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LINDA MODU, an individual and on behalf of all others similarly-situated.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

LINDA MODU, an individual and on behalf of
all others similarly-situated.

Plaintiffs,

v.

CITY WAX, LLC, a limited liability company;
EUROPEAN WAX CENTER, INC., a
corporation; and DOES 1 to 1000, inclusive.

Defendants.

CASE NO.: 23STCV18659
[Assigned for all purposes to the
Hon. Yvette M. Palazuelos, Dept. 9 –
SSC]

CLASS ACTION

**FIRST AMENDED COMPLAINT
FOR DAMAGES AND
EQUITABLE RELIEF**

- 1. Failure to Pay All Wages Due in Violation of Cal. Labor Code Cal. Labor Code §§ 204, 510, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198**
- 2. Meal Period Violations (Cal. Lab. Code §§ 512, 226.7)**
- 3. Rest Period Violations (Cal. Lab. Code §§ 226.7)**
- 4. Failure to Reimburse for Business Expenses (Cal. Labor Code §**

2802)

5. **Failure to Provide Accurate
Itemized Statements in Violation
of Cal. Labor Code § 226(a)-(g)**

6. **Waiting Time Penalties (Cal. Lab.
Code §§ 201-203)**

7. **Unfair Competition in Violation
of Cal. Business & Professions
Code 17200, et seq.**

8. **Violation of PAGA, Labor Code
§2699 et seq.**

[DEMAND FOR TRIAL BY JURY]

Complaint Filed: August 24, 2023
Trial: TBD

1. COMES NOW, Plaintiff LINDA MODU, (“Plaintiff” or “MODU”), individually and on behalf of all others similarly-situated and brings this action against Defendant CITY WAX. LLC, a limited liability company, Defendant EUROPEAN WAX CENTER, INC, a corporation (referred to collectively as “Defendants”) and DOES 1 to 1000, and alleges on information and belief (except those allegations relating to Plaintiff MODU herself, which is asserted on personal knowledge), as follows:

PARTIES TO THE ACTION

2. Plaintiff MODU is, and was at all relevant times, a resident of the County of Los Angeles, State of California, and employed by Defendants and DOES 1 to 1000 at one of their locations in the County of Los Angeles, State of California within the four years preceding the filing of this complaint.

3. Defendant CITY WAX, LLC is a limited liability company organized under the laws of the State of California. At all relevant times Defendant CITY WAX, LLC, individually or jointly with Defendant EUROPEAN WAX CENTER, INC and/or DOES 1 to 1000, conducted business, employed individuals, and operated body waxing centers located in the State of California and in the County of Los Angeles, including, but not limited to, the location where Plaintiff MODU

1 worked. Defendant CITY WAX, LLC conducted business using its own name and/or under
2 fictitious business names including, but not limited to, "EUROPEAN WAX CENTER".

3 4. Defendant EUROPEAN WAX CENTER, INC. is a corporation organized under the laws
4 of the State of Delaware. At all relevant times Defendant EUROPEAN WAX CENTER, INC.,
5 individually and jointly with Defendant CITY WAX, LLC and/or DOES 1 to 1000, conducted
6 business, employed individuals, and operated, waxing centers located throughout the United States
7 of America, the State of California and in the County of Los Angeles, including, but not limited to,
8 the location where Plaintiff MODU worked. Defendant EUROPEAN WAX CENTER, INC. did
9 so using its own name and/or under fictitious business names including, but not limited to,
10 "EUROPEAN WAX CENTER".

11 5. Plaintiff MODU is informed and believes, and based thereon alleges, that Defendants
12 EUROPEAN WAX CENTER, INC., CITY WAX, LLC and/or DOES 1 to 1000, and each of them,
13 were in a joint employment relationship with Plaintiff MODU, and similarly-situated employees,
14 for all relevant purposes described in this Complaint.

15 6. The true names and capacities of Defendants DOES 1 to 1000 are unknown to Plaintiff
16 MODU who will amend this complaint to allege such names and capacities as soon as they are
17 ascertained. Each Defendant designated herein as DOE is in some manner legally responsible for
18 the unlawful acts and damages alleged herein.

19 **GENERAL ALLEGATIONS**

20 ***Plaintiff MODU's Employment With Defendants and DOES 1 to 1000***

21 7. Within the four years preceding the filing of this Complaint, Defendants and DOES 1 to
22 1000 operated body waxing centers in the State of California including within the County of Los
23 Angeles.

24 8. Within the four years preceding the filing of this Complaint, Plaintiff MODU was
25 employed by Defendants and DOES 1 to 1000, by each of them and/or jointly, as an Esthetician
26 (aka "Wax Specialist") at one of Defendants' locations in the City of Studio City, County of Los
27 Angeles, State of California ("Studio City location").
28

9. Plaintiff MODU's employment with Defendants and DOES 1 to 1000 at its Studio City location began in or about August 2022 and terminated on or about July 2023.

Defendants and DOES 1 to 1000's Illegal Policies, Procedures, and Practices

10. At all relevant times, Defendants and DOES 1 to 1000's employment of Plaintiff and similarly-situated California-based employees was governed by California Wage Order, Industrial Welfare Commission ("IWC") Wage Order No. 2-2001 ("WAGE ORDER 2"), including but not limited to Sections 3, 8, 9 and 12; the Cal. Code of Regulations (CCR) § 11020, the Cal. Labor Code §§ 201-203, 204, 221, 226, 226.7, 246, 227.3, 510, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and 2802.

11. Despite these legal obligations, and as described below, and at all relevant times, Plaintiff is informed and believes, and based thereon alleges, that Defendants and DOES 1 to 1000 created, implemented, and continue to utilize illegal rules, policies, procedures and practices including, but not limited to, ones pertaining to compensation, overtime pay, meal and rest periods, paid sick leave, business expense reimbursement, and itemized wage statements---all which violated wage and hour laws (including those set forth in the Cal. Labor Code) and the rights of Plaintiff and similarly-situated employees.

Unpaid Wages Violations

12. At all relevant times, Defendants and/or DOES 1 to 1000 were legally-required to pay Plaintiff and similarly-situated employees for all the time they were under the Defendants and/or DOES 1 to 1000's control, including time they were suffered or permitted to work, including, but not limited to, Cal. Labor Code § 204, WAGE ORDER 2, *Morillion vs. Royal Packing*, (2000) 22 Cal. 4th 575.

13. At all relevant times, Defendants and/or DOES 1 to 1000 were obligated to pay Plaintiff MODU and similarly-situated California-based employees and each of them, one and one-half (1 1/2) times their "regular rate" of pay for all time worked in excess of 8 hours per workday and two (2) times their "regular rate" of pay for all time worked in excess of 12 hours per workday. Additionally, Defendants and/or DOES 1 to 1000 were obligated to pay Plaintiff and all similarly-

1 situated employees one and one-half (1 1/2) times their “regular rate” of pay for all hours worked
2 in excess of 40 hours per workweek.

3 14. At all relevant times, Defendants and/or DOES 1 to 1000 were obligated pursuant to Cal.
4 Labor Code § 246 to pay Plaintiff and similarly-situated California-based employees wages for
5 paid sick time calculated in the same manner as the “regular rate” of pay for the workweek in
6 which the employee uses paid sick time or by dividing the employee’s total wages, not including
7 overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
8 days of employment (referred to as “PAID SICK TIME”).

9 15. Plaintiff and similarly-situated employees are informed and believe, and thereon allege,
10 that Defendants and/or DOES 1 to 1000 failed to meet all the above-mentioned legal obligations
11 owed to Plaintiff and similarly-situated employees because they did not properly pay them all
12 earned wages due based on their illegal uniform policies, procedures and practices including, but
13 not limited to:

14 (a) Failing to include all required earned non-discretionary income within the hourly
15 “regular rate” (e.g., non-discretionary bonus, incentive pay, commissions, etc.) when calculating
16 overtime pay. *Marin v. Costco Wholesale Corp.*, 169 Cal.App.4th 804, 807 (2008) (holding that
17 bonus must be included in overtime rate calculation under California law) and 5 CFR §
18 551.514(a) (“When an employee earns a nondiscretionary cash award or bonus. . . the bonus
19 must be taken into account in determining overtime pay for the period of time during which the
20 bonus was earned.”)

21 (b) Failing to include required earned non-discretionary income within the hourly
22 “regular rate” (e.g., non-discretionary bonus, incentive pay, commissions, etc.) when calculating
23 PAID SICK TIME for California-based employees (Cal. Labor Code § 246, et al) or,
24 alternatively, by not dividing the employee’s total wages, not including overtime premium pay,
25 by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.

26 (c) Failing to compensate employees for “pre-shift” work, “post-shift” work, time
27 worked during meal and rest periods, and/or other “off-the-clock” work.

28 ***Meal And Rest Period Violations***

16. At all relevant times, Labor Code sections 226.7, 512, and WAGE ORDER 2 required Defendants and/or DOES 1 to 1000 provide Plaintiff and similarly-situated California-based employees with a thirty (30) minute uninterrupted, duty-free meal period within the first five (5) hours of work and a second one when they work more than ten (10) hours the same workday. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004.

17. At all relevant times, WAGE ORDER 2, including Section 12, required Defendants and/or DOES 1 to 1000 to provide to provide Plaintiff and similarly-situated California-based employees with a paid ten (10) minute rest period for every four (4) hours worked, or "major fraction" thereof.

18. Plaintiff and similarly-situated employees are informed and believe, and thereon allege, that Defendants and/or DOES 1 to 1000 failed to meet the above-mentioned legal obligations owed to Plaintiff and similarly-situated California-based employees because they:

(a) Failed to compensate employees for missed meal and rest periods at the "regular rate" of pay inclusive of all required earned non-discretionary income (e.g., non-discretionary bonus, incentive pay, commissions, etc.) *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021) (the calculation of premium pay for a noncompliant meal, rest, or recovery period, like the calculation of overtime pay, had to account for not only hourly wages but also other nondiscretionary payments)

(b) Failed to provide complete, timely uninterrupted, duty-free meal periods and rest periods.

Unpaid Business Expenses

19. At all relevant times, Defendants and/or DOES 1 to 1000's were legally-required to indemnify Plaintiff and similarly-situated California-based employees "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." Cal. Labor Code § 2802.

20. Plaintiff and similarly-situated California-based employees are informed and believe, and thereon allege, that Defendants and/or DOES 1 to 1000 failed to meet the above-mentioned legal obligations due to failing to reimburse employees for required use of personal cell/smartphone

1 devices at work and personal use of equipment and supplies. *Cochran v. Schwan's Home Service,*
2 *Inc.*, 228 Cal. App. 4th 1137, 1140 (2017) (Labor Code section 2802 requires employers to
3 reimburse employees for mandated use of personal phones to perform work)

4 **CLASS ACTION ALLEGATIONS**

5 21. Plaintiff MODU brings this action individually and on behalf of all persons similarly-
6 situated. Such a representative action is necessary to prevent and remedy the deceptive, unlawful,
7 and unfair practices alleged herein.

8 ***Class Definition***

9 22. This action is brought and may be properly maintained as a class action pursuant to Code
10 of Civil Procedure § 382. Plaintiff MODU brings this action on behalf of herself and all current
11 and former employees of Defendants and/or DOES 1 to 1000 who worked for Defendants and/or
12 DOES 1 to 1000 in the State of California at any time in the four years preceding the filing of this
13 Complaint (plus any applicable additional statutory tolling period under Emergency Rule 9)
14 (referred to herein as “**CLASS MEMBERS**”)

15 23. Plaintiff MODU is informed and believes, and thereon alleges, that **CLASS MEMBERS**
16 and each of them, were subjected to one or more illegal wage-and-hour policies and practices
17 during their employment with Defendants and/or DOES 1 to 1000 that gave rise to one or more of
18 the claims alleged, and those **CLASS MEMBERS** could fall within one or more subclasses
19 including, but not limited to:

20 (a) **UNPAID WAGES SUBCLASS.** All persons who were employed by Defendants
21 and/or DOES 1 to 1000, by any of them or jointly, in the State of California at any time in the
22 three years preceding the filing of this Complaint (plus any applicable additional statutory tolling
23 period under Emergency Rule 9) who were not paid all wages earned as required by applicable
24 law including, but not limited to, WAGE ORDER 2 § 3 and Cal. Labor Code §§ 204, 246, 510,
25 510, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 due to illegal policies or practices of
26 Defendants and/or DOES 1 to 1000 including, but not limited to: (1) failing to include all
27 required earned non-discretionary income within the hourly “regular rate” (e.g., non-
28 discretionary bonus, incentive pay, commissions, etc.) when calculating and paying overtime

1 wages; (2) failing to include required earned non-discretionary income within the hourly “regular
2 rate” (e.g., non-discretionary bonus, incentive pay, commissions, etc.) when calculating and
3 paying PAID SICK TIME for California-based employees (Cal. Labor Code § 246, et al) or,
4 alternatively, by not calculating and paying the PAID SICK TIME by dividing the employee’s
5 total wages, not including overtime premium pay, by the employee’s total hours worked in the
6 full pay periods of the prior 90 days of employment; and (3) failing to compensate employees for
7 “pre-shift” work, “post-shift” work, time worked during meal and rest periods, and/or other “off-
8 the-clock” work.

9 (b) **MEAL PERIOD SUBCLASS.** All persons who were employed by Defendants
10 and/or DOES 1 to 1000, by any of them or jointly, in the State of California at any time in the
11 three years preceding the filing of this Complaint (plus any applicable additional statutory tolling
12 period under Emergency Rule 9) who did not receive all uninterrupted, duty-free meal periods in
13 compliance with California law and/or who were not paid one hour of “regular rate” pay
14 inclusive of all earned non-discretionary income (e.g., non-discretionary bonus, incentive pay,
15 commissions, etc.) for any legally-compliant, uninterrupted, duty-free meal period that was not
16 provided.

17 (c) **REST PERIOD SUBCLASS.** All persons who were employed by Defendants
18 and/or DOES 1 to 1000, by any of them or jointly, in the State of California at any time in the
19 three years preceding the filing of this Complaint who did not receive all uninterrupted, duty-free
20 rest periods in compliance with California law and/or who were not paid one hour of “regular
21 rate” pay inclusive of all earned non-discretionary income (e.g., non-discretionary bonus,
22 incentive pay, commissions, etc.) for any legally-compliant, uninterrupted, duty-free meal period
23 that was not provided.

24 (c) **UNPAID BUSINESS EXPENSES SUBCLASS.** All persons who were
25 employed by Defendants and/or DOES 1 to 1000, by any of them or jointly, in the State of
26 California at any time in the three years preceding the filing of this Complaint who incurred
27 business expenses in the performance of their job duties for Defendants and/or DOES 1 to 1000
28 but weren’t fully reimbursed for the expense.

1 (d) **PAID SICK LEAVE SUBCLASS.** All persons who were employed by
2 Defendants and/or DOES 1 to 1000, by any of them or jointly, in the State of California at any
3 time in the three years preceding the filing of this Complaint who were not paid all wages earned
4 for PAID SICK TIME as required by WAGE ORDER 2 § 3 and Cal. Labor Code § 246 for
5 PAID SICK TIME due to illegal policies or practices of Defendants and/or DOES 1 to 1000
6 including, but not limited to: failing to include required earned non-discretionary income within
7 the hourly “regular rate” (e.g., non-discretionary bonus, incentive pay, commissions, etc.) when
8 calculating and paying PAID SICK TIME for California-based employees (Cal. Labor Code §
9 246, et al) or, alternatively, by not calculating and paying the PAID SICK TIME by dividing the
10 employee’s total wages, not including overtime premium pay, by the employee’s total hours
11 worked in the full pay periods of the prior 90 days of employment

12 (e) **WAGE STATEMENT SUBCLASS.** All CLASS MEMBERS including, but not
13 limited to, persons within the UNPAID WAGES SUBCLASS, the MEAL PERIOD SUBCLASS,
14 the REST PERIOD SUBCLASS, the PAID SICK LEAVE SUBCLASS that received an itemized
15 wage statement that was not in full compliance with Cal. Labor Code §226(a).

16 (f) **WAITING TIME PENALTIES CLASS.** All CLASS MEMBERS including, but
17 not limited to, persons within the UNPAID WAGES SUBCLASS, the MEAL PERIOD
18 SUBCLASS, the REST PERIOD SUBCLASS, and/or the PAID SICK LEAVE SUBCLASS who
19 did not receive all wages due at the time of his or her termination as required by Cal. Labor Code
20 §§ 201-203.

21 24. The CLASS MEMBERS are so numerous that joinder of all members is impracticable.
22 While the exact number of CLASS MEMBERS are unknown to Plaintiff at this time and can
23 only be ascertained through discovery, Plaintiff believes that there are at least one thousand
24 (1000) or more putative CLASS MEMBERS.

25 25. There is a well-defined community of interest among the members of the proposed class.
26 Plaintiff, like all other CLASS MEMBERS, was denied: paid meal and rest periods, proper
27 wages, earned paid sick time, reimbursement for business expenses incurred, accurate itemized
28 wage statements, and waiting time penalties to which they were entitled to under applicable law.

1 The facts underlying the misconduct of Defendants and/or DOES 1 to 1000, and each of them,
2 are common to all CLASS MEMBERS and represent a common practice of wrongful conduct
3 resulting in damages to all CLASS MEMBERS.

4 26. There are numerous questions of law and fact common to Plaintiff and CLASS
5 MEMBERS and those questions predominate over any questions that may affect individual
6 members of the class. The common questions of law and fact include (but aren't limited to) the
7 following:

8 (a) Whether Defendants and/or DOES 1 to 1000, and each of them and/or jointly,
9 violated WAGE ORDER 2, CCR § 11020, Cal. Labor Code §§ 204, 246 558, 1194, 1197 and the
10 FLSA by failing to pay CLASS MEMBERS correctly and fully for all time they were under the
11 Defendants' control, including time they were suffered or permitted to work.

12 (b) Whether Defendants and/or DOES 1 to 1000, and each of them and/or jointly,
13 violated Cal. Labor Code §§ 226.7 and 512, WAGE ORDER 2 and CCR § 11020 by failing to
14 provide California-based CLASS MEMBERS, or properly compensate them for, required meal
15 and rest periods.

16 (c) Whether Defendants and/or DOES 1 to 1000, and each of them and/or jointly,
17 violated by failing to pay California-based CLASS MEMBERS for accrued, vested paid sick
18 time required by Cal. Labor Code § 246.

19 (d) Whether Defendants and/or DOES 1 to 1000, and each of them and/or jointly,
20 violated Cal. Labor Code § 2802 by not fully reimbursing California-based CLASS MEMBERS
21 for business expenses incurred in the performance of their job.

22 (f) Whether Defendants and/or DOES 1 to 1000, and each of them and/or jointly,
23 violated Cal. Labor Code §226 by failing to provide California-based CLASS MEMBERS with
24 itemized wage statements in full compliance with Cal. Labor Code §226.

25 (g) Whether Defendants and/or DOES 1 to 1000, and each of them and/or jointly,
26 violated Cal. Labor Code §§ 201-203 by failing to pay California-based CLASS MEMBERS all
27 wages earned at the time of the termination of employment with Defendants and/or DOES 1 to
28 1000, and each of them

27. Plaintiff's claims are typical of the claims of the other CLASS MEMBERS. Plaintiff and CLASS MEMBERS have both sustained economic damage arising out of the common course of conduct as alleged herein.

28. Plaintiff will fairly and adequately represent and protect the interests of the putative class. Plaintiff has retained counsel with substantial experience involving employment class actions. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the putative class and have the financial resources necessary to do so. Neither Plaintiff nor her counsel has any interest adverse to those of the putative class. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual joinder of all members of the class is impracticable. Further, as the damages suffered by each individual member of the class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them. The cost to the court system of such individual adjudication would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments and would magnify the delay and expense to all parties and the court system in multiple trials of identical factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each of the CLASS MEMBERS.

FIRST CAUSE OF ACTION

Failure to Pay All Wages Due in Violation of

Cal. Labor Code §§ 204, 510, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198

(By Plaintiff And CLASS MEMBERS

Against Defendants and DOES 1 to 1000)

29. Plaintiff and CLASS MEMBERS hereby incorporate by reference and realleges all preceding paragraphs of this complaint as if fully set forth herein.

30. At all times relevant hereto, California law, including WAGE ORDER 2 and CCR § 11020 were in full force and binding on Defendants and DOES 1 to 1000 and required that Plaintiff and CLASS MEMBERS, and each of them:

1 (a) Be paid for all time they were under the Defendants and DOES 1 to 1000's
2 control, including time were suffered or permitted to work.

3 (b) Shall not be employed more than eight (8) hours in any workday or more than
4 forty (40) hours in any workweek unless each employee receives one and one-half (1 1/2) times
5 his or her "regular rate" of pay.

6 (c) Shall not be employed more than twelve (12) hours in any workday or more than
7 eight (8) hours on the seventh (7th) consecutive workday in any workweek unless each employee
8 receives double his or her "regular rate" pay.

9 31. Despite these legal requirements, Plaintiff is informed and believes, and thereon alleges,
10 that Plaintiff and CLASS MEMBERS, and each of them, regularly worked over eight (8) hours
11 per day and over forty (40) hours per week but Defendants and DOES 1 to 1000 willfully and
12 intentionally refused, and continue to refuse, to pay Plaintiff and CLASS MEMBERS the legally
13 required overtime compensation inclusive of all hourly wages and piece rate earnings.
14 Defendants and DOES 1 to 1000 failed to do so, and continue to do so, due to illegal policies or
15 practices of Defendants and/or DOES 1 to 1000 including, but not limited to:

16 (a) failing to include all required earned non-discretionary income within the
17 hourly "regular rate" (e.g., non-discretionary bonus, incentive pay, commissions, etc.) when
18 calculating and paying overtime wages;

19 (b) failing to include required earned non-discretionary income within the hourly
20 "regular rate" (e.g., non-discretionary bonus, incentive pay, commissions, etc.) when calculating
21 and paying PAID SICK TIME for California-based employees (Cal. Labor Code § 246, et al) or,
22 alternatively, by not calculating and paying the PAID SICK TIME by dividing the employee's
23 total wages, not including overtime premium pay, by the employee's total hours worked in the
24 full pay periods of the prior 90 days of employment; and

25 (c) failing to compensate employees for "pre-shift" work, "post-shift" work, time
26 worked during meal and rest periods, and/or other "off-the-clock" work.

27 32. Defendants and DOES 1 to 1000's conduct described herein violates Cal. Labor Code §§
28 §§ 204, 510, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and therefore, pursuant to Labor

Code § 1194(a), Plaintiff and the putative UNPAID WAGE CLASS, and each of them, are entitled to recover all unpaid wages (including overtime compensation) plus interest, attorneys' fees and costs of suit.

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SECOND CAUSE OF ACTION

Meal Period Violations (Cal. Lab. Code §§ 512, 226.7)

(By Plaintiff And CLASS MEMBERS Against Defendants and DOES 1 to 1000)

33. Plaintiff and CLASS MEMBERS hereby incorporate by reference and realleges all preceding paragraphs of this complaint as if fully set forth herein.

34. At all relevant times, Labor Code §§ 226.7, 512, and WAGE ORDER 2 required Defendants and/or DOES 1 to 1000 provide Plaintiff and similarly-situated California-based employees with a thirty (30) minute uninterrupted, duty-free meal period within the first five (5) hours of work and a second one if they work more than ten (10) hours the same workday.

35. During their employment of Plaintiff and CLASS MEMBERS, Defendants and DOES 1 to 1000, and each of them and/or jointly, failed to provide Plaintiff and CLASS MEMBERS with legally-compliant meal periods, or failed to properly pay for those missed or non-complaint meal periods at the employee's "regular rate", that they were entitled to under California law.

36. Pursuant to Labor Code § 226.7, the conduct of Defendants and DOES 1 to 1000, and each of them, alleged herein entitles Plaintiff and the CLASS MEMBERS to payment of one (1) additional hour of wages at the "regular rate" for each day a legally-compliant meal period was not provided to each of them.

37. As a proximate result of Defendants and DOES 1 to 1000's conduct as alleged herein, Plaintiff and CLASS MEMBERS have been denied earned compensation for meal periods, and have thereby sustained, and continue to sustain, damages in a sum according to proof.

38. As a proximate result of the conduct of Defendants and DOES 1 to 1000 as alleged herein, Plaintiff and CLASS MEMBERS have incurred, and continue to incur, substantial costs of suit and attorneys' fees in a sum to be proven.

THIRD CAUSE OF ACTION

Rest Period Violations (Cal. Lab. Code §§ 512, 226.7)

(By Plaintiff And CLASS MEMBERS Against Defendants and DOES 1 to 1000)

39. Plaintiff and CLASS MEMBERS hereby incorporate by reference and realleges all preceding paragraphs of this complaint as if fully set forth herein.

40. At all times relevant hereto, WAGE ORDER 2, including Section 12, and CCR § 11020 were in full force and binding on Defendants and DOES 1 to 1000. The specified wage order and regulation required Defendants and DOES 1 to 1000, and each of them, to provide Plaintiff and CLASS MEMBERS with a paid ten (10) minute rest period for every four hours worked, or "major fraction" thereof.

41. During their employment of Plaintiff and CLASS MEMBERS, Defendants and DOES 1 to 1000, and each of them and/or jointly, failed to provide Plaintiff and the putative CLASS MEMBERS with legally-compliant rest periods, or failed to properly pay for those missed or non-complaint rest periods, that they were entitled to under California law.

42. Pursuant to Labor Code § 226.7, the conduct of Defendants and DOES 1 to 1000, and each of them, alleged herein entitles Plaintiff and CLASS MEMBERS to payment of one (1) additional hour of wages at the "regular rate" for each day a legally-compliant rest period was not provided to each of them.

43. As a proximate result of Defendants and DOES 1 to 1000's conduct as alleged herein, Plaintiff and CLASS MEMBERS have been denied earned compensation for rest periods, and have thereby sustained, and continue to sustain, damages in a sum according to proof.

44. As a proximate result of the conduct of Defendants and DOES 1 to 1000 as alleged herein, Plaintiff and CLASS MEMBERS have incurred, and continue to incur, substantial costs of suit and attorneys' fees in a sum to be proven.

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FOURTH CAUSE OF ACTION

Failure to Reimburse for Business Expenses (Cal. Labor Code § 2802)

(By Plaintiff And CLASS MEMBERS Against Defendants and DOES 1 to 1000)

45. Plaintiff and CLASS MEMBERS hereby incorporate by reference and realleges all preceding paragraphs of this complaint as if fully set forth herein.

46. At all relevant times, Cal. Labor Code § 2802 was applicable to Defendants and DOES 1 to 1000 and required them to reimburse employees for all business expenses.

47. Defendants and DOES 1 to 1000 violated Labor Code § 2802 by failing to fully reimburse Plaintiff and CLASS MEMBERS for required use of personal cell/smartphone devices at work and personal use of equipment and supplies.

48. Accordingly, Defendants and DOES 1 to 1000's conduct described herein violates Labor Code § 2802 and therefore, Plaintiff and the putative UNPAID BUSINESS EXPENSES CLASS, and each of them, are entitled to the cost of owning, and using, their personal cell/smart phone, plus interest thereon, attorneys' fees and costs of suit.

FIFTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Statements

in Violation of Cal. Labor Code § 226(a)-(g)

(By Plaintiff And CLASS MEMBERS Against Defendants and DOES 1 to 1000)

49. Plaintiff and CLASS MEMBERS hereby incorporate by reference and realleges all preceding paragraphs of this complaint as if fully set forth herein.

50. Labor Code §226(a) sets forth reporting requirements for employers when they pay wages, as follows: "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (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

1 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
2 that all deductions made on written orders of the employee may be aggregated and shown as one
3 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,
4 (7) the name of the employee and his or her social security number, except that by January 1,
5 2008, only the last four digits of his or her social security number or an employee identification
6 number other than a social security number may be shown on the itemized statement, (8) the
7 name and address of the legal entity that is the employer, and (9) all applicable hourly rates in
8 effect during the pay period and the corresponding number of hours worked at each hourly rate
9 by the employee. The deductions made from payments of wages shall be recorded in ink or other
10 indelible form, properly dated, showing the month, day, and year, and a copy of the statement or
11 a record of the deductions shall be kept on file by the employer for at least three years at the
12 place of employment or at a central location within the State of California.”

13 51. Defendants and DOES 1 to 1000, and as a result of their illegal policies, procedures, and
14 practices described above, failed to comply with these requirements as they did not provide
15 itemized statements to Plaintiff and CLASS MEMBERS showing (1) gross wages earned, (2)
16 total hours worked by the employee, except for any employee whose compensation is solely
17 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
18 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate
19 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
20 deductions, provided that all deductions made on written orders of the employee may be
21 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
22 which the employee is paid, (7) the name of the employee and his or her social security number,
23 except that by January 1, 2008, only the last four digits of his or her social security number or an
24 employee identification number other than a social security number may be shown on the
25 itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all
26 applicable hourly rates in effect during the pay period and the corresponding number of hours
27 worked at each hourly rate by the employee.

1 52. Plaintiff and CLASS MEMBERS, and each of them, were injured by these failures
2 because, among other things, the failure to record the name and address of the legal entity that is
3 the employer, and accurately record the hourly rate hindered Plaintiff CLASS MEMBERS from
4 determining the true identity of the employer and amounts of wages actually owed to them.

5 53. As a proximate result of Defendants and DOES 1 to 1000'S conduct as alleged herein,
6 Plaintiff and CLASS MEMBERS, and each of them, request recovery of Labor Code §226(e)
7 penalties according to proof, as well as interest, attorney's fees and costs pursuant to Labor Code
8 §226(e), in a sum as provided by the Labor Code and/or other statutes.

9 **SIXTH CAUSE OF ACTION**

10 **Waiting Time Penalties (Cal. Lab. Code §§ 201-203)**

11 ***(By Plaintiff And CLASS MEMBERS Against Defendants and DOES 1 to 1000)***

12 54. Plaintiff and CLASS MEMBERS hereby incorporate by reference and realleges all
13 preceding paragraphs of this complaint as if fully set forth herein.

14 55. Cal. Labor Code § 201 requires an employer who discharges an employee to pay
15 compensation due and owing to said employee immediately upon discharge. Cal. Labor Code §
16 202 requires an employer to promptly pay compensation due and owing to an employee within
17 no more than seventy-two (72) hours of that employee's termination of employment by
18 resignation, and at the time of termination if an employee is involuntarily terminated.

19 56. Cal. Labor Code § 203 provides that if an employer willfully fails to pay compensation
20 promptly upon discharge or resignation in a prompt and timely manner as required pursuant to
21 Cal. Labor Code § 201 and § 202 respectively, said employer is liable to said employee for a
22 waiting time wage continuation as described herein.

23 57. The willful failure of Defendants and DOES 1 to 1000 and each of them, to pay Plaintiff
24 and CLASS MEMBERS---whose employment with Defendants and DOES 1 to 1000 has
25 terminated----all the wages due and owing them as described within this Complaint constitutes
26 violations of Labor Code §§ 201 and 203. Accordingly, Plaintiff and CLASS MEMBERS are
27 entitled to a waiting time wage continuation pursuant to Labor Code §203, which provides that
28

1 an employee's wages will continue as a waiting time wage continuation up to thirty (30) days
2 from the time the wages were due.

3 58. Accordingly, Plaintiff and CLASS MEMBERS seek waiting time wage continuation for
4 the allocable time period prior to filing this complaint, plus costs, interest, disbursements and
5 attorneys' fees pursuant to California law, including but not limited to Labor Code § 218.6.

6 **SEVENTH CAUSE OF ACTION**

7 **Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, et seq.**

8 ***(By Plaintiff On Behalf Of California-Based CLASS MEMBERS And The General Public***
9 ***Against All Defendants and DOES 1 to 1000)***

10 59. Plaintiff hereby incorporate by reference and realleges all preceding paragraphs of this
11 complaint as if fully set forth herein.

12 60. Plaintiff, individually and on behalf of the general public, brings this claim pursuant to
13 Business & Professions Code section 17200, et seq. which prohibits unlawful and unfair business
14 practices. The conduct of each and all Defendants and DOES 1 to 1000 as alleged in this
15 Complaint has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, CLASS
16 MEMBERS employed by Defendants and DOES 1 to 1000 in California, and the general public.
17 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
18 California Code of Civil Procedure section 1021.5.

19 61. Plaintiff is a "person" within the meaning of Business & Professions Code section 17204,
20 and therefore they have standing to bring this cause of action for injunctive relief, restitution, and
21 other appropriate equitable relief.

22 62. Wage and hour laws express fundamental public policies. Providing employees with
23 proper wages, meal and rest periods, paid sick time, and business expense reimbursement
24 constitute fundamental public policy of the State of California. Cal. Labor Code §90.5(a)
25 articulates the public policies of this State of California are to vigorously enforce minimum labor
26 standards, to ensure that employees are not required or permitted to work under substandard and
27 unlawful conditions, and to protect law abiding employers and their employees from competitors
28 who lower their costs by failing to comply with minimum labor standards.

63. Through the conduct alleged in this Complaint, Defendants and DOES 1 to 1000, and each of them, have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Profession Code section 17200, et seq., depriving Plaintiff, California-based CLASS MEMBERS and all interested persons, of rights, benefits, and privileges guaranteed to all employees under law.

64. Defendants and DOES 1 to 1000, by engaging in the conduct described in this Complaint either knew, or in the exercise of reasonable care should have known, that the conduct was unlawful. Accordingly, Defendants and DOES 1 to 1000, and each of them, violated section 17200, et. seq., of the Bus. & Prof. Code.

65. As a proximate result of the unlawful conduct of Defendants and DOES 1 to 1000 and each of them, Plaintiff and California-based CLASS MEMBERS have been damaged in a sum as may be proven.

66. Pursuant to the Business & Professions Code, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment, by Defendants and DOES 1 to 1000, its agents or employees, of any unlawful or deceptive practice prohibited by the Business & Professions Code, and/or, including, but not limited to, restitution to Plaintiff and CLASS MEMBERS.

EIGHTH CAUSE OF ACTION

Violation of PAGA (Labor Code § 2699, et seq.)

***(By Plaintiff MODU On Behalf Of CLASS MEMBERS And All Aggrieved Employees
Against Defendants and/or DOES 1-100)***

67. Plaintiff MODU and CLASS MEMBERS hereby incorporate by reference and reallege all preceding paragraphs of this First Amended Complaint as if fully set forth herein.

68. California Labor Code section 2699 et. seq. provides employees with a private right of action to remedy an employer's failure to comply with Labor Code sections designated in Labor Code section 2699.5 including, but not limited to, Cal. Labor Code §§ 201, 201(a), 202(a), 203, 204, 204(b), 210, 226, 226(a), 226.3, 226.7(a)-(e), 246-248.7, 256, 510, 512(a), 516, 551, 552,

558, 1033, 1194, 1197, 1198, & 2802, as well as IWC Wage Order No. 4-2001—all of which Defendants and/or DOES 1-100 violated as set forth above in this pleading and within Plaintiff MODU and CLASS MEMBERS’s notice(s) to the LWDA/Defendants and/or DOES 1-100, which is attached hereto as Exhibit 1 and incorporated by reference.

69. Plaintiff MODU, on behalf of themselves and Aggrieved Employees, bring this representative action against Defendants and DOES 1-100 to recover wages and penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, et seq.

70. Based on the above allegations incorporated by reference, Defendants and/or DOES 1-100 violated Labor Code sections §§ 201, 201(a), 202(a), 203, 204, 204(b), 210, 226, 226(a), 226.3, 226.7(a)-(e), 246-248.7, 256, 510, 512, 512(a), 516, 551, 552, 558, 1033, 1194, 1197, 1198, & 2802, as well as IWC Wage Order No. 4-2001.

71. As a result of the acts alleged above, Plaintiff MODU, on behalf of themselves and Aggrieved Employees, seeks penalties under Labor Code section 2699 because of Defendants and DOES 1-100’s violations of Cal. Labor Code §§ 201, 201(a), 202(a), 203, 204, 204(b), 210, 226, 226(a), 226.3, 226.7(a)-(e), 246-248.7, 256, 510, 512(a), 516, 551, 552, 558, 1033, 1194, 1197, 1198, & 2802, as well as IWC Wage Order No. 4-2001.

72. Under Labor Code sections 2699(a), (f), and 2699.5, for each such violation, Plaintiff MODU and Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

\$100.00 for the initial violation per employee per pay period; and

\$200.00 for each subsequent violation per employee per pay period.

73. These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce Development Agency (“LWDA”) and twenty-five percent (25%) to the affected employees. These penalties may be stacked separately for each of Defendants and/or DOES 1-100’s violations of the California Labor Code.

74. Defendants and/or DOES 1-100 failed to provide Plaintiff MODU and Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section

226(a). Plaintiff MODU seek separate PAGA penalties for Defendants and/or DOES 1-100's violations of Labor Code section 226(a) and (e). *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App. 5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after Friant that "[t]o the extent the Court's Order [granting summary judgment to Home Depot] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiff MODU's derivative claim for [PAGA] penalties under section 226(e)...the Court's Order should not be read to grant summary judgment on Plaintiff MODU's claim for PAGA penalties based on violation of section 226(a)."]. For violations of Labor Code section 226(a), Plaintiff MODU seek the default penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required records in subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted by law Plaintiff MODU and Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and seek default PAGA penalties for each of Defendants and/or DOES 1-100's numerous violations of Labor Code section 226(a).

75. Labor Code section 210 provides that "[i]n addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." As a result of the faulty compensation policies and practices, Plaintiff MODU and Aggrieved Employees are also entitled to recover penalties under Labor Code section 210 through PAGA.

76. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and liquidated damages, in the amount of: "(1) [f]or any initial violation that is intentionally committed, one

1 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
2 is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two
3 hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the
4 employee is underpaid regardless of whether the initial violation is intentionally committed.”

5 Accordingly, through PAGA and to the extent permitted by law, Plaintiff MODU and Aggrieved
6 Employees are entitled to recover pursuant to Labor Code section 1197.1.

7 77. On or about August 7, 2023, and in compliance with California Labor Code
8 §2699.3(1)(A) and §2699.3(B), Plaintiff MODU, on behalf of herself, the CLASS MEMBERS
9 and all aggrieved employees, gave written notice by online filing with the LWDA (including a
10 filing fee of seventy-five dollars (\$75.00) and by certified mail to the Defendants of the specific
11 Labor Code provisions to have been violated, including the facts and theories to support the
12 alleged violations. The matter was assigned LWDA Case Number LWDA-CM-975340-23.

13 78. Whereas the LWDA did not give notice to Plaintiff MODU, or their attorneys, of its
14 intent to investigate the alleged violation set forth in Plaintiff MODU’s notice, and more than 65
15 calendar days have passed since the Notice was filed, the Plaintiffs now commence a civil action
16 pursuant to Labor Code § 2699 pursuant to Labor Code § 2699.3(2)(A)(1).

17 79. Plaintiff MODU, as personal representatives of the general public, will and do seek to
18 recover any and all penalties for each and every violation shown to exist or to have occurred
19 during the one-year period before Plaintiff MODU filed notice with the LWDA of their intent to
20 bring an action, in an amount according to proof, as to those penalties that are otherwise only
21 available to public agency enforcement actions. Funds recovered will be distributed in
22 accordance with the PAGA, with 75% of the penalties recovered being reimbursed to the State of
23 California and the LWDA.

24 80. Plaintiff MODU were compelled to retain the services of counsel to file this action to
25 protect their interests and those of Aggrieved Employees, and to assess and collect the wages and
26 penalties owed by Defendants and/or DOES 1-100. Plaintiff MODU have thereby incurred
27 attorneys’ fees and costs, which they are entitled to recover under Labor Code section
28 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and CLASS MEMBERS pray for judgment against Defendants and DOES 1 to 1000 jointly and severally as follows:

1. For unpaid wages.
2. For restitution of all monies due Plaintiff and CLASS MEMBERS, for the unlawful business practices of Defendants and DOES 1 to 1000.
3. For injunctive relief enjoining Defendants and DOES 1 to 1000's unlawful practices and unfair business practices within the meaning of Business & Professions Code § 17200, et seq.
4. For declaratory relief declaring Defendants and DOES 1 to 1000 unlawfully: failed to properly pay all earned wages including overtime and sick pay; failed to properly compensate and/or provide meal and rest periods; failed to reimburse business expenses, failed to provide accurate itemized wages statements; and, a declaration of the amounts of damages, penalties, equitable relief, costs, and attorneys' fees to which Plaintiff and CLASS MEMBERS are entitled;
5. For damages/compensation pursuant to Labor Code §§ 204, 226.7, and 1194.
6. For liquidated damages pursuant to Labor Code § 1194.2.
7. For interest accrued to date, for interest pursuant to Labor Code § 218.6, and prejudgment and post judgment interest.
8. For costs of suit and expenses pursuant to Labor Code §§ 226, 1194, and 2699 (the Private Attorney General Act); Code of Civil Procedure § 1021.5.
9. For reasonable attorney's fees pursuant to Labor Code §§ 226, 1194, and 2699 (the Private Attorney General Act) , and Code of Civil Procedure § 1021.5.
10. For equitable restitution of all sums by which Defendants and DOES 1 to 1000 were unjustly enriched with a constructive trust placed thereon to enforce said restitution.
11. For statutory penalties pursuant to Labor Code §§201-203, 204, 210, 226(e), 226.3, 226.7, 227.3, 512, 558.1, and 2699 (the Private Attorney General Act)
12. Such other and further relief as this Court may deem proper and just.

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DATE: November 2, 2023

LAW OFFICE OF DONALD POTTER

By _____

Donald Potter
Attorney for Plaintiff LINDA MODU individually
and on behalf of all others similarly-situated

DEMAND FOR JURY TRIAL

Plaintiff MODU, on behalf of herself and similarly-situated employees, hereby demands a jury trial on all matters triable to a jury.

DATE: November 2, 2023

LAW OFFICE OF DONALD POTTER

By



Donald Potter

Attorney for Plaintiff LINDA MODU individually
and on behalf of all others similarly-situated

EXHIBIT 1



LAW OFFICE OF
DONALD POTTER

August 7, 2023

Email address: dp@donpotterlaw.com

SENT VIA CERTIFIED MAIL

City Wax, LLC
2443 S. University Blvd
#700
Denver, CO 80210

California Labor and Workforce
Development Agency
*Submitted Electronically with Filing
Fee*

European Wax Center, Inc.
5830 Granite Parkway
3rd Floor
Plano, TX 75024

Re: CALIFORNIA LABOR CODE § 2699.3 PAGA NOTICE

To the LWDA and Company Representative(s):

This letter serves as written notice under Labor Code section 2699.3 on behalf of LINDA MODU (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

CITY WAX, LLC
EUROPEAN WAX CENTER, INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

Through this notice, Plaintiff requests that Defendants complete an internal investigation an audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in a settlement approved by the Superior Court of

California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

BACKGROUND

Defendants employed Plaintiff during the PAGA Period in the position of Esthetician (aka "Wax Specialist") at one of Defendants' locations in the Studio City, California from in or about August 2022 through her termination on or about July 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the "aggrieved employees" and the "PAGA Period").

Plaintiff reserves the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

PAGA CLAIMS

Unpaid Overtime

Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the "Hours and Days of Work" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires "[a]ny 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;" and "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;" and "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." Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198

renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. *First*, as stated in the “Unpaid Hours Worked” section below, Defendants engaged in an unlawful policy and practice of requiring Plaintiff and other aggrieved employees to work pre-shift, post-shift, during meal and rest periods, and other off-the-clock work without compensation.

Second, Defendants failed to pay overtime and double time at the “regular rate of pay” because they didn’t include all required earned non-discretionary income within the hourly “regular rate” (e.g., non-discretionary bonus, incentive pay, commissions, etc.) when calculating overtime pay. *Marin v. Costco Wholesale Corp.*, 169 Cal.App.4th 804, 807 (2008) (holding that bonus must be included in overtime rate calculation under California law) and 5 CFR § 551.514(a) (“When an employee earns a nondiscretionary cash award or bonus. . . the bonus must be taken into account in determining overtime pay for the period of time during which the bonus was earned.”)

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / “Penalties” section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

***Unpaid Hours Worked/Minimum Wage
Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders***

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all*

hours worked in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

On information and belief, Defendants had a policy or practice of having Plaintiff and the aggrieved employees worked pre-shift, post-shift, during meal and rest periods, and other off-the-clock work without compensation. As such, Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees. Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendants failed to provide paid sick leave in accordance with California law, rendering

Defendants liable for an associated civil penalty with respect to every employee and pay period during the PAGA period. Specifically, Defendants paid paid sick leave at the base rate rather than the increased and proper regular rate (or pursuant to another lawful method) rendering the paid sick leave underpaid.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

***Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders***

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees. Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Defendants failed to provide compliant meal periods, As a matter of policy and practice Defendants failed to pay Plaintiff and other aggrieved employees meal premiums
First, Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods in order to keep up with the high demand of the job and as a result of high turnover and understaffing. Nonetheless, Defendants had a policy and practice of avoiding and failing to pay meal premiums to Plaintiff and, on information and belief, other

aggrieved employees. Additionally, Plaintiff and other aggrieved employees were not paid one full meal period premium when they experienced late, missed, short or interrupted meal periods.

As discussed in the sections above, Defendants had an unlawful policy and practice of requiring Plaintiff and aggrieved employees to work through which deprived employees of being paid their owed meal period premiums.

Second, to the extent that Defendants paid meal period premiums, Defendant failed to pay Plaintiff and other aggrieved employees a meal period premium at the “regular rate of compensation” because premiums paid did not factor in all required earned non-discretionary income within the hourly “regular rate” (e.g., non-discretionary bonus, incentive pay, commissions, etc.) and. Instead, paid Plaintiff and aggrieved employees at their base hourly rate.

Plaintiff worked more than 6 hours and even up to 9 hours, without a compliant meal break. When Plaintiff and aggrieved employees experienced these missed, late, short, and interrupted meal periods, Defendants failed to pay meal period premiums at the regular rate as required by Labor Code section 226.7.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

***Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders***

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees. Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

On information and belief, Defendants had a policy and practice of not paying rest period premiums to employees who were not authorized to take rest periods. To the extent Defendants ever paid a rest period premium, Defendants violated Labor Code section 226.7

because such premiums were not paid at the correct regular rate of compensation to the aggrieved employees, which would have factored in commissions and other forms of compensation. As discussed throughout this correspondence, Defendants had a noncompliant policy and practice of miscalculating and underpaying the regular rate of pay applicable to overtime and other premiums. Based on this practice, Plaintiff alleges that rest period premiums were equally deficient with respect to payments made to the aggrieved employees. On information and belief, Plaintiff alleges Defendants did not communicate a lawful rest period policy to the aggrieved employees and instead required them to work their shifts without regard for California's rest period obligations.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

***Unpaid Business Expenses
Violation of Labor Code § 2802***

At all relevant times, Defendants were legally-required to identify Plaintiffs and the aggrieved employees "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." Cal. Labor Code § 2802.

Plaintiff is informed and believes, and thereon alleges, that Defendants failed to meet the above-mentioned legal obligations because the work required use of personal cell/smartphone devices and other equipment at work but Defendants failed to fully reimburse them for that expense. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1140 (2017) (Labor Code section 2802 requires employers to reimburse employees for mandated use of personal phones to perform work)

***Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210***

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees. Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and

204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Indeed, Defendants failed to pay all premiums, overtime, regular, sick leave, and other earnings on time each payday.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

***Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256***

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment. Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

***Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3***

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9). Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees, including failing to list the accurate overtime rate using the proper regular rate of pay hourly rate multiple. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub. Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time Plaintiff and other aggrieved employees worked due to Defendants policy and practice of requiring employees to work off-the-clock during uncompensated meal periods.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they cause confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees. Labor Code section 1174 requires that employers maintain accurate “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.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders. As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500)

and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

CONCLUSION

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief. Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

LAW OFFICE OF DONALD POTTER



Donald Potter
California State Bar No. 192735

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the instant action. My business address is Law Office of Donald Potter, 155 North Lake Avenue, Suite 800, Pasadena, California 91101.

On November 2, 2023, I served the interested parties on the service list, and in the manner stated below, with the following document(s) described as:

FIRST AMENDED COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF

SERVICE LIST

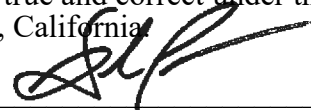
PHILIP J. AZZARA pazzara@fisherphillips.com CORINA S. JOHNSON cjohnson@fisherphillips.com BRIANNA HUSCHKE, bhuschke@fisherphillips.com THERESE HSU thsu@fisherphillips.com FISHER & PHILLIPS LLP 2050 Main Street, Suite 1000 Irvine, California 92614 Attorneys for Defendant CITY WAX, LLC	Alina Landver alina@landverlaw.com LANDVER LAW CORPORATION, APC 9301 Wilshire Blvd, Suite 605 Beverly Hills, California 90210 Co-Counsel for Plaintiff LINDA MODU and the putative class
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X (BY ELECTRONIC MAIL/CASEANYWHERE) Pursuant to Cal. Code of Civ. Procedure Section 1010.6(e), and California Rules of Court, Rule 2.251(a), I caused said document(s) to be transmitted to the email address(es) of the persons listed in the service list.; and,

_____ (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand to the above addressee(s).

_____ (BY MAIL) I enclosed the documents in an envelope or package addressed to the persons above and personally placed such envelope with postage fully prepaid for collection and mailing on the above-referenced date following the ordinary practices of this office. I am readily familiar with our office's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence, including said envelope, will be deposited with the U.S. Postal Service at Pasadena, CA on the above referenced date.

I declare, under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed November 2, 2023 at Pasadena, California



Donald Potter