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Attorneys for Plaintiff,
HEATHER RODRIGUEZ, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA
(*UNLIMITED JURISDICTION*)

HEATHER RODRIGUEZ, as an "aggrieved employee" on behalf of herself and other similarly situated "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff,

vs.

SCJM2, LLC, a California limited liability company; and DOES 1–50, inclusive,

Defendants.

Case No. 2023CUOE012116

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

JURY TRIAL DEMANDED

Plaintiff, Heather Rodriguez (hereafter "Plaintiff" or "Rodriguez"), on behalf of herself, the State of California, and the other Aggrieved Employees, complains and alleges as follows:

I. INTRODUCTION

1. Plaintiff brings this representative action based on alleged violations of the California Labor Code and Industrial Welfare Commission Order No. 2-2001 (hereafter "the Wage Order"), against Defendants SCJM2, LLC, a California limited liability company, and DOES 1-50, inclusive (collectively "Defendants").

2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her, the State of California, and the Aggrieved Employees (defined below), for civil penalties and other related relief. These claims are based on Defendants' failures to:

(A) Pay all wages, including minimum, regular, overtime and doubletime wages, earned for all hours worked at the correct rates of pay;

(B) Provide all meal periods;

(C) Authorize and permit all rest breaks;

(D) Pay premium wages for unprovided meal periods;

(E) Pay premium wages for unprovided rest breaks;

(F) Pay for reporting time;

(G) Pay spit shift premium pay;

(H) Indemnify for necessary work-related expenditures;

(I) Only deduct wages lawfully;

(J) Issue proper pay cards and other proper acknowledgments of indebtedness without discount;

(K) Issue only accurate and complete itemized wage statements;

(L) Issue statements of the total hours of rest and recovery periods;

(M) Disallow financial patronage of employer;

(N) Timely pay wages during employment;

(O) Timely pay wages upon termination of employment; and

(P) Maintain accurate employment records.

Accordingly, Plaintiff now seeks to recover civil penalties and related relief through this representative action.

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II. THE PARTIES

3. Plaintiff Heather Rodriguez is resident of California.

4. Defendant SCJM2, LLC is a limited liability company doing business as Sport Clips organized and existing under the laws of California and also a citizen of California based on Plaintiff's information and belief.

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

6. The "Aggrieved Employees" are all individuals the Defendants have employed or otherwise contracted with in California as non-exempt employees, including hairstylists, individuals performing work comparable to the aforementioned, and individuals in similar positions during the period beginning one year before the Plaintiff's notices of April 27 and May 26, 2023 to the California Labor and Workforce Development Agency and ending on the date judgment is entered.

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

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

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

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III. FACTUAL ALLEGATIONS

10. IWC Wage Order 2-2001 ("the Wage Order") applies to "all persons employed in the personal service industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean

> [A]ny industry, business, or establishment operated for the purpose of rendering, directly or indirectly, any service, operation, or process used or useful in the care, cleansing, or beautification of the body, skin, nails, or hair, or in the enhancement of personal appearance or health, including but not limited to beauty salons, schools of beauty culture offering beauty care to the public for a fee, barber shops, bath and massage parlors, physical conditioning, weight control salons, health clubs, and mortuaries.

Wage Order, § 2(J). At all relevant times during the applicable limitations period, the Defendants, Rodriguez, and all of the Aggrieved Employees were covered by the Wage Order because the Defendants operated, and Rodriguez, and all of the Aggrieved Employees, worked for one or more hair salons. Accordingly, Rodriguez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

11. On approximately December 13, 2021, the Defendants began to employ Rodriguez in Camarillo in the position of hourly, non-exempt hairstylist. The Defendants continuously employed her in that capacity until on or about October 27, 2022 when her employment ended.

12. At all relevant times, the Defendants issued wages to Rodriguez and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour plus commissions. At all relevant times, the Defendants classified Rodriguez and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

13. At all relevant times, the Defendants failed to compensate Rodriguez and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay.

14. At all relevant times, the Defendants failed to compensate Rodriguez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek.

15. At all relevant times, the Defendants failed to compensate Rodriguez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek.

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16. At all relevant times, the Defendants failed to provide Rodriguez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Defendants required Plaintiff and all other Aggrieved Employees to work five (5) or more hours before taking their meal period. The Defendants scheduled Plaintiff and all other Aggrieved Employees to work at least 6 hours before taking their first meal period. The Defendants also failed to pay premium wages for days on which it failed to provide Rodriguez and all of the other Aggrieved Employees with meal periods as required by law.

17. At all relevant times, the Defendants failed to authorize and permit Rodriguez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Defendants disallowed any paid 10-minute, duty-free rest breaks. The Defendants required Plaintiff and the other Aggrieved Employees to work, including folding towels, when they were not attending to clients or when the salon was slow. The Defendants also failed to pay premium wages for days on which it failed to authorize and permit Rodriguez and all of the other Aggrieved Employees to take rest breaks as required by law.

18. At all relevant times, the Defendants failed to pay to Rodriguez and all of the other Aggrieved Employees reporting time pay they earned.

19. At all relevant times, the Defendants failed to pay Rodriguez and all of the other Aggrieved Employees with split shift premiums as required by the Wage Order.

20. At all relevant times, the Defendants required Rodriguez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Defendants required Plaintiff and all other Aggrieved Employees to supply tools, equipment, and supplies, namely clippers, edgers, shears, trimmers, and grooming products to perform their job duties. However, the Defendants did not provide these items and did not reimburse Plaintiff and the other Aggrieved Employees for these items.

21. At all relevant times, the Defendants unlawfully deducted wages belonging to Rodriguez and all of the other Aggrieved Employees.

22. At all relevant times, the Defendants unlawfully issued acknowledgments of indebtedness to Rodriguez and all of the other Aggrieved Employees that were not payable in cash without discount at some established business within the state, and that failed to display the name and address of the business.

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23. At all relevant times, the Defendants failed to issue to Rodriguez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on the wage statements they issued to Rodriguez and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all split shift premium wages, all hours work at each rate of pay, and related information.

24. At all relevant times, the Defendants required financial patronage from Rodriguez and all of the other Aggrieved Employees to allow them to work. The Defendants required Plaintiff and all other Aggrieved Employees to purchase grooming products Defendants sold to their customers, such as gel, beard cream, and pomade, to pitch to the customers. The Defendants failed to reimburse Plaintiff and all other Aggrieved Employees for these purchased products.

25. At all relevant times, the Defendants also failed to timely pay Rodriguez and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

26. At all relevant times, the Defendants failed to maintain accurate employee records of Rodriguez and all of the other Aggrieved Employees.

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

A. Not paid all wages earned, including, but not limited to, minimum, regular, overtime, and doubletime wages for work performed while clocked out;

B. Not provided with all off duty meal periods;

C. Not authorized and permitted to take all rest break periods;

D. Not paid one hour's pay for each workday in which Defendants failed to authorize and permit them to take one or more timely rest periods;

E. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely meal periods;

F. Not indemnified for all necessary business expenditures incurred during the discharge of their duties;

G. Not provided with accurate and complete wage statements; and

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H. Not timely paid all earned and unpaid wages during their employment with Defendants and at the time such employment ended.

IV. FIRST (AND ONLY) CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698, *et seq.*)

(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against all Defendants)

28. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

29. At all relevant times, Plaintiff and the Aggrieved Employees have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

30. Section 2 of the Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

31. Section 3 of the Wage Order states:

> (A) Daily Overtime - General Provisions
>
> (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:
>
> (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

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

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

32. Within the personal services industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so. Wage Order 2, § 2(G).

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

34. Labor Code section 510 states:

> Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

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

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

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

38. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours

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worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

39. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay.

40. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as required by California law.

B. UNPAID REPORTING TIME PAY

41. Under Section 5 of the Wage Order

> [e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

Wage Order 2, sec. 5(A).

42. The Defendants required Rodriguez and all of the other Aggrieved Employees to report for a full day of work (eight or more hours) and, instead of furnishing them with half of more of their usual scheduled day's work, sent them home. Furthermore, the Defendants failed to pay Rodriguez and all of the other Aggrieved Employees at least two (2) hours at their regular rates of pay. This is a violation of the Wage Order and also the Labor Code (§ 1198). Accordingly, Rodriguez seeks an award of civil penalties against the Defendants on behalf of herself and all of the Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

C. FAILURE TO PAY SPLIT SHIFT PREMIUMS

43. Wage Order § 2 (L) defines a "Shift" as "designated hours of work by an employee, with a designated beginning time and quitting time." A "Split shift" is defined by § 2 (M) as "a work schedule which is interrupted by non-paid non-working periods established by

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the employer, other than bona fide rest or meal periods."

44. Wage Order § 4 (C) pertaining to "Minimum Wages" states: "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment."

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

46. The Defendants directed Rodriguez and all of the Aggrieved Employees to regularly work split shifts. However, the Defendants intentionally failed to pay Rodriguez and all of the Aggrieved Employees the equivalent of a sum greater than one hour's pay at the minimum wage in addition to the minimum wage for a workday. In so doing, the Defendants violated Labor Code §§ 1197 and 1198. Accordingly, Rodriguez seeks an award of civil penalties against the Defendants on behalf of herself and all of the Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

D. FAILURE TO PROVIDE MEAL PERIODS

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

48. In relevant part, California Labor Code § 1198 states:

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

49. Within the healthcare industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so. Wage Order 2, § 2(G).

50. In relevant part, In relevant part, California Labor Code § 512 states:

> An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than

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> 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.
>
> An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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

> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
>
> (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
>
> (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
>
> (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

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> (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

52. In relevant part, California Labor Code § 226.7 states:

> (b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
>
> (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

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

54. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

55. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees with all required 30-minute duty free meal periods and 10-minute rest periods free from any work duties in accordance with the Wage Order.

56. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely rest and meal periods. The Defendants required Plaintiff and all other Aggrieved Employees to work five (5) or more hours before taking their meal period. The Defendants scheduled Plaintiff and all other Aggrieved Employees to work at least 6 hours before taking their first meal period. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Aggrieved Employees with timely meal periods.

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57. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Defendants required Plaintiff and all other Aggrieved Employees to work five (5) or more hours before taking their meal period. The Defendants scheduled Plaintiff and all other Aggrieved Employees to work at least 6 hours before getting their first meal period. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages on workdays they failed to provide them with 10-minute rest periods every four hours worked or major fraction thereof.

58. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty meal periods and rest breaks required by California law.

<u>E. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS</u>

59. In relevant part, California Labor Code § 1198 states:

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

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

> (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half ($3^1/_2$) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
>
> (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular

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> rate of compensation for each workday that the rest period is not provided.

61. In relevant part, California Labor Code § 226.7 states:

> (b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
>
> (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

62. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

63. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved Employees to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

64. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Aggrieved Employees for days on which they failed to authorize and permit Plaintiff and the other Aggrieved Employees to take timely rest periods.

65. At all relevant times, due to high workload and low staffing levels, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages on workdays they failed to authorize and permit them to take 10-minute rest periods every four hours worked or major fraction thereof.

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66. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved Employees to take all rest breaks required by California law.

F. FAILURE TO INDEMNIFY

67. In pertinent part, California Labor Code § 2802(a) states: "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

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

69. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Defendants required Plaintiff and all other Aggrieved Employees to supply tools, equipment, and supplies, namely clippers, edgers, shears, and trimmers to perform their job duties. The Defendants required Plaintiff and all other Aggrieved Employees to purchase grooming products Defendants sold to their customers, such as gel, beard cream, and pomade, to pitch to the customers. The Defendant failed to reimburse Plaintiff and all other Aggrieved Employees for these purchased products. Additionally, the Defendants failed to provide tools to Plaintiff and the other Aggrieved Employees they required them to use to perform their work, nor did they reimburse them for such tools, including clippers, edgers, shears, trimmers, and grooming products.

70. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they incurred during the course of performing their duties.

G. UNLAWFUL ISSUANCE OF ACKNOWLEDGMENT OF INDEBTEDNESS NOT NEGOTIABLE WITHOUT DISCOUNT AT ESTABLISHED PLACE OF BUSINESS WITHIN THE STATE

71. In relevant part, California Labor Code § 212 states:

> (a) No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

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> (1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.
>
> (2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.
>
> (b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee.
>
> (c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the bank's address need not appear on the instrument and, in that case, the instrument shall be negotiable and payable in cash, on demand, without discount, at any place of business of the drawee chosen by the person entitled to enforce the instrument.

This statute only permits the use of pay cards as remuneration where the employer has both obtained the employee's voluntary authorization (*see* Labor Code § 213 and O.L. 1994.02.03-1, p.2) and has enabled the employee to use the card to obtain all wages due without incurring charge (O.L. 2008.07.07 and O.L. 1997.10.21). Indeed, the DLSE has specifically noted:

> The imposition of a fee in order to readily *access* one's earned and paid wages under a payroll card program which is designed to discharge the employer's wage payment obligation could impermissibly interfere with an employee's receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited.

O.L. 2008.07.07 at p. 8. In addition, a pay card system must also comply with the requirement of Labor Code § 2(d), which requires that employer pay deposits to employees be made in a bank, savings and loan association, or credit union "with a place of business in [California]." Further, a pay card system must comply with Labor Code § 212(a), which requires that all wages be fully payable, on demand and without discount, at some established business in California.

72. At all relevant times, the Defendants required Rodriguez and all of the other

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Aggrieved Employees to use a pay card to receive their wages. However, the Defendants deducted various fees associated with such transactions per pay period, including but not limited to a withdrawal fee. As a result, the Defendants' pay card system violated Labor Code § 212. Accordingly, Rodriguez now seeks an award of civil penalties against the Defendants on behalf of herself and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of California Labor Code § 212, and $200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of California Labor Code § 212, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

H. UNLAWFUL DEDUCTIONS

73. Under Labor Code § 221, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." The Defendants deducted wages from the wages earned by Rodriguez and all of the other Aggrieved Employees for in violation of Labor Code § 221. Accordingly, Rodriguez seeks an award of civil penalties against the Defendants on behalf of herself and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code § 221, and $200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221 (penalties set by Labor Code § 225.5).

I. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS

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

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

A. The amount of the gross wages or net wages paid to the employee during

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the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

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

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

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

E. The number of piece-rate units earned and the piece rate.

76. "Promptly and easily determine," as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

77. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Defendants failed to state in the wage statements they issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above).

78. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

79. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused

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difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

<u>J. UNTIMELY WAGES DURING EMPLOYMENT</u>

80. Labor Code § 204 states:

> (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. …
>
> (b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.
>
> (2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.
>
> (c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.
>
> (d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

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81. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages on workdays they failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

K. UNTIMELY FINAL WAGES

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

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

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

85. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Aggrieved Employees all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

L. REQUIRING PATRONAGE

86. In relevant part, Labor Code § 450 states:

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

87. The Defendants required Plaintiff and all other Aggrieved Employees to purchase grooming products Defendants sold to their customers, such as gel, beard cream, and pomade, to pitch to the customers. As a result, the Defendants required Rodriguez and other Aggrieved

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Employees to patronize Rodriguez in violation of Labor Code § 450. Accordingly, Rodriguez seeks an award of civil penalties against the Defendants on behalf of herself and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee per pay period in which initial violations of Labor Code § 450 occurred, and $200 for each aggrieved employee per pay period in which subsequent violation of § 450 occurred (penalties set by Labor Code § 2699(f)(2)).

M. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

88. Labor Code § 1174 states:

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

89. Labor Code § 1174.5 states:

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

90. Section 7 of the Wage Order states:

> (a) Every employer shall keep accurate information with respect to each employee including the following:
>
> (1) Full name, home address, occupation, and social security number.
>
> (2) Birth date, if under 18 years, and designation as a minor.

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

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

92. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

93. Accordingly, Rodriguez seeks an award of civil penalties against the Defendants on behalf of herself and all of the other Aggrieved Employees as follows: (1) $500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and (2) $100 for each aggrieved employee for each initial violation of Labor Code section 1198, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

N. CIVIL PENALTIES SOUGHT

94. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 212, 221, 226, 226.7, 450, 512, 1194, 1197, 1198, 2802, and related Labor Code statutes.

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

96. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 212, 221, 226, 226.7, 450, 512, 1194, 1197, 1198, 2802, and related Labor Code statutes during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars ($100.00) for each aggrieved employee for each initial violation and two hundred dollars ($200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code §§ 212 and 221, one hundred dollars ($100.00) for each aggrieved employee for each initial violation and two hundred dollars ($200.00) for each subsequent violation (penalty amounts established by California Labor Code § 225.5).

C. For violations of California Labor Code § 226, two hundred fifty dollars ($250.00) per employee for initial violation and one thousand dollars ($1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

D. For violations of California Labor Code §§ 510 and 512, fifty dollars ($50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

E. For violations of California Labor Code § 1174, five hundred dollars ($500.00) for each Aggrieved Employee for each initial violation (penalty amounts established by Labor Code § 1174.5).

F. For violations of California Labor Code § 1197, one hundred dollars ($100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars ($250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts

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established by California Labor Code § 1197.1).

G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 450, 1194, 1198, and 2802, one hundred dollars ($100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

O. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

97. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letters dated April 27 and May 26, 2023, Plaintiff filed written notice online with the Labor and Workforce Development Agency ("LWDA") and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the notice to the LWDA dated April 27, 2023 is attached as Exhibit A. A true and correct copy of the notice to the LWDA dated May 26, 2023 is attached as Exhibit B. Plaintiff submitted her LWDA notices with a fee in the amount of $75.00. The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing her that it does not intend to investigate these allegations.

98. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorneys' fees, and costs in connection with their claims for civil penalties.

V. PRAYER FOR RELIEF

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

A. Civil penalties;

B. Costs of suit;

C. Reasonable attorneys' fees; and

D. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury

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trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: July 31, 2023

By: David Spivak

DAVID G. SPIVAK, Attorney for Plaintiff, HEATHER RODRIGUEZ, and all others similarly situated

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EXHIBIT A

THE SPIVAK LAW FIRM
EMPLOYEE RIGHTS

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***SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL ***

April 27, 2023

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

RE: Heather Rodriguez / The Sport Clips Employers

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Heather Rodriguez (hereafter "Rodriguez" or "Complainant") provides notice that SCJM2, LLC (d/b/a/Sport Clips) and related entities (collectively "the Sport Clips Employers" or "Employers") violated her rights and those of all other individuals the Sport Clips Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including hairstylists, barbers, and individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the "Aggrieved Employees") under Labor Code sections 201, 202, 203, 204, 212, 221, 226, 226.7, 450, 512, 1194, 1197, 1198, 2802, and other Labor Code statutes. On behalf of herself and all other Aggrieved Employees, Rodriguez hereby provides this notice to the Labor & Workforce Development Agency and the Sport Clips Employers and their agents and representatives.

At all relevant times, the Sport Clips Employers have employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Rodriguez and all other Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 2-2001 (hereafter "the Wage Order"), section 2, subdivision (E), and "Aggrieved Employees" within the meaning of California Labor Code section 2699(c).

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STATEMENT OF FACTS

On or about December 13, 2021, the Sport Clips Employers began to employ Rodriguez in Camarillo in the position of hourly, non-exempt hairstylist. The Sport Clips Employers continuously employed her in that capacity until on or about October 27, 2022 when her employment ended. The Sport Clips Employers compensated her and the other Aggrieved Employees at an hourly rate of less than twice the minimum wage rate for the city of Camarillo in Ventura County, California.

At all relevant times, the Sport Clips Employers compensated Rodriguez and all other Aggrieved Employees on a bi-weekly basis at an hourly rate of pay. Additionally, at all relevant times, the Sport Clips Employers required Rodriguez and all other Aggrieved Employees to purchase grooming products from Sport Clips to perform their job duties. The Sport Clips Employers also required Rodriguez and all other Aggrieved Employees to supply their own clippers, edgers, shears, and trimmers to work. The Sport Clips Employers failed to provide Rodriguez and the other Aggrieved Employees with all timely meal and rest periods as required under California law. Lastly, the Sport Clips Employers issued Rodriguez and all other Aggrieved Employees their final wages with unfunded pay cards.

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

(a) The Sport Clips Employers failed to pay Rodriguez and all other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay including minimum and regular wages;

(b) The Sport Clips Employers failed to provide Rodriguez and all other Aggrieved Employees all meal periods in compliance with California law;

(c) The Sport Clips Employers failed to authorize and permit Rodriguez and all other Aggrieved Employees to take rest breaks in compliance with California law;

(d) The Sport Clips Employers failed to compensate Rodriguez and all other Aggrieved Employees at one hour's pay for each day in which the Sport

Clips Employers failed to provide them with one or more meal periods as required by law;

(e) The Sport Clips Employers failed to compensate Rodriguez and all other Aggrieved Employees at one hour's pay for each day in which the Sport Clips Employers failed to authorize and permit them to take one or more rest breaks as required by law;

(f) The Sport Clips Employers failed to indemnify Rodriguez and all other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

(g) The Sport Clips Employers unlawfully issued acknowledgments of indebtedness to Rodriguez and all other Aggrieved Employees that were not payable in cash without discount at some established business within the state;

(h) The Sport Clips Employers required financial patronage from Rodriguez and all other Aggrieved Employees to allow them to work;

(i) The Sport Clips Employers knowingly and intentionally failed to provide Rodriguez and all other Aggrieved Employees with accurate wage statements;

(j) The Sport Clips Employers willfully failed to timely pay Rodriguez and all other Aggrieved Employees all earned and unpaid wages during their employment with the Sport Clips Employers and when their employment ended; and

(k) The Sport Clips Employers failed to maintain accurate employment records pertaining to Rodriguez and all other Aggrieved Employees.

Accordingly, Rodriguez now seeks unpaid wages and civil penalties on behalf of herself and all other Aggrieved Employees based on Sport Clips Employers' alleged violations of the Labor Code and the Wage Order.

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The Wage Order

The Wage Order applies to "all persons employed in the personal service industry whether paid on a time, piece rate, commission, or other basis[.]" Wage Order, § 1. The Wage Order defines "Personal Service Industry" to mean:

> [A]ny industry, business, or establishment operated for the purpose of rendering, directly or indirectly, any service, operation, or process used or useful in the care, cleansing, or beautification of the body, skin, nails, or hair, or in the enhancement of personal appearance or health, including but not limited to beauty salons, schools of beauty culture offering beauty care to the public for a fee, barber shops, bath and massage parlors, physical conditioning, weight control salons, health clubs, and mortuaries.

Wage Order, § 2(J). At all relevant times during the applicable limitations period, the Sport Clips Employers, Rodriguez, and all other Aggrieved Employees were covered by the Wage Order because the Sport Clips Employers operated, and Rodriguez and all other Aggrieved Employees worked for, one or more hair salons. Accordingly, Rodriguez and all other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages for All Hours Worked at the Correct Rates of Pay
(Lab. Code §§ 221, 510, 1194, 1197, and 1198)

Under Labor Code section 1197, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

In relevant part, section 2(G) of the Wage Order states:

> "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

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

> (A) Daily Overtime - General Provisions:
>
> > (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7^{th}) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7^{th}) consecutive day of work in a workweek.

(2) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

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

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

The Sport Clips Employers required Rodriguez and all other Aggrieved Employees to work overtime. With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g.*, *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904-905. Bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Sport Clips Employers, Rodriguez and all of the other Aggrieved Employees earned meal period premium wages and rest period premium wages during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Sport Clips Employers failed to pay Rodriguez and all other Aggrieved Employees meal period premium wages, rest period premium wages, overtime, and double time premium pay on such meal period premium wages and rest period premium wages.

The Sport Clips Employers required Rodriguez and the Aggrieved Employees to work through or take delayed meal periods.

At all relevant times during the applicable limitations period, the Sport Clips Employers failed to compensate Rodriguez and all other Aggrieved Employees for all hours worked, including, but not limited to minimum and regular wages for all hours they worked at the correct rates of pay. Accordingly, Rodriguez now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. $50 for each aggrieved employee for each initial violation of Labor Code § 510, and $100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);

2. $100 for each aggrieved employee for each initial violation of Labor Code § 1194, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

3. $100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and $250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1); and

4. $100 for each aggrieved employee for each initial violation of Labor Code § 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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<u>Failure to Provide Meal Periods</u>
(Lab. Code §§ 226.7 and 512)

In relevant part, California Labor Code section 512 states:

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

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

> Meal Periods:
>
> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
> …
>
> (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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

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

The Sport Clips Employers failed to provide Rodriguez and all other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Sport Clips Employers required Rodriguez and all other Aggrieved Employees to work five (5) or more hours before taking their meal period. The Sport Clips Employers scheduled Rodriguez and all other Aggrieved Employees to work at least 6 hours before taking their first meal period. The Sport Clips Employers failed to pay premium wages for days on which they failed to provide Rodriguez and all other Aggrieved Employees with meal periods as required by law. Accordingly, Rodriguez now seeks civil penalties for these Labor Code violations that the Sport Clips Employers have committed against her and all other Aggrieved Employees as follows:

1. $100 for each Aggrieved Employee for each initial violation of Labor Code § 226.7, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. $50 for each Aggrieved Employee for each initial violation of Labor Code § 512, and $100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and

3. $100 for each Aggrieved Employee for each initial violation of Labor Code § 1198, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 and 1198)

Section 2(G) of the Wage Order states:

> "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states: "The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful."

Section 12 of the Wage Order provides, in relevant part:

> Rest Periods:
>
> (B) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
>
> (C) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

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

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

The Sport Clips Employers failed to authorize and permit Rodriguez and all other Aggrieved Employees to take ten-minute, off-duty rest breaks every four hours worked or major portion thereof. The Sport Clips Employers disallowed any paid 10-minute, duty-free rest breaks. The Sport Clips Employers required Rodriguez and the other Aggrieved Employees to remain busy and do additional work, like folding towels, when they were not attending to clients or when the salon was slow. The Sport Clips Employers also failed to pay premium wages for days on which they did not authorize and permit Rodriguez and all other Aggrieved Employees to take rest breaks as required by law. Accordingly, Rodriguez now seeks civil penalties for these Labor Code violations that the Sport Clips Employers have committed against her, and all other Aggrieved Employees as follows:

1. $100 for each aggrieved employee for each initial violation of Labor Code § 226.7, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)) and

2. $100 for each aggrieved employee for each initial violation of Labor Code § 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code section 2802(a) states, "[a]n employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

Additionally, the Wage Order states, in pertinent part,

> (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. Notwithstanding any other provision of this section, employees in beauty salons, schools of beauty culture offering beauty care to the public for a fee, and barber shops may be required to furnish their own manicure implements, curling irons, rollers, clips, haircutting scissors, combs, blowers, razors, and eyebrow tweezers. This subsection (B) shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

Wage Order, § 9.

Labor Code section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Sport Clips Employers required Rodriguez and all other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Sport Clips Employers required Rodriguez and all other Aggrieved Employees to supply clippers, edgers, shears, and trimmers to perform their job duties. The Sport Clips Employers also required Rodriguez and all other Aggrieved Employees to purchase grooming products the Sport Clips Employers sold to their customers, such as gel, beard cream, and pomade, to pitch to the customers. The Sport Clips Employers did not provide these items and did not reimburse Rodriguez and all other Aggrieved

Employees for these required work items. The Sport Clips employers likewise did not pay Rodriguez and all other Aggrieved Employees at least two (2) times the minimum wage.

Accordingly, Rodriguez seeks civil penalties for these Labor Code violations that the Sport Clips Employers have committed against her, and all other Aggrieved Employees as follows:

1. $100 for each aggrieved employee for each initial violation of Labor Code § 2802, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)) and

2. $100 for each aggrieved employee for each initial violation of Labor Code § 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

<u>Failure to Timely Pay Wages During Employment</u>
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Sport Clips Employers failed to compensate Rodriguez and all other Aggrieved Employees for wages earned, including all minimum and regular wages and unprovided meal period premium wages, unprovided rest break premium wages, and other compensation, at the intervals stated above. As a result, the Sport Clips Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Rodriguez now seeks civil penalties for the Labor Code violations that the Sport Clips Employers have committed against her, and all other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code § 204, and $200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 210).

<u>Failure to Timely Pay Wages Upon Termination of Employment</u>
(Lab. Code §§ 201, 202, and 203)

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

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

The Sport Clips Employers failed to pay Rodriguez and all other Aggrieved Employees whose employment ended all the earned, but unpaid wages described above by the conclusion of their employment, including minimum wages, regular wages, unprovided meal period premium wages, and unprovided rest break premium wages. By failing to pay Rodriguez and all other Aggrieved Employees as set forth above at the end of employment, the Sport Clips Employers are liable for violations of Labor Code sections 201, 202, and 203. Accordingly, on behalf of herself and all other Aggrieved Employees, Rodriguez seeks civil penalties from the Sport Clips Employers as follows:

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

2. For violations of Labor Code § 202, $100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and $200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, $100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and $200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Requiring Patronage
(Lab. Code § 450)

In relevant part, Labor Code section 450 states:

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

At all relevant times during the applicable limitations period, the Sport Clips Employers required Rodriguez and other Aggrieved Employees to pay the Sport Clips Employers for hair styling products as a necessary condition of employment. As a result, the Sport Clips Employers required Rodriguez and other Aggrieved Employees to patronize Sport Clips Employers in violation of Labor Code section 450. Accordingly, Rodriguez seeks civil penalties on behalf of herself and all other Aggrieved Employees as follows: $100 for each aggrieved employee per pay period in which initial violations of Labor Code § 450 occurred, and $200 for each aggrieved employee per pay period in which subsequent violation of § 450 occurred (penalties set by Labor Code § 2699(f)(2)).

Unlawful Issuance of Acknowledgment of Indebtedness Not Negotiable Without Discount at Established Place of Business Within the State
(Lab. Code § 212)

In relevant part, California Labor Code § 212 states:

> (a) No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:
>
> > (1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.
> >
> > (2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.
>
> (b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee.
>
> (c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the bank's address need not appear on the instrument and, in that case, the instrument shall be negotiable and payable in cash, on demand, without discount, at any place of business of the drawee chosen by the person entitled to enforce the instrument.

This statute only permits the use of pay cards as remuneration where the employer has both obtained the employee's voluntary authorization (*see* Labor Code § 213 and O.L. 1994.02.03-1 at p. 2) and has enabled the employee to use the card to obtain all wages due without incurring charge (O.L. 2008.07.07 and O.L. 1997.10.21). Indeed, the DLSE has specifically noted:

> The imposition of a fee in order to readily *access* one's earned and paid wages under a payroll card program which is designed to discharge the

> employer's wage payment obligation could impermissibly interfere with an employee's receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited.

O.L. 2008.07.07 at p. 8. In addition, a pay card system must also comply with the requirement of Labor Code § 2(d), which requires that employer pay deposits to employees be made in a bank, savings and loan association, or credit union "with a place of business in [California]." Further, a pay card system must comply with Labor Code § 212(a), which requires that all wages be fully payable, on demand and without discount, at some established business in California.

At all relevant times, the Sport Clips Employers required Rodriguez and all other Aggrieved Employees to use a pay card to receive their final wages. The Sport Clips Employers provided Rodriguez and all other Aggrieved Employees pay cards with zero ($0.00) balances on them. The Sport Clips Employers paid Rodriguez on November 11, 2022, only after she advised the card had no money on it. As a result, the Sport Clips Employers' pay card system violated Labor Code § 212.

Accordingly, Rodriguez now seeks civil penalties on behalf of herself and all other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code § 212, and $200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 212, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;

2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment

of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;

5. Net wages earned;

6. The inclusive dates of the period for which the employee is paid;

7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;

8. The name and address of the legal entity that is the employer; and

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, the Sport Clips Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code section 226. The Sport Clips Employers knowingly and intentionally failed to state on the wage statements they issued to Rodriguez and all other Aggrieved Employees the earned, but unpaid wages described above. The wage statements do not state all minimum wages, regular wages, overtime wages, doubletime wages, meal period premium wages, rest break premium wages earned, complete final wages, and other required information.

Accordingly, Rodriguez seeks civil penalties for the Labor Code violations that the Sport Clips Employers have committed against her and all other Aggrieved Employees as follows: $250 for each aggrieved employee for each initial violation of California

Labor Code § 226(a), and $1,000 for each aggrieved employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Conclusion

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

Sincerely,

David Spivak

David G. Spivak Esq.
david@spivaklaw.com

cc: Heather Rodriguez

Walter L. Haines Esq.
United Employees Law Group
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SCJM2, LLC d/b/a Sport Clips
c/o Ron Chamberlain - Agent
3581 Corte Castillo
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EXHIBIT B

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

May 26, 2023

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

RE: Heather Rodriguez / The Sport Clips Employers
LWDA Case No. LWDA-CM-951207-23

To Whom It May Concern:

This is a supplemental notice to Heather Rodriguez's original notice, dated April 27, 2023 (enclosed). The original notice inadvertently omitted a claim pursuant to Labor Code sections 1197 and 1198 (split shift premium pay). The original notice is incorporated by reference herein.

Failure to Pay Split Shift Premiums
(Lab. Code §§ 1197 and 1198)

Wage Order § 2 (Q) defines a "Shift" as "designated hours of work by an employee, with a designated beginning time and quitting time." A "Split shift" is defined by § 2 (R) as "a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods."

Wage Order § 4 (C) pertaining to "Minimum Wages" states: "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment."

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

The Sport Clips Employers directed Rodriguez and all of the Aggrieved Employees to regularly work split shifts. Due to chronic understaffing, the Sport Clips Employers regularly required Rodriguez and all other Aggrieved Employees to work split shifts. The Sport Clips Employers required Rodriguez and all other Aggrieved Employees to either work a split shift, or work 6 days in a workweek. However, the Sport Clips Employers intentionally failed to pay Rodriguez and all of the Aggrieved Employees the equivalent of a sum greater than one hour's pay at the minimum wage in addition to the minimum wage for a workday. In so doing, the Sport Clips Employers violated Labor Code §§ 1197 and 1198. Accordingly, Rodriguez seeks civil penalties from the Sport Clips Employers on behalf of herself and all of the Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Conclusion

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

Sincerely,

David Spivak

David G. Spivak Esq.
david@spivaklaw.com
Encl. as stated
cc: Heather Rodriguez
Walter L. Haines Esq.

SCJM2, LLC d/b/a Sport Clips
c/o Ron Chamberlain - Agent
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***SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL ***

April 27, 2023

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

RE: Heather Rodriguez / The Sport Clips Employers

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Heather Rodriguez (hereafter "Rodriguez" or "Complainant") provides notice that SCJM2, LLC (d/b/a/Sport Clips) and related entities (collectively "the Sport Clips Employers" or "Employers") violated her rights and those of all other individuals the Sport Clips Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including hairstylists, barbers, and individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the "Aggrieved Employees") under Labor Code sections 201, 202, 203, 204, 212, 221, 226, 226.7, 450, 512, 1194, 1197, 1198, 2802, and other Labor Code statutes. On behalf of herself and all other Aggrieved Employees, Rodriguez hereby provides this notice to the Labor & Workforce Development Agency and the Sport Clips Employers and their agents and representatives.

At all relevant times, the Sport Clips Employers have employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Rodriguez and all other Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 2-2001 (hereafter "the Wage Order"), section 2, subdivision (E), and "Aggrieved Employees" within the meaning of California Labor Code section 2699(c).

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STATEMENT OF FACTS

On or about December 13, 2021, the Sport Clips Employers began to employ Rodriguez in Camarillo in the position of hourly, non-exempt hairstylist. The Sport Clips Employers continuously employed her in that capacity until on or about October 27, 2022 when her employment ended. The Sport Clips Employers compensated her and the other Aggrieved Employees at an hourly rate of less than twice the minimum wage rate for the city of Camarillo in Ventura County, California.

At all relevant times, the Sport Clips Employers compensated Rodriguez and all other Aggrieved Employees on a bi-weekly basis at an hourly rate of pay. Additionally, at all relevant times, the Sport Clips Employers required Rodriguez and all other Aggrieved Employees to purchase grooming products from Sport Clips to perform their job duties. The Sport Clips Employers also required Rodriguez and all other Aggrieved Employees to supply their own clippers, edgers, shears, and trimmers to work. The Sport Clips Employers failed to provide Rodriguez and the other Aggrieved Employees with all timely meal and rest periods as required under California law. Lastly, the Sport Clips Employers issued Rodriguez and all other Aggrieved Employees their final wages with unfunded pay cards.

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

(a) The Sport Clips Employers failed to pay Rodriguez and all other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay including minimum and regular wages;

(b) The Sport Clips Employers failed to provide Rodriguez and all other Aggrieved Employees all meal periods in compliance with California law;

(c) The Sport Clips Employers failed to authorize and permit Rodriguez and all other Aggrieved Employees to take rest breaks in compliance with California law;

(d) The Sport Clips Employers failed to compensate Rodriguez and all other Aggrieved Employees at one hour's pay for each day in which the Sport

Clips Employers failed to provide them with one or more meal periods as required by law;

(e) The Sport Clips Employers failed to compensate Rodriguez and all other Aggrieved Employees at one hour's pay for each day in which the Sport Clips Employers failed to authorize and permit them to take one or more rest breaks as required by law;

(f) The Sport Clips Employers failed to indemnify Rodriguez and all other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

(g) The Sport Clips Employers unlawfully issued acknowledgments of indebtedness to Rodriguez and all other Aggrieved Employees that were not payable in cash without discount at some established business within the state;

(h) The Sport Clips Employers required financial patronage from Rodriguez and all other Aggrieved Employees to allow them to work;

(i) The Sport Clips Employers knowingly and intentionally failed to provide Rodriguez and all other Aggrieved Employees with accurate wage statements;

(j) The Sport Clips Employers willfully failed to timely pay Rodriguez and all other Aggrieved Employees all earned and unpaid wages during their employment with the Sport Clips Employers and when their employment ended; and

(k) The Sport Clips Employers failed to maintain accurate employment records pertaining to Rodriguez and all other Aggrieved Employees.

Accordingly, Rodriguez now seeks unpaid wages and civil penalties on behalf of herself and all other Aggrieved Employees based on Sport Clips Employers' alleged violations of the Labor Code and the Wage Order.

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The Wage Order

The Wage Order applies to "all persons employed in the personal service industry whether paid on a time, piece rate, commission, or other basis[.]" Wage Order, § 1. The Wage Order defines "Personal Service Industry" to mean:

> [A]ny industry, business, or establishment operated for the purpose of rendering, directly or indirectly, any service, operation, or process used or useful in the care, cleansing, or beautification of the body, skin, nails, or hair, or in the enhancement of personal appearance or health, including but not limited to beauty salons, schools of beauty culture offering beauty care to the public for a fee, barber shops, bath and massage parlors, physical conditioning, weight control salons, health clubs, and mortuaries.

Wage Order, § 2(J). At all relevant times during the applicable limitations period, the Sport Clips Employers, Rodriguez, and all other Aggrieved Employees were covered by the Wage Order because the Sport Clips Employers operated, and Rodriguez and all other Aggrieved Employees worked for, one or more hair salons. Accordingly, Rodriguez and all other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages for All Hours Worked at the Correct Rates of Pay
(Lab. Code §§ 221, 510, 1194, 1197, and 1198)

Under Labor Code section 1197, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

In relevant part, section 2(G) of the Wage Order states:

> "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

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

> (A) Daily Overtime - General Provisions:
>
> > (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7^{th}) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7^{th}) consecutive day of work in a workweek.

(2) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

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

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

The Sport Clips Employers required Rodriguez and all other Aggrieved Employees to work overtime. With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g.*, *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904-905. Bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Sport Clips Employers, Rodriguez and all of the other Aggrieved Employees earned meal period premium wages and rest period premium wages during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Sport Clips Employers failed to pay Rodriguez and all other Aggrieved Employees meal period premium wages, rest period premium wages, overtime, and double time premium pay on such meal period premium wages and rest period premium wages.

The Sport Clips Employers required Rodriguez and the Aggrieved Employees to work through or take delayed meal periods.

At all relevant times during the applicable limitations period, the Sport Clips Employers failed to compensate Rodriguez and all other Aggrieved Employees for all hours worked, including, but not limited to minimum and regular wages for all hours they worked at the correct rates of pay. Accordingly, Rodriguez now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. $50 for each aggrieved employee for each initial violation of Labor Code § 510, and $100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);

2. $100 for each aggrieved employee for each initial violation of Labor Code § 1194, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

3. $100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and $250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1); and

4. $100 for each aggrieved employee for each initial violation of Labor Code § 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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<u>Failure to Provide Meal Periods</u>
(Lab. Code §§ 226.7 and 512)

In relevant part, California Labor Code section 512 states:

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

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

> Meal Periods:
>
> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
> …
>
> (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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

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

The Sport Clips Employers failed to provide Rodriguez and all other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Sport Clips Employers required Rodriguez and all other Aggrieved Employees to work five (5) or more hours before taking their meal period. The Sport Clips Employers scheduled Rodriguez and all other Aggrieved Employees to work at least 6 hours before taking their first meal period. The Sport Clips Employers failed to pay premium wages for days on which they failed to provide Rodriguez and all other Aggrieved Employees with meal periods as required by law. Accordingly, Rodriguez now seeks civil penalties for these Labor Code violations that the Sport Clips Employers have committed against her and all other Aggrieved Employees as follows:

1. $100 for each Aggrieved Employee for each initial violation of Labor Code § 226.7, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. $50 for each Aggrieved Employee for each initial violation of Labor Code § 512, and $100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and

3. $100 for each Aggrieved Employee for each initial violation of Labor Code § 1198, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 and 1198)

Section 2(G) of the Wage Order states:

> "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states: "The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful."

Section 12 of the Wage Order provides, in relevant part:

> Rest Periods:
>
> (B) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
>
> (C) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

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

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

The Sport Clips Employers failed to authorize and permit Rodriguez and all other Aggrieved Employees to take ten-minute, off-duty rest breaks every four hours worked or major portion thereof. The Sport Clips Employers disallowed any paid 10-minute, duty-free rest breaks. The Sport Clips Employers required Rodriguez and the other Aggrieved Employees to remain busy and do additional work, like folding towels, when they were not attending to clients or when the salon was slow. The Sport Clips Employers also failed to pay premium wages for days on which they did not authorize and permit Rodriguez and all other Aggrieved Employees to take rest breaks as required by law. Accordingly, Rodriguez now seeks civil penalties for these Labor Code violations that the Sport Clips Employers have committed against her, and all other Aggrieved Employees as follows:

1. $100 for each aggrieved employee for each initial violation of Labor Code § 226.7, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)) and

2. $100 for each aggrieved employee for each initial violation of Labor Code § 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code section 2802(a) states, "[a]n employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

Additionally, the Wage Order states, in pertinent part,

> (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. Notwithstanding any other provision of this section, employees in beauty salons, schools of beauty culture offering beauty care to the public for a fee, and barber shops may be required to furnish their own manicure implements, curling irons, rollers, clips, haircutting scissors, combs, blowers, razors, and eyebrow tweezers. This subsection (B) shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

Wage Order, § 9.

Labor Code section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Sport Clips Employers required Rodriguez and all other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Sport Clips Employers required Rodriguez and all other Aggrieved Employees to supply clippers, edgers, shears, and trimmers to perform their job duties. The Sport Clips Employers also required Rodriguez and all other Aggrieved Employees to purchase grooming products the Sport Clips Employers sold to their customers, such as gel, beard cream, and pomade, to pitch to the customers. The Sport Clips Employers did not provide these items and did not reimburse Rodriguez and all other Aggrieved

Employees for these required work items. The Sport Clips employers likewise did not pay Rodriguez and all other Aggrieved Employees at least two (2) times the minimum wage.

Accordingly, Rodriguez seeks civil penalties for these Labor Code violations that the Sport Clips Employers have committed against her, and all other Aggrieved Employees as follows:

1. $100 for each aggrieved employee for each initial violation of Labor Code § 2802, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)) and

2. $100 for each aggrieved employee for each initial violation of Labor Code § 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Sport Clips Employers failed to compensate Rodriguez and all other Aggrieved Employees for wages earned, including all minimum and regular wages and unprovided meal period premium wages, unprovided rest break premium wages, and other compensation, at the intervals stated above. As a result, the Sport Clips Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Rodriguez now seeks civil penalties for the Labor Code violations that the Sport Clips Employers have committed against her, and all other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code § 204, and $200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 210).

<u>Failure to Timely Pay Wages Upon Termination of Employment</u>
(Lab. Code §§ 201, 202, and 203)

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

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

The Sport Clips Employers failed to pay Rodriguez and all other Aggrieved Employees whose employment ended all the earned, but unpaid wages described above by the conclusion of their employment, including minimum wages, regular wages, unprovided meal period premium wages, and unprovided rest break premium wages. By failing to pay Rodriguez and all other Aggrieved Employees as set forth above at the end of employment, the Sport Clips Employers are liable for violations of Labor Code sections 201, 202, and 203. Accordingly, on behalf of herself and all other Aggrieved Employees, Rodriguez seeks civil penalties from the Sport Clips Employers as follows:

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

2. For violations of Labor Code § 202, $100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and $200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, $100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and $200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Requiring Patronage
(Lab. Code § 450)

In relevant part, Labor Code section 450 states:

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

At all relevant times during the applicable limitations period, the Sport Clips Employers required Rodriguez and other Aggrieved Employees to pay the Sport Clips Employers for hair styling products as a necessary condition of employment. As a result, the Sport Clips Employers required Rodriguez and other Aggrieved Employees to patronize Sport Clips Employers in violation of Labor Code section 450. Accordingly, Rodriguez seeks civil penalties on behalf of herself and all other Aggrieved Employees as follows: $100 for each aggrieved employee per pay period in which initial violations of Labor Code § 450 occurred, and $200 for each aggrieved employee per pay period in which subsequent violation of § 450 occurred (penalties set by Labor Code § 2699(f)(2)).

Unlawful Issuance of Acknowledgment of Indebtedness Not Negotiable Without Discount at Established Place of Business Within the State
(Lab. Code § 212)

In relevant part, California Labor Code § 212 states:

> (a) No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:
>
> > (1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.
> >
> > (2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.
>
> (b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee.
>
> (c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the bank's address need not appear on the instrument and, in that case, the instrument shall be negotiable and payable in cash, on demand, without discount, at any place of business of the drawee chosen by the person entitled to enforce the instrument.

This statute only permits the use of pay cards as remuneration where the employer has both obtained the employee's voluntary authorization (*see* Labor Code § 213 and O.L. 1994.02.03-1 at p. 2) and has enabled the employee to use the card to obtain all wages due without incurring charge (O.L. 2008.07.07 and O.L. 1997.10.21). Indeed, the DLSE has specifically noted:

> The imposition of a fee in order to readily *access* one's earned and paid wages under a payroll card program which is designed to discharge the

> employer's wage payment obligation could impermissibly interfere with an employee's receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited.

O.L. 2008.07.07 at p. 8. In addition, a pay card system must also comply with the requirement of Labor Code § 2(d), which requires that employer pay deposits to employees be made in a bank, savings and loan association, or credit union "with a place of business in [California]." Further, a pay card system must comply with Labor Code § 212(a), which requires that all wages be fully payable, on demand and without discount, at some established business in California.

At all relevant times, the Sport Clips Employers required Rodriguez and all other Aggrieved Employees to use a pay card to receive their final wages. The Sport Clips Employers provided Rodriguez and all other Aggrieved Employees pay cards with zero ($0.00) balances on them. The Sport Clips Employers paid Rodriguez on November 11, 2022, only after she advised the card had no money on it. As a result, the Sport Clips Employers' pay card system violated Labor Code § 212.

Accordingly, Rodriguez now seeks civil penalties on behalf of herself and all other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code § 212, and $200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 212, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;

2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment

of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;

5. Net wages earned;

6. The inclusive dates of the period for which the employee is paid;

7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;

8. The name and address of the legal entity that is the employer; and

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, the Sport Clips Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code section 226. The Sport Clips Employers knowingly and intentionally failed to state on the wage statements they issued to Rodriguez and all other Aggrieved Employees the earned, but unpaid wages described above. The wage statements do not state all minimum wages, regular wages, overtime wages, doubletime wages, meal period premium wages, rest break premium wages earned, complete final wages, and other required information.

Accordingly, Rodriguez seeks civil penalties for the Labor Code violations that the Sport Clips Employers have committed against her and all other Aggrieved Employees as follows: $250 for each aggrieved employee for each initial violation of California

Labor Code § 226(a), and $1,000 for each aggrieved employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Conclusion

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

Sincerely,

David Spivak

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