
18 similarly situated,

19 Plaintiff,

20 v.

21 MERAKI LOUNGE, LLC, a California Limited
22 Liability Company; TIFANNY HOOVER, an
23 individual; LAWA MERAKI, an unknown
24 business entity; and DOES 1 through 10,
25 inclusive,

26 Defendant.

) Case No: 37-2023-00022352-CU-OE-CTL

) **COMPLAINT FOR:**

) **PAGA and Wage Hour Violations:**

-) 1. WILLFUL MISCLASSIFICATION
) [Labor Code § 226.8];
) 2. MINIMUM WAGE VIOLATIONS
) [Labor Code § 1197];
) 3. OVERTIME VIOLATIONS [Labor
) Code § 1197];
) 4. WAGE STATEMENT VIOLATIONS
) [Labor Code § 226];
) 5. MEAL AND REST PERIOD
) VIOLATIONS [Labor Code §§ 226.7
) and 512];
) 6. FAILURE TO TIMELY PAY WAGES
) [Labor Code § 204];
) 7. FAILURE TO PAY WAGES UPON
) SEPARATION [Labor Code §§ 201-
) 203];
) 8. UNLAWFUL COMMISSIONS
) AGREEMENT [Labor Code § 2751];
) 9. FAILURE TO PAY SICK TIME [Labor
) Code §246];

) **Individual Causes of Action:**

-) 10. BREACH OF CONTRACT;
) 11. BREACH OF IMPLIED CONTRACT;
) 12. BREACH OF ORAL CONTRACT;
) 13. PROMISSORY ESTOPPEL;
) 14. QUANTUM MERUIT;

[JURY TRIAL DEMANDED]

PARTIES, JURISDICTION, AND VENUE

- 2

- 1 4. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned
2 herein, Defendant TIFFANY HOOVER (“HOOVER” or collectively “the Salon” herein)
3 was and is a resident of the County of San Diego, State of California.
- 4 5. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned
5 herein, Defendant LAWA MERAKI (“LAWA” or collectively “the Salon” herein) was
6 and is an unknown business entity doing business throughout the state, including the
7 County of San Diego, State of California.
- 8 6. Plaintiff is presently unaware of the true names, capacities and liability of Defendants
9 named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of
10 court to amend this complaint to allege their true names and capacities after the same
11 have been ascertained.
- 12 7. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
13 Defendants is responsible in some manner for the wrongs and damages as herein alleged,
14 and in so acting was functioning as the agent, servant, partner, and employee of the co-
15 Defendant, and in doing the actions mentioned below, was acting within the course and
16 scope of his or her authority as such agent, servant, partner, and employee with the
17 permission and consent of the co-Defendant. Plaintiff’s injuries as herein alleged were
18 proximately caused by said Defendant. Wherever it is alleged herein that any act or
19 omission was done or committed by any specially named Defendant or Defendant,
20 Plaintiff intends thereby to allege and does allege that the same act or omission was also
21 done and committed by each and every defendant named as a DOE, both separately and
22 in concert with the named Defendant or Defendant.
- 23 8. Plaintiff is informed and believes and thereon alleges that Defendant, and each of them,
24 including DOES 1 through 10, are and at all times herein mentioned were either
25 individuals, sole proprietorships, partnerships, registered professionals, corporations, alter
26 egos or other legal entities which were licensed to do and/or were doing business in the
27 County of Los Angeles, State of California at all times relevant to the subject matter of
28 this action.

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FACTUAL BACKGROUND

9. Defendant MERAKI LOUNGE is a beauty salon specializing in extensions, blonding and coloring, and cutting hair located at 369 Tenth Avenue, San Diego, California 92101. Defendant TIFFANY HOOVER was and is the owner of Defendant MERAKI LOUNGE and Defendant LAWA MERAKI (all named Defendants are collectively “the Salon” herein).

10. On or around January 2, 2019, Plaintiff JESSICA PHILLIPS commenced working for the Salon. Plaintiff’s employment with the Salon lasted until November 3, 2022, when she resigned. Throughout her employment with the Salon, Plaintiff performed her job in a capable and competent manner and was commended for doing so.

11. Throughout the term of her employment, Plaintiff and all other aggrieved employees were, and currently are, denied the benefits and protections of the Labor Code due to the Salon’s institutionalized pay practices, standard as to all of the Salon’s California-based employees.

Commission Stylists Are/Were Employees of the Salon

12. At all relevant times herein, the Salon had three types of employees:

- a. Front desk staff and assistants, who on information and belief were classified as employees, whose duties included scheduling appointments, cashing out clients, and general business operations;
- b. Commission Stylists, who were misclassified as independent contractors, whose duties included bringing in customers and taking customers from the Salon, cutting hair, dying hair, installing and maintaining extensions, and, importantly, selling Salon products (shampoo, conditioner, styling products, etc.) to customers. Commission Stylists were paid on commission of sales and services only. Commission Stylists did not pay rent for use of any booths or workstations.
- c. Booth Renting Stylists, who were properly classified as independent contractors, who paid the Salon rent for the use of booths or workstations. Booth Renting Stylists retained all of the money for their services, and

1 serviced solely their own customers (as opposed to Salon customers).
2 Booth Renting Stylists were not paid a commission or expected to sell
3 Salon products.

- 4 13. The Salon is regularly engaged in the business of cutting and styling hair. As a hair
5 stylist, Plaintiff's services were part of the Salon's regular business.

6 **The Salon Controlled Commission Stylists' Work**

- 7 14. Plaintiff was hired as a Commission Stylist on or around January 2, 2019. Plaintiff and
8 other Commission Stylists were required to train with Defendant HOOVER at the
9 beginning of their employment before being assigned to a booth.

- 10 15. Plaintiff and other Commission Stylists were not permitted to work at other salons, nor
11 sublet their chairs. Plaintiff and other Commission Stylists were not permitted to operate
12 a separate business.

- 13 16. Plaintiff and all other Commission Stylists' prices for services were set solely by the
14 Salon. Commission Stylists had no opportunity to negotiate the amount charged to clients
15 for their services. Moreover, Commission Stylists' hours of work were determined solely
16 by the Salon. If a Commission Stylist needed additional time to service a client, they
17 were pressured by Defendant HOOVER to finish in a timely manner, and at times
18 directed to clean the Salon after their last customer.

- 19 17. Commission Stylists' work schedules were set and maintained by the Salon through the
20 Vagaro App. Through this App, the Salon assigned clients to Commission Stylists.

- 21 18. Commission Stylists were always expected to be working while at the Salon. If
22 Commission Stylists were in between customers or otherwise not with a client, they were
23 directed by the Salon to clean, stock, and perform other miscellaneous tasks for the
24 Salon.

- 25 19. The Salon maintained and enforced policies for refunds and resolving customer
26 complaints, and maintained a selection of hair products to sell.

- 27 20. Plaintiff and other Commission Stylists were required to attend staff meetings at the
28 Salon to discuss policy changes, clients, services, and pay.

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The Salon Managed Commission Stylists' Cash Flow

21. Commission Stylists never collected payment from the clients directly. The clients always paid the Salon, not the Commission Stylists, including card tips.
22. The Salon received a flat amount for each service Commission Stylists performed. Commission Stylists were paid a fluctuating percentage of each service performed.
23. The Salon held the lease on the entire space and owned all the equipment Commission Stylists used in the salon. The Salon provided all the products, such as shampoos, conditioners, hair dyes, rollers, and towels. Commission Stylists never paid, nor were asked to pay, the Salon for any products they used.
24. The agreement between the Salon and Plaintiff required that Plaintiff attempt to sell *only the Salon's* products.
25. Plaintiff's contract with the Salon (discussed in more detail below) only provided for the Salon terminating Plaintiff and stated Plaintiff could be terminated without cause, which resembles an at-will employment relationship.
26. Plaintiff, and other Commission Stylists, believed that they were in an employment relationship with the Salon.
27. Commission Stylists were paid biweekly, based on a percentage of the money the Salon received for their services and product sales.

Plaintiff's First Contract with the Salon

28. On or around January 2, 2019, Plaintiff and the Salon entered into an employment agreement titled "Commission Contractor Agreement" (hereinafter "Agreement #1"). (Please see **Exhibit 1**, a true and correct copy of this agreement).
29. Agreement #1 is a commission plan which states Plaintiff would receive anywhere from 40%-50% compensation of services rendered. It also states Plaintiff "shall provide the following services *to Lawa Meraki*" and that if Plaintiff did not comply with any of the stipulations in Agreement #1, it would result in Plaintiff's **termination**. In fact, Agreement #1 (a five-page contract) referred to ways Plaintiff could be terminated **six** times.

- 1 30. Although Agreement #1 stated that Plaintiff “is not, for any purpose, an employee of [the
2 Salon]” and briefly names Plaintiff as an independent contractor, the Salon improperly
3 classified Plaintiff. Specifically, merely a few sentences later, Agreement #1 states that
4 Plaintiff’s engagement with the Salon is “at-will” and that Plaintiff is “subject to being
5 terminated at the discretion of [the Salon] at any time.” This language further implies
6 Plaintiff was an at-will employee and that the Salon could fire her or otherwise terminate
7 her employment.
- 8 31. Continuously, Agreement #1 states, “All salon retail products; not excluding hair
9 extensions are to be sold and recorded through [the Salon] at time of purchase. Only
10 products provided by [the Salon] are to be sold within the salon. Failure to abide with the
11 above stated stipulations will result in immediate termination.” (Emphasis added.)
- 12 32. Based on the promises and language of Agreement #1, Plaintiff signed the contract
13 understanding that she was under the Salon’s control, and thus an employee, and
14 expected to be paid the commissions promised to her.
- 15 33. The Salon only paid Plaintiff and other employees via check stubs and/or Apple Pay
16 descriptions that did not provide a breakdown of the commissions, or any owed wages,
17 Plaintiff received.
- 18 34. In or around November 2022, Plaintiff reviewed her income statements and determined
19 that she had been **significantly** underpaid on each pay period and was not given the 40% -
20 50% commission promised and owed to her.

21 **Plaintiff’s Second Contract with the Salon**

- 22 35. On or around November 9, 2021, Defendant HOOVER took all Salon Front Desk Staff,
23 Commission Stylists, and Booth Renting Stylists out to dinner. There, Defendant
24 HOOVER handed out a packet titled “Commission Stylist Level System” (hereinafter
25 “Agreement #2”). (Please see **Exhibit 2**, a true and correct copy of this agreement).
- 26 36. Agreement #2 instituted a 5-level system *based on years of service*. For example, an
27 employee was promoted from “Level 1” (Front Desk and Assistant hourly employees) to
28 “Level 2” (Stylist) after a 6-month evaluation. The promotion resulted in those
employees receiving 40% commission for services rendered and 10% commission for

1 product and hair sales. However, the employee was in turn required to sell at least \$250
2 of product per week and perform at least \$1,500 worth of services per week. Employees
3 moved up to “Level 3” after a 12-month evaluation, and “Level 4” and “Level 5” after a
4 24-month evaluation, with respective raises in commission percentages. Further, “Level
5 3” through “Level 5” *required two or more years of “service” with the Salon.*

6 37. At the time Agreement #2 was distributed, Plaintiff had been an employee of the Salon
7 for more than two years and was promised that she would be classified as a “Level 5”
8 employee. The Salon promised Plaintiff 50% commission on services rendered and 10%
9 commission on product and hair sales, as well as her own assistant to help with servicing
10 clients. In return, Plaintiff was required to make \$1,000 in product and hair sales and
11 perform at least \$4,500 in services each week. No hourly wage or salary was discussed at
12 any time.

13 38. Notably, neither Plaintiff nor the Salon signed or formerly acknowledged this new
14 commission contract. Defendant HOOVER referred to the document as a contract, but the
15 document did not contemplate signature, having no signature line. Instead, the “contract”
16 functioned as a **policy** through which employees agreed to the terms by way of their
17 continued employment. Plaintiff was excited to continue her career with the Salon and
18 saw this Level System as an opportunity to succeed within the business. Plaintiff trusted
19 Defendant HOOVER and relied on her promise that she would be awarded the proper
20 amount of commission each pay period.

21 39. Plaintiff met and/or exceeded the requirements to remain a “Level 5” employee each
22 week. However, the Salon never assigned Plaintiff an assistant. Instead, Plaintiff was
23 always overworked and stressed that she would not meet the target sales or services
24 required of her because she was working alone.

25 40. Defendant HOOVER would reprimand Plaintiff if clients had to wait, if Plaintiff was
26 late, or if Plaintiff was allegedly not performing to Defendant HOOVER’s standards.
27 Surprisingly, Defendant HOOVER would call Plaintiff a “crack head” and verbally
28 berate her in front of clients and colleagues. Nonetheless, Plaintiff was still meeting the
requirements of a “Level 5” employee.

1 41. On or around November 3, 2022, Plaintiff texted Defendant HOOVER and informed her
2 that she was formally resigning.

3 42. In or around November 2022, Plaintiff reviewed her income statements and determined
4 that she had been significantly underpaid on each pay period and was not given the 50%
5 commission owed to her as a "Level 5" employee.

6 **REPRESENTATIVE ALLEGATIONS**

7 43. As more specifically set forth below, Plaintiff brings this action in a representative
8 capacity on behalf of all current and former nonexempt employees of the Salon. Code
9 Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout
10 the operative limitations period, Plaintiff and all other aggrieved employees were denied
11 the protections and benefits of the Labor Code and Industrial Welfare Commission
12 ("IWC") Wage Order(s) due to the Salon's standard practices. Throughout their
13 employment, Plaintiff and all other aggrieved employees were and are denied full and
14 accurate compensation, including overtime compensation, in violation of, *inter alia*,
15 Labor Code §§ 510 and 1194. Plaintiff and the other aggrieved employees were and are
16 denied meal and rest periods and meal and rest period payments, in violation of, *inter*
17 *alia*, IWC Wage Order 2 (or any other applicable Wage Order) and Labor Code §§ 226.7
18 and 512. The Salon failed to furnish accurate itemized wage statements in violation of,
19 *inter alia*, Labor Code § 226. The Salon failed to reimburse Plaintiff and other aggrieved
20 employees for necessary business expenditures in violation of, *inter alia*, Labor Code §
21 2802. The Salon failed to provide all compensation due at termination of employment in
22 violation of, *inter alia*, Labor Code §§ 201 through 203.

23 44. Plaintiff brings this action on the grounds that she and other similarly situated current and
24 former employees of the Salon were and are improperly denied the mandated wages and
25 reimbursements resulting from the above-referenced violations. Code Civ. Proc. § 2699;
26 *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is
27 believed to exceed thirty (30) aggrieved employees.
28

- 1 45. The approximately thirty (30) aggrieved employees are comprised of all of the Salon's
2 current and former California-based Commission Stylists and Front Desk Staff
3 (hereinafter collectively "Non-Exempt Employees"). The Salon's standard policies and
4 practices which lead to Labor Code violations, as alleged herein, applied to all California
5 nonexempt employees, including those designated as "commission-based employees."
- 6 46. There are questions of fact and law common to all aggrieved employees arising from
7 Defendant's actions including, among others, the following:
- 8 a. Whether the Salon properly classified each of its "employees" and "independent
9 contractors."
 - 10 b. Whether the Salon failed to pay its employees the proper straight-time, overtime,
11 and double time wages due and owing to them;
 - 12 c. Whether the Salon failed to provide its employees with statutorily-compliant Meal
13 and/or Rest Periods, in violation of, *inter alia*, California Labor Code §§ 512 and
14 226.7, in that the Salon's written policies are not compliant with California law,
15 the Salon does not allow its employees duty-free Meal and/or Rest Periods, and
16 the Salon improperly "round" employees recorded Meal Periods;
 - 17 d. Whether the Salon failed to properly provide Meal and Rest Period premiums in
18 accordance with law;
 - 19 e. Whether the Salon failed to properly calculate and pay its employees Overtime
20 compensation or Meal and Rest Period premiums in accordance with law by
21 failing to properly calculate, into the Regular Rate of Pay, the value of employee
22 benefits;
 - 23 g. Whether the Salon failed to properly reimburse its employees for necessary
24 business expenditures for, *inter alia*, cell phone costs and mileage, in violation of
25 Labor Code § 2802;
 - 26 g. Whether the Salon failed to provide all compensation upon termination of
27 employment in violation of Labor Code §§ 201-203, due, in part, to the fact that
28 the Salon failed to provide proper compensation for all hours worked, as
discussed above; and

1 h. Whether the Salon failed to provide Plaintiff and all other aggrieved employees
2 with accurate itemized wage statements in violation of, among other statutes,
3 Labor Code § 226.

4 47. At all times mentioned herein, the Salon was subject to the Labor Code and Industrial
5 Welfare Commission Wage Orders of the State of California, including, but not limited
6 to, California Labor Code § 2698 et seq.

7 48. At all times mentioned herein, the Salon is and was an “employer” as that term is used
8 within the relevant sections of the California Labor Code and the applicable wage order.
9 An employer-employee relationship existed between Plaintiff and the Salon.

10 49. On February 21, 2023, counsel for Plaintiff prepared and electronically submitted a letter
11 to the LWDA via the California Department of Industrial Relations’ “PAGA Filing”
12 website. This letter concerned Defendants MERAKI LOUNGE and TIFFANY
13 HOOVER, and their Labor Code violations. A copy of this letter was also mailed to
14 Defendants, via USPS Certified Mail. The letter contained the specific provisions of the
15 California Labor Code violated by the Salon, as well as the facts and theories in support
16 of Plaintiff claims. (Please see **Exhibit 3**, a true and correct copy of this letter.)

17 50. On April 28, 2023, counsel for Plaintiff prepared and electronically submitted an
18 amended letter to the LWDA via the California Department of Industrial Relations’
19 “PAGA Filing” website. This letter concerned Defendant LAWA MERAKI and its Labor
20 Code violations. Copies of this letter was also mailed to Defendants MERAKI LOUNGE
21 and TIFFANY HOOVER, via USPS Certified Mail. The letter contained the specific
22 provisions of the California Labor Code violated by the Salon, as well as the facts and
23 theories in support of Plaintiff claims. (Please see **Exhibit 4**, a true and correct copy of
24 this letter.)

25 51. The statutory time period for the LWDA to investigate and/or respond, and for the
26 employer to respond, has concluded.

27 52. Throughout the operative limitations period, Plaintiff and all other aggrieved employees
28 were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due
to Defendant's standard practices. Said violations are set forth below.

FIRST CAUSE OF ACTION

Willful Misclassification

[Labor Code § 226.8]

Representative Action

(Against All Defendants)

53. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
54. A worker is properly considered an independent contractor to whom the Wage Order does not apply only if the hiring entity establishes: (a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact; (b) that the worker performs work that is outside the usual course of the hiring entity's business; and (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.
55. The work performed by the Commission Stylists, at issue in this case, is within the usual course of the Salon's business due to, *inter alia*, the primary source of the Salon's business is styling hair and selling hair product. As such, an employer-employee relationship is created between the Salon and the Commission Stylists.
56. Labor Code § 226.8 prohibits any person or employer from willfully misclassifying an individual who is an employee subject to the applicable Wage Order.
57. Since at least 2019 until the present, the Salon has maintained a uniform policy whereby the Salon has misclassified all Commission Stylists as independent contractors for purposes of the Wage Order.
58. Through its misclassification of every Commission Stylist as an independent contractor for purposes of the Wage Order, the Salon has engaged in a pattern and practice of willful misclassification for its own financial benefit.
59. Pursuant to Labor Code § 226.8, Plaintiffs are entitled to recover the civil penalties for the Salon's misclassification of employees with regard to their employment status under the Wage Order of not less than ten thousand dollars (\$10,000) and up to twenty-five

1 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines
2 permitted by law.

3 60. Plaintiffs are entitled to recover attorney's fees and costs in bringing this action.

4 61. The Salon is subject to an order requiring it to provide public notice of its violation of
5 section 226.8, as required under subsections (e) and (f) thereof, in the event this court
6 determines that a violation has been committed.

7 **SECOND CAUSE OF ACTION**

8 **Minimum Wage Violations**

9 **[Labor Code § 1197]**

10 **Individual and Representative Action**

11 **(Against All Defendants)**

12 62. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
13 the preceding paragraphs as though fully set forth herein.

14 63. The Salon failed to pay its employees all compensation due in violation of, *inter alia*,
15 Labor Code § 1197. California law holds that the failure to pay for any work time
16 constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.* (2005) 135
17 Cal.App.4th 314, 323. These violations were caused by and through the Salon's failure to
18 maintain accurate Time Records (as required by California law), to the detriment of the
19 employees. Specifically, as Plaintiff and other employees were paid via commission
20 (instead of hourly), they did not receive compensation for working beyond their
21 scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation.
22 Moreover, the Salon would often require Plaintiff and other employees to work extended
23 hours (beyond the Salon's hours of operation) without compensation. Additionally, the
24 right to receive the proper minimum wage compensation was impacted by the Salon
25 knowingly failing to consider other work performed by the employees, including all time
26 employees were under the Salon's control. These actions, and instructions, caused the
27 employees to lose compensation, including proper minimum wage compensation and
28 overtime compensation.

64. As a direct result of the Salon's failure to comply with the foregoing provisions of the
Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
amount to be proven at trial.

65. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer for Relief.

66. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of the Salon pursuant to Labor Code § 2699(a) for each of these employees.

67. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

THIRD CAUSE OF ACTION

Overtime Violations

[Labor Code § 2698 *et seq.*]

Individual and Representative Action

(Against All Defendants)

68. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

69. The Salon failed to pay Plaintiff and all other aggrieved employees all compensation, including Overtime Compensation, due in violation of, among other statutes, Labor Code § 510. These violations occurred due to the Salon's illegal policies, referenced above, whereby employees experienced monetary under-compensation. Given the length of Plaintiff's and other employees' shifts (often far beyond their scheduled hours), and that Plaintiff and other employees were paid commission (instead of hourly), the unpaid work time often would have been owed at the Overtime Rate of Pay. These systematic failures to provide any proper overtime compensation are in violation of California law. Moreover, on the rare occasions when Non-Exempt Employees were paid Overtime, nondiscretionary bonuses were not included in the Overtime Rate of Pay.

70. As a direct result of the Salon's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

71. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3,

1 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
2 penalties pursuant to Labor Code § 2699, as more specifically set forth in the below
3 Prayer for Relief.

4 72. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
5 Defendant pursuant to Labor Code § 2699(a) for each of these employees.

6 73. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
7 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

8 **FOURTH CAUSE OF ACTION**

9 **Wage Statement Violations**

10 **[Labor Code § 226]**

11 **Individual and Representative Action**

12 **(Against All Defendants)**

13 74. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
14 the preceding paragraphs as though fully set forth herein.

15 75. The Salon willfully failed to provide Plaintiff and all other aggrieved employees with
16 accurate itemized wage statements in violation of, among other statutes, Labor Code §
17 226. These violations include, but are not limited to, the Salon's failure to provide
18 compliant wage statements. Instead, employees would receive only checks and/or Apple
19 Pay descriptions from Defendant HOOVER.

20 76. The Salon violated Labor Code § 226(a)(1) by failing to to furnish an accurate showing
21 of the gross wages earned by its employees. For example, the Salon (a) would not
22 provide compensation for all hours and minutes worked, (b) would use an improper (and
23 lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period Penalties
24 when due.

25 77. The Salon violated Labor Code § 226(a)(2) by failing to furnish an accurate showing of
26 all hours worked at each hourly rate by the employee. The checks and/or Apple Pay
27 descriptions do not list the hours worked at any rate, for any pay period. Through the
28 Salon's failure to provide any compliant wage statements showing hours worked or
hourly rate, and through the Salon's commission-only based pay, Plaintiff and other

employees were not compensated for all hours worked. Furthermore, the Salon failed to state the Overtime Rate of Pay on its earning records.

78. The Salon violated Labor Code section 226(a)(3) by failing to furnish an accurate showing of the number of piece-rate units earned and/or any applicable piece rate. The wage statements do not list the rates worked, for any pay period. The wage statements fail to list any rate at all for any earnings, including commissions.

79. The Salon violated Labor Code § 226(a)(5) by willfully failing to furnish an accurate showing of the net wages earned by its employees. For example, the Salon (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period penalties when due. Further, on the rare occasions in which the Salon would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.

80. The Salon violated Labor Code section 226(a)(8) by failing to include the name and address of the legal entity that is the employer. For example, the Salon would pay employees via check or Apple Pay from Defendant HOOVER's account, and include no information about Defendants MERAKI LOUNGE, LLC, or LAWA MERAKI.

81. The Salon violated Labor Code § 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The Salon's checks and Apple Pay descriptions do not list the hourly rate for either Regular or Overtime Rates of pay, for any Pay Period. Additionally, Plaintiff, and the other employees, were not compensated for all hours worked (due in part to the Salon's requiring employees to list only Scheduled work time, not actual work time to include "on-call" hours). The checks and Apple Pay descriptions do not state the hourly rates for any work. Therefore, the Salon failed to provide a showing of the "total hours worked" by its employees pursuant to section 226(a)(2).

1 82. The Salon's failure to include the above information in its calculation of Plaintiff's, and
2 other aggrieved employees', gross and net wages subjects the Salon to liability under
3 Labor Code § 226.

4 83. As a direct result of the Salon's failure to comply with the foregoing provisions of the
5 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
6 amount to be proven at trial.

7 84. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
8 behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3,
9 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
10 penalties pursuant to Labor Code § 2699, as more specifically set forth in the below
11 Prayer for Relief.

12 85. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
13 Defendants pursuant to Labor Code § 2699(a) for each of these employees.

14 86. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
15 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

16 **FIFTH CAUSE OF ACTION**

17 **Meal and Rest Period Violations**

18 **[Labor Code §§ 226.7 and 512]**

19 **Individual and Representative Action**

20 **(Against All Defendants)**

21 87. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
22 the preceding paragraphs as though fully set forth herein.

23 88. Labor Code § 1198 states:

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

The Salon violated this section by establishing working conditions below the standard of
the applicable Wage Order.

89. Under applicable California law, "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

1 Period of not less than 30 minutes [...] An employer may not employ an employee for a
2 work period of more than 10 hours per day without providing the employee with a second
3 Meal Period of not less than 30 minutes” Lab. Code § 512(a); *see also* 8 Cal. Code Regs.
4 § 11020 (11).

5 90. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the
6 Meal Period shall be considered an “on duty” Meal Period and counted as time worked. 8
7 Cal. Code Regs. § 11020 (11).

8 91. California law requires employers to provide nonexempt employees with a 10-minute
9 Rest Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs.
10 § 11020 (12).

11 92. An employer who fails to provide Meal or Rest Periods as required by an applicable
12 Wage Order must pay the employee one additional hour of pay at the employee’s regular
13 rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code §
14 226.7(b); 8 Cal. Code Regs. § 11020 (11), (12).

15 93. Within the operative time period, the Salon failed to possess compliant Meal and Rest
16 Period policies.

17 94. For example, the Salon does not possess a legal Rest Period policy, as its Rest Period
18 policy lacks required language under California law. The Salon makes no attempt to
19 ensure that its employees are either timely or wholly provided Rest Periods. Plaintiff and
20 other employees would often either miss a Rest Period entirely, be provided a short or
21 untimely Rest Period, or be provided only one Rest Period, even when they were working
22 in excess of 6.5 hours a day. The Salon would pressure their employees to either skip or
23 cut short a Rest Period, as employees were expected to respond to clients and supervisors
24 at all times.

25 95. Moreover, the Salon illegally retained control over its employees during Rest Periods.
26 For example, the Salon required Plaintiff and other employees to “remain on the
27 premises” (i.e. remain at the salon to clean or prepare stations) and to remain “on call”
28

(i.e. be available to clients, including “walk-in” clients without appointments) at all times, including during Rest Periods.

96. These violations are due, in part, to the fact that the Salon does not possess a legal Rest Period policy or practice, as its Rest Period policy lacks required language, resulting in employees failing to receive all Rest Periods legally due. The Salon does not provide Rest Periods, as defined by California law. Further, the Salon has never provided a compliant Rest Period Penalty Payment to any employee as to the above referenced-issues.

97. The Salon also does not possess a legal Meal Period policy, and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods. Plaintiff and other employees would often either miss a Meal Period entirely, be provided a short or late Meal Period, or be provided only one Meal Period, even when they were working in excess of 10 hours a day. Over the course of their employment, Plaintiff and other employees were never allotted time to take a Meal Period and were instructed on numerous occasions to “remain on the premises” (i.e. remain at the salon to clean or prepare stations) and to remain “on call” (i.e. be available to clients including “walk-in” clients without appointments) at all times, including during Meal Periods. Additionally, the Salon failed to accurately record its employees actual start and stop times of Meal Periods, in violation of the IWC Wage Orders. 8 Cal. Code Regs. § 11020 (7)(A)(3).

98. Moreover, the Salon’s policies and practices preclude “duty-free” Meal and Rest Periods, in that the employees are required to remain “on-call” at all times, including during the Meal and Rest Periods, in order to (among other reasons) remain available during their Meal Periods to attend to client needs and/or be available for walk-in clients. These institutional and established practices of the Salon are illegal, in that Plaintiff and all other aggrieved employees were denied proper and/or timely Meal and Rest Periods.

99. The Salon willfully failed and refused to pay Plaintiff and all other aggrieved employees one additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest

1 Period was not provided, as required by Labor Code § 226.7 and IWC Wage Order 2
2 (11), (12).

3 100. Any payments made by the Salon for missed or late Meal Periods were not paid at an
4 employee's regular rate in violation of Labor Code § 226.7 and the operative IWC Wage
5 Orders. Instead, these payments were made at an employee's base rate and did not
6 include the value of, *inter alia*, additional compensation and/or employee benefits.

7 101. As a direct result of the Salon's failure to comply with the foregoing provisions of the
8 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
9 amount to be proven at trial.

10 102. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
11 behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3,
12 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
13 penalties pursuant to Labor Code § 2699, as more specifically set forth in the below
14 Prayer for Relief.

15 103. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of the
16 Salon pursuant to Labor Code § 2699(a).

17 104. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
18 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

19 **SIXTH CAUSE OF ACTION**

20 **Failure to Timely Pay Wages**

21 **[Labor Code § 204]**

22 **Individual and Representative Action**

23 **(Against All Defendants)**

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

26 106. Plaintiff and all other aggrieved employees performed work for the Salon, as an
27 employee of the Salon, as stated herein. Throughout Plaintiff's and all other aggrieved
28 employees' employment, they earned wages that were not paid to them, as stated herein,
in an amount according to proof at trial.

1 107. California Labor Code § 204 - applicable at all times relevant herein to Plaintiff's and all
2 other aggrieved employees' employment by the Salon - provides that all wages earned by
3 any person in any employment are due and payable twice during each calendar month.
4 The Salon failed to pay Plaintiff and all other aggrieved employees the wages they were
5 entitled to under the Code.

6 108. During her employment, Plaintiff and all other aggrieved employees were denied proper
7 wages due, in part, to the Salon's misclassification of Non-Exempt Employees, and other
8 aggrieved employees as "exempt" or "independent contractors." Despite the Salon's title,
9 Plaintiff and other aggrieved employees were not "exempt" nor "independent
10 contractors" as, among other reasons, they were under the Salon's control and were
11 engaged in the business of cutting and styling hair.

12 109. As a direct result of the Salon's failure to comply with the foregoing provisions of the
13 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
14 amount to be proven at trial.

15 110. As a result of the Salon's willful failure to pay wages, in addition to such other damages
16 and penalties as may properly be recovered herein, Plaintiffs and all other aggrieved
17 employees are entitled to back pay, waiting time penalties, interest, costs, and attorneys'
18 fees pursuant to Labor Code §§ 226, 512, 1197, and 2802.

19 111. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
20 behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3,
21 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
22 penalties pursuant to Labor Code § 2699, as more specifically set forth in the below
23 Prayer for Relief.

24 112. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of the
25 Salon pursuant to Labor Code § 2699(a) for each of these employees.

26 113. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
27 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

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SEVENTH CAUSE OF ACTION
Failure to Pay Wages Upon Separation
[Labor Code §§ 201-203]
Individual and Representative Action
(Against All Defendants)

114. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
115. The Salon willfully failed to provide Plaintiff and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code §§ 201 through 203. These violations resulted from, among other unlawful actions, the Salon's willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code §§ 226.7, 510, 512, and 1197.
116. The Salon failed to provide all compensation upon termination of employment in violation of Labor Code §§ 201-203 due, in part, to the fact that the Salon failed to provide proper compensation for all hours worked, intentionally misclassified employees as "independent contractors" and failed to pay meal and/or rest period penalties.
117. As a direct result of the Salon's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.
118. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer for Relief.
119. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of the Salon pursuant to Labor Code § 2699(a).
120. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

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EIGHTH CAUSE OF ACTION
Unlawful Commissions Agreement
[Labor Code § 2751]
Individual and Representative Action
(Against All Defendants)

121. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

122. Cal. Labor Code § 2751 states:

(a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing **and shall set forth the method by which the commissions shall be computed and paid.**

(b) The employer shall give a **signed copy** of the contract to every employee who is a party thereto **and shall obtain a signed receipt for the contract from each employee.** In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.

123. Plaintiff entered into two employment contracts with the Salon, Agreement #1 and Agreement #2, as stated herein and attached as Exhibits 1 and 2.

124. The Salon failed and refused, and continues to refuse, to pay Plaintiff the commissions that Plaintiff earned and that were then due via Agreement #1 and Agreement #2, as stated herein.

125. Agreement #1 violates Labor Code § 2751 by, *inter alia*, not listing the method by which commissions are computed and paid. Instead, Agreement #1 simply states “Cosmetologists [...] will receive any percentage between 40%-50% compensation for services rendered.” Agreement #1 notably does not mention, *at all*, how commissions are to be paid, when they are earned, or when they are paid.

126. Agreement #2 violates Labor Code § 2751 by, among other failures, failing to set forth with specificity when and how commissions will be paid, giving unfettered discretion to the Salon in terms of if, when, and how commissions will be paid, whether sales will be approved, and unstated charges and fees.

1 127. Further, the Salon violated the provisions of Labor Code § 2751 in that the Salon did not
2 give Plaintiff a signed copy of Agreement #2 and did not ask for, or obtain from Plaintiff,
3 a signed receipt thereof.

4 128. Plaintiff did all, or substantially all, of the things Agreements #1 and #2 required of her,
5 or in the alternative, Plaintiff was excused from such performance.

6 129. These violations are asserted on behalf of Plaintiff and all other aggrieved employees,
7 and also form the underlying basis for violations of California's Unfair Competition Law
8 ("UCL"), Business & Professions Code §§ 17200, *et seq.*, and of California's Private
9 Attorneys General Act ("PAGA"), California Labor Code §§ 2699, *et seq.* *Comin v.*
10 *IBM* (N.D. Cal. Feb. 9, 2021, Case No. 19-cv-07261-JD) 2021 U.S. Dist. LEXIS 24881, 9.

11 130. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
12 behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3,
13 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
14 penalties pursuant to Labor Code § 2699, as more specifically set forth in the below
15 Prayer for Relief.

16 131. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of the
17 Salon pursuant to Labor Code § 2699(a).

18 132. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
19 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

20 **NINTH CAUSE OF ACTION**

21 **Failure to Pay Sick Time**
22 **[Labor Code § 246]**

23 **Individual and Representative Action**
24 **(Against All Defendants)**

25 133. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
26 the preceding paragraphs as though fully set forth herein.

27 134. Under Labor Code § 246.5(a), an employee who works in California for the same
28 employer for 30 or more days within a year from the commencement of employment is
entitled to paid sick days. Per § 246(b)(2), an employee is entitled to no less than 24
hours of accrued sick leave or paid time off per calendar year.

1 135. The Salon did not provide Plaintiff and other employees with accrued sick days pursuant
2 to the Labor Code. Further, in each instance when Plaintiff took a sick day, the Salon did
3 not pay Plaintiff and other employees for sick days as required by law.

4 136. The Salon's conduct violates California Labor Code § 246.

5 137. Pursuant to California Labor Code § 248.5, Plaintiff is entitled to recover three (3) times
6 the dollar amount equivalent of each paid sick day, or \$ 250, whichever is greater, and
7 not to exceed an aggregate penalty of \$ 4,000.

8 138. Labor Code § 246(i) provides that an employer must provide an employee with written
9 notice that sets forth the amount of paid sick leave available or paid time off that an
10 employer provides in lieu of sick leave for use on either the employee's itemized wage
11 statement or in a separate written statement provided on the designated pay date with the
12 employee's wages.

13 139. Plaintiff and other aggrieved employees did not receive sick leave and notice on their
14 wage statements or other separate written statements that listed the balance of paid sick
15 leave that they should have been accruing, in violation of Labor Code §§ 246 *et seq.*

16 140. As a direct result of the Salon's failure to comply with the foregoing provisions of the
17 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
18 amount to be proven at trial.

19 141. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
20 behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3,
21 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
22 penalties pursuant to Labor Code § 2699, as more specifically set forth in the below
23 Prayer for Relief.

24 142. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of the
25 Salon pursuant to Labor Code § 2699(a).

26 143. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor
27 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

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TENTH CAUSE OF ACTION

**Breach Of Written Contract
Individual Action
(Against All Defendants)**

144. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
145. Plaintiff and the Salon entered into two agreements, Agreement #1 and Agreement #2, as stated herein, attached hereto as Exhibits 1 and 2.
146. Under both contracts, the Salon was required to pay Plaintiff a calculable commission based on the number of services she rendered and hair products she sold. The commission payments were paid on a biweekly basis as they were earned by Plaintiff.
147. Plaintiff did all, or substantially all, of the things the contract required her under the contracts, or in the alternative, Plaintiff was excused from such performance, as stated herein.
148. The Salon failed to perform on the contract by failing to pay Plaintiff the proper commissions promised and owed to her.
149. As a direct and proximate result of the Salon's unlawful actions against Plaintiff, as stated herein, Plaintiff has been harmed in that she has suffered substantial economic losses, in an amount according to proof plus interest.

ELEVENTH CAUSE OF ACTION

**Breach Of Implied Contract
Individual Action
(Against All Defendants)**

150. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
151. Should the trier of fact find that a valid and enforceable written agreement did not exist between Plaintiff and the Salon, Plaintiff alleges this claim in the alternative.
152. The Salon offered Plaintiff employment as a Commission Stylist. If Plaintiff performed services for the Salon—style hair or sell hair products—the Salon would pay Plaintiff commissions based on the value of the service and/or sale of products.

1 153. Throughout Plaintiff's employment, Plaintiff performed services for the Salon diligently
2 and competently.

3 154. The Salon maintained that it would pay Plaintiff commissions for the work she
4 performed. The Salon did, in fact, regularly pay Plaintiff commissions biweekly for
5 services and sales, throughout her employment, up until her notice of resignation.
6 However, the Salon did not pay Plaintiff the proper commissions promised and owed to
7 Plaintiff, as stated herein.

8 155. Plaintiff reasonably relied on the Salon's representations, policies, and practices as
9 described in Agreement #1 and Agreement #2, as stated herein.

10 156. Based on the foregoing, there existed an implied contract between Plaintiff and the Salon
11 wherein the Salon was required to pay Plaintiff commissions for services rendered and
12 products sold.

13 157. Plaintiff did all, or substantially all, of the things the contract required of her, or in the
14 alternative, Plaintiff was excused from such performance.

15 158. The Salon failed to perform on the contract by failing to pay Plaintiff the proper
16 commissions promised and owed to her.

17 159. As a direct and proximate result of the Salon's unlawful actions against Plaintiff, as
18 stated herein, Plaintiff has been harmed in that she has suffered substantial economic
19 losses, in an amount according to proof plus interest.

20 **TWELFTH CAUSE OF ACTION**

21 **Breach Of Oral Contract**

22 **Individual Action**

23 **(Against All Defendants)**

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

26 161. Should the trier of fact find that a valid and enforceable oral or written agreement did not
27 exist between Plaintiff and the Salon, Plaintiff alleges this claim in the alternative.

28 162. Plaintiff and the Salon entered into an oral agreement, Agreement #2, as stated herein.

1 163. Under the contract, the Salon was required to pay Plaintiff a calculable commission for
2 services she rendered and products she sold. Agreement #2 also stated the Salon was to
3 provide Plaintiff with an assistant.

4 164. Plaintiff did all, or substantially all, of the things the contract required of her under the
5 contract, or in the alternative, Plaintiff was excused from such performance.

6 165. The Salon maintained that they would pay Plaintiff commissions for the work she
7 performed. The Salon did, in fact, regularly pay Plaintiff commissions biweekly for her
8 services and sales, throughout her employment, up until her notice of resignation.
9 However, the Salon did not pay the proper commissions promised and owed to Plaintiff,
10 as stated herein.

11 166. The Salon failed to perform on the contract by failing to pay Plaintiff the proper number
12 of commissions promised and owed.

13 167. As a direct and proximate result of the Salon's unlawful actions against Plaintiff, as
14 stated herein, Plaintiff has been harmed in that she has suffered substantial economic
15 losses, in an amount according to proof plus interest.

16 **THIRTEENTH CAUSE OF ACTION**

17 **Promissory Estoppel**
18 **Individual Action**
(Against All Defendants)

19 168. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
20 the preceding and subsequent paragraphs as though fully set forth herein.

21 169. Should the trier of fact find that a valid and enforceable agreement did not exist between
22 Plaintiff and the Salon, Plaintiff alleges this claim in the alternative.

23 170. The Salon clearly and unambiguously promised to pay Plaintiff commissions at specified
24 rates, as alleged herein. Specifically, Plaintiff was promised 40% - 50% commission in
25 Agreement #1, and later 50% commission in Agreement #2 for services rendered and
26 products sold. Plaintiff was paid less than 40% commission for her work.

27 171. Plaintiff relied on the Salon's promise, as evidenced by the fact that she began and
28 continued to perform work for the Salon after said promise was made, as stated herein.

1 172. Plaintiff's reliance on the Salon's promises was reasonable for Plaintiff, and foreseeable
2 to the Salon.

3 173. Plaintiff was injured in that she was not provided the proper commissions promised and
4 owed to her, and in that she forewent other employment she could have obtained during
5 the time she performed work for the Salon.

6 174. As a direct and proximate result of the Salon's inducement of Plaintiff's reliance,
7 Plaintiff has been injured in an amount according to proof at trial plus interest.

8 **FOURTEENTH CAUSE OF ACTION**

9 **Quantum Meruit**
10 **Individual Action**
11 **(Against All Defendants)**

12 175. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
13 the preceding paragraphs as though fully set forth herein.

14 176. Should the trier of fact find that a valid and enforceable agreement did not exist between
15 Plaintiff and the Salon, Plaintiff alleges this claim in the alternative.

16 177. As an employee of the Salon, both Plaintiff and the Salon understood and expected that
17 the Salon would compensate Plaintiff via commissions for the reasonable value of the
18 services Plaintiff performed, as stated herein.

19 178. The Salon failed to pay Plaintiff the reasonable value of the services she performed, as
20 the Salon failed to pay Plaintiff the 40% and later 50% commission she was promised
21 and owed, as stated herein.

22 179. As a direct and proximate result of the Salon's failure to pay Plaintiff the reasonable
23 value of the services she rendered, Plaintiff was harmed. Plaintiff is entitled to receive the
24 reasonable value of such services in an amount according to proof at trial plus interest.

25 **FIFTEENTH CAUSE OF ACTION**

26 **Unlawful, Unfair, And/Or Fraudulent Business Practices**
27 **[Cal. Bus. & Prof. Code § 17200, et seq.]**
28 **Individual Action**
(Against All Defendants)

180. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
the preceding paragraphs as though fully set forth herein.

1 181. California Business & Professions Code §§ 17200 et seq. prohibits the engagement of
2 any business acts or practices constituting unfair competition. Section 17200 defines
3 “unfair competition” to mean and include “...any unlawful, unfair or fraudulent business
4 act or practice.”

5 182. Plaintiff performed work for the Salon, as an employee, as stated herein.

6 183. The Salon has committed acts of unfair competition as defined by the Unfair Business
7 Practices Act, by engaging in the unlawful, unfair and fraudulent business practices and
8 acts described in this Complaint, including, but not limited to the Salon’s failure to pay
9 Plaintiff pursuant to the terms of the contracts, or alternatively, for the reasonable value
10 of her services. Such practices negatively affect the Salon’s competitors who *do pay*
11 according to the contracts to which they are parties or, in the alternative, pay the
12 reasonable value of services rendered on their behalf.

13 184. As a direct and proximate result of the Salon’s unlawful and/or unfair business acts or
14 practices, Plaintiff has suffered an injury-in-fact and was deprived of money or property
15 to which he has valid and cognizable claims.

16 185. The harm to Plaintiff resulting from these unlawful and/or unfair business acts or
17 practices, far outweighs whatever benefits, if any, such business practices have for the
18 Salon.

19 186. In addition to all other damages properly recoverable, Plaintiff is entitled to all restitution
20 damages arising from the Salon’s unlawful and/or unfair business acts or practices, in an
21 amount to be established according to proof plus interest.

22 187. Plaintiff is further entitled to cumulative damages pursuant to California Business and
23 Professions Code § 17205, and an award of attorneys’ fees pursuant to California Code of
24 Civil Procedure § 1021.5.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff on her own behalf and on behalf of all aggrieved employees, prays for judgment as follows:

1. For compensatory damages according to proof, as set forth under Labor Code §§ 510, 1194, and 2802, among other statutes;
2. For penalties and restitution of wages according to proof, as set forth under Labor Code §§ 226, 226.7, 450, 1197.1, and 2699(f) among other statutes;
3. For penalties pursuant to Title 8, California Code of Regulations, Wage Order 2 (or any applicable Wage Order);
4. For lost back pay in an amount to be proven;
5. Where available, for liquidated damages pursuant to Labor Code § 1194.2;
6. Where available, for an award of interest, including prejudgment interest, pursuant to Labor Code § 218.6;
7. For punitive damages in an amount necessary to make an example of and to punish the Salon, and to deter future similar conduct;
8. For special damages in an amount according to proof;
9. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code §§ 218.5, 226, 1194, 2802 and Code of Civil Procedure § 1021.5; and
10. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests that this matter be heard and decided by trial by jury.

DATED: April 28, 2023

GRUENBERG LAW



JOSHUA D. GRUENBERG, ESQ.
KATHERINE A. DISHONGH, ESQ.
SAMANTHA N. ALVARADO, ESQ.

Attorneys for Plaintiff

**JESSICA PHILLIPS, individually, and in a
representative capacity on behalf of other
members of the general public similarly situated**

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EXHIBIT 1

(1) COMMISSION CONTRACTOR AGREEMENT (AGREEMENT #1)

Commission Contractor Agreement

This Commission Contractor Agreement (the "Agreement") is made as of this 2 day of January, 2019, (the "Effective Date") by and between Lawa Meraki, a California Corporation, with its principal place of business at 744 G Street 106A, San Diego, CA 92101, (the "Company") and Jessica Phillips at 744 G Street 106A, San Diego, CA 92101 (the "Commission Contractor"), (each, a "Party" and collectively, the "Parties").

1. **Services.** Commission Contractor shall provide the following services to Lawa Meraki (the "Services"): Cosmetologist and/or Esthetician

2. **Compensation.** In consideration for Commission Contractor performance of the Services, Lawa Meraki shall pay Commission Contractor according to the following payment terms: Cosmetologists and or Estheticians will receive any percentage between 40%-50% compensation for services rendered. If Lawa Meraki is subject to inspection by the California Board of Barbering and Cosmetology and receives a fine due to the negligence of the Commission Contractor to follow guidelines and policies set by the California Board of Barbering and Cosmetology the Commission Contractor is responsible for all fines and/or penalties against the Commission Contractor and Lawa Meraki. Proof of payment must be provided to Lawa Meraki before the deadline of fee. If the deadline has passed and the Commission Contractor has not provided proof of payment and all fees accumulated the Commission Contractor will not be permitted to work and failure to comply with above stated stipulations will result in termination and Commission Contractor will continue to be responsible for all fines and fees accrued. Commission Contractor is responsible for understanding all penalizable fees and continuing education necessary to keep Commission Contractor license current. Commission Contractor will receive keys that will permit Commission Contractor access to Lawa Meraki. Commission Contractor is responsible for the cost to change the locks to the Lawa Meraki salon if Commission Contractor should lose initial set of keys provided by Lawa Meraki. Failure to notify Tiffany Hoover immediately in regards to lost or stolen keys will result in termination of Commission Contractor.

3. **Commission Contractor.** The Parties agree and acknowledge that Jessica Phillips an Commission Contractor and is not, for any purpose, an employee of Lawa Meraki. The Commission Contractor does not have any authority to enter into agreements or contracts on behalf of Lawa Meraki, and shall not represent that it possesses any such authority. Commission Contractor shall not be entitled to any of the Company's benefits including but not limited to coverage under medical, dental, retirement, or other plans. Company shall not be obligated to pay worker's compensation insurance, unemployment compensation, social security, withholding tax or other taxes or withholding for or on behalf of the Commission Contractor in connection with the performance of Services under this Agreement. Property that has been damaged by the Commission Contractor is required to be reported immediately to Tiffany Hoover. Nothing contained in this

Agreement shall be deemed or construed by the Parties to create the relationship of a partnership, a joint venture or other fiduciary relationship.

4. Term and Termination. This Agreement and Commission Contractor's engagement with Lawa Meraki under this Agreement shall commence on the Effective Date.

a. Terms and Agreements. Commission Contractor acknowledges and agrees that the engagement with Lawa Meraki is at will and that the Commission Contractor shall be treated as an Independent Contractor; Commission Contractor acknowledges and agrees that the engagement with Lawa Meraki is at will, subject to being terminated at the discretion of Lawa Meraki at any time, without prior notice to Commission Contractor. In addition, this Agreement may be terminated by Commission Contractor upon thirty (30) days prior written notice to Lawa Meraki. Each term is for no less than a six (6) month period.

5. Confidentiality.

a. Confidential and Proprietary Information. In the course of performing Services, the Commission Contractor will be exposed to confidential and proprietary information of the Company. Confidential and proprietary information shall mean any data or information that is competitively sensitive material and not generally known to the public, including, but not limited to, information relating to product development and plans, marketing strategies, finance, operations, systems, proprietary concepts, documentation, reports, data, specifications, object code, flow charts, data, databases, inventions, know-how, trade secrets, customer lists, customer relationships, customer profiles, supplier lists, supplier relationships, supplier profiles, pricing, sales estimates, business plans and internal performance results relating to the past, present or future business activities, technical information, design, process, procedure, formula, or improvement, which Lawa Meraki considers confidential and proprietary. Commission Contractor acknowledges and agrees that the confidential and proprietary information is valuable property of Lawa Meraki, developed over a long period of time at substantial expense and that it is worthy of protection.

b. Confidentiality Obligations. Except as otherwise expressly permitted in this Agreement, Commission Contractor shall not disclose or use in any manner, directly or indirectly, any confidential and proprietary information either during the term of this Agreement or at any time thereafter, except as required to perform the Services or with the permission of Tiffany Hoover's prior written consent.

c. Rights in Confidential and Proprietary Information. All ideas, concepts, work product, information, written material or other confidential and proprietary information disclosed to Commission Contractor by Lawa Meraki (i) are and shall remain the sole and exclusive property of the Company, and (ii) are disclosed or permitted to be acquired by Commission Contractor solely in reliance on Commission Contractor's agreement to maintain them in confidence and not to use or disclose them to any other person except in furtherance of the Company's business. Except as expressly provided herein, this

Agreement does not confer any right, license, ownership or other interest or title in, to or under the confidential and proprietary information to Commission Contractor.

d. **Irreparable Harm.** Commission Contractor acknowledges that use or disclosure of any confidential and proprietary information in a manner inconsistent with this Agreement will give rise to irreparable injury for which damages would not be an adequate remedy. Accordingly, in addition to any other legal remedies which may be available at law or in equity, the Company shall be entitled to equitable or injunctive relief against the unauthorized use or disclosure of confidential and proprietary information. The Company shall be entitled to pursue any other legally permissible remedy available as a result of such breach, including but not limited to damages, both direct and consequential. In any action brought by the Company under this Section, the Company shall be entitled to recover its attorney's fees and costs from Commission Contractor.

6. **Ownership of Work Product.** All salon retail products; not excluding hair extensions are to be sold and recorded through Lawa Meraki at time of purchase. Only products provided by Lawa Meraki are to be sold within the salon. Failure to abide with above stated stipulations will result in immediate termination.

7. **Representations, Warranties and Indemnification.**

a. Both Company and Commission Contractor represent and warrant that each Party has full power, authority and right to execute and deliver this Agreement, has full power and authority to perform its obligations under this Agreement, and has taken all necessary action to authorize the execution and delivery of this Agreement. No other consents are necessary to enter into or perform this Agreement.

b. Commission Contractor represents and warrants that it has all the necessary licenses, permits and registrations required to perform the Services under this Agreement in accordance with applicable federal, state and local laws, rules and regulations and that it will perform the Services according to the Company's guidelines and specifications and with the standard of care prevailing in the industry.

c. The Commission Contractor shall indemnify and hold harmless the Company from any damages, claims, liabilities, loss and expenses, including reasonable attorney's fees, arising from the performance of Services or of any breach hereunder by Commission Contractor.

8. **Miscellaneous.**

a. **Governing Law.** The terms of this Agreement shall be governed exclusively by the laws of the State of California (not including its conflicts of law provisions). Any dispute arising from this Agreement shall be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association.

b. **Expenses.** Except as otherwise specified in this Agreement, (i) all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement shall be paid by the Party incurring such costs and expenses and (ii) neither Party shall have any obligation to reimburse the other Party for any such expenses.

c. **Insurance.** For the term of this Agreement, Commission Contractor shall obtain and maintain a policy of insurance, with appropriate and adequate coverage and limits, to cover any claims for bodily injury, property damage or other losses which might arise out of any negligent act or omission committed by Commission Contractor in connection with the performance of Services under this Agreement. Commission Contractor is responsible to provide Lawa Meraki with proof of insurance required by California State Law for Cosmetologists and/or Estheticians failure to maintain adequate insurance and/or let insurance lapse or terminate will result in termination from Lawa Meraki.

d. **Binding Effect and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Other than as set forth in the preceding sentence and as otherwise expressly stated herein, no assignment of this Agreement or of any rights or obligations under this Agreement may be made without the prior written consent of the other Party.

e. **Entire Agreement and Amendment.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior understandings of the Parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by both of the Parties.

f. **Notices.** Any notice or other communication given or made to either Party under this Agreement shall be in writing and delivered by hand, sent by overnight courier service or sent by certified or registered mail, return receipt requested, to the address stated above or to another address as that Party may subsequently designate by notice and shall be deemed given on the date of delivery.

g. **Waiver.** Neither Party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly and in writing. Waiver by either Party of a breach or violation of any provision of this Agreement shall not constitute a waiver of any subsequent or other breach or violation.

h. **Further Assurances.** At the request of one Party, the other Party shall execute and deliver such other documents and take such other actions as may be reasonably necessary to effect the terms of this Agreement.

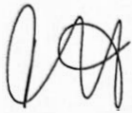
i. **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall

continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable parts had not been included in this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first written above.

Tiffany Hoover

Signature:



Print Name: Tiffany Hoover

Title: Owner La'Wa Meraki

Commission Contractor

Signature:



Jessica Phillips

Print Name:

Title:

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EXHIBIT 2

(2) COMMISSION STYLIST LEVEL SYSTEM (AGREEMENT #2)

Commission Stylist Level System

MERAKI LOUNGE BY LAWA MERAKI

Level System:

Level 1: Front Desk, Assistant & Check Off List

Front Desk (3+ Months)

Assisting Tiffany (6+ Months)

Pass Check Off List

Hourly Pay

Level 2: 6 Month Evaluation

40% Service Commission

10% Product/Hair Commission

Hair/Product Sales- \$250 per week

Services- \$1,500 per week

Level 3: 12 Month Evaluation

2 Year Requirement

45% Service Commission

10% Product/Hair Commission

Hair/Product Sales- \$500 per week

Services- \$2,500

Level 4: 24 Month Evaluation

2+ Year Requirement

50% Service Commission

10% Product/Hair Commission

Hair/Product Sales- \$750 per week

Services- \$3,500 per week

Level 5: 24 Month + Evaluation

2+ Year Requirement

50% Service Commission

10% Product/Hair Commission

Assistant

Hair/ Product Sales- \$1,000

Services- \$4,500

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EXHIBIT 3

(3) PLAINTIFF’S LETTER FILED WITH THE LABOR AND WORKFORCE
DEVELOPMENT AGENCY



February 21, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

Re: Jessica Phillips v. Meraki Lounge LLC

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Meraki Lounge LLC and Tiffany Hoover (hereinafter collectively “MERAKI”), in the above-referenced matter.

This “written notice” is filed on behalf of Jessica Phillips and all current and former non-exempt employees employed by MERAKI and Tiffany Hoover. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by MERAKI are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-204, 223, 226, 226.7, 246, 510, 512, and, 1194, as well as IWC Wage Order 2, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11020 et seq.

Facts and theories supporting the allegations: Our client, Jessica Phillips, worked as a non-exempt employee employed by MERAKI from approximately January 2019 until approximately November 2022. Jessica Phillips was a hair stylist for MERAKI.

Please Note: The majority of the Labor Code violations experienced by Ms. Phillips and others were initiated by MERAKI’s categorization of Ms. Phillips and others as “independent contractors.” For example, as these employees were designated as “independent contractors” by MERAKI, they did not receive proper Overtime Compensation, regardless of how many hours a day/week they would work, and were not provided any legal Meal or Rest periods. However, all of the Labor Code violations were also experienced by MERAKI employees, regardless of whether they were misclassified or not.

Throughout the term of Ms. Phillips' employment, MERAKI required Ms. Phillips and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

MERAKI failed to provide all compensation, including Minimum Wage and Overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 223, 1194, 510, IWC Wage Order 2, and any other applicable wage orders. This illegal action is due, in part, to MERAKI's policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both Minimum and Overtime compensation) for all time worked by the employees, or in control of the employer. For instance, as Ms. Phillips was paid via commission (instead of hourly), she did not receive compensation for working beyond her scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Moreover, MERAKI would often require Ms. Phillips to work extended hours (beyond MERAKI's hours of operation) without compensation.

Additionally, among other issues, MERAKI had notice of Ms. Phillips, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but failed to provide any compensation for this work time.

Finally, because Ms. Phillips, and other non-exempt employees, were paid commissions, MERAKI failed to properly calculate the legal Overtime Rate of Pay (or pay Overtime Pay, at all).

Failure to Provide Compliant Meal Periods

MERAKI failed to provide compliant Meal Periods in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 2, or any other applicable wage orders. For example, MERAKI does not possess a legal Meal Period policy and makes no attempt to ensure its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely or be provided a short or untimely Meal Period. Over the course of her employment, Ms. Phillips was never allotted time to take a Meal Period and was instructed on numerous occasions to remain available during her Meal Periods to attend to client needs and/or be available for walk-in clients.

MERAKI would pressure its employees to either skip or cut short a Meal Period as employees were expected to respond to supervisors at all times. On the rare occasions when employees *were* paid Meal Period penalties (i.e. California

Meal Period Premiums), such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of 226.7.” (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256.) Even more recently, a 2020 California Supreme Court ruling stated that “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a 226.7 violation.’” (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73.) To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. MERAKI failed to pay Meal Period Premiums at the proper rate, as MERAKI fails to either **(1)** pay a full hour’s worth of pay, or **(2)** properly calculate the Regular Rate of Pay for purposes of determining the premium rate owed. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 864.)

Finally, MERAKI illegally retained control over its employees during Meal Periods. For example, MERAKI required its employees to “remain on the premises” (i.e. remain at the salon to clean or prepare stations) and to remain “on call” (i.e. be available to clients including “walk-in” clients without appointments) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

MERAKI failed to provide compliant Rest Periods or requisite Rest Period Penalty Payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, IWC Wage Order 2, and any other applicable wage orders. For example, MERAKI does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. MERAKI makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. Employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. MERAKI would pressure its employees to either skip or cut short a Rest Period as employees were expected to respond to clients and supervisors at all times. MERAKI has never provided a compliant Rest Period Penalty Payment to any employee as to the above-referenced issues.

Finally, MERAKI illegally retained control over its employees during Rest Periods. For example, MERAKI required its employees to “remain on the premises”

(i.e. remain at the salon to clean or prepare stations) and to remain “on call” (i.e. be available to clients, including “walk-in” clients without appointments) at all times, including during Rest Periods.

Wage Statement Violations

The below-described violations stem from MERAKI’s misclassification and uniform failure to provide compliant wage statements. Instead, employees would receive check stubs and/or Apple Pay descriptions from MERAKI’s owner, Tiffany Hoover.

MERAKI violated Labor Code section 226(a)(1) by failing to furnish an accurate showing of the gross wages earned by its employees. For example, MERAKI **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use an improper (and *lesser*) Overtime Rate of Pay, and **(c)** would fail to pay Meal and/or Rest Period Penalties when due.

MERAKI violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. The check stubs and/or Apple Pay descriptions do not list the hours worked at any rate, for any pay period. Through MERAKI’s failure to provide any compliant wage statements showing hours worked or hourly rate, and through MERAKI’s commission-only based pay, Ms. Phillips and other employees were not compensated for all hours worked. Furthermore, MERAKI failed to state the Overtime Rate of Pay on its earning records.

MERAKI violated Labor Code section 226(a)(3) by failing to furnish an accurate showing of the number of piece-rate units earned and/or any applicable piece rate. The wage statements do not list the rates worked, for any pay period. The wage statements fail to list any rate at all for any earnings, including commissions.

MERAKI violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, MERAKI **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use an improper (and *lesser*) Overtime Rate of Pay, and **(c)** would fail to pay Meal and/or Rest Period penalties when due. Further, on the rare occasions in which MERAKI would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.

MERAKI violated Labor Code section 226(a)(8) by failing to include the name and address of the legal entity that is the employer. For example, MERAKI would pay employees via check or Apple Pay from MERAKI's owner Tiffany Hoover, and include no information about MERAKI.

MERAKI violated Labor Code section 226 (a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. MERAKI's check stubs and Apple Pay descriptions do not list the hourly rate for either Regular or Overtime Rates of pay, for any Pay Period. Additionally, Ms. Phillips, and the other employees, were not compensated for all hours worked (due in part to MERAKI requiring employees to list only *Scheduled* work time, not actual work time to include "on-call" hours). The check stubs and Apple Pay descriptions do not state the hourly rates for any work. Therefore, MERAKI failed to provide a showing of the "total hours worked" by its employees pursuant to section 226(a)(2).

Failure to Provide Sick Time

MERAKI failed to provide accrued sick hours in violation of, *inter alia*, Labor Code § 246. Moreover, MERAKI failed to accurately list the amount of sick time earned on any documents given to or received by employees. Ms. Phillip's was never given any sick time. MERAKI has not had a "paid time off" policy and did not pay its employees for sick days.

Willful Failure to Provide All Compensation to Ex-Employees

MERAKI failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-204, due in part, to the fact that MERAKI failed to provide proper compensation for all hours worked, and failed to pay full Meal Period and Rest Period penalties, as discussed above. Ms. Phillips ceased employment with MERAKI in or around November 2022, and did not receive all wages due and owed to her, including accrued sick leave

To confirm, MERAKI is a "person" as defined within California Labor Code section 18.

Additionally, Tiffany Hoover is a "person" as defined within California Labor Code section 18.

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GRUENBERG LAW

gruenberglaw.com

Again, thank you for your assistance and instruction with this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Samantha N. Alvarado

Cc: Via Certified U.S. Mail

TIFFANY HOOVER
Agent of Service for
Meraki Lounge, LLC
1080 Park Blvd
Unit 701 San Diego, Ca 92101

Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave., 10th Floor
San Francisco, CA 94102

TIFFANY HOOVER
1080 Park Blvd
Unit 701
San Diego, Ca 92101

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EXHIBIT 4

(4) PLAINTIFF’S SECOND LETTER FILED WITH THE LABOR AND WORKFORCE
DEVELOPMENT AGENCY



April 28, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

Re: Jessica Phillips v. Meraki Lounge LLC

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Meraki Lounge LLC, Tiffany Hoover, and Lawa Meraki (hereinafter all named parties are collectively “MERAKI”) in the above-referenced matter.

This “written notice” is filed on behalf of Jessica Phillips and all current and former non-exempt employees employed by MERAKI and Tiffany Hoover. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by MERAKI are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-204, 223, 226, 226.7, 246, 510, 512, and, 1194, as well as IWC Wage Order 2, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11020 et seq.

Facts and theories supporting the allegations: Our client, Jessica Phillips, worked as a non-exempt employee employed by MERAKI from approximately January 2019 until approximately November 2022. Jessica Phillips was a hair stylist for MERAKI.

Please Note: The majority of the Labor Code violations experienced by Ms. Phillips and others were initiated by MERAKI’s categorization of Ms. Phillips and others as “independent contractors.” For example, as these employees were designated as “independent contractors” by MERAKI, they did not receive proper Overtime Compensation, regardless of how many hours a day/week they would work, and were not provided any legal Meal or Rest periods. However, all of the Labor Code violations were also experienced by MERAKI employees, regardless of whether they were misclassified or not.

Throughout the term of Ms. Phillips' employment, MERAKI required Ms. Phillips and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

MERAKI failed to provide all compensation, including Minimum Wage and Overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 223, 1194, 510, IWC Wage Order 2, and any other applicable wage orders. This illegal action is due, in part, to MERAKI's policies of **(1)** failing to properly retain accurate Time Records, in violation of California law, and **(2)** failing to provide compensation (including both Minimum and Overtime compensation) for all time worked by the employees, or in control of the employer. For instance, as Ms. Phillips was paid via commission (instead of hourly), she did not receive compensation for working beyond her scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Moreover, MERAKI would often require Ms. Phillips to work extended hours (beyond MERAKI's hours of operation) without compensation.

Additionally, among other issues, MERAKI had notice of Ms. Phillips, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but failed to provide any compensation for this work time.

Finally, because Ms. Phillips, and other non-exempt employees, were paid commissions, MERAKI failed to properly calculate the legal Overtime Rate of Pay (or pay Overtime Pay, at all).

Failure to Provide Compliant Meal Periods

MERAKI failed to provide compliant Meal Periods in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 2, or any other applicable wage orders. For example, MERAKI does not possess a legal Meal Period policy and makes no attempt to ensure its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely or be provided a short or untimely Meal Period. Over the course of her employment, Ms. Phillips was never allotted time to take a Meal Period and was instructed on numerous occasions to remain available during her Meal Periods to attend to client needs and/or be available for walk-in clients.

MERAKI would pressure its employees to either skip or cut short a Meal Period as employees were expected to respond to supervisors at all times. On the rare occasions when employees *were* paid Meal Period penalties (i.e. California

Meal Period Premiums), such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of 226.7.” (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256.) Even more recently, a 2020 California Supreme Court ruling stated that “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a 226.7 violation.’” (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73.) To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. MERAKI failed to pay Meal Period Premiums at the proper rate, as MERAKI fails to either **(1)** pay a full hour’s worth of pay, or **(2)** properly calculate the Regular Rate of Pay for purposes of determining the premium rate owed. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 864.)

Finally, MERAKI illegally retained control over its employees during Meal Periods. For example, MERAKI required its employees to “remain on the premises” (i.e. remain at the salon to clean or prepare stations) and to remain “on call” (i.e. be available to clients including “walk-in” clients without appointments) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

MERAKI failed to provide compliant Rest Periods or requisite Rest Period Penalty Payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, IWC Wage Order 2, and any other applicable wage orders. For example, MERAKI does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. MERAKI makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. Employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. MERAKI would pressure its employees to either skip or cut short a Rest Period as employees were expected to respond to clients and supervisors at all times. MERAKI has never provided a compliant Rest Period Penalty Payment to any employee as to the above-referenced issues.

Finally, MERAKI illegally retained control over its employees during Rest Periods. For example, MERAKI required its employees to “remain on the premises”

(i.e. remain at the salon to clean or prepare stations) and to remain “on call” (i.e. be available to clients, including “walk-in” clients without appointments) at all times, including during Rest Periods.

Wage Statement Violations

The below-described violations stem from MERAKI’s misclassification and uniform failure to provide compliant wage statements. Instead, employees would receive check stubs and/or Apple Pay descriptions from MERAKI’s owner, Tiffany Hoover.

MERAKI violated Labor Code section 226(a)(1) by failing to furnish an accurate showing of the gross wages earned by its employees. For example, MERAKI **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use an improper (and lesser) Overtime Rate of Pay, and **(c)** would fail to pay Meal and/or Rest Period Penalties when due.

MERAKI violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. The check stubs and/or Apple Pay descriptions do not list the hours worked at any rate, for any pay period. Through MERAKI’s failure to provide any compliant wage statements showing hours worked or hourly rate, and through MERAKI’s commission-only based pay, Ms. Phillips and other employees were not compensated for all hours worked. Furthermore, MERAKI failed to state the Overtime Rate of Pay on its earning records.

MERAKI violated Labor Code section 226(a)(3) by failing to furnish an accurate showing of the number of piece-rate units earned and/or any applicable piece rate. The wage statements do not list the rates worked, for any pay period. The wage statements fail to list any rate at all for any earnings, including commissions.

MERAKI violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, MERAKI **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use an improper (and lesser) Overtime Rate of Pay, and **(c)** would fail to pay Meal and/or Rest Period penalties when due. Further, on the rare occasions in which MERAKI would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.

MERAKI violated Labor Code section 226(a)(8) by failing to include the name and address of the legal entity that is the employer. For example, MERAKI would pay employees via check or Apple Pay from MERAKI's owner Tiffany Hoover, and include no information about MERAKI.

MERAKI violated Labor Code section 226 (a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. MERAKI's check stubs and Apple Pay descriptions do not list the hourly rate for either Regular or Overtime Rates of pay, for any Pay Period. Additionally, Ms. Phillips, and the other employees, were not compensated for all hours worked (due in part to MERAKI requiring employees to list only *Scheduled* work time, not actual work time to include "on-call" hours). The check stubs and Apple Pay descriptions do not state the hourly rates for any work. Therefore, MERAKI failed to provide a showing of the "total hours worked" by its employees pursuant to section 226(a)(2).

Failure to Provide Sick Time

MERAKI failed to provide accrued sick hours in violation of, *inter alia*, Labor Code § 246. Moreover, MERAKI failed to accurately list the amount of sick time earned on any documents given to or received by employees. Ms. Phillip's was never given any sick time. MERAKI has not had a "paid time off" policy and did not pay its employees for sick days.

Unlawful Commissions Agreement

MERAKI failed to provide a compliant contract of employment for services rendered when the method of payment involves commissions in violation of Labor Code § 2751. This section requires the employer give a signed copy of the contract to every employee who is a party thereto and must obtain a signed receipt for the contract from each employee. MERAKI entered into an employment contract with Ms. Phillips which involved payment via commissions but failed to set forth with specificity when and how commissions would be paid and did not give Ms. Phillips a signed copy of the contract, nor did MERAKI ask for or obtain from Ms. Phillips a signed receipt thereof. Thus, MERAKI initiated an unlawful commissions agreement pursuant to section 2751.

Willful Failure to Provide All Compensation to Ex-Employees

MERAKI failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-204, due in part, to the fact that MERAKI failed to provide proper compensation for all hours worked, and failed to pay full

Meal Period and Rest Period penalties, as discussed above. Ms. Phillips ceased employment with MERAKI in or around November 2022, and did not receive all wages due and owed to her, including accrued sick leave

To confirm, MERAKI is a “person” as defined within California Labor Code section 18.

Additionally, Tiffany Hoover is a “person” as defined within California Labor Code section 18.

Finally, Lawa Meraki is a “person” as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction with this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Samantha N. Alvarado

Cc: Via Certified U.S. Mail

MICHAEL PEREZ
Attorney for
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