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ANDREW JAMES MILLER,
individually and in a representative
capacity, on behalf of other members
of the general public similarly
situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

ANDREW JAMES MILLER, individually and in)
a representative capacity on behalf of other)
members of the general public similarly situated,)

Plaintiff,

v.

STAPPER INSPIRED LLC dba REVEL FIT)
CLUB, a California Limited Liability Company;)
and DANE DROBNY, an individual; and DOES)
1 through 10, inclusive)

Defendants.)

Case No: 37-2023-00051359-CU-OE-CTL

COMPLAINT FOR:

1. MINIMUM WAGE VIOLATIONS
PURSUANT TO LABOR CODE §
2698 *et seq.*
2. OVERTIME VIOLATIONS
PURSUANT TO LABOR CODE §
2698 *et seq.*
3. WAGE STATEMENT
VIOLATIONS PURSUANT TO
LABOR CODE § 2698 *et seq.*
4. MEAL AND REST PERIOD
VIOLATIONS PURSUANT TO
LABOR CODE § 2698 *et seq.*
5. FAILURE TO REIMBURSE
PURSUANT TO LABOR CODE §
2698 *et seq.*
6. FAILURE TO TIMELY PAY
WAGES PURSUANT TO LABOR
CODE § 2698 *et seq.*
7. FAILURE TO PAY WAGES UPON
SEPARATION PURSUANT TO
LABOR CODE § 2698 *et seq.*

[JURY TRIAL DEMANDED]

COMES NOW Plaintiff ANDREW JAMES MILLER (“Plaintiff”), in an Individual and Representative capacity on behalf of all aggrieved employees alleges for his complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) may not be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff injuries occurred in the County of San Diego, State of California.
3. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant STAPPER INSPIRED LLC dba REVEL FIT CLUB (“STAPPER” or “Defendants” collectively) was and is a California Limited Liability Company doing business throughout the state, including the County of San Diego, State of California.
4. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant DANE DROBNY (“DROBNY” or “Defendants” collectively) was and is an individual residing and doing business in the state, including the County of San Diego, State of California.
5. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.

- 1 6. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
2 Defendant is responsible in some manner for the wrongs and damages as herein alleged,
3 and in so acting was functioning as the agent, servant, partner, and employee of the co-
4 Defendant, and in doing the actions mentioned below, was acting within the course and
5 scope of his or her authority as such agent, servant, partner, and employee with the
6 permission and consent of the co-Defendant. Plaintiff injuries as herein alleged were
7 proximately caused by said Defendant. Wherever it is alleged herein that any act or
8 omission was done or committed by any specially named Defendant or Defendants,
9 Plaintiff intends thereby to allege and does allege that the same act or omission was also
10 done and committed by each and every defendant named as a DOE, both separately and
11 in concert with the named Defendant or Defendants.
- 12 7. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
13 including DOES 1 through 10, are and at all times herein mentioned were either
14 individuals, sole proprietorships, partnerships, registered professionals, corporations, alter
15 egos or other legal entities which were licensed to do and/or were doing business in the
16 County of San Diego, State of California at all times relevant to the subject matter of this
17 action.

18 **FACTUAL BACKGROUND**

- 19 8. On or around January 2021, Plaintiff ANDREW JAMES MILLER commenced working
20 for Defendants as a trainer. Plaintiff employment with Defendants lasted until August 21,
21 2203. Throughout his employment with Defendants, Plaintiff performed his job in a
22 capable and competent manner and was commended for doing so.
- 23 9. During Plaintiff's employment with Defendants, Defendant DROBNY regularly directed
24 and controlled Plaintiff's, and other aggrieved employees, all aspects of employment
25 including, inter alia, schedules, rates of pay, reimbursement policies, and meal and rest
26 policies.
- 27 10. Throughout the term of his employment, Plaintiff and all other aggrieved employees
28 were, and currently are, denied the benefits and protections of the Labor Code due to

Defendants' institutionalized pay practices, standard as to all of Defendants' California-based employees.

REPRESENTATIVE ALLEGATIONS

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

12. Plaintiff brings this action on the grounds that he and other similarly situated current and former employees of Defendants were and are improperly denied the mandated wages and reimbursements resulting from the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is believed to exceed twenty (20) aggrieved employees.

13. The approximately twenty (20) aggrieved employees are comprised of all of Defendants' current and former California-based employees, designated as "nonexempt" by Defendants. Defendants' standard policies and practices which lead to Labor Code violations, as alleged herein, applied to all California nonexempt employees.

- 1 14. There are questions of fact and law common to all aggrieved employees arising from
2 Defendants' actions include, among others, the following:
- 3 a. Whether Defendants failed to pay its employees the proper straight-time,
4 overtime, and double time wages due and owing to them;
- 5 b. Whether Defendants failed to provide its employees with statutorily-compliant
6 Meal and/or Rest Periods, in violation of, inter alia, California Labor Code §§ 512
7 and 226.7, in that Defendants written policies and practices are not compliant with
8 California law, Defendants do not allow its employees duty-free Meal and/or Rest
9 Periods, and Defendants improperly "round" employees' recorded Meal Periods;
- 10 c. Whether Defendants failed to properly provide Meal and Rest Period premiums in
11 accordance with law;
- 12 d. Whether Defendants failed to properly calculate and pay its employees Overtime
13 compensation or Meal and Rest Period premiums in accordance with law by
14 failing to properly calculate, into the Regular Rate of Pay, the value of employee
15 benefits;
- 16 e. Whether Defendants failed to properly reimburse its employees for necessary
17 business expenditures for, inter alia, cell phone costs, necessary work supplies,
18 and mileage, in violation of Labor Code § 2802;
- 19 f. Whether Defendants failed to provide all compensation, timely, during
20 employment in violation of Labor Code § 204 due, in part, to the fact that
21 Defendants failed to provide proper compensation for all hours worked, as
22 discussed above;
- 23 g. Whether Defendants failed to provide all compensation upon termination of
24 employment in violation of Labor Code §§ 201-203, due, in part, to the fact that
25 Defendants failed to provide proper compensation for all hours worked, as
26 discussed above; and
27
28

h. Whether Defendants failed to provide Plaintiff and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code § 266.

15. At all times mentioned herein, Defendants were subject to the Labor Code and Industrial Welfare Commission Wage Orders of the State of California, including, but not limited to, California Labor Code § 2698 *et seq.*

16. At all times mentioned herein, Defendants are and were “employers” as that term is used within the relevant sections of the California Labor Code and the applicable wage order. An employer-employee relationship existed between Plaintiff and Defendants.

17. Plaintiff has exhausted his administrative remedies and pre-filing requirements California Labor Code § 2699.3, and has also fulfilled all notice requirements under the statute. On September 20, 2023, counsel for Plaintiff prepared and electronically submitted a letter to the LWDA via the California Department of Industrial Relations’ “PAGA Filing” website. This letter concerned Stapper Insired, LLC dba Revel Fit Club, Dane Drobný and their Labor Code violations. A copy of this letter was also mailed to Defendants, via USPS Certified Mail. The letter contained the specific provisions of the California Labor Code violated by Defendants, as well as the facts and theories in support of Plaintiff’s claims. (Please see **Exhibit 1**, a true and correct copy of this letter.)

18. The statutory time period for the LWDA to investigate and/or respond, and for the employers to respond, has concluded.

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

FIRST CAUSE OF ACTION

Minimum Wage Violations Pursuant to Labor Code § 2698 *et seq.*

Representative Action

(By Plaintiff Representative against Defendants and DOES 1 through 10)

20. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

21. Defendants failed to pay its employees all compensation due in violation of, among other statutes, Labor Code § 1197. California law holds that the failure to pay for any work time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323. These violations were caused by and through Defendants' failure to maintain accurate Time Records (as required by California law), to the detriment of the employees. Specifically, Defendants recorded only scheduled work time as opposed to actual work time, and would frequently falsify, or edit, employees' recorded time. Additionally, the right to receive the proper minimum wage compensation was impacted by Defendants knowingly failing to consider other work performed by the employees, including all time employees were under Defendants' control. These actions, and instructions, caused the employees to lose compensation, including proper minimum wage compensation and overtime compensation.

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

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

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

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

SECOND CAUSE OF ACTION

Overtime Violations Pursuant to Labor Code § 119.510

Representative Action

(By Plaintiff Representative against Defendants and DOES 1 through 10)

26. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

1 27. Defendants willfully failed to pay Plaintiff and all other aggrieved employees all
2 compensation, including Overtime Compensation, due in violation of, among other
3 statutes, Labor Code § 510. These violations occurred due to Defendants' illegal policies,
4 referenced above, whereby employees experienced monetary under-compensation. Given
5 the length of Plaintiff's (and other employees') shifts, the unpaid work time would have
6 been owed at the overtime rate of pay. Additionally, Plaintiff and other employees
7 worked in excess of eight hours per shift without receiving overtime pay. These
8 systematic failures to provide proper overtime compensation are in violation of California
9 law.

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

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

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

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

22 **THIRD CAUSE OF ACTION**

23 **Wage Statement Violations Pursuant to Labor Code § 226**
24 **Representative Action**

25 **(By Plaintiff Representative against Defendants and DOES 1 through 10)**

26 32. Plaintiff hereby incorporates by reference each and every allegation contained in the
27 preceding paragraphs as though fully set forth herein.

28 33. Defendants willfully failed to provide Plaintiff and all other aggrieved employees with
accurate itemized wage statements in violation of, among other statutes, Labor Code §
226. These violations include, but are not limited to, Defendants' failure to accurately

1 identify all applicable regular and overtime rates of pay in violation of section 226(a)(9),
2 and providing inaccurate representations of both “gross” and “net wages.” Defendants
3 also failed to provide an accurate showing of the “total hours worked,” in violation of
4 Labor Code § 226(a)(2).

5 34. As a direct result of Defendants’ failure to comply with the foregoing provisions of the
6 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
7 amount to be proven at trial.

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

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

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

17 **FOURTH CAUSE OF ACTION**

18 **Meal and Rest Period Violations Pursuant to Labor Code §§ 226.7 and 512** 19 **Representative Action** 20 **(By Plaintiff Representative against Defendants and DOES 1 through 10)**

21 38. Plaintiff hereby incorporates by reference each and every allegation contained in the
22 preceding paragraphs as though fully set forth herein.

23 39. Labor Code § 1198 states:

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

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

40. Under applicable California law, “An employer may not employ an employee for a work
period of more than five hours per day without providing the employee with a Meal

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

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

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

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

15 44. Within the operative time period, Defendants failed to possess compliant Meal and Rest
16 Period policies or practices.

17 45. For example, Defendants’ Rest Period policy and practice do not provide the right for
18 employees to “leave the premises,” by requiring employees to remain on the job site
19 during Rest Periods. Additionally, employees often do not have time to take a break as
20 classes are often scheduled back-to-back, or employees are required to clean, attend to
21 clients, and sell merchandise.

22 46. Moreover, Defendants’ policies and practices preclude “duty-free” Meal and Rest
23 Periods. These institutional and established practices of Defendants are illegal, in that
24 Plaintiff and all other employees were denied proper and/or timely Meal and Rest
25 Periods.

26 47. These violations are due, in part, to the fact that Defendants do not possess a legal Rest
27 Period policy or practice, as its Rest Period policy lacks required language, resulting in
28 employees failing to receive all Rest Periods legally due. Defendants do not provide Rest

- 1 Periods, as defined by California law. Further, Defendants have never provided a Rest
2 Period penalty payment to any employee.
- 3 48. Defendants also do not possess a legal Meal Period policy, and make no attempt to ensure
4 that its employees are either timely or wholly provided Meal Periods. The employees
5 would often either miss a Meal Period entirely, be provided a short or late Meal Period,
6 or be provided only one Meal Period, even when they were working in excess of 10 hours
7 a day. Additionally, Defendants failed to accurately record its employees' actual start and
8 stop times of Meal Periods (and would frequently edit or falsify time records with respect
9 to Meal Periods), in violation of the IWC Wage Orders. 8 Cal. Code Regs. § 11020
10 (7)(A).
- 11 49. Moreover, Defendants' policies and practices preclude "duty-free" Meal and Rest
12 Periods, in that the employees are required to remain "On Call" at all times, including
13 during the Meal and Rest Periods, in order to (among other reasons) attend to clients,
14 clean the gym and sell merchandise. These institutional and established practices of
15 Defendants are illegal, in that Plaintiff and all other aggrieved employees were denied
16 proper and/or timely Meal and Rest Periods.
- 17 50. Defendants willfully failed and refused to pay Plaintiff and all other aggrieved employees
18 one additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest
19 Period was not provided, as required by Labor Code § 226.7 and IWC Wage Order 2
20 (11), (12).
- 21 51. Any payments made by Defendants for missed or late Meal Periods were not paid at an
22 employee's regular rate in violation of Labor Code § 226.7 and the operative IWC Wage
23 Orders. Instead, these payments were made at an employee's base rate and did not
24 include the value of, inter alia, additional compensation and/or employee benefits.
- 25 52. As a direct result of Defendants' failure to comply with the foregoing provisions of the
26 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
27 amount to be proven at trial.
- 28

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

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

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

FIFTH CAUSE OF ACTION
Failure to Reimburse Pursuant to Labor Code § 2802
Representative Action
(By Plaintiff Representative against Defendants and DOES 1 through 10)

56. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

57. Defendants failed to reimburse their nonexempt employees for all necessary business expenditures incurred in direct consequence of the discharge of their duties in violation of, among other statutes, Labor Code § 2802. These expenditures are the result of, inter alia, Defendants' standard policies which require their employees to incur cell phone, mileage, and other necessary work costs without reimbursement.

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

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

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

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

SIXTH CAUSE OF ACTION

Failure to Timely Pay Wages Pursuant to Labor Code § 2698 *et seq.*

Representative Action

(By Plaintiff Representative against Defendants and DOES 1 through 10)

62. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

63. Plaintiff and all other aggrieved employees performed work for Defendants, as employees of Defendants, as stated herein. Throughout Plaintiff's and all other aggrieved employees' employment, they earned wages that were not paid to them, as stated herein, in an amount according to proof at trial.

64. California Labor Code § 204, applicable at all times relevant herein to Plaintiff's and all other aggrieved employees' employment by Defendants, provides that all wages earned by any person in any employment are due and payable twice during each calendar month. Defendants failed to pay Plaintiff and all other aggrieved employees the wages they were entitled to under the Code.

65. During their employment, Plaintiff and all other aggrieved employees were and are denied proper wages due, in part, to Defendants' uniform policies and procedures of editing time records resulting in an underpayment to employees.

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

67. As a result of Defendants' willful failure to pay wages, in addition to such other damages and penalties as may properly be recovered herein, Plaintiff and all other aggrieved employees are entitled to back pay, waiting time penalties, interest, costs, and attorneys' fees pursuant to Labor Code §§ 206, 218.5, 218.6, 558, 1194.2, and 1197.1.

68. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code §

1 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
2 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
3 the below Prayer For Relief.

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

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

8 **SEVENTH CAUSE OF ACTION**

9 **Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 *et seq.***
10 **Representative Action**

11 **(By Plaintiff Representative against Defendants and DOES 1 through 10)**

12 71. Plaintiff hereby incorporates by reference each and every allegation contained in the
13 preceding paragraphs as though fully set forth herein.

14 72. Defendants willfully failed to provide Plaintiff and other aggrieved employees with all
15 wages earned and unpaid at termination in violation of, among other statutes, Labor Code
16 §§ 201 through 203. These violations resulted from, among other unlawful actions,
17 Defendants willful failure to provide accurate and complete compensation to aggrieved
18 employees under Labor Code §§ 226.7, 510, 512, and 1197.

19 73. Defendants failed to provide all compensation upon termination of employment in
20 violation of Labor Code §§ 201-203 due, in part, to the fact that Defendants failed to
21 provide proper compensation for all hours worked, and failed to pay meal and/or rest
22 period penalties.

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

26 75. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
27 behalf of himself and all other aggrieved employees by and through Labor Code §
28 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may

76. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.
77. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

[illegible]

PRAYER FOR RELIEF

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

1. For compensatory damages according to proof, as set forth under Labor Code §§ 510, 1194, and 2802, among other statutes;
2. For penalties and restitution of wages according to proof, as set forth under Labor Code §§ 221, 226, 226.7, 450 and 1197.1, among other statutes;
3. For penalties pursuant to Title 8, California Code of Regulations, Wage Order 2 (or any applicable Wage Order);
4. For lost back pay in an amount to be proven;
5. Where available, for liquidated damages pursuant to Labor Code § 1194.2;
6. Where available, for an award of interest, including prejudgment interest, pursuant to Labor Code § 218.6;
7. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code §§ 218.5, 226, 1194, 2802 and Code of Civil Procedure § 1021.5; and
8. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

DATED: November 28, 2023

GRUENBERG LAW



JOSHUA D. GRUENBERG, ESQ.
KATHERINE D. KREBS, ESQ.

Attorneys for Plaintiff

**ANDREW JAMES MILLER in an individual
and representative capacity, and on behalf of
other members of the general public similarly
situated**

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EXHIBIT 1

(1) PLAINTIFF'S LETTER FILED WITH THE LABOR AND WORKFORCE
DEVELOPMENT AGENCY

September 20, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

Re: Andrew James Miller v. Stapper Inspired, LLC dba Revel Fit Club, Dane Drobný

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Stapper Inspired, LLC dba Revel Fit Club and Dane Drobný (hereinafter collectively “Revel”), in the above-referenced matter.

This “written notice” is filed on behalf of Andrew James Miller and all current and former non-exempt employees employed by Revel. Thank you for your assistance and instruction on this issue.

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

CALIFORNIA LABOR CODE SECTIONS 201-204, 223, 226, 226.7, 246, 510, 512, 1194, and 2802 as well as IWC Wage Order 2, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11020 et seq.

Facts and theories supporting the allegations: Our client, Andrew James Miller, worked as a non-exempt employee employed by Revel from approximately August 4, 2022 until approximately August 21, 2023. Mr. Miller was a trainer for Revel.

Throughout the term of Mr. Miller’s employment, Revel required Mr. Miller and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

Revel failed to provide all compensation, including Minimum Wage and Overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, inter alia, Labor Code sections 223, 1194, 510, IWC Wage Order 2, and any other applicable wage orders. This illegal action is due, in part, to Revel’s policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both Minimum and Overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Mr. Miller did not receive compensation for working beyond his scheduled (as

opposed to *actual*) work hours, resulting in a loss of compensation. Moreover, Revel would often require Mr. Miller to work extended hours (beyond his scheduled hours) without compensation. For example, Mr. Miller, and other non-exempt employees of Revel, were often only paid for scheduled class times. Mr. Miller and other non-exempt employees were required to take additional, non-scheduled class times, without compensation. Additionally, Mr. Miller, and other non-exempt employees were required to work *outside* of scheduled class times (i.e., during non-schedule class times or to give tours to new clients) but were not paid for that time. Further, Revel would regularly contact Mr. Miller outside of normal work hours (i.e., “after hours” or during lunch) without compensation.

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

Finally, Revel failed to properly calculate and pay overtime at the actual overtime rate of pay, as Revel ignores certain compensation when calculating the regular rate of pay. Additionally, Revel would improperly classify overtime, or double time, as regular time, resulting in an underpayment to employees.

Failure to Provide Compliant Meal Periods

Revel failed to provide compliant Meal Periods in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 2, or any other applicable wage orders. For example, Revel does not possess a legal Meal Period policy and makes no attempt to ensure its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely or be provided a short or untimely Meal Period. Over the course of his employment, Mr. Miller was instructed on numerous occasions to remain available during his Meal Periods.

Revel would pressure its employees to either skip or cut short a Meal Period as employees were expected to respond to supervisors and clients at all times. On the rare occasions when employees *were* paid Meal Period penalties (i.e. California Meal Period Premiums), such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of 226.7.” (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256.) Even more recently, a 2020 California Supreme Court ruling stated that “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does

not excuse a 226.7 violation.” (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73.) To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Revel failed to pay Meal Period Premiums at the proper rate, as Revel fails to either **(1)** pay a full hour’s worth of pay, or **(2)** properly calculate the Regular Rate of Pay for purposes of determining the premium rate owed. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 864.)

Finally, Revel illegally retained control over its employees during Meal Periods. For example, Revel required its employees to “remain on the premises” (i.e. remain at the gym) and to remain “on call” (i.e. monitor their telephones) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

Revel failed to provide compliant Rest Periods or requisite Rest Period Penalty Payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, IWC Wage Order 2, and any other applicable wage orders. For example, Revel does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Revel makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. Revel would pressure its employees to either skip or cut short a Rest Period as employees were expected to respond to customers at all times. Revel has never provided a compliant Rest Period Penalty Payment to any employee as to the above-referenced issues. Finally, on the rare occasions in which Revel would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.

Finally, Revel illegally retained control over its employees during Rest Periods. For example, Revel required its employees to “remain on the premises,” (i.e. remain at the gym) and to remain “On Call” (i.e. monitor their telephones) at all times, including during Rest Periods.

Wage Statement Violations

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

Revel violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Additionally, the wage statements are inaccurate, due in part, to Revel's practices of paying per class and rounding. Furthermore, Revel failed to state the accurate Overtime Rate of Pay on its earning records.

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

Willful Failure to Reimburse Business Expenses

Revel failed to provide compliance expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for expenses incurred by Mr. Miller, and other non-exempt employees, including expenses for cell-phone costs, other necessary work supplies, and mileage.

Willful Failure to Provide All Compensation

Revel failed to provide all compensation during and upon termination of employment in violation of Labor Code sections 201-204, due in part, to the fact that Revel failed to provide proper compensation for all hours worked, and failed to pay full Rest Period penalties, as discussed above. Mr. Miller ceased employment with Revel in or around August 2023 and did not receive all wages due and owed to him.

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

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

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we
know
work

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

Very Truly Yours,



Katherine D. Krebs,
Esq.

Cc: Via Certified U.S. Mail

MARK DROBNY

Agents of Service of Process for

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