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County of San Diego
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Clerk of the Superior Court
By L. McAlister ,Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JANE DOE, as an individual and on behalf of
all others similarly situated,

Plaintiff,

vs.

MIDWAY VENTURE, LLC d.b.a. PACERS
SHOWGIRLS / PACERS SHOWGIRLS
INTERNATIONAL, a California Limited
Liability Company; PETER BALOV, an
individual; and DOES 1 through 100,

Defendants.

CASE NO. 24CU001438C

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197, 1198);**
- (2) FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 1194, 1198);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) UNLAWFUL DEDUCTIONS FROM
WAGES (LABOR CODE §§ 221-
223);**
- (6) UNLAWFUL TIP COLLECTION
(LABOR CODE § 351);**
- (7) FAILURE TO INDEMNIFY ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE §§
2802, 2804);**
- (8) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**

(9) UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*); AND

(10) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE (LABOR CODE § 2698, *et seq.*)).

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Jane Doe ("Plaintiff"), on behalf of herself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint ("Complaint")
3 against Defendants Midway Venture, LLC d.b.a. Pacers Showgirls/Pacers Showgirls
4 International, a California Limited Liability Company; Peter Balov, an individual; and DOES 1
5 to 100, inclusive (collectively "Defendants"), and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business and Professions
9 Code § 17200 *et. Seq.*, Labor Code §§ 201-204, 221-223, 226.2, 226.7, 226.8, 351, 510, 512, 516,
10 558, 1174, 1194, 1194.2, 1197, 1198, 1199, 2698 *et seq.*; 2802, 2804, and Industrial Welfare
11 Commission Wage Order 5 ("Wage Order 5"), in addition to seeking injunctive relief, declaratory
12 relief, and restitution. This Complaint is brought pursuant to California Code of Civil Procedure
13 § 382. This Court has jurisdiction over Defendants' violations of the California Labor Code
14 because the amount in controversy exceeds this Court's jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in San Diego County. Defendants own, maintain offices, transact business, have an agent
19 or agents within San Diego County, and/or otherwise are found within San Diego County, and
20 Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is, and at all times relevant herein was, an individual over the age of
23 eighteen (18). At all relevant times herein, Plaintiff was, and currently is, a California resident.
24 Within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff
25 was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of
26 Defendants' policies and/or practices complained of herein, lost money and/or property, and has
27 been deprived of the rights guaranteed by California Business and Professions Code § 17200 *et.*
28 *seq.*, Labor Code §§ 201-204, 221-223, 226.2, 226.7, 226.8, 351, 510, 512, 516, 558, 1174, 1194,

1 1194.2, 1197, 1198, 2698 *et seq.*; 2802, 2804, and Wage Order 5, which sets employment
2 standards for the “Public Housekeeping Industry.”

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the
4 applicable statute of limitations for each cause of action pled herein and continuing to the present,
5 Defendants did (and continue to do) business by operating a night club offering live adult
6 entertainment, cigars, and liquor within the County of San Diego, and the State of California and,
7 therefore, were (and are) doing business in the County of San Diego and the State of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 further amend this Complaint when such true names and capacities are discovered. Plaintiff is
12 informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether
13 individual, partners, or corporate, were responsible in some manner for the acts and omissions
14 alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 20) to
15 be subject to the unlawful employment practices, wrongs, injuries and damages complained of
16 herein.

17 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
18 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

19 7. At all relevant times, each of said Defendants participated in the doing of the acts
20 hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
21 and each of them, were the agents, servants, and employees of each and every one of the other
22 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
23 within the course and scope of said agency and employment. Defendants, and each of them,
24 approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions
25 complained of herein.

26 8. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
28 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Plaintiff worked for Defendants as an exotic dancer from 2018 to approximately
5 June 19, 2023. During Plaintiff's employment with Defendants, Plaintiff typically worked from
6 8:00 p.m. to 3:30 a.m., Wednesday through Sunday.

7 10. Plaintiff alleges that Peter Balov, the owner/manager of Defendants caused said
8 Labor Code violations to occur, and is therefore personally liable under Labor Code section
9 558.1(a), which states that "[a]ny employer or other person acting on behalf of an employer, who
10 violates, or causes to be violated, any provision regulating minimum wages or hours and days of
11 work in any order of the Industrial Welfare Commission, or violates, or causes to be violated,
12 Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such
13 violation."

14 11. During the entirety of Plaintiff and other non-exempt employees' employment
15 with Defendants, Defendants classified its dancers and other individuals who perform
16 Defendants' core business functions as independent contractors, as opposed to employees.
17 Notwithstanding that Plaintiff and other similarly situated individuals should have been classified
18 as non-exempt employees of Defendants, because they provide services that are within the usual
19 course of the hiring entity's business, Defendants willfully misclassified these individuals as
20 independent contractors. See *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th
21 903 ("Under this [ABC] test, a worker is properly considered an independent contractor to whom
22 a wage order does not apply only if the hiring entity establishes: . . . (B) that the worker performs
23 work that is outside the usual course of the hiring entity's business . . .").

24 12. Throughout Plaintiff and other non-exempt employees' employment, Defendants
25 failed to maintain accurate records of Plaintiff and other non-exempt employees' actual hours
26 worked. Rather, Defendants primarily compensated its dancers pursuant to an unlawful piece-
27 rate/commission pay plan which purported to pay its dancers a percentage of all their earnings
28 earned during their shift and/or a set dollar amount per semi-private or private dance.

1 13. Defendants' piece-rate/commission pay plans violate California law as they fail to
2 pay its dancers for time spent completing non-productive tasks, including, but not limited to, time
3 spent dancing in the club without performing for clients, walking around and mingling, discussing
4 pricing, and/or performing on the main stage. As a result of Defendants failure to pay Plaintiff
5 and other non-exempt employees for their nonproductive time, Respondents failed to pay Plaintiff
6 and other non-exempt employees at least minimum wage for all hours worked. Additionally,
7 when non-exempt employees worked over 8 hours in a shift and/or 40 hours a week, Defendants
8 failed to pay them any overtime wages.

9 14. Defendants further failed to pay Plaintiff and other non-exempt employees for all
10 hours worked when their piece-rate/commission earnings did not exceed minimum wage.
11 Specifically, at least once per week, Plaintiff worked for Defendants for seven plus hours and was
12 only paid between \$0 and \$20. Plaintiff and other non-exempt employees also did not receive at
13 least minimum wage for all hours worked as a result of Defendants unlawful policy and practice
14 of deducting \$40-\$100 from Plaintiff and other non-exempt employees earned wages as a nightly
15 fee to work at Defendants venue in violation of Labor Code §§ 221-223.

16 15. Defendants have also failed to authorize and permit all legally required rest periods
17 to Plaintiff and other non-exempt employees. Upon information and belief, Defendants have
18 failed to maintain any legally compliant rest period policy. In practice, Plaintiff and other non-
19 exempt employees were required to work through their rest periods due to the nature of their
20 work. Despite failing to authorize and permit Plaintiff and other non-exempt employees to take
21 all rest periods to which they are entitled, upon information and belief, Defendants maintained no
22 mechanism for the payment of rest period premium payments as required by Labor Code section
23 226.7. Defendants further failed to authorize and permit Plaintiff and other non-exempt
24 employees to take a paid rest period for every 4-hour period worked, or major fraction thereof,
25 because Defendants' commission and/or piece-rate compensation plan failed to separately
26 compensate Plaintiff and other non-exempt employees for required rest periods. *See Vaquero v.*
27 *Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017); *Bluford v. Safeway Inc.*, 216 Cal.App.4th
28 864 (2013) ("There is no dispute that Safeway's activity-based compensation system did not

separately compensate drivers for their rest periods.”); Labor Code § 226.2(a)(1) (requiring employers to pay piece rate employees separate for rest periods and other nonproductive time).

16. Defendants’ meal period policies/practices have also failed to provide Plaintiff and other non-exempt employees with all legally compliant meal periods because they have failed to provide Plaintiff and other non-exempt employees with a timely, duty-free, and uninterrupted 30-minute meal period commencing before the end of the fifth hour of work, and/or a second 30-minute meal period for shifts of over 10.0 hours. Specifically, Defendants did not provide Plaintiff and other non-exempt employees with legally compliant meal periods as they required Plaintiff and other non-exempt employees to remain on the floor during the entirety of their shift. Defendants further failed to compensate Plaintiff and other non-exempt employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, Defendants maintained no mechanism for the payment of meal period premium payments as required by Labor Code section 226.7.

17. Defendants further unlawfully deducted tips from Plaintiff and other non-exempt employees as a result of its policy and practice of collecting 30% of all money received by Plaintiff and other non-exempt employees in violation of Labor Code sections 351 and 353.

18. Defendants’ policies have also failed to reimburse Plaintiff and other non-exempt employees for all necessary business expenses, including but not limited to the costs of their uniform and police permits.

19. As a result of Defendants’ failure to compensate its non-exempt employees for all minimum and overtime wages, all meal and rest period premiums, and non-productive time, Defendants failed to pay all final wages owed to non-exempt employees upon their respective separations of employment.

CLASS ACTION ALLEGATIONS

20. **Class Definitions:** Plaintiff brings this action on behalf of herself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

a. The Minimum Wage Class consists of all of Defendants’ current and former non-

1 exempt employees in California who (i) performed work that was compensated on
2 a piece-rate and/or commission basis; and/or (ii) were subject to Defendants'
3 timekeeping policies/practices during the four years immediately preceding the
4 filing of this action through the present.

5 b. The Overtime Class consists of all of Defendants' current and former non-exempt
6 employees in California who worked more than 8.0 hours per day and/or 40.0
7 hours per week, and (i) performed work that was compensated on a piece-rate
8 and/or commission basis; and/or (ii) were subject to Defendants' timekeeping
9 policies/practices, during the four years immediately preceding the filing of this
10 action through the present.

11 c. The Meal Period Class consists of all of Defendants' current and former non-
12 exempt employees in California who: (i) worked at least one shift in excess of 5.0
13 hours; and/or (ii) worked at least one shift in excess of 10.0 hours, at any time
14 during the four years immediately preceding the filing of this action to the present.

15 d. The Rest Period Class consists of all Defendants' current and former non-exempt
16 employees in California who worked a shift in excess of 3.5 hours, during the four
17 years immediately preceding the filing of this action to the present.

18 e. The Unlawful Deductions from Wages Class consists of all of Defendants' current
19 and former non-exempt employees in California who were classified as an
20 independent contractor during the four years immediately preceding the filing of
21 this action through the present.

22 f. The Unlawful Tip Collection Class consists of all of Defendants' current and
23 former non-exempt employees in California who were classified as an independent
24 contractor during the four years immediately preceding the filing of this action
25 through the present.

26 g. The Expense Reimbursement Class consists of all Defendants' current and former
27 non-exempt employees in California who purchased uniforms and police permits
28 for business related purposes, during the four years immediately preceding the

filing of the Complaint through the present.

- h. The Waiting Time Penalty Class consists of Defendants' formerly employed members of the Minimum Wage Class, Overtime Class, Meal Period Class, Rest Period Class, Unlawful Deductions from Wages Class, and/or Unlawful Tip Collection Class, during the three years immediately preceding the filing of this action through the present.

21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes and Subclasses are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

22. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Overtime Class and Minimum Wage Class for all hours worked;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.2, 226.7 and 516;
- iv. Whether Defendants provided meal and rest period premium payments for non-compliant meal and rest periods;
- v. Whether Defendants failed to reimburse members of the Employee Expense Class for necessary work expenses;
- vi. Whether Defendants furnished legally compliant wage statements to members of

the Wage Statement Class pursuant to Labor Code § 226;

vii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were unlawful;

viii. Whether Defendants failed to maintain accurate records of hours worked, wages earned, and other employment conditions pursuant to Labor Code § 1174;

ix. Whether Defendants made unlawful deductions from wages for members of the Unlawful Deductions from Wages Class pursuant to Labor Code §§ 221, 222, and 223; and

x. Whether Defendants unlawfully collected tips from members of the Unlawful Tip Collection Class pursuant to Labor Code § 351.

23. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, including but not limited to Defendants' failure to implement a lawful meal and rest period policies, their system of compensating employees on a piece-rate basis, and/or failure to provide accurate wage statements. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

24. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not properly paid all minimum and overtime wages owed, was not provided all required meal periods, was not authorized and permitted all rest periods, did not receive all premium pay for meal and rest period violations, was misclassified as an independent contractor, was subject to unlawful deductions from wages, experienced unlawful tip collection, was not reimbursed for necessary business expenses, and was not

provided with accurate, itemized wage statements.

25. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

26. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further,

1 the claims of the individual members of the Class are not sufficiently large to warrant vigorous
2 individual prosecution considering all of the concomitant costs and expenses attending thereto.
3 As such, the Classes identified in Paragraph 20 are maintainable as classes under § 382 of the
4 Code of Civil Procedure.

5 **FIRST CAUSE OF ACTION**

6 **MINIMUM WAGE VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

8 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 28. Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
10 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
11 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
12 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
13 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
14 wages and interest accrued thereon.

15 29. At all relevant times herein, Defendants failed to conform their pay practices to
16 the requirements of the law. This unlawful conduct includes, but is not limited to Defendants'
17 piece-rate compensation structure for members of the Minimum Wage Class, which resulted in
18 these individuals only being paid on Defendants' piece-rate system, as opposed to being paid for
19 all hours worked. Accordingly, Plaintiff and members of the Minimum Wage Class were not
20 compensated for all hours worked, including, but not limited to all hours they were subject to the
21 control of Defendants and/or suffered or permitted to work under the California Labor Code and
22 Wage Order 5.

23 30. California Labor Code § 1198 makes unlawful the employment of an employee
24 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
25 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
26 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
27 amount equal to the wages due and interest thereon.

28 31. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and

1 members of the Minimum Wage Class seek penalties pursuant to Wage Order 5 § 20 and
2 California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and
3 Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2;
4 attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages
5 and/or penalties pursuant to California Labor Code § 558(a).

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGES**

8 **(AGAINST ALL DEFENDANTS)**

9 32. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 33. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and
11 1198, which provide that non-exempt employees are entitled to all overtime wages and
12 compensation for all overtime hours worked and provide a private right of action for the failure
13 to pay all overtime compensation for overtime work performed.

14 34. At all times relevant herein, Defendants were required to properly compensate
15 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
16 hours worked pursuant to California Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3
17 requires an employer to pay an employee "one and one-half (1½) times the employee's regular
18 rate of pay" for work in excess of 8 hours per work day and/or in excess of 40 hours of work in a
19 workweek. Defendants caused Plaintiff and members of the Overtime Class to work overtime
20 hours, but failed to credit these employees with all overtime hours actually worked.

21 35. The foregoing policies and practices are unlawful and create entitlement to
22 recovery by Plaintiff and the Overtime Class members in a civil action for the unpaid amount of
23 overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and
24 costs of suit according to California Labor Code §§ 204, 210, 216, 218.6, 510, 558, 1194, and
25 1198; Civil Code §§ 3287 and 3289, and Code of Civil Procedure § 1021.5.

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civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 226.7, 516, 558, Wage Order 1, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

UNLAWFUL DEDUCTIONS FROM WAGES

(AGAINST ALL DEFENDANTS)

42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

43. Labor Code § 221 states that it is unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. Labor Code § 223 prohibits the secret payment of a lower wage while purporting to pay the wage designated by statute or contract.

44. Defendants violated Labor Code §§ 221-223 by making unlawful deductions from the wages of Plaintiff and other non-exempt employees. These sections prohibit employers from deducting any amount from wages earned by employees unless specifically authorized by law.

45. As a result, Plaintiff and other non-exempt employees seek to recover all unlawfully deducted wages, along with statutory penalties and attorney's fees and costs of suit pursuant to Labor Code §§ 221-223.

SIXTH CAUSE OF ACTION

UNLAWFUL TIP COLLECTION

(AGAINST ALL DEFENDANTS)

46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

47. Labor Code § 351 prohibits employers from collecting, taking, or receiving any gratuity left for an employee by a patron. This statute ensures that all tips are the sole property of the employee or employees to whom they were paid, given, or left for. Labor Code § 353 requires that no employer or agent shall deduct any amount from wages due an employee on account of a gratuity.

48. Defendants violated Labor Code §§ 351 and 353 by unlawfully taking a portion of Plaintiff and other non-exempt employees' tips through compensation plans that required employees to pay Defendants 30% of all monies earned during their shifts. Additionally, upon

information and belief, Defendants required non-exempt employees to share their tips with other employees, including management.

49. As a result of these violations, Plaintiff and other non-exempt employees seek to recover the unlawfully taken tips, along with statutory penalties and attorney's fees and costs of suit pursuant to Labor Code §§ 351 and 353.

SEVENTH CAUSE OF ACTION

FAILURE TO INDEMNIFY ALL NECESSARY BUSINESS EXPENDITURES (AGAINST ALL DEFENDANTS)

50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

51. At all relevant times herein, Defendants were subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or his or her obedience to the directions of the employer."

52. At all relevant times herein, Defendants were subject to Labor Code § 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

53. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, and Wage Order 5, § 9, Plaintiff and members of the Expense Reimbursement Class were damaged in sums, which will be shown according to proof.

54. Plaintiff and members of the Expense Reimbursement Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

55. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the necessary expenditures.

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1 **EIGHTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

4 56. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 57. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
6 an employer to pay all wages earned immediately at the time of termination of employment in the
7 event the employer discharges the employee or the employee provides at least 72 hours of notice
8 of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
9 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
10 employee's last date of employment.

11 58. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
13 at the time of their separation which include, among other things, underpaid minimum wages and
14 overtime wages and meal and rest period premiums. Further, Plaintiff is informed and believes,
15 and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue
16 to fail to pay members of the Waiting Time Class all earned wages at the end of employment in
17 a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to
18 pay all wages was willful within the meaning of Labor Code § 203.

19 59. Defendants' willful failure to timely pay Plaintiff and members of the Waiting
20 Time Class their earned wages upon separation from employment results in a continued payment
21 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
22 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
23 plus reasonable attorneys' fees and costs of suit.

24 **NINTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION**

26 **(AGAINST ALL DEFENDANTS)**

27 60. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 61. Defendants have engaged and continue to engage in unfair and/or unlawful

business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by: (a) failing to pay Plaintiff and members of the Minimum Wage Class and Overtime Class all minimum and overtime wages owed; (b) failing to provide Plaintiff and members of the Meal Period Class with all meal periods to which they are entitled, and failing to pay them all meal period premium payments; (c) failing to authorize and permit Plaintiff and members of the Rest Period Class all rest periods to which they are entitled, and failing to pay them rest period premium payments; and (d) failing to issue accurate and itemized wage statements to the Wage Statement Class.

62. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

63. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

64. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

65. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

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1 **TENTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **(AGAINST ALL DEFENDANTS)**

4 66. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 67. Defendants have committed several Labor Code violations against Plaintiff,
6 members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee”
7 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved
8 employees, brings this representative action against Defendants to recover the civil penalties due
9 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
10 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
11 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
12 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
13 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
14 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
15 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
16 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
17 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
18 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
19 subsequent violation per employee per pay period for those violations of the Labor Code for which
20 no civil penalty is specifically provided, based on the following Labor Code violations:

- 21 a. Willfully misclassifying Plaintiff and other aggrieved employees as independent
22 contractors under Labor Code § 226.8;
- 23 b. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
24 Wage Class, and other aggrieved employees in violation of Labor Code §§ 204,
25 226.2, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 26 c. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
27 earned overtime compensation in violation of Labor Code §§ 204, 226.2, 510, 558,
28 1194, and 1198;

- d. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- e. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.2, 226.7, 516, 558, and 1198;
- f. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved employees for all necessary work expenses incurred in violation of Labor Code §§ 226.8, 2802 and 2804;
- g. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code §§ 226, 226.2;
- h. Failing to pay Plaintiff, the Employee Expense Class, and other aggrieved employees their full wages by deducting fees in violation of Labor Code §§ 221-223;
- i. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- j. Failing to pay Plaintiff, the Employee Expense Class, and other aggrieved employees their full wages by unlawfully collecting from earned tips in violation of Labor Code §§ 351 and 353;
- k. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- l. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174, 1198, and 1199.
68. On June 18, 2024, Plaintiff notified Defendants via certified mail, and notified

1 the California Labor and Workforce Development Agency (“LWDA”) via its website, of
2 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
3 civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the
4 California Labor Code identified in Paragraph 67 (a)-(l). Now that sixty-five days have passed
5 from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not
6 provided notice that it intends to investigate the violations, Plaintiff has exhausted her
7 administrative requirements for bringing a claim under the Private Attorneys General Act with
8 respect to these violations.

9 69. Based on the foregoing, Plaintiff seeks to represent herself and all Aggrieved
10 Employees, as defined by Labor Code § 2699(c).

11 70. Plaintiff was compelled to retain the services of counsel to file this court action to
12 protect her interests and the interests of other aggrieved employees, and to assess and collect the
13 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which
14 she is entitled to receive under California Labor Code § 2699(g).

15 **PRAYER**

16 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
17 this suit is brought against Defendants, as follows:

- 18 1. For an order certifying the proposed Classes;
- 19 2. For an order appointing Plaintiff as representative of the Classes;
- 20 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 21 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
22 damages, and penalties according to proof pursuant to Labor Code §§ 226.2, 1182.12, 1194,
23 1194.2, 1197, and 1198
- 24 5. Upon the Second Cause of Action, for compensatory, consequential, general and
25 special damages according to proof pursuant to Labor Code §§ 204, 226.2, 510, 558, 1194, and
26 1198;
- 27 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
28 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

1 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 226.2, 226.7, 516, and 558;

3 8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
4 special damages according to proof pursuant to Labor Code §§ 221-223;

5 9. Upon the Sixth Cause of Action, for compensatory, consequential, general, and
6 special damages according to proof pursuant to Labor Code §§ 351 and 353;

7 10. Upon the Seventh Cause of Action, for compensatory, consequential, general and
8 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

9 11. Upon the Eighth Cause of Action, for statutory waiting time penalties pursuant to
10 Labor Code §§ 201-203;

11 12. Upon the Ninth Cause of Action, for restitution to Plaintiff and members of the
12 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
13 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
14 *seq.*;

15 13. Upon the Tenth Cause of Action, for civil penalties due to Plaintiff, other
16 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
17 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
18 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
19 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
20 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
21 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
22 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
23 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
24 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
25 each initial violation and \$200 for each subsequent violation per employee per pay period for
26 those violations of the Labor Code for which no civil penalty is specifically provided, based on
27 the Labor Code violations identified in Paragraph 67 (a)-(l);

28 14. Prejudgment interest on all due and unpaid wages pursuant to California Labor

1 Code § 218.6 and Civil Code §§ 3287 and 3289;

2 15. On all causes of action, for attorneys' fees and costs as provided by Labor Code
3 §§ 1194 *et seq.*, and 2699(g); and Code of Civil Procedure § 1021.5; and

4 15. For such other and further relief, the Court may deem just and proper.

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6 Dated: August 23, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

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8 By:



Paul K. Haines
Attorneys for Plaintiff

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12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

14
15 Dated: August 23, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

16
17 By:



Paul K. Haines
Attorneys for Plaintiff