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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

KUPER BANK, an individual, and on behalf of
the State of California, as a private attorney
general,

Plaintiff,

vs.

PARADIES SHOPS, LLC, a Limited Liability
Company; and DOES 1 through 50, inclusive,

Defendants.

Case No. **24TRCV02360**

COMPLAINT FOR:

1. CIVIL PENALTIES PURSUANT TO
LABOR CODE § 2699, *et seq.* FOR
VIOLATIONS OF LABOR CODE §§
201, 202, 203, 204 *et seq.*, 210, 218, 221,
226(a), 226.7, 227.3, 246, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION
11040, SUBDIVISION 5(A)-(B),
CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 1
1070(14) (FAILURE TO PROVIDE
SEATING), AND THE APPLICABLE
WAGE ORDER(S);
2. DISCRIMINATION AND
RETALIATION IN VIOLATION OF
FEHA; and,
3. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY.

1 Kuper Bank (“PLAINTIFF”), on behalf of the people of the State of California and as
2 an “aggrieved employee” acting as a private attorney general under the Labor Code Private
3 Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) with regard to the First Cause of
4 Action, and as an individual with regard to the Second and Third Causes of Action, alleges on
5 information and belief, except for his own acts and knowledge which are based on personal
6 knowledge, the following:

7 INTRODUCTION

8 1. PLAINTIFF brings the First Cause of Action against Defendant Paradies Shops, LLC
9 (referred to as “DEFENDANT”) seeking to recover PAGA civil penalties on behalf of all current and
10 former aggrieved employees that worked for DEFENDANT. As to the First Cause of Action
11 PLAINTIFF does **not seek to recover anything other than penalties as permitted by California**
12 **Labor Code § 2699.** To the extent that statutory violations are mentioned for wage violations,
13 PLAINTIFF does not seek underlying general and/or special damages for those violations, but simply
14 the civil penalties permitted by California Labor Code § 2699.

15 2. As to the First Cause of Action, California has enacted the PAGA which permits
16 PLAINTIFF to bring an action on behalf of himself and on behalf of others for PAGA penalties
17 only, which is the precise and sole nature of this action.

18 3. Accordingly, as to the First Cause of Action, PLAINTIFF seeks to obtain all
19 applicable relief for DEFENDANT’s violations under PAGA and solely for the relief as
20 permitted by PAGA – that is, penalties and any other relief the Court deems proper pursuant to
21 the PAGA. As to the First Cause of Action, nothing in this complaint should be construed as
22 attempting to obtain any relief that would not be available in a PAGA-only action.

23 4. As to the First Cause of Action, PLAINTIFF is not suing in his individual
24 capacity; he is proceeding herein solely under the PAGA, on behalf of the State of California
25 for all aggrieved employees, including himself and other aggrieved employees. As to the First
26 Cause of Action, nothing in this complaint should be construed as PLAINTIFF suing in his
27 individual capacity.
28

THE PARTIES

5. Paradies Shops, LLC (“DEFENDANT”) is a limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in California.

6. DEFENDANT is a leading North American travel retailer and restaurateur.

7. PLAINTIFF was employed by DEFENDANT in California from March of 2023 to March of 2024. PLAINTIFF was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

8. As to the First Cause of Action, PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by DEFENDANT in California, including any employees staffed with DEFENDANT by a third party, and classified as non-exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of January 23, 2023 until a date as determined by the Court (the "PAGA PERIOD").

9. As to the First Cause of Action, PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT’s violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

10. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

11. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and all the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal

1 break. DEFENDANT, as a matter of established company policy and procedure,
2 administers a uniform practice of rounding the actual time worked and recorded by
3 PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT,
4 so that during the course of their employment, PLAINTIFF and the AGGRIEVED
5 EMPLOYEES are paid less than they would have been paid had they been paid for actual
6 recorded time rather than “rounded” time. Additionally, DEFENDANT engages in the
7 practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work off
8 the clock in that DEFENDANT, as a condition of employment, required these employees to
9 submit to mandatory temperature checks and symptom questionnaires for COVID-19
10 screening prior to clocking into DEFENDANT’s timekeeping system for the workday. As a
11 result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime
12 wage compensation, and off-duty meal breaks by working without their time being correctly
13 recorded and without compensation at the applicable rates. DEFENDANT’s policy and
14 practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, is
15 evidenced by DEFENDANT’s business records.

16 13. State law provides that employees must be paid overtime and meal and rest
17 break premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and the
18 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is
19 tied to specific elements of an employee’s performance.

20 14. The second component of PLAINTIFF’s and the AGGRIEVED
21 EMPLOYEES’ compensation is DEFENDANT’s non-discretionary incentive program that
22 paid PLAINTIFF and the AGGRIEVED EMPLOYEES incentive wages based on their
23 performance for DEFENDANT. The non-discretionary incentive program provided all
24 employees paid on an hourly basis with incentive compensation when the employees met the
25 various performance goals set by DEFENDANT. However, when calculating the regular
26 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
27 the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive
28 compensation as part of the employees’ “regular rate of pay” for purposes of calculating

1 overtime pay and meal and rest break premium pay. Management and supervisors described
2 the incentive program to potential and new employees as part of the compensation package.
3 As a matter of law, the incentive compensation received by PLAINTIFF and the
4 AGGRIEVED EMPLOYEES must be included in the “regular rate of pay.” The failure to
5 do so has resulted in a underpayment of overtime compensation and meal and rest break
6 premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES by DEFENDANT.

7 15. As a result of their rigorous work schedules, PLAINTIFF and the
8 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off
9 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
10 and the AGGRIEVED EMPLOYEES were required from time to time to perform work as
11 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving
12 a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
13 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in
14 which these employees were required by DEFENDANT to work ten (10) hours of work.
15 DEFENDANT also engaged in the practice of rounding the meal period times to avoid
16 paying penalties to PLAINTIFF and the AGGRIEVED EMPLOYEES. PLAINTIFF and the
17 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
18 and in accordance with DEFENDANT’s corporate policy and practice.

19 16. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED
20 EMPLOYEES were also required from time to time to work in excess of four (4) hours
21 without being provided ten (10) minute rest periods. Further, these employees were denied
22 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
23 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
24 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
25 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
26 hours or more from time to time. PLAINTIFF and the AGGRIEVED EMPLOYEES were
27 also not provided with one hour wages in lieu thereof. Additionally, the applicable
28 California Wage Order requires employers to provide employees with off-duty rest periods,

1 which the California Supreme Court defined as time during which an employee is relieved
2 from all work related duties and free from employer control. In so doing, the Court held that
3 the requirement under California law that employers authorize and permit all employees to
4 take rest period means that employers must relieve employees of all duties and relinquish
5 control over how employees spend their time which includes control over the locations
6 where employees may take their rest period. Employers cannot impose controls that prohibit
7 an employee from taking a brief walk - five minutes out, five minutes back. Here,
8 DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED EMPLOYEES from
9 unconstrained walks and is unlawful based on DEFENDANT's rule which states
10 PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
11 their rest period.

12 17. During the PAGA PERIOD, DEFENDANT failed to accurately record and
13 pay PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
14 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
15 DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for
16 all time worked, meaning the time during which an employee was subject to the control of
17 an employer, including all the time the employee was permitted or suffered to permit this
18 work. DEFENDANT required these employees to work off the clock without paying them
19 for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or
20 should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES were under
21 compensated for all time worked. As a result, PLAINTIFF and the AGGRIEVED
22 EMPLOYEES forfeited time worked by working without their time being accurately
23 recorded and without compensation at the applicable minimum wage and overtime wage
24 rates. To the extent that the time worked off the clock does not qualify for overtime
25 premium payment, DEFENDANT failed to pay minimum wages for the time worked off-
26 the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

27 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
28 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to

1 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
2 provides that every employer shall furnish each of his or her employees with an accurate
3 itemized wage statement in writing showing, among other things, gross wages earned and all
4 applicable hourly rates in effect during the pay period and the corresponding amount of time
5 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
6 an hourly basis. As such, the wage statements should reflect all applicable hourly rates
7 during the pay period and the total hours worked, and the applicable pay period in which the
8 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
9 DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to
10 identify such information. More specifically, the wage statements failed to identify the
11 accurate total hours worked each pay period. When the hours shown on the wage statements
12 were added up, they did not equal the actual total hours worked during the pay period in
13 violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this
14 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that
15 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT
16 from time to time provided PLAINTIFF and the AGGRIEVED EMPLOYEES with wage
17 statements which violated Cal. Lab. Code § 226.

18 19. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
19 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
20 the wages are paid not more than seven (7) calendar days following the close of the payroll
21 period. Cal. Lab. Code § 210 provides:

22 in [I]n addition to, and entirely independent and apart from, any other penalty provided
23 this article, every person who fails to pay the wages of each employee as provided in
24 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
25 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
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.

26 20. DEFENDANT from time to time failed to pay PLAINTIFF and the
27 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
28

1 accordance with Cal. Lab. Code § 204(d), including but not limited to the “Hourly” regular
2 wage payments.

3 21. DEFENDANT underpaid sick pay wages to PLAINTIFF and the
4 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in
5 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
6 employees earn non-discretionary remuneration, including, but not limited to, incentives,
7 shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay,
8 DEFENDANT underpays sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES at
9 their base rates of pay.

10 22. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt
11 employees be calculated by dividing the employee’s total wages, not including overtime
12 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
13 days of employment.

14 23. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
15 at the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely
16 earned non-discretionary incentive wages which increased their regular rate of pay.
17 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
18 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as
19 required under Cal. Lab. Code Section 246.

20 24. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
21 and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
22 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
23 believes and based thereon alleges that such failure to pay sick pay at regular rate was
24 willful, such that the AGGRIEVED EMPLOYEES whose employment has separated are
25 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

26 25. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
27 to collect or receive from an employee any part of wages theretofore paid by said employer
28 to said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and

1 the AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
2 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
3 deductions from compensation payable to PLAINTIFF and the AGGRIEVED
4 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable
5 pay period and upon termination.

6 26. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
7 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred
8 by the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of
9 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
10 2802, employers are required to indemnify employees for all expenses incurred in the course
11 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
12 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
13 employee in direct consequence of the discharge of his or her duties, or of his or her
14 obedience to the directions of the employer, even though unlawful, unless the employee, at
15 the time of obeying the directions, believed them to be unlawful."

16 27. In the course of their employment PLAINTIFF and the AGGRIEVED
17 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
18 personal cellular phones and home offices as a result of and in furtherance of their job duties
19 as employees for DEFENDANT but are not reimbursed or indemnified by DEFENDANT
20 for the cost associated with the use of their personal cellular phones and home offices for
21 DEFENDANT's benefit. Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES
22 were required by DEFENDANT to use their personal cellular phones and home offices. As
23 a result, in the course of their employment with DEFENDANT, PLAINTIFF and the
24 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
25 were not limited to, costs related to the use of their personal cellular phones and home
26 offices all on behalf of and for the benefit of DEFENDANT.

27 28. In violation of the applicable sections of the California Labor Code and the
28 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,

1 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
2 knowingly and systematically failed to provide PLAINTIFF and the other AGGRIEVED
3 EMPLOYEES suitable seating when the nature of these employees' work reasonably
4 permitted sitting.

5 29. DEFENDANT knew or should have known that PLAINTIFF and other
6 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit
7 when it did not interfere with the performance of their duties, and that DEFENDANT did
8 not provide suitable seating and/or did not allow them to sit when it did not interfere with
9 the performance of their duties.

10 30. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
11 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage
12 Order 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties
13 on behalf of PLAINTIFF and other AGGRIEVED EMPLOYEES as provided herein.
14 Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's
15 intentional disregard of the obligation to meet this burden, DEFENDANT violated the
16 California Labor Code and regulations promulgated thereunder as herein alleged.

17 31. The employment of PLAINTIFF and some AGGRIEVED EMPLOYEES has
18 terminated and DEFENDANT has not tendered payment of all wages owed as required by
19 law. Additionally, at all times during the term of PLAINTIFF's employment with
20 DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES earned and accrued
21 vested vacation and holiday time on the date of their termination pursuant to
22 DEFENDANT's uniform vacation policies and applicable California law. The amount of
23 vacation pay PLAINTIFF and the other AGGRIEVED EMPLOYEES earned and
24 accumulated is evidenced by DEFENDANT's business records. Additionally,
25 DEFENDANT also underpaid accrued vested vacation wages to PLAINTIFF and other
26 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay and
27 more specifically the final rate of pay that included all non-discretionary incentive
28 compensation. Rather than pay vacation wages at the regular rate of pay, DEFENDANT

1 underpaid vacation wages to PLAINTIFF and other AGGRIEVED EMPLOYEES at their
2 base rates of pay, instead of including all of PLAINTIFF and other AGGRIEVED
3 EMPLOYEES' non-discretionary incentive compensation into the vacation wage payment
4 calculations. DEFENDANT failed to specify in DEFENDANT's written vacation policy the
5 rate at which PLAINTIFF and other AGGRIEVED EMPLOYEES would be paid vacation
6 upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful
7 practice, policy and procedure to deny paying the PLAINTIFF and other AGGRIEVED
8 EMPLOYEES all of their vested vacation and holiday time, DEFENDANT failed to pay the
9 PLAINTIFF and other AGGRIEVED EMPLOYEES all vested vacation time as wages due
10 upon employment termination, in violation of the California Labor Code, Sections 201, 202,
11 203 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to PLAINTIFF
12 and other AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of
13 PLAINTIFFS' and other AGGRIEVED EMPLOYEES' non-discretionary compensation
14 into the waiting time penalty calculations. This failure by DEFENDANT is believed to be
15 the result of DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation
16 for earned, accrued and vested vacation and holiday time, as well as the corresponding
17 waiting time penalties that were paid. DEFENDANT perpetrated this unlawful, unfair and
18 deceptive practice to the detriment of PLAINTIFF and other AGGRIEVED EMPLOYEES.
19 DEFENDANT's uniform practice and policy of failing to pay the AGGRIEVED
20 EMPLOYEES for all vested vacation and holiday time accumulated at employment
21 termination violated and continues to violate Section 227.3 of the California Labor Code.

JURISDICTION AND VENUE

24 32. This Court has jurisdiction over this Action pursuant to California Code of
25 Civil Procedure, Section 410.10.

26 33. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
28

1 employs AGGRIEVED EMPLOYEES across California, including in this County, and
2 committed the wrongful conduct herein alleged in this County against AGGRIEVED
3 EMPLOYEES.

4
5 **FIRST CAUSE OF ACTION**

6 **For Violation of the Private Attorneys General Act**

7 **[Cal. Lab. Code §§ 2698, *et seq.*]**

8 **(By PLAINTIFF and Against All Defendants)**

9 34. PLAINTIFF realleges and incorporates by this reference, as though fully set
10 forth herein, the prior paragraphs of this Complaint.

11 35. PAGA is a mechanism by which the State of California itself can enforce state
12 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
13 the state's labor law enforcement agencies. An action to recover civil penalties under
14 PAGA is fundamentally a law enforcement action designed to protect the public and not to
15 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
16 but to create a means of "deputizing" citizens as private attorneys general to enforce the
17 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
18 public interest to allow aggrieved employees, acting as private attorneys general to recover
19 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
20 claims cannot be subject to arbitration.

21 36. PLAINTIFF, and such persons that may be added from time to time who
22 satisfy the requirements and exhaust the administrative procedures under the Private
23 Attorney General Act, brings this Representative Action on behalf of the State of California
24 with respect to himself and all individuals who are or previously were employed by
25 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
26 party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the
27 time period of January 23, 2023 until a date as determined by the Court (the "PAGA
28 PERIOD").

1 37. On January 23, 2024, PLAINTIFF gave written notice by electronic mail to the
2 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
3 employer of the specific provisions of this code alleged to have been violated as required by
4 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
5 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
6 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
7 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
8 pursuant to Section 2699 as the proxy of the State of California with respect to all
9 AGGRIEVED EMPLOYEES as herein defined.

10 38. The policies, acts and practices heretofore described were and are an unlawful
11 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
12 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
13 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
14 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
15 required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable
16 seating, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
17 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2),
18 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
19 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure
20 to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil
21 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties
22 as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative
23 of the State of California for the illegal conduct perpetrated on PLAINTIFF and the
24 AGGRIEVED EMPLOYEES.

25 39. All of the conduct and violations alleged herein occurred during the PAGA
26

27 ¹As to the First Cause of Action, Plaintiff specifically excludes and/or does not allege any
28 claims under California Labor Code §558(a)(3).

1 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
2 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
3 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
4 2018 AJDAR 12157 (Certified for Publication 12/19/18).

5 **SECOND CAUSE OF ACTION**

6 **[Discrimination and Retaliation For the Exercise of Rights Guaranteed Under the**
7 **FEHA, Participating in Protected Activities, and/or Opposing DEFENDANT's Failure**
8 **to Provide Such Rights]**

9 **Violation of FEHA Government Section 12900, *et. seq.***

10 **(By PLAINTIFF Against All Defendants)**

11 40. PLAINTIFF realleges and incorporates by reference, as though fully set forth
12 herein, the prior paragraphs of this Complaint. Prior to filing this action PLAINTIFF
13 exhausted her administrative remedies by filing a timely administrative complaint with the
14 Department of Fair Employment and Housing ("DFEH") and received a DFEH Right to Sue
15 letter on January 24, 2024.

16 41. DEFENDANT's conduct, as alleged, violated FEHA, Government Code
17 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
18 including the following bases for liability:

19 a. Taking adverse employment actions against PLAINTIFF, including
20 paying lower wages, discharging, barring, refusing to transfer, retain, hire, select, and/or
21 employ, and/or otherwise discriminating against PLAINTIFF, in whole or in part on the
22 basis of PLAINTIFF's sexual orientation and/or gender in violation of Government Code
23 Section 12940(a);

24 b. Harassing PLAINTIFF and/or creating a hostile work environment, in
25 whole or in part on the basis of PLAINTIFF's sexual/orientation and/or gender;

26 c. Failing to take all reasonable steps to prevent discrimination and
27 harassment based on sexual orientation/gender in violation of Government Code section
28 12940(k);

1 d. Retaliating against PLAINTIFF for seeking to exercise rights
2 guaranteed under FEHA, participating in protected activities, and/or opposing
3 DEFENDANT's failure to provide such rights, in violation of Government Code Section
4 12940(h).

5 42. For background, PLAINTIFF is a homosexual male that is married to a male.
6 In April of 2023 and continuing throughout the rest of his employment, PLAINTIFF
7 reported to his managers that he was being called derogatory words relating to him being a
8 homosexual by other employees of DEFENDANT. In one instance, an employee of
9 DEFENDANT told PLAINTIFF "my son's masculine. Thank God because if he was a
10 fa\$%ot, I'd beat it out of him." PLAINTIFF was terrified to go to work and felt
11 uncomfortable at work as a result of the harassment and discrimination. As a result of the
12 good faith complaints PLAINTIFF made to DEFENDANT regarding the discriminatory
13 practices stated above and also as a result of PLAINTIFF's sexual orientation and/or gender,
14 DEFENDANT in direct retaliation for those complaints, DEFENDANT denied PLAINTIFF
15 employment benefits, including but not limited to, higher wages in his position with the
16 company and favorable schedules, and ultimately terminated PLAINTIFF's employment in
17 March of 2024.

18 43. As a proximate result of DEFENDANT's willful, knowing, and intentional
19 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain
20 substantial losses of earnings and other employment benefits.

21 44. As a proximate result of DEFENDANT's willful, knowing, and intentional
22 discrimination against PLAINTIFF, PLAINTIFF has suffered and continues to suffer
23 humiliation, emotional distress, and physical and mental pain and anguish, all to
24 PLAINTIFF's damage in a sum according to proof.

25 45. PLAINTIFF has incurred and continues to incur legal expenses and attorneys'
26 fees. Pursuant to Government Code Section 12965(b), PLAINTIFF is entitled to recover
27 reasonable attorneys' fees and costs (including expert costs) in an amount according to
28 proof.

1 46. DEFENDANT's misconduct was committed intentionally, in a malicious,
2 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
3 against DEFENDANT.

4
5 **THIRD CAUSE OF ACTION**

6 **For Wrongful Termination in Violation of Public Policy**

7 **(By PLAINTIFF Against All Defendants)**

8 47. PLAINTIFF realleges and incorporate by this reference, as though fully set
9 forth herein, the prior paragraphs of this Complaint.

10 48. For background, PLAINTIFF is a homosexual male that is married to a male.
11 In April of 2023 and continuing throughout the rest of his employment, PLAINTIFF
12 reported to his managers that he was being called derogatory words relating to him being a
13 homosexual by other employees of DEFENDANT. In one instance, an employee of
14 DEFENDANT told PLAINTIFF "my son's masculine. Thank God because if he was a
15 fa\$%ot, I'd beat it out of him." PLAINTIFF was terrified to go to work and felt
16 uncomfortable at work as a result of the harassment and discrimination. PLAINTIFF
17 eventually filed a claim with California's Department of Fair Employment and Housing
18 regarding the above conduct and received a right to sue on January 24, 2024. As a result of
19 the good faith complaints PLAINTIFF made to DEFENDANT regarding the discriminatory
20 practices stated above (including the right to sue obtained from the DFEH) and also as a
21 result of PLAINTIFF's sexual orientation and/or gender, DEFENDANT in direct retaliation
22 for those complaints, wrongfully terminated PLAINTIFF's employment in March of 2024.
23 PLAINTIFF's wrongful termination in March of 2024 was for a pretextual reason(s) to
24 disguise DEFENDANT's unlawful employment practices directed at PLAINTIFF.

25 49. Within the State of California there exists a substantial and fundamental public
26 policy, set forth in the California Government Code §12900 et seq., which forbids age
27 and/or medical condition harassment/discrimination, retaliation, and wrongful termination.
28 Unlawful harassment includes the right to be free from unwanted, offensive racial

1 harassment, and the right to protest such conduct without fear of retaliation or further harm.
2 This public policy of the state is one that benefits the public at large and guarantees the
3 rights of an employee to perform their work free from age and/or medical condition
4 harassment/discrimination/retaliation. These actions were in violation of FEHA, the
5 California Constitution, and California Labor Code Section 1102.5. DEFENDANT
6 terminated PLAINTIFF's employment in violation of various fundamental public policies
7 underlying both state and federal laws. Specifically, PLAINTIFF's employment was
8 terminated in part because of his protected status (i.e., sexual orientation and/or good faith
9 complaints). These actions were in violation of fundamental public policy.

10 50. The motivating reason(s) for PLAINTIFF's termination was sexual
11 orientation, harassment/discrimination and PLAINTIFF's protests and/or resistance thereof.
12 PLAINTIFF's discharge from PLAINTIFF's position of employment was in violation of the
13 public policies of the State of California.

14 51. As a result of DEFENDANT's actions, PLAINTIFF has suffered substantial
15 losses in earnings and employment benefits and emotional distress in an amount to be
16 determined according to proof at trial.

17 52. In doing the acts herein alleged, DEFENDANT acted with malice and
18 oppression, and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is
19 entitled to exemplary and punitive damages from DEFENDANT in an amount to be
20 determined to punish DEFENDANT and to deter such wrongful conduct in the future.

21
22 **PRAYER FOR RELIEF**

23 WHEREFORE, PLAINTIFF prays for judgment against each Defendant,
24 jointly and severally, as follows:

25 1. As to the First Cause of Action, on behalf of the State of California and
26 with respect to all AGGRIEVED EMPLOYEES:

27 A) Recovery of civil penalties as prescribed by the Labor Code
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Private
Attorneys General Act of 2004; and,
B) An award of attorneys’ fees and cost of suit, as allowable under
the
law, including, but not limited to, pursuant to Labor Code §2699.
2. For the Second and Third Causes of Action on behalf of PLAINTIFF
Individually:
A) For all special damages which were sustained as a result of
DEFENDANT's conduct, including, but not limited to, back pay,
front pay, lost compensation and job benefits that PLAINTIFF
would have received but for the retaliatory practices of
DEFENDANT; and,
B) For all exemplary damages, according to proof, which were
sustained as a result of DEFENDANT's conduct.

Dated: July 15, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: /s/ Nicholas De Blouw
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw

Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: July 15, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

**2255 CALLE CLARA
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WRITERS EXT:

1004

January 23, 2024

CA3095

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Paradies Shops, LLC
Certified Mail #9589071052700182377416
CSC - Lawyers Incorporating Service
Becky DeGeorge
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), Brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Paradies Shops, LLC in California, including any employees staffed with Paradies Shops, LLC by a third party, and classified as non-exempt employees during the time period of January 23, 2024 until a date as determined by the Court. Our offices represent Plaintiff Kuper Bank (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Paradies Shops, LLC (“Defendant”). Plaintiff has been employed with Defendant since March of 2023 in California and at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved

Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. See *Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiff and the Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to Plaintiff and the Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.