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Counsel for Plaintiffs and Settlement Class and Collective Action Members

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION - RIVERSIDE

LAUREN BYRNE, BAMBIE BEDFORD, and JENNIFER DISLA, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

CITY OF INDUSTRY HOSPITALITY VENTURE, INC., CITY OF INDUSTRY HOSPITALITY VENTURE, LLC, DG HOSPITALITY VAN NUYS, LLC, FARMDALE HOSPITALITY SERVICES, INC., FARMDALE HOSPITALITY SERVICES, LLC, HIGH EXPECTATIONS HOSPITALITY, LLC, HIGH EXPECTATIONS HOSPITALITY DALLAS, LLC, INLAND RESTAURANT VENTURE

Case No: 5:17-cv-00527

SECOND AMENDED COMPLAINT FOR VIOLATIONS OF FLSA AND STATE LAWS

COLLECTIVE ACTION AND CLASS ACTION

DEMAND FOR JURY TRIAL

I, INC., INLAND RESTAURANT VENTURE I, LLC, KENTUCKY HOSPITALITY VENTURE, LLC, KENTUCKY HOSPITALITY VENTURE LEXINGTON, LLC, L.C.M., LLC, LCM1, LLC, MIDNIGHT SUN ENTERPRISES, INC., MIDNIGHT SUN ENTERPRISES, LLC, NITELIFE, INC., NITELIFE MINNEAPOLIS, LLC, OLYMPIC AVENUE VENTURE, INC., OLYMPIC AVENUE VENTURES, LLC, RIALTO POCKETS, INCORPORATED, RIALTO POCKETS, LLC, ROUGE GENTLEMEN'S CLUB, INC., SANTA BARBARA HOSPITALITY SERVICES, INC., SANTA BARBARA HOSPITALITY SERVICES, LLC, SANTA MARIA RESTAURANT ENTERPRISES, INC., SANTA MARIA RESTAURANT ENTERPRISES, LLC, SARIE'S LOUNGE, LLC, THE OXNARD HOSPITALITY SERVICES, INC., THE OXNARD HOSPITALITY SERVICES, LLC, WASHINGTON MANAGEMENT, LLC, WASHINGTON MANAGEMENT LOS ANGELES, LLC, WILD ORCHID, INC., WILD ORCHID PORTLAND, LLC, WORLD CLASS VENUES, LLC, WORLD CLASS VENUES IOWA, LLC, W P B HOSPITALITY, LLC, WPB HOSPITALITY WEST PALM BEACH, LLC, THE SPEARMINT RHINO COMPANIES WORLDWIDE, INC., SPEARMINT RHINO CONSULTING WORLDWIDE, INC.,

Defendants.

Plaintiffs Lauren Byrne ("Byrne"), Bambie Bedford ("Bedford"), and Jennifer Disla ("Disla"), (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated, file this Second Amended Complaint against Defendants City of Industry Hospitality Venture, Inc., City of Industry Hospitality Venture, LLC, DG Hospitality Van Nuys, LLC, Farmdale Hospitality Services, Inc., Farmdale Hospitality Services, LLC, High Expectations Hospitality, LLC, High Expectations Hospitality Dallas, LLC, Inland Restaurant Venture I, Inc., Inland Restaurant Venture I, LLC, Kentucky Hospitality Venture, LLC, Kentucky Hospitality Venture Lexington, LLC, L.C.M., LLC, LCM1, LLC, Midnight Sun Enterprises, Inc., Midnight Sun Enterprises, LLC, Nitelife, Inc., Nitelife Minneapolis, LLC, Olympic Avenue Venture, Inc., Olympic Avenue Ventures, LLC, Rialto Pockets, Incorporated, Rialto Pockets, LLC, Rouge Gentlemen's Club, Inc., Santa Barbara Hospitality Services, Inc., Santa Barbara Hospitality Services, LLC, Santa Maria Restaurant Enterprises, Inc., Santa Maria Restaurant Enterprises, LLC, Sarie's Lounge, LLC, The Oxnard Hospitality Services, Inc., The Oxnard Hospitality Services, LLC, Washington Management, LLC, Washington Management Los Angeles, LLC, Wild Orchid, Inc., Wild Orchid Portland, LLC, World Class Venues, LLC, World Class Venues Iowa, LLC, W. P. B. Hospitality, LLC, WPB Hospitality West Palm Beach, LLC, The Spearmint Rhino Companies Worldwide, Inc., Spearmint Rhino Consulting Worldwide, Inc. (collectively "Defendants" or "Spearmint Rhino"), showing in support as follows:

I. INTRODUCTION AND NATURE OF ACTION

1. This is an action brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and the Portal-to-Portal Act, 29 U.S.C. §§ 251-262 (collectively, the "FLSA") to redress Defendants' long standing abuse of the federal minimum wage and overtime standards. Plaintiffs bring this action as a collective action under 29 U.S.C. § 216(b). The FLSA violation raised in this lawsuit is straightforward – Defendants do not pay their exotic dancer employees anything.

2. This action is also brought by Byrne under the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200-17210, the California Labor Code and related regulations including the California Private Attorneys General Act, ("PAGA"), Cal. Wage Order No. 10-2001; Cal. Labor Code §§ 200-2699.5, (collectively, "California State Law"), for Defendants' various violations of California State Law including: (1) failure to pay employees working in California state-mandated minimum wages, (2) failure to pay employees working in California overtime compensation at a rate of one and one-half times the regular rate of pay for all hours worked over forty per week, or over eight per day, or for the first eight hours of work on the seventh consecutive day of work in a workweek (3) failure to pay employees working in California overtime compensation at a rate of twice the regular rate of pay for all hours worked in excess of 12 hours in one day, and for any hours worked in excess of eight hours on the seventh consecutive day of work in a workweek,(4) failure to pay employees working in California all wages due within the time specified by law, (5) failure to afford their employees

working in California with proper meal and rest periods, (6) for recordkeeping violations explained in greater detail below, and (7) for statutory penalties assessed in connection with PAGA. Byrne brings these claims as a class action under FED. R. CIV. P. 23.

3. This action is also brought as a class action pursuant to FED. R. CIV. P. 23 under California, Florida, Idaho, Iowa, Kentucky, Minnesota, Oregon, and Texas State Law, claims for including breach of contract and quantum meruit.

4. Defendants City of Industry Hospitality Venture, Inc., City of Industry Hospitality Venture, LLC, DG Hospitality Van Nuys, LLC, Farmdale Hospitality Services, Inc., Farmdale Hospitality Services, LLC, High Expectations Hospitality, LLC, High Expectations Hospitality Dallas, LLC, Inland Restaurant Venture I, Inc., Inland Restaurant Venture I, LLC, Kentucky Hospitality Venture, LLC, Kentucky Hospitality Venture Lexington, LLC, L.C.M., LLC, LCM1, LLC, Midnight Sun Enterprises, Inc., Midnight Sun Enterprises, LLC, Nitelife, Inc., Nitelife Minneapolis, LLC, Olympic Avenue Venture, Inc., Olympic Avenue Ventures, LLC, Rialto Pockets, Incorporated, Rialto Pockets, LLC, Rouge Gentlemen's Club, Inc., Santa Barbara Hospitality Services, Inc., Santa Barbara Hospitality Services, LLC, Santa Maria Restaurant Enterprises, Inc., Santa Maria Restaurant Enterprises, LLC, Sarie's Lounge, LLC, The Oxnard Hospitality Services, Inc., The Oxnard Hospitality Services, LLC, Washington Management, LLC, Washington Management Los Angeles, LLC, Wild Orchid, Inc., Wild Orchid Portland, LLC, World Class Venues, LLC, World Class Venues Iowa, LLC, W. P. B. Hospitality, LLC, WPB Hospitality West Palm Beach, LLC, The

Spearmint Rhino Companies Worldwide, Inc., Spearmint Rhino Consulting Worldwide, Inc. own and manage gentlemen's clubs located throughout the country operating under the name "Spearmint Rhino Gentlemen's Club" ("Spearmint Rhino"), "Dames N Games Topless Sports Bar & Grill" ("Dames N Games") and/or "Blue Zebra Adult Cabaret" ("Blue Zebra"). Plaintiffs, on behalf of themselves and all others similarly situated, allege that Defendants are joint employers and are jointly and severally liable for their damages and those of the respective putative Class and Collective Action Members.

5. Plaintiff Lauren Byrne is a non-exempt former employee of Spearmint Rhino who worked as an exotic dancer at Defendants' adult entertainment club in Santa Barbara, California. Plaintiff Bambie Bedford is a non-exempt former employee of Spearmint Rhino who worked as an exotic dancer at Defendants' adult entertainment club in Dallas, Texas. Plaintiff Jennifer Disla is a non-exempt former employee of Spearmint Rhino who worked as an exotic dancer at Defendants' adult entertainment club in West Palm Beach, Florida. During their tenure as dancers for Defendants, they did not receive the FLSA-mandated minimum wage for all hours worked, nor did they receive time-and-one-half her regular rate of pay for each hour worked over 40 in a given workweek.

6. In fact, Defendants did not compensate Byrne, Bedford, or Disla whatsoever for any hours they worked at the respective Spearmint Rhino locations. Byrne, Bedford, and Disla were first required to pay to enter the club, and their only compensation came in the form of tips received from club patrons. Moreover, Plaintiffs were required to divide those tips with certain Defendants and other

employees who do not customarily receive tips. Consequently, Defendants often failed to compensate Plaintiffs and other workers like them at federal- and state-mandated minimum wage rates, and failed to provide Plaintiffs and others like them with commensurate overtime when they worked over 40 hours in a given workweek, or per California State Law, over 8 hours in a given workday.

II. THE PARTIES

A. Plaintiff Lauren Byrne

7. Plaintiff Lauren Byrne is an individual residing in Ventura County, California. She has standing to file this lawsuit.

8. Byrne was an exotic dancer employee of Defendants. She worked exclusively for Defendants at their location at 22 East Montecito Street, Santa Barbara California, 93101, from approximately September 19, 2016 through approximately October 23, 2016.

9. Byrne's written consent to participate in this action was previously filed as an exhibit to the Original Complaint in this case.

B. Plaintiff Bambie Bedford

10. Plaintiff Bambie Bedford is an individual residing in Dallas, Texas. She has standing to file this lawsuit.

11. Bedford was an exotic dancer employee of Defendants. She worked exclusively for Defendants at their location at 10965 Composite Drive, Dallas, Texas 75220, during the relevant time period.

12. Bedford's written consent to participate in this action was previously filed in this case.

C. Plaintiff Jennifer Disla

13. Plaintiff Jennifer Disla is an individual residing in West Palm Beach, Florida. She has standing to file this lawsuit.

14. Disla was an exotic dancer employee of Defendants. She worked exclusively for Defendants at their location at 2154 Zip Code Place, West Palm Beach, Florida 33409, during the relevant time period.

15. Disla's written consent to participate in this action was previously filed in this case.

D. Putative Collective Action Members

16. The putative Collective Action Members are all current and former exotic dancers who worked for Defendants at any Spearmint Rhino location nationwide at any time within the three years prior to February 3, 2017 through the date of final disposition of this action who did not receive minimum wages or overtime premium pay for hours worked over 40 in a given workweek from Defendants.

17. Plaintiffs seek to represent the Collective Action Members, seeking damages for claims of unpaid minimum wages and overtime wages pursuant to the FLSA, and Plaintiffs are similarly situated to the Collective Action Members pursuant to 29 U.S.C. § 216(b).

E. Putative California Class Action Members

18. The putative California Class Action Members are all current and former exotic dancers who work or worked for Defendants at any Spearmint Rhino, Blue Zebra, and/or Dames N Games location in California at any time within the four years prior to February 3, 2017 through the date of the final disposition of this action.

19. Plaintiffs seek damages for the California State Law Claims, described further below.

F. <u>Putative Florida Class Action Members</u>

20. The putative Florida Class Action Members are all current and former exotic dancers who work or worked for Defendants at any Spearmint Rhino location in Florida at any time within the five years prior to February 3, 2017 through the date of the final disposition of this action.

21. Plaintiffs seek damages for the Florida State Law Claims, described further below.

G. <u>Putative Idaho Class Action Members</u>

22. The putative Idaho Class Action Members are all current and former exotic dancers who work or worked for Defendants at any Spearmint Rhino location in Idaho at any time within the three years prior to February 3, 2017 through the date of the final disposition of this action.

23. Plaintiffs seek damages for the Idaho State Law Claims, described further below.

H. <u>Putative Iowa Class Action Members</u>

24. The putative Iowa Class Action Members are all current and former exotic dancers who work or worked for Defendants at any Spearmint Rhino location in Iowa at any time within the three years prior to February 3, 2017 through the date of the final disposition of this action.

25. Plaintiffs seek damages for the Iowa State Law Claims, described further below.

I. Putative Kentucky Class Action Members

26. The putative Kentucky Class Action Members are all current and former exotic dancers who work or worked for Defendants at any Spearmint Rhino location in Kentucky at any time within the three years prior to February 3, 2017 through the date of the final disposition of this action.

27. Plaintiffs seek damages for the Kentucky State Law Claims, described further below.

J. Putative Minnesota Class Action Members

28. The putative Minnesota Class Action Members are all current and former exotic dancers who work or worked for Defendants at any Spearmint Rhino location in Minnesota at any time within the three years prior to February 3, 2017 through the date of the final disposition of this action.

29. Plaintiffs seek damages for the Minnesota State Law Claims, described further below.

K. Putative Oregon Class Action Members

30. The putative Oregon Class Action Members are all current and former exotic dancers who work or worked for Defendants at any Spearmint Rhino

location in Oregon at any time within the three years prior to February 3, 2017 through the date of the final disposition of this action.

31. Plaintiffs seek damages for the Oregon State Law Claims, described further below.

L. Putative Texas Class Action Members

32. The putative Texas Class Action Members are all current and former exotic dancers who work or worked for Defendants at any Spearmint Rhino location in Texas at any time within the three years prior to February 3, 2017 through the date of the final disposition of this action.

33. Plaintiffs seek damages for the Texas State Law Claims, described further below.

M. Defendant City of Industry Hospitality Venture, Inc.

34. Defendant City of Industry Hospitality Venture, Inc. is a California corporation that does business as Spearmint Rhino.

35. City of Industry Hospitality Venture, Inc. may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

36. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

37. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

38. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise

1 worked on goods or materials that have been moved in or produced for commerce
2 by any person.
3 39. On information and belief, at all times relevant to this lawsuit,
4 Defendant has had gross operating revenues or business volume in excess of
5 $500,000.

6 **N. Defendant City of Industry Hospitality Venture, LLC**

7 40. Defendant City of Industry Hospitality Venture, LLC is a California
8 limited liability company in which entertainers can elect to be members.
9 41. City of Industry Hospitality Venture, LLC may be served process
10 through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco,
11 California 92860.
12 42. At all times relevant to this lawsuit, Defendant has been an "enterprise
13 engaged in commerce" as defined by the FLSA.
14 43. At all times relevant to this lawsuit, Defendant employed, and
15 continues to employ, two or more employees.
16 44. At all times relevant to this lawsuit, Defendant employed two or more
17 employees who engaged in commerce and/or who handled, sold or otherwise
18 worked on goods or materials that have been moved in or produced for commerce
19 by any person.
20 45. On information and belief, at all times relevant to this lawsuit,
21 Defendant has had gross operating revenues or business volume in excess of
22 $500,000.

23 **O. Defendant DG Hospitality Van Nuys, LLC**

24

46. Defendant DG Hospitality Van Nuys, LLC is a California limited liability company in which entertainers can elect to be members.

47. DG Hospitality Van Nuys, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

48. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

49. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

50. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

51. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

P. <u>Defendant Farmdale Hospitality Services, Inc.</u>

52. Defendant Farmdale Hospitality Services, Inc. is a California corporation that does business as Blue Zebra.

53. Farmdale Hospitality Services, Inc. may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

54. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

55. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

56. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

57. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

Q. <u>Defendant Farmdale Hospitality Services, LLC</u>

58. Defendant Farmdale Hospitality Services, LLC is a California limited liability company in which entertainers can elect to be members.

59. Farmdale Hospitality Services, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

60. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

61. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

62. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

63. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

R. Defendant High Expectations Hospitality, LLC

64. Defendant High Expectations Hospitality, LLC is a Texas limited liability company that does business as Spearmint Rhino.

65. High Expectations Hospitality, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

66. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

67. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

68. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

69. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

S. Defendant High Expectations Hospitality Dallas, LLC

70. Defendant High Expectations Hospitality Dallas, LLC is a California limited liability company in which entertainers can elect to be members.

71. High Expectations Hospitality Dallas, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

72. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

73. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

74. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

75. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

T. <u>Defendant Inland Restaurant Venture I, Inc.</u>

76. Defendant Inland Restaurant Venture I, Inc. is a California corporation that does business as Spearmint Rhino.

77. Inland Restaurant Venture I, Inc. may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

78. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

79. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

80. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

81. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

U. <u>Defendant Inland Restaurant Venture I, LLC</u>

82. Defendant Inland Restaurant Venture I, LLC is a California limited liability company in which entertainers can elect to be members.

83. Inland Restaurant Venture I, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

84. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

85. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

86. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

87. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

V. Defendant Kentucky Hospitality Venture, LLC

88. Defendant Kentucky Hospitality Venture, LLC is a Kentucky limited liability company that does business as Spearmint Rhino.

89. Kentucky Hospitality Venture, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

90. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

91. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

92. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

93. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

W. Defendant Kentucky Hospitality Venture Lexington, LLC

94. Defendant Kentucky Hospitality Venture Lexington, LLC is a California limited liability company in which entertainers can elect to be members.

95. Kentucky Hospitality Venture Lexington, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

96. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

97. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

98. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

99. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

X. <u>Defendant L.C.M., LLC</u>

100. Defendant L.C.M., LLC is an Idaho limited liability company that does business as Spearmint Rhino.

101. L.C.M., LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

102. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

103. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

104. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise

worked on goods or materials that have been moved in or produced for commerce by any person.

105. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

Y. Defendant LCM1, LLC

106. Defendant LCM1, LLC is a California limited liability company in which entertainers can elect to be members.

107. LCM1, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

108. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

109. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

110. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

111. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

Z. Defendant Midnight Sun Enterprises, Inc.

112. Defendant Midnight Sun Enterprises, Inc. is a California corporation that does business as Spearmint Rhino.

113. Midnight Sun Enterprises, Inc. may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

114. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

115. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

116. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

117. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

AA. Defendant Midnight Sun Enterprises, LLC

118. Defendant Midnight Sun Enterprises, LLC is a California limited liability company in which entertainers can elect to be members.

119. Midnight Sun Enterprises, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

120. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

121. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

122. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

123. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

BB. Defendant Nitelife, Inc.

124. Defendant Nitelife, Inc. is a Minnesota corporation that does business as Spearmint Rhino.

125. Nitelife, Inc. may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

126. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

127. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

128. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

129. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

CC. Defendant Nitelife Minneapolis, LLC

130. Defendant Nitelife Minneapolis, LLC is a California limited liability company in which entertainers can elect to be members.

131. Nitelife Minneapolis, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

132. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

133. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

134. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

135. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

DD. Defendant Olympic Avenue Venture, Inc.

136. Defendant Olympic Avenue Venture, Inc. is a California corporation that does business as Spearmint Rhino.

137. Olympic Avenue Venture, Inc. may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

138. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

139. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

140. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

141. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

EE. <u>Defendant Olympic Avenue Ventures, LLC</u>

142. Defendant Olympic Avenue Ventures, LLC is a California limited liability company in which entertainers can elect to be members.

143. Olympic Avenue Ventures, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

144. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

145. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

146. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

147. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

FF. <u>Defendant Rialto Pockets, Incorporated</u>

148. Defendant Rialto Pockets, Incorporated is a California corporation that does business as Spearmint Rhino.

149. Rialto Pockets, Incorporated may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

150. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

151. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

152. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

153. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

GG. Defendant Rialto Pockets, LLC

154. Defendant Rialto Pockets, LLC is a California limited liability company in which entertainers can elect to be members.

155. Rialto Pockets, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

156. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

157. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

158. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

159. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

HH. Rouge Gentlemen's Club, Inc.

160. Defendant Rouge Gentlemen's Club, Inc. is a California corporation that does business as Dames N Games.

161. Rouge Gentlemen's Club, Inc. may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

162. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

163. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

164. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

165. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

II. <u>Defendant Santa Barbara Hospitality Services, Inc.</u>

166. Defendant Santa Barbara Hospitality Services, Inc. is a California corporation that does business as Spearmint Rhino.

167. Santa Barbara Hospitality Services, Inc. may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

168. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

169. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

170. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

171. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

JJ. Defendant Santa Barbara Hospitality Services, LLC

172. Defendant Santa Barbara Hospitality Services, LLC is a California limited liability company in which entertainers can elect to be members.

173. Santa Barbara Hospitality Services, LLC may be served with summons through its registered agent, Joann Castillo at 1875 Tandem Way, Norco, California 92860.

174. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

175. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

176. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

177. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

KK. Defendant Santa Maria Restaurant Enterprises, Inc.

178. Defendant Santa Maria Restaurant Enterprises, Inc. is a California corporation that does business as Spearmint Rhino.

179. Santa Maria Restaurant Enterprises, Inc. may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

180. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

181. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

182. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

183. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

LL. Defendant Santa Maria Restaurant Enterprises, LLC

184. Defendant Santa Maria Restaurant Enterprises, LLC is a California limited liability company in which entertainers can elect to be members.

185. Santa Maria Restaurant Enterprises, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

186. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

187. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

188. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

189. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

MM. Defendant Sarie's Lounge, LLC

190. Defendant Sarie's Lounge, LLC is an Iowa limited liability company that does business as Spearmint Rhino.

191. Sarie's Lounge, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

192. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

193. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

194. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

195. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

NN. Defendant The Oxnard Hospitality Services, Inc.

196. Defendant The Oxnard Hospitality Services, Inc. is a California corporation that does business as Spearmint Rhino.

197. The Oxnard Hospitality Services, Inc. may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

198. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

199. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

200. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

201. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

OO. Defendant The Oxnard Hospitality Services, LLC

202. Defendant The Oxnard Hospitality Services, LLC is a California limited liability company in which entertainers can elect to be members.

203. The Oxnard Hospitality Services, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

204. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

205. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

206. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

207. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

PP. Defendant Washington Management, LLC

208. Defendant Washington Management, LLC is a California limited liability company that does business as Dames N Games.

209. Washington Management, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

210. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

211. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

212. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

213. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

QQ. <u>Defendant Washington Management Los Angeles, LLC</u>

214. Defendant Washington Management Los Angeles, LLC is a California limited liability company in which entertainers can elect to be members.

215. Washington Management Los Angeles, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

216. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

217. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

218. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

219. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

RR. Defendant Wild Orchid, Inc.

220. Defendant Wild Orchid, Inc. is an Oregon corporation that does business as Spearmint Rhino.

221. Wild Orchid, Inc. may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

222. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

223. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

224. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

225. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

SS. Defendant Wild Orchid Portland, LLC

226. Defendant Wild Orchid Portland, LLC is a California limited liability company in which entertainers can elect to be members.

227. Wild Orchid Portland, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

228. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

229. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

230. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

231. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

TT. Defendant World Class Venues, LLC

232. Defendant World Class Venues, LLC is an Iowa limited liability company that does business as Spearmint Rhino.

233. World Class Venues, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

234. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

235. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

236. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

237. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

UU. Defendant World Class Venues Iowa, LLC

238. Defendant World Class Venues Iowa, LLC is a California limited liability company in which entertainers can elect to be members.

239. World Class Venues Iowa, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

240. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

241. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

242. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

243. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

VV. Defendant WPB Hospitality, LLC

244. Defendant W P B Hospitality, LLC is a Florida limited liability company that does business as Spearmint Rhino.

245. W P B Hospitality, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

246. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

247. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

248. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

249. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

WW. Defendant WPB Hospitality West Palm Beach, LLC

250. Defendant WPB Hospitality West Palm Beach, LLC is a California limited liability company in which entertainers can elect to be members.

251. WPB Hospitality West Palm Beach, LLC may be served process through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

252. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

253. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

254. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

255. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

XX. Defendant The Spearmint Rhino Companies Worldwide, Inc.

256. Defendant The Spearmint Rhino Companies Worldwide, Inc. is a Nevada corporation doing business in California.

257. The Spearmint Rhino Companies Worldwide, Inc. may be served with summons through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

258. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

259. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

260. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise

worked on goods or materials that have been moved in or produced for commerce by any person.

261. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

YY. Defendant Spearmint Rhino Consulting Worldwide, Inc.

262. Defendant Spearmint Rhino Consulting Worldwide, Inc. is a Delaware corporation doing business in California.

263. Spearmint Rhino Consulting Worldwide, Inc. may be served with summons through its registered agent, Joann Castillo, at 1875 Tandem Way, Norco, California 92860.

264. At all times relevant to this lawsuit, Defendant has been an "enterprise engaged in commerce" as defined by the FLSA.

265. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

266. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

267. On information and belief, at all times relevant to this lawsuit, Defendant has had gross operating revenues or business volume in excess of $500,000.

III. JURISDICTION AND VENUE

268. This Court has federal question jurisdiction over all claims pursuant to 28 U.S.C. § 1331 and the FLSA at 29 U.S.C. § 216(b).

269. This Court also has supplemental jurisdiction over Plaintiffs' California State Law claims pursuant to 28 U.S.C. §1367 because those claims derive from a common nucleus of operative fact.

270. This Court is empowered to issue a declaratory judgment with respect to all claims pursuant to 28 U.S.C. §§ 2201 & 2202.

271. The United States District Court for the Central District of California has personal jurisdiction over Defendants because Defendants do business in California and in this District, and because many of the acts complained of and giving rise to the claims alleged occurred in California and in this District.

272. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to all claims occurred in this District.

IV. FACTUAL BACKGROUND (APPLICABLE TO ALL CLAIMS FOR RELIEF)

A. Related Case (*Trauth*) and Defendants' Prior Wage Scheme:

273. Like most (if not all) gentlemen's clubs throughout the country, Defendants' prior business practice was to classify all of their exotic dancer employees as independent contractors.

274. Defendants' prior misclassification of their exotic dancers as independent contractors was not due to any unique factor related to their employment or relationship with Defendants. Rather, as is common business

practice amongst gentlemen's clubs, Defendants simply misclassified all of their exotic dancers as independent contractors instead of employees. As a result of this uniform misclassification, exotic dancers of Spearmint Rhino were not paid minimum wages or overtime wages as required by relevant federal and state law.

275. On July 13, 2009, a group of exotic dancers filed a wage lawsuit ("the *Trauth* case") against Spearmint Rhino for wage violations under federal and state laws.[1] The exotic dancers in that lawsuit alleged that they were misclassified as independent contractors and were entitled to their wages for all hours worked. Eventually, the *Trauth* cases settled, and came before the Court for final approval. *See Trauth v. Spearmint Rhino Cos. Worldwide, Inc.*, Case No. EDCV 09-01316-VAP (DTBx), 2012 WL 12893448 (C.D. Cal. Nov. 7, 2012) (Phillips, C.J.). In the order approving the settlement, Chief Judge Virginia A. Phillips ordered Spearmint Rhino as follows:

> Within six months, the Clubs will no longer treat Dancers as independent contractors or lessees; instead the Clubs will treat Dancers "as either employees or owners (e.g. shareholder, limited partner, partner, member or other type of ownership stake)" of any Clubs in existence at the time of settlement. (Doc. No. 318-1 ¶ 4.2.) In California, Dancers will no longer be charged stage fees (i.e., fees a Dancer pays for the privilege of performing at a Club). (Id. ¶ 4.1.)

Id. at *1.

276. Thereafter, Defendants no longer classified their exotic dancers as independent contractors. Instead they are now, facially, "members" of newly

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[1] *Tracy Dawn Trauth, et al v. Spearmint Rhino Companies Worldwide, Inc., et al*, Civ. A. No. 5:09-cv-01316-VAP-DTB, in the Central District of California Eastern Division – Riverside, Before United States District Chief Judge Virginia A. Phillips.

formed limited liability companies such as Santa Barbara Hospitality Services, LLC.

277. Apart from this solitary measure, every single aspect of the employment relationship between the exotic dancers and their employer, Spearmint Rhino, remains wholly unchanged. In fact, in direct contravention of Chief Judge Phillips order, Defendants continue to require their exotic dancer employees to pay fees for the privilege of performing at Spearmint Rhino locations. It is clear that Chief Judge Phillips intended Spearmint Rhino to reclassify their exotic dancers as employees or actual owners (or members) of Spearmint Rhino. It goes without saying, Chief Judge Phillips did not intend for the Club to continue its illegal pay practice of labeling its exotic dancers something other than employees (now "members" rather than "independent contractors") for the purpose of avoiding its federal and state wage obligations.

278. Defendants' actions instead leave their exotic dancer employees with no real ownership interest in the newly formed LLCs. The exotic dancers still work as employees for Spearmint Rhino, are still economically dependent on Spearmint Rhino in all respects relevant to the "economic realities" test described further below, and regularly make below minimum wage compensation.

B. <u>Defendants' New Scheme to Avoid FLSA Compliance</u>

279. Defendants now embroil their exotic dancer employees in a series of illusory contractual engagements to give the appearance that the exotic dancers are "members" of the limited liability companies formed subsequent to Chief Judge Phillips's order such as Santa Barbara Hospitality Services, LLC. However, all of

the agreements exotic dancers are forced to sign upon being hired with Spearmint Rhino cannot mask the reality that nothing has really changed in Spearmint Rhino's operations. In fact, Defendants use many (if not most) of the same kinds of documents, policies, and procedures found to create an employer/employee relationship in other exotic dancer cases with respect to Plaintiffs and Spearmint Rhino's other exotic dancers. Exotic dancers do not have any real decision-making authority, do not share equitably in the profitability of Spearmint Rhino, and do not have the right to control Spearmint Rhino management. In short, they are not owners of Spearmint Rhino in any demonstrable sense.

280. The exotic dancers remain economically dependent and under the complete control and direction of Defendants, but are paid no wages in connection with that work. They are still clearly integral to Defendants' business, since without the exotic dancers there would be no gentlemen's clubs. And finally, they still generate revenue for Spearmint Rhino, as they are still required to share the tips that they earn with Spearmint Rhino, and are otherwise treated as employees of Spearmint Rhino in all relevant respects as before.

281. The totality of the circumstances surrounding the relationship between Defendants and their exotic dancer employees establishes economic dependence by the exotic dancers on Defendants, and thus employee status. As a matter of economic reality, Plaintiffs and the putative Class and Collective Action Members are not in business for themselves, nor truly independent, but rather are economically dependent upon finding employment through Spearmint Rhino. Plaintiffs and the putative Class and Collective Action Members are not engaged in

occupations or business distinct from that of Defendants, in fact, their work is the basis of Defendants' business.

282. Defendants' business operation is to obtain the customers who desire the exotic dance entertainment and provide the workers who conduct the dance services on behalf of Defendants.

283. Indeed, a cursory review of Santa Barbara Hospitality Services, LLC's operating agreement shows that Defendants retain pervasive control over Spearmint Rhino's operations as a whole and that the exotic dancer's duties are integral to those operations.

1. Spearmint Rhino Exerts Control as Employers of the Plaintiffs and Putative Class and Collective Action Members.

284. Plaintiffs and Putative Class and Collective Action Members do not exert control over a meaningful part of Spearmint Rhino's business and do not stand as separate economic entities from Defendants. Defendants exercise control over all aspects of the working relationship with their exotic dancer employees.

285. Plaintiffs and Putative Class and Collective Action Members' economic status is inextricably linked to conditions over which Defendants have complete control. Exotic dancer employees of Defendants are completely dependent on Defendants for their income. Spearmint Rhino controls all of the advertising and promotion without which Plaintiffs and Putative Class and Collective Action Members could not survive economically. Moreover, Defendants create and control the atmosphere and surroundings at Spearmint

Rhino locations, the existence of which dictates the flow of customers into Spearmint Rhino clubs. The exotic dancers have no control over the customer volume or atmosphere at Spearmint Rhino clubs.

286. Defendants continue to employ guidelines and rules dictating the way in which their exotic dancer employees, including Plaintiffs and Putative Class and Collective Action Members, must conduct themselves. Defendants set the hours of operations, the lengths of shifts their exotic dancer employees must work, the show time during which an exotic dancer may perform, and set minimum dance tips. Defendants also determine the sequence in which a dancer may perform on stage during her stage rotation; the themes of dancers' performances, including their costuming and appearances; their conduct at work (*e.g.*, that they should be on the floor as much as possible when not on stage to mingle with club patrons); tip splits; and all other terms and conditions of employment.

287. Defendants require that their dancers work a minimum number of shifts each week, each shift comprising a set number of hours. Exotic dancer employees are required to report in and report out at the beginning and end of every shift. If an exotic dancer employee arrives late, leaves early, or misses a shift, she is subject to a fine, penalty, or reprimand by Defendants.

288. Defendants routinely schedule their exotic dancer employees to work in excess of 40 hours per week and knowingly permit dancers to work in excess of 40 hours per week regularly. Defendants also routinely schedule their exotic dancer employees to work in excess of eight hours in a day and knowingly permit dancers to work in excess of eight hours in a day with frequency.

289. Defendants, not exotic dancers, set the minimum tip amount that exotic dancer employees must collect from patrons when performing dances. Defendants announce the minimum tip amount to patrons in the club wishing to receive the dance entertainment.

290. The entire sum a dancer receives from a patron for a dance is not given to Defendants and taken into its gross receipts. Instead, the dancers keep their share of the payment under the tip share policy and pay over to Defendants the portion they demand as their share which they now term "rent and/or overhead." Defendants' aforementioned portion bears no actual relation to expenses associated with rent and/or overhead. For example, for a table dance, Plaintiffs would be required to pay the club a portion of the minimum tip set by Defendants once collected from a patron of the club.

291. Defendants establish the split or percentage which each exotic dancer employee is required to pay to Spearmint Rhino for each type of dance they may perform during their shift. In addition, amounts must be shared with disc jockeys, door staff, and other employees as part of Defendants' tip sharing policy. Further, exotic dancer employees are expected to assist Defendants in selling drinks during their shift. The foregoing non-exhaustively demonstrates that Defendants set the terms and conditions for the work of each exotic dancer employee.

2. Working as an Exotic Dancer Employee of Spearmint Rhino Does Not Require Special Skill or Initiative.

292. Plaintiffs and Putative Class and Collective Action Members do not exercise the skill and initiative of those in business for themselves.

293. Plaintiffs and Putative Class and Collective Action Members are not required to have any specialized or unusual skills to work at Defendants' club. Prior dance experience is not required as a prerequisite to employment. Dancers are not required to attain a certain level of skill in order to dance at Defendants' club. There are no certification standards for dancers. There are no dance seminars, no specialized training, no instructional booklets, and no choreography provided or required in order to work at Defendants' club. The dance skills utilized are commensurate with those exercised by ordinary people dancing at a typical nightclub or a wedding.

294. Plaintiffs, like the putative Class and Collective Action Members, did not have the opportunity to exercise business skills and initiative necessary to elevate their status to that of an owner of Spearmint Rhino. Dancers exercise no business management skills. They maintain no separate business structures or facilities. Exotic dancer employees do not actively participate in any effort to increase a club's client base, enhance goodwill, or establish contracting possibilities. The scope of a dancer's initiative is restricted to decisions involving what clothing to wear (within Defendants' guidelines) or how provocatively to dance.

295. Plaintiffs and Putative Class and Collective Action Members are not permitted to hire or contract other qualified individuals to provide dances to patrons and increase the club's revenue as an owner of the club would.

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3. Spearmint Rhino's Relative Investment in Defendants' Operations Vastly Exceeds that of Plaintiffs and Putative Class and Collective Action Members.

296. Plaintiffs' investment in the exotic dancing business is minute when compared with that of Defendants.

297. Plaintiffs, like all other exotic dancer employees of Spearmint Rhino, has made no capital investment in the facilities, advertising, maintenance, sound systems, lights, food, beverage, inventory, or staffing at Defendants' club. A dancer's investment is limited to expenditures on costumes or makeup. But for Defendants' provision of the lavish club work environment, the dancers would earn nothing.

4. Plaintiffs and Putative Class and Collective Action Members Did Not Have the Ability to Alter their Opportunity for Profit and Loss Per the Economic Reality Test.

298. Defendants, not the exotic dancer employees such as Plaintiffs, manage all aspects of the business operation including attracting investors, establishing working hours and hours of operations, setting the atmosphere, coordinating advertising, hiring, selling a club's real and personal property, and controlling the staff. Defendants alone took the true business risks related to Spearmint Rhino clubs.

299. Exotic dancer employees, such as Plaintiffs and Putative Class and Collective Action Members, do not control the key determinations for profit and loss of the Spearmint Rhino enterprise. Specifically, Plaintiffs were not responsible for any aspect of the enterprise's ongoing business risk. For example, Defendants

are responsible for all financing, for the acquisition and/or lease of physical facilities and equipment, for inventory, for the payment of wages of individuals such as managers and bartenders (but not exotic dancer employees), and for obtaining appropriate business insurance, permits, and licenses.

300. Defendants, not exotic dancer employees, establish the minimum dance tip amounts that should be collected from patrons when dancing. Exotic dancer employees are not charged with the authority to accept a lower rate.

301. The tips received by exotic dancer employees are not a return on a capital investment. They are a gratuity for services rendered. From this perspective, it is clear that a dancer's supposed "return on investment" is no different than that of a waiter who serves food during a customer's meal at a restaurant.

5. Plaintiffs and Putative Class and Collective Action Members Worked Exclusively for Spearmint Rhino for Indefinite Periods of Time.

302. Plaintiffs worked exclusively for Defendants while employed as exotic dancers at a Spearmint Rhino club. Plaintiffs were not employed for a set term, but rather anticipated that their employment with Spearmint Rhino would be on an ongoing basis.

303. On information and belief, many exotic dancer employees work exclusively for Defendants for protracted periods of time, often for years at a time.

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6. Exotic Dancers Provide Services at Spearmint Rhino Locations that Are Integral to the Financial Success of Defendants' Enterprise.

304. Plaintiffs and putative Class and Collective Action Members are essential to the success of Defendants' clubs. The continued success of clubs such as Defendants' turns upon the provision of dances by exotic dancers for the club's patrons. In fact, the sole reason establishments like the Spearmint Rhino exist is to showcase dancers' physical attributes for customers of the business.

305. Moreover, Defendants are able to charge higher admission prices and a much higher price for their drinks than a comparable establishment without dancers because exotic dancers are the main attraction of such clubs. As a result, the dancers are an integral part of Defendants' business.

306. The foregoing demonstrates that dancers like Plaintiffs and Putative Class and Collective Action Members are economically dependent on Defendants and subject to significant control by Defendants. Therefore, Plaintiffs and Putative Class and Collective Action Members are employees, not business owners, and should have been paid minimum wage at all times that they worked at Defendants' clubs. Similarly, they should have been afforded all rights and benefits of an employee pursuant to relevant state and federal law, including the payment of overtime wages whenever they worked over forty hours in a given workweek or over 8 hours in a given day in the state of California.

307. All actions described above are willful, intentional, and the result of design rather than mistake or inadvertence. Defendants were aware that the FLSA

applied to the operation of their clubs at all relevant times and were aware of the economic realities test under which its exotic dancers are clearly employees.

V. FLSA CLAIMS FOR MINIMUM WAGES, STRAIGHT TIME COMPENSATION, AND OVERTIME PAY

308. Plaintiffs incorporates the preceding paragraphs by reference as if set forth fully in this section.

A. FLSA Coverage

309. All conditions precedent to this suit, if any, have been fulfilled.

310. At all times relevant to this lawsuit, Defendants are/were eligible and covered employers under the FLSA pursuant to 29 U.S.C. § 203(d).

311. At all times relevant to this lawsuit, Defendants are/have been enterprises engaged in commerce under the FLSA pursuant to 29 U.S.C. § 203(s)(1)(A).

312. At all times relevant to this lawsuit, Defendants have employed, and continue to employ, employees including Plaintiffs and the putative Collective Action Members who engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

313. At all relevant times, Defendants have had gross operating revenues or business volume in excess of $500,000.

B. FLSA Allegations

314. The FLSA is to be construed expansively in favor of coverage, recognizing that broad coverage is essential to accomplish the goals of this remedial legislation, including the avoidance of unfair competition. *See Tony &*

Susan Alamo Found. v. Sec'y of Labor, 471 U.S. 290, 296-97 (1985); *Hale v. Arizona*, 993 F.2d 1387, 1402 (9th Cir. 1993).

315. "[N]either the common law concepts of 'employee' and 'independent contractor' nor contractual provisions purporting to describe the relationship are determinative of employment status." *Mathis v. Hous. Auth. of Umatilla Cty.*, 242 F. Supp. 2d 777, 783 (D. Or. 2002) *quoting Nash v. Res., Inc.*, 982 F. Supp. 1427, 1433 (D. Or. 1997).

316. Rather, to determine employment status under the FLSA's broad remedial purpose, courts across the nation apply some variant of the "economic realities test." In this Circuit, *Real v. Driscoll Strawberry Assocs., Inc.* sets out the relevant factor analysis:

> 1) the degree of the alleged employer's right to control the manner in which the work is to be performed; 2) the alleged employee's opportunity for profit or loss depending upon his managerial skill; 3) the alleged employee's investment in equipment or materials required for his task, or his employment of helpers; 4) whether the service rendered requires a special skill; 5) the degree of permanence of the working relationship; and 6) whether the service rendered is an integral part of the alleged employer's business.
>
> The presence of any individual factor is not dispositive of whether an employee/employer relationship exists. Such a determination depends "upon the circumstances of the whole activity."

603 F.2d 748 (9th Cir. 1979) *quoting Rutherford Food Corp. v. McComb*, 331 U.S. 722, 730 (1947). In the end, the factors are aids used to determine whether "as a matter of economic reality, the individuals 'are dependent upon the business to which they render service.'" *Donovan v. Sureway Cleaners*, 656 F.2d 1368, 1370 (9th Cir. 1981) *quoting Bartels v. Birmingham*, 332 U.S. 126, 130 (1947).

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317. The FLSA recognizes the doctrine of joint employers. 29 U.S.C. § 203(d).

> Where the employee performs work which simultaneously benefits two or more employers [. . .] a joint employment relationship generally will be considered to exist [. . .] [w]*here the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.*

Chao v. A-One Med. Servs., Inc., 346 F.3d 908, 917-18 (9th Cir. 2003) *quoting* 29 C.F.R. § 791.2(b) (emphasis in original).

318. The FLSA applied to Plaintiffs and the putative Collective Action Members at all times that they worked as exotic dancers at the Spearmint Rhino locations of Defendants.

319. No exemptions to the application of the FLSA apply to Plaintiffs or the putative Collective Action Members. For instance, neither Plaintiffs nor any putative Collective Action Member have ever been a professional or artist exempt from the provisions of the FLSA. The dancing required by Spearmint Rhino does not require invention, imagination or talent in a recognized field of artistic endeavor and Plaintiffs and the putative Collective Action Members have never been compensated by Defendants on a set salary, wage, or fee basis. Rather, Plaintiffs and the Putative Collective Action Members' sole source of income while working for Defendants was tips given to them by the club's patrons (*i.e.*, stage dancing or single dancing tips).

320. At all relevant times, Plaintiffs and the Putative Collective Action Members were employees of Defendants pursuant to the FLSA. On information and belief, during the three years preceding the filing of this action more than one thousand exotic dancers have worked at Spearmint Rhino locations nationwide, all without receiving any wages from Defendants.

321. During the relevant time period, neither Plaintiffs nor any putative Collective Action Member received money from Defendants in the form of wages, nor did they receive any other category of compensation (*e.g.*, bonuses, shift differentials, *per diem* payments) from Defendants. Plaintiffs and putative Collective Action Members generated their income solely through tips they received from Defendants' customers when they performed dances for those patrons. Nonetheless, Defendants imposed a fee schedule that required Plaintiffs and the putative Collective Action Members to pay for the privilege of dancing at Spearmint Rhino locations. Defendants assessed a daily house fee to be paid by Plaintiffs and the putative Collective Action Members per shift and additionally demanded a portion of the gratuity an exotic dancer would receive per dance.

322. The money that Plaintiffs and the putative Collective Action Members would receive from customers at Spearmint Rhino locations is a tip, not a service charge as those terms are defined in relevant FLSA regulations. *See* 29 C.F.R. §§ 531.52, 531.53, & 531.55.

323. Those tips received by Plaintiffs and the putative Collective Action Members does not become part of the Defendants' gross receipts to be later distributed to the exotic dancers at a given location as wages. Instead, exotic

dancers at Spearmint Rhino locations merely pay the club a portion of their tips, which Spearmint Rhino pockets as pure profit.

324. Plaintiffs and the putative Collective Action Members are tipped employees under the FLSA, as they are engaged in an occupation in which they customarily and regularly receive more than $30 per month in tips. *See* 29 U.S.C. § 203(t).

325. However, Defendants are not entitled to take a tip credit for the amounts Plaintiffs and the putative Collective Action Members received as tips. 29 U.S.C. § 203(m) requires an employer to inform its employee that it intends to rely on the tip credit to satisfy its minimum wage obligations. Here, Defendants affirmatively informed Plaintiffs and the putative Collective Action Members that they would not be paid wages at all, much less paid a tip credit adjusted minimum wage.

326. Defendants' contractual scheme to label Plaintiffs and the putative Collective Action Members as so-called "members" of a limited liability company was designed to deny them their fundamental rights as employees to receive minimum wages, overtime, to demand and retain portions of tips given to putative Collective Action Members by Spearmint Rhino customers, and was all done to enhance Defendants' profits.

327. Defendants' contractual scheme to label Plaintiffs and the putative Collective Action Members as so-called "members" of an LLC rather than employees was willful. Defendants knew or should have known that Plaintiffs and

1 the putative Collective Action Members do not share in the benefits and privileges
2 of actual ownership of the Spearmint Rhino.
3 328. Furthermore, workers cannot elect to be treated as members of a
4 limited liability company instead of employees. *Real*, 603 F.2d at 755 ("Economic
5 realities, not contractual labels, determine employment status for the remedial
6 purposes of the FLSA."). Nor can workers agree to be paid less than the minimum
7 wage. *Jewell Ridge Coal Corp. v. Local No. 6167, United Mine Workers of Am.*,
8 325 U.S. 161 177 (1945). Neither of the aforementioned legal concepts are new to
9 Defendants. This is not Defendants' first attempt to contract around state and
10 federal wage laws in order to deprive their employees of their rightfully earned
11 wages. Defendants know, or should have known, their LLC "member" agreements
12 are in violation of state and federal law.
13 329. Finally, federal law requires employers to make and keep accurate and
14 detailed payroll data for non-exempt employees. 29 U.S.C. § 211(c); 29 C.F.R. §
15 516.2. Amongst other things, the regulations require employers to make and keep
16 payroll records showing data such as the employee's name, social security number,
17 occupation, time of day and day of week which the workweek begins, regular
18 hourly rate of pay for any week in which overtime pay is due, hours worked each
19 workday and total hours worked each workweek, total daily or weekly straight
20 time earnings, total premium pay for overtime hours, total wages paid each pay
21 period and date of payment and pay period covered by the payment, and records of
22 remedial payments. 29 C.F.R. § 516.2(a)&(b). Employers are required to maintain
23 the foregoing data for a minimum of three years. 29 C.F.R. § 516.5. Defendants
24

have failed to keep the aforementioned records despite their prior dealings with numerous wage and hour lawsuits. Defendants' continual failure to comply with and disregard of the FLSA's record keeping provision is willful and in violation of the law.

C. <u>Collective Action Allegations</u>

330. Plaintiffs seek to bring their claims under the FLSA on behalf of themselves and all other exotic dancers who worked for the Spearmint Rhino in the three years immediately preceding February 3, 2017 and continuing thereafter through the date on which final judgment is entered. Those who file a written consent will be a party to this action pursuant to 29 U.S.C. § 216(b) (the "FLSA Class").

331. Plaintiffs have actual knowledge that putative Collective Action Members have been denied wages for all hours worked in each workweek. Plaintiffs worked with other dancers at a Spearmint Rhino location. As such, they have personal knowledge of the pay violations. Furthermore, other exotic dancer employees at Defendants' establishments have shared with them that they experienced similar pay violations as those described in this complaint.

332. Other employees similarly situated to Plaintiffs work or have worked for Defendants at their gentlemen's club locations without being paid a wage.

333. The putative Collective Action Members are similarly situated to Plaintiffs in all relevant respects, having performed the same work duties as Plaintiffs and being similarly situated with regard to Defendants pay practices.

334. The putative Collective Action Members regularly work or have worked in excess of forty hours during a workweek.

335. The putative Collective Action Members are not exempt from receiving overtime and/or pay at the federally mandated minimum wage rate under the FLSA.

336. The putative Collective Action Members are similar to Plaintiffs in terms of job duties, pay structure, misclassification as supposed "members" of Santa Barbara Hospitality Services, LLC and similar newly-formed LLCs such as Midnight Sun Enterprises, LLC and Kentucky Hospitality Venture Lexington, LLC, and the denial of overtime and minimum wage.

337. Defendants' failure to pay overtime compensation and minimum wages results from generally applicable policies or practices, and does not depend on the personal circumstances of the putative Collective Action Members.

338. The experiences of Plaintiffs with respect to their pay, or lack thereof, is typical of the experiences of the putative Collective Action Members.

339. The specific job titles or precise job responsibilities of each putative Collective Action Member does not prevent collective treatment.

340. Although the exact amount of damages may vary among the putative Collective Action Members, the damages are easily calculable using a simple formula uniformly applicable to all of the exotic dancer employees.

341. Plaintiffs propose that the class of putative Collective Action Members be defined as:

All current and former exotic dancers who worked at any Spearmint Rhino, Dames N Games and/or Blue Zebra location in the United States from any time starting three years before February 3, 2017 to the present.

VI. CALIFORNIA STATE LAW CLAIMS

342. Plaintiffs incorporate the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

A. Controlling California State Law and Allegations

343. California law requires employers to pay all wages due to an employee immediately upon discharge and within the time required by law after their employment ends. Cal. Labor Code §§ 201, 202. Should an employer willfully fail to timely pay its employee, the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty days wages. Cal. Labor Code § 203.

344. Defendants' scheme to categorize Byrne and the putative California Class as so-called members of an LLC while otherwise treating them as employees, on information and belief, involved retention of certain money to be paid to Byrne and the putative California Class under the auspices of a shareholder distribution payable pursuant to a tax Schedule K-1.

345. An indefinite sum of money was promised to Byrne pursuant to this scheme. When Byrne left her employment with Defendants, on information and belief, money was owed to her under this scheme. Byrne has not received any money pursuant to the promise to date.

346. As Byrne was an employee of Spearmint Rhino, Defendants' retention of money owed to her was a violation of California State Law.

347. On information and belief, this pay practice is applicable to certain members of the putative California Class who are former employees of Spearmint Rhino, Dames N Games and/or Blue Zebra, who were promised shareholder distributions payable pursuant to a tax Schedule K-1.

348. California law does not permit an employer to receive any part of a gratuity or tip, nor does it permit an offset or reduction against minimum wages due to employees based on tips received. Cal. Labor Code § 351.

349. Likewise, California law does not permit tip-splitting with managers who have the ability to hire, discharge, supervise, direct or control the acts of an employee, as those managers are agents of the employer. Cal. Labor Code § 350. *See also*, *Jameson v. Five Feet Rest., Inc.*, 107 Cal. App. 4th 138, 143-144 (Cal. Ct. App. 2003).

350. Throughout the time period relevant to this claim for relief, Byrne and the putative California Class, defined below, were required to tender tips to Defendants and those tips were unlawfully split with managers with the ability to hire, discharge, supervise, direct or control Byrne and the putative California Class.

351. California Labor Code § 351 does not provide a private cause of action for employees to recover misappropriated tips. *See also*, *Lu v. Hawaiian Gardens Casino, Inc.*, 50 Cal. 4th 592, 603-604 (Cal. 2010) (suggesting such claims could be pursued under theory of common law conversion). However the violation has been found actionable under California's Unfair Competition Law

("UCL"). *See Matoff v. Brinker Rest. Corp.*, 439 F. Supp. 2d 1035, 1038-1039 (C.D. Cal. 2006) (permitting restitution).

352. When on shift, Byrne and the putative California Class routinely worked in excess of five hour shifts. During their shifts, they were not permitted to take meal breaks during which time they were relieved of all duty.

353. Moreover, Byrne and the putative California Class routinely worked in excess of four hours without being relieved of all duty for a ten-minute rest period.

354. Byrne and the putative California Class never received timely, accurate, itemized wage statements including their hours of work completed.

355. Defendants' actions described herein with regard to Byrne and the putative California Class were willful, intentional, and not the result of mistake or inadvertence.

356. Defendants were aware that the California Labor Code, and other laws of the State of California applied to their operation of Spearmint Rhino, Dames N Games and Blue Zebra locations at all relevant times, and that under the relevant test Byrne and the putative California Class were employees of Spearmint Rhino, not true members of an LLC.

357. Defendants were aware of and/or the subject of previous litigation and enforcement actions relating to wage and hour law violations where the misclassification of exotic dancers as independent contractors was challenged, and refused to change their business arrangements in accord with prior Court Order.

358. Defendants were aware that their failure to pay minimum wage, overtime compensation, and that their retention of tips paid to Byrne and the putative California Class were unlawful pursuant to California State Law. Defendants were also aware that their policy to categorize Byrne and the putative California Class as so-called members of an LLC while otherwise treating them as employees is a violation of the relevant economic reality test for employees.

359. Despite prior litigation in this exact District, Defendants continued to require Byrne and the putative California Class to pay for the privilege of dancing at Spearmint Rhino, Dames N Games and Blue Zebra locations, to tender tips earned to Defendants, and did not pay Byrne and the putative California Class minimum or overtime wages.

B. Class Action Allegations

360. Byrne brings her claims for relief under California State Law, listed above, for violations of California's wage and hour laws as a class action, pursuant to FED. R. CIV. P. 23(a), (b)(2), & (b)(3).

361. Numerosity (FED. R. CIV. P. 23(a)(1)) – the California Class is so numerous that joinder of all members is impracticable. On information and belief, during the relevant time period at least one hundred individuals worked for Defendants in the State of California.

362. Commonality (FED. R. CIV. P. 23(a)(2)) – Common questions of law and fact exist as to putative members of the California Class, including, but not limited to, the following:

a. Whether Defendants unlawfully failed to pay all wages owed in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200-17210, and the California Labor Code and related regulations including the California Private Attorneys General Act, ("PAGA"), Cal. Wage Order No. 10-2001; Cal. Labor Code §§ 200-2699.5;

b. Whether Defendants maintained a policy or practice of misclassifying the putative California Class as members of an LLC as opposed to employees;

c. Whether Defendants unlawfully failed to keep and furnish the putative California Class with records of hours worked, in violation of Cal. Labor Code §§ 226 & 1174;

d. Whether Defendants unlawfully failed to provide the putative California Class with meal and rest breaks, in violation of Cal. Labor Code §§ 226.7 & 512;

e. Whether Defendants' policy and practice of failing to pay the putative California Class all wages due immediately upon discharge violates the California Wage Payment Provisions elaborated above.

f. Whether Defendants' policy and practice of failing to pay the putative California Class all wages due within the time required by law after their employment ends violates California law; and

g. The proper measure of damages sustained by the putative California Class.

363. Typicality (FED. R. CIV. P. 23(a)(3)) – Plaintiffs' claims are typical of those of the putative California Class. Byrne, like other California Class members, was subjected to Defendants' policy and practice of refusing to pay wages owed to its exotic dancer employees in violation of California law. Byrne's job duties and claims are typical of those of the putative California Class.

364. Adequacy (FED. R. CIV. P. 23(a)(4)) – Plaintiffs will fairly and adequately represent and protect the interests of the putative California Class.

365. Adequacy of counsel (FED. R. CIV. P. 23(g)) – Byrne has retained counsel competent and experienced in complex class actions, the FLSA, and state labor and employment litigation. Byrne's counsel has litigated numerous class actions on behalf of nonexempt employees asserting off-the-clock claims under the FLSA and state law. Byrne's counsel intends to commit the necessary resources to prosecute this action vigorously for the benefit of all of the putative California Class.

366. Class certification of the California State Law claims is appropriate pursuant to FED. R. CIV. P. 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the putative California Class, making appropriate declaratory and injunctive relief with respect to Byrne and the putative California Class as a whole. Byrne is entitled to injunctive relief to end Defendants' common and uniform practice of treating their exotic dancers as employees while misclassifying them as owners of an LLC.

367. Predominance and superiority (FED. R. CIV. P. 23(b)(3)) – Class certification of the California State Law claims is also appropriate under FED. R.

CIV. P. 23(b)(3) because questions of law and fact common to the putative California Class predominate over any questions affecting only individual members of the putative California Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' common and uniform policies and practices unlawfully fail to compensate the putative California Class. The damages suffered by individual members of the putative California Class are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation which might result in inconsistent judgments about Defendants' practices.

368. Notice (FED. R. CIV. P. 23(c)(2)(B)) – Byrne intends to send notice to all members of the putative California Class to the extent provided by Rule 23.

369. Byrne proposes that the class be defined as:

All current and former exotic dancers who worked at any Spearmint Rhino, Dames N Games and/or Blue Zebra location in the State of California from any time starting four years prior to February 3, 2017 until the date the case resolves.

370. Byrne also brings this action as an aggrieved employee on behalf of herself and other current former employees pursuant to the California Private Attorneys General Act ("PAGA") of 2004, Cal. Labor Code §§ 2698-2699.5.

VII. FLORIDA STATE LAW CLAIMS

371. Plaintiffs incorporate the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

A. Controlling Florida State Law and Allegations

372. The foregoing conduct, as alleged, constitutes breach of contract under Florida law.

373. The putative Florida Class Members entered into implied and/or express contracts with Defendants for the former to provide services to the latter. Defendants offered employment to the putative Florida Class Members, and the latter accepted. The contract was supported by consideration – Defendants received the value of the work performed by the putative Florida Class Members and the putative Florida Class Members received money.

374. Defendants breached the contracts by failing to pay the putative Florida Class Members all wages owed for all hours worked for Defendants.

375. The putative Florida Class Members suffered damages resulting from Defendants' breach of contract. Such damages include lost wages, interest, and such relief as the Court deems just and proper.

376. As a result of Defendants' failure to pay wages earned and due, and its decision to withhold wages earned and due to the putative Florida Class Members, Defendants have breached – and continue to breach – their implied and/or express contracts with the putative Florida Class Members.

377. Plaintiffs, on behalf of the putative Florida Class Members, seek damages in the amount of the respective unpaid wages earned, interest, attorneys' fees and costs, and such other legal and equitable relief as the Court deems just and proper.

378. Furthermore, at all relevant times Defendants agreed to and were required to pay their exotic dancer employees for all hours they worked at a rate of no less than the higher of the prevailing federal or state minimum wage.

379. Defendants requested and/or knowingly accepted valuable services from the putative Florida Class Members, which benefited Defendants, and for which a reasonable person would have expected to receive pay. The putative Florida Class Members provided their services and labor with the reasonable expectation of receiving compensation from Defendants.

380. Defendants, however, have failed to properly compensate the putative Florida Class Members for all of the valuable services and labor they performed for Defendants' benefit.

381. Defendants have been unjustly enriched at the expense of the putative Florida Class Members.

382. It would be unjust for Defendants to retain the benefit the putative Florida Class Members' efforts without compensation therefore.

383. Defendants are liable to the putative Florida Class Members for damages caused by Defendants' failure to compensate the putative Florida Class Members for all hours that they worked for Defendants' benefit.

B. <u>Class Action Allegations</u>

384. Plaintiffs bring claims for relief under Florida State Law, listed above, for violations of Florida wage and hour laws as a class action, pursuant to FED. R. CIV. P. 23(a), (b)(2), & (b)(3).

385. Numerosity (FED. R. CIV. P. 23(a)(1)) – the Florida Class is so numerous that joinder of all members is impracticable. On information and belief, during the relevant time period at least one hundred individuals worked for Defendants in the State of Florida.

386. Commonality (FED. R. CIV. P. 23(a)(2)) – Common questions of law and fact exist as to putative members of the Florida Class, including, but not limited to, the following:

a. Whether Defendants unlawfully failed to pay all wages owed in violation of Florida law;

b. Whether Defendants maintained a policy or practice of misclassifying the putative Florida Class as members of an LLC as opposed to employees; and

c. The proper measure of damages sustained by the putative Florida Class.

387. Typicality (FED. R. CIV. P. 23(a)(3)) – Plaintiffs' claims are typical of those of the putative Florida Class. Plaintiffs, like the Florida Class members, were subjected to Defendants' policy and practice of refusing to pay wages owed to its exotic dancer employees in violation of Florida law. Plaintiffs' job duties and claims are typical of those of the putative Florida Class.

388. Adequacy (FED. R. CIV. P. 23(a)(4)) – Plaintiffs will fairly and adequately represent and protect the interests of the putative Florida Class.

389. Adequacy of counsel (FED. R. CIV. P. 23(g)) – Plaintiffs have retained counsel competent and experienced in complex class actions, the FLSA, and state

labor and employment litigation. Plaintiffs' counsel has litigated numerous class actions on behalf of nonexempt employees asserting off-the-clock claims under the FLSA and state law. Plaintiffs' counsel intends to commit the necessary resources to prosecute this action vigorously for the benefit of all of the putative Florida Class.

390. Class certification of the Florida State Law claims is appropriate pursuant to FED. R. CIV. P. 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the putative Florida Class, making appropriate declaratory and injunctive relief with respect to the Florida Class. The Florida Class is entitled to injunctive relief to end Defendants' common and uniform practice of treating their exotic dancers as employees while misclassifying them as owners of an LLC.

391. Predominance and superiority (FED. R. CIV. P. 23(b)(3)) – Class certification of the Florida State Law claims is also appropriate under FED. R. CIV. P. 23(b)(3) because questions of law and fact common to the putative Florida Class predominate over any questions affecting only individual members of the putative Florida Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' common and uniform policies and practices unlawfully fail to compensate the putative Florida Class. The damages suffered by individual members of the putative Florida Class are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need

for unduly duplicative litigation which might result in inconsistent judgments about Defendants' practices.

392. Notice (FED. R. CIV. P. 23(c)(2)(B)) – Plaintiffs intend to send notice to all members of the putative Florida Class to the extent provided by Rule 23.

393. Plaintiffs propose that the Florida Class be defined as:

All current and former exotic dancers who worked at any Spearmint Rhino location in the State of Florida from any time starting five years prior to February 3, 2017 until the date the case resolves.

VIII. IDAHO STATE LAW CLAIMS

394. Plaintiffs incorporate the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

A. Controlling Idaho State Law and Allegations

395. The foregoing conduct, as alleged, constitutes breach of contract under Idaho law.

396. The putative Idaho Class Members entered into implied and/or express contracts with Defendants for the former to provide services to the latter. Defendants offered employment to the putative Idaho Class Members, and the latter accepted. The contract was supported by consideration – Defendants received the value of the work performed by the putative Idaho Class Members and the putative Idaho Class Members received money.

397. Defendants breached the contracts by failing to pay the putative Idaho Class Members all wages owed for all hours worked for Defendants.

398. The putative Idaho Class Members suffered damages resulting from Defendants' breach of contract. Such damages include lost wages, interest, and such relief as the Court deems just and proper.

399. As a result of Defendants' failure to pay wages earned and due, and its decision to withhold wages earned and due to the putative Idaho Class Members, Defendants have breached – and continue to breach – their implied and/or express contracts with the putative Idaho Class Members.

400. Plaintiffs, on behalf of the putative Idaho Class Members, seek damages in the amount of the respective unpaid wages earned, interest, attorneys' fees and costs, and such other legal and equitable relief as the Court deems just and proper.

401. Furthermore, at all relevant times Defendants agreed to and were required to pay their exotic dancer employees for all hours they worked at a rate of no less than the higher of the prevailing federal or state minimum wage.

402. Defendants requested and/or knowingly accepted valuable services from the putative Idaho Class Members, which benefited Defendants, and for which a reasonable person would have expected to receive pay. The putative Idaho Class Members provided their services and labor with the reasonable expectation of receiving compensation from Defendants.

403. Defendants, however, have failed to properly compensate the putative Idaho Class Members for all of the valuable services and labor they performed for Defendants' benefit.

404. Defendants have been unjustly enriched at the expense of the putative Idaho Class Members.

405. It would be unjust for Defendants to retain the benefit the putative Idaho Class Members' efforts without compensation therefore.

406. Defendants are liable to the putative Idaho Class Members for damages caused by Defendants' failure to compensate the putative Idaho Class Members for all hours that they worked for Defendants' benefit.

B. Class Action Allegations

407. Plaintiffs bring claims for relief under Idaho State Law, listed above, for violations of Idaho wage and hour laws as a class action, pursuant to FED. R. CIV. P. 23(a), (b)(2), & (b)(3).

408. Numerosity (FED. R. CIV. P. 23(a)(1)) – the Idaho Class is so numerous that joinder of all members is impracticable. On information and belief, during the relevant time period at least one hundred individuals worked for Defendants in the State of Idaho.

409. Commonality (FED. R. CIV. P. 23(a)(2)) – Common questions of law and fact exist as to putative members of the Idaho Class, including, but not limited to, the following:

a. Whether Defendants unlawfully failed to pay all wages owed in violation of Idaho law;

b. Whether Defendants maintained a policy or practice of misclassifying the putative Idaho Class as members of an LLC as opposed to employees; and

c. The proper measure of damages sustained by the putative Idaho Class.

410. Typicality (FED. R. CIV. P. 23(a)(3)) – Plaintiffs' claims are typical of those of the putative Idaho Class. Plaintiffs, like the Idaho Class members, were subjected to Defendants' policy and practice of refusing to pay wages owed to its exotic dancer employees in violation of Idaho law. Plaintiffs' job duties and claims are typical of those of the putative Idaho Class.

411. Adequacy (FED. R. CIV. P. 23(a)(4)) – Plaintiffs will fairly and adequately represent and protect the interests of the putative Idaho Class.

412. Adequacy of counsel (FED. R. CIV. P. 23(g)) – Plaintiffs have retained counsel competent and experienced in complex class actions, the FLSA, and state labor and employment litigation. Plaintiffs' counsel has litigated numerous class actions on behalf of nonexempt employees asserting off-the-clock claims under the FLSA and state law. Plaintiffs' counsel intends to commit the necessary resources to prosecute this action vigorously for the benefit of all of the putative Idaho Class.

413. Class certification of the Idaho State Law claims is appropriate pursuant to FED. R. CIV. P. 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the putative Idaho Class, making appropriate declaratory and injunctive relief with respect to the Idaho Class. The Idaho Class is entitled to injunctive relief to end Defendants' common and uniform practice of treating their exotic dancers as employees while misclassifying them as owners of an LLC.

414. Predominance and superiority (FED. R. CIV. P. 23(b)(3)) – Class certification of the Idaho State Law claims is also appropriate under FED. R. CIV. P. 23(b)(3) because questions of law and fact common to the putative Idaho Class predominate over any questions affecting only individual members of the putative Idaho Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' common and uniform policies and practices unlawfully fail to compensate the putative Idaho Class. The damages suffered by individual members of the putative Idaho Class are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation which might result in inconsistent judgments about Defendants' practices.

415. Notice (FED. R. CIV. P. 23(c)(2)(B)) – Plaintiffs intend to send notice to all members of the putative Idaho Class to the extent provided by Rule 23.

416. Plaintiffs propose that the Idaho Class be defined as:

All current and former exotic dancers who worked at any Spearmint Rhino location in the State of Idaho from any time starting three years prior to February 3, 2017 until the date the case resolves.

IX. IOWA STATE LAW CLAIMS

417. Plaintiffs incorporate the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

A. Controlling Iowa State Law and Allegations

418. The foregoing conduct, as alleged, constitutes breach of contract under Iowa law.

419. The putative Iowa Class Members entered into implied and/or express contracts with Defendants for the former to provide services to the latter. Defendants offered employment to the putative Iowa Class Members, and the latter accepted. The contract was supported by consideration – Defendants received the value of the work performed by the putative Iowa Class Members and the putative Iowa Class Members received money.

420. Defendants breached the contracts by failing to pay the putative Iowa Class Members all wages owed for all hours worked for Defendants.

421. The putative Iowa Class Members suffered damages resulting from Defendants' breach of contract. Such damages include lost wages, interest, and such relief as the Court deems just and proper.

422. As a result of Defendants' failure to pay wages earned and due, and its decision to withhold wages earned and due to the putative Iowa Class Members, Defendants have breached – and continue to breach – their implied and/or express contracts with the putative Iowa Class Members.

423. Plaintiffs, on behalf of the putative Iowa Class Members, seek damages in the amount of the respective unpaid wages earned, interest, attorneys' fees and costs, and such other legal and equitable relief as the Court deems just and proper.

424. Furthermore, at all relevant times Defendants agreed to and were required to pay their exotic dancer employees for all hours they worked at a rate of no less than the higher of the prevailing federal or state minimum wage.

425. Defendants requested and/or knowingly accepted valuable services from the putative Iowa Class Members, which benefited Defendants, and for which a reasonable person would have expected to receive pay. The putative Iowa Class Members provided their services and labor with the reasonable expectation of receiving compensation from Defendants.

426. Defendants, however, have failed to properly compensate the putative Iowa Class Members for all of the valuable services and labor they performed for Defendants' benefit.

427. Defendants have been unjustly enriched at the expense of the putative Iowa Class Members.

428. It would be unjust for Defendants to retain the benefit the putative Iowa Class Members' efforts without compensation therefore.

429. Defendants are liable to the putative Iowa Class Members for damages caused by Defendants' failure to compensate the putative Iowa Class Members for all hours that they worked for Defendants' benefit.

B. <u>Class Action Allegations</u>

430. Plaintiffs bring claims for relief under Iowa State Law, listed above, for violations of Iowa wage and hour laws as a class action, pursuant to FED. R. CIV. P. 23(a), (b)(2), & (b)(3).

431. Numerosity (FED. R. CIV. P. 23(a)(1)) – the Iowa Class is so numerous that joinder of all members is impracticable. On information and belief, during the relevant time period at least one hundred individuals worked for Defendants in the State of Iowa.

432. Commonality (FED. R. CIV. P. 23(a)(2)) – Common questions of law and fact exist as to putative members of the Iowa Class, including, but not limited to, the following:

a. Whether Defendants unlawfully failed to pay all wages owed in violation of Iowa law;

b. Whether Defendants maintained a policy or practice of misclassifying the putative Iowa Class as members of an LLC as opposed to employees; and

c. The proper measure of damages sustained by the putative Iowa Class.

433. Typicality (FED. R. CIV. P. 23(a)(3)) – Plaintiffs' claims are typical of those of the putative Iowa Class. Plaintiffs, like the Iowa Class members, were subjected to Defendants' policy and practice of refusing to pay wages owed to its exotic dancer employees in violation of Iowa law. Plaintiffs' job duties and claims are typical of those of the putative Iowa Class.

434. Adequacy (FED. R. CIV. P. 23(a)(4)) – Plaintiffs will fairly and adequately represent and protect the interests of the putative Iowa Class.

435. Adequacy of counsel (FED. R. CIV. P. 23(g)) – Plaintiffs have retained counsel competent and experienced in complex class actions, the FLSA, and state

labor and employment litigation. Plaintiffs' counsel has litigated numerous class actions on behalf of nonexempt employees asserting off-the-clock claims under the FLSA and state law. Plaintiffs' counsel intends to commit the necessary resources to prosecute this action vigorously for the benefit of all of the putative Iowa Class.

436. Class certification of the Iowa State Law claims is appropriate pursuant to FED. R. CIV. P. 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the putative Iowa Class, making appropriate declaratory and injunctive relief with respect to the Iowa Class. The Iowa Class is entitled to injunctive relief to end Defendants' common and uniform practice of treating their exotic dancers as employees while misclassifying them as owners of an LLC.

437. Predominance and superiority (FED. R. CIV. P. 23(b)(3)) – Class certification of the Iowa State Law claims is also appropriate under FED. R. CIV. P. 23(b)(3) because questions of law and fact common to the putative Iowa Class predominate over any questions affecting only individual members of the putative Iowa Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' common and uniform policies and practices unlawfully fail to compensate the putative Iowa Class. The damages suffered by individual members of the putative Iowa Class are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation which might result in inconsistent judgments about Defendants' practices.

438. Notice (FED. R. CIV. P. 23(c)(2)(B)) – Plaintiffs intend to send notice to all members of the putative Iowa Class to the extent provided by Rule 23.

439. Plaintiffs propose that the Iowa Class be defined as:

All current and former exotic dancers who worked at any Spearmint Rhino location in the State of Iowa from any time starting three years prior to February 3, 2017 until the date the case resolves.

X. KENTUCKY STATE LAW CLAIMS

440. Plaintiffs incorporate the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

A. Controlling Kentucky State Law and Allegations

441. The foregoing conduct, as alleged, constitutes breach of contract under Kentucky law.

442. The putative Kentucky Class Members entered into implied and/or express contracts with Defendants for the former to provide services to the latter. Defendants offered employment to the putative Kentucky Class Members, and the latter accepted. The contract was supported by consideration – Defendants received the value of the work performed by the putative Kentucky Class Members and the putative Kentucky Class Members received money.

443. Defendants breached the contracts by failing to pay the putative Kentucky Class Members all wages owed for all hours worked for Defendants.

444. The putative Kentucky Class Members suffered damages resulting from Defendants' breach of contract. Such damages include lost wages, interest, and such relief as the Court deems just and proper.

445. As a result of Defendants' failure to pay wages earned and due, and its decision to withhold wages earned and due to the putative Kentucky Class Members, Defendants have breached – and continue to breach – their implied and/or express contracts with the putative Kentucky Class Members.

446. Plaintiffs, on behalf of the putative Kentucky Class Members, seek damages in the amount of the respective unpaid wages earned, interest, attorneys' fees and costs, and such other legal and equitable relief as the Court deems just and proper.

447. Furthermore, at all relevant times Defendants agreed to and were required to pay their exotic dancer employees for all hours they worked at a rate of no less than the higher of the prevailing federal or state minimum wage.

448. Defendants requested and/or knowingly accepted valuable services from the putative Kentucky Class Members, which benefited Defendants, and for which a reasonable person would have expected to receive pay. The putative Kentucky Class Members provided their services and labor with the reasonable expectation of receiving compensation from Defendants.

449. Defendants, however, have failed to properly compensate the putative Kentucky Class Members for all of the valuable services and labor they performed for Defendants' benefit.

450. Defendants have been unjustly enriched at the expense of the putative Kentucky Class Members.

451. It would be unjust for Defendants to retain the benefit the putative Kentucky Class Members' efforts without compensation therefore.

452. Defendants are liable to the putative Kentucky Class Members for damages caused by Defendants' failure to compensate the putative Kentucky Class Members for all hours that they worked for Defendants' benefit.

B. <u>Class Action Allegations</u>

453. Plaintiffs bring claims for relief under Kentucky State Law, listed above, for violations of Kentucky wage and hour laws as a class action, pursuant to FED. R. CIV. P. 23(a), (b)(2), & (b)(3).

454. <u>Numerosity</u> (FED. R. CIV. P. 23(a)(1)) – the Kentucky Class is so numerous that joinder of all members is impracticable. On information and belief, during the relevant time period at least one hundred individuals worked for Defendants in the State of Kentucky.

455. <u>Commonality</u> (FED. R. CIV. P. 23(a)(2)) – Common questions of law and fact exist as to putative members of the Kentucky Class, including, but not limited to, the following:

a. Whether Defendants unlawfully failed to pay all wages owed in violation of Kentucky law;

b. Whether Defendants maintained a policy or practice of misclassifying the putative Kentucky Class as members of an LLC as opposed to employees; and

c. The proper measure of damages sustained by the putative Kentucky Class.

456. <u>Typicality</u> (FED. R. CIV. P. 23(a)(3)) – Plaintiffs' claims are typical of those of the putative Kentucky Class. Plaintiffs, like the Kentucky Class members,

were subjected to Defendants' policy and practice of refusing to pay wages owed to its exotic dancer employees in violation of Kentucky law. Plaintiffs' job duties and claims are typical of those of the putative Kentucky Class.

457. Adequacy (FED. R. CIV. P. 23(a)(4)) – Plaintiffs will fairly and adequately represent and protect the interests of the putative Kentucky Class.

458. Adequacy of counsel (FED. R. CIV. P. 23(g)) – Plaintiffs have retained counsel competent and experienced in complex class actions, the FLSA, and state labor and employment litigation. Plaintiffs' counsel has litigated numerous class actions on behalf of nonexempt employees asserting off-the-clock claims under the FLSA and state law. Plaintiffs' counsel intends to commit the necessary resources to prosecute this action vigorously for the benefit of all of the putative Kentucky Class.

459. Class certification of the Kentucky State Law claims is appropriate pursuant to FED. R. CIV. P. 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the putative Kentucky Class, making appropriate declaratory and injunctive relief with respect to the Kentucky Class. The Kentucky Class is entitled to injunctive relief to end Defendants' common and uniform practice of treating their exotic dancers as employees while misclassifying them as owners of an LLC.

460. Predominance and superiority (FED. R. CIV. P. 23(b)(3)) – Class certification of the Kentucky State Law claims is also appropriate under FED. R. CIV. P. 23(b)(3) because questions of law and fact common to the putative Kentucky Class predominate over any questions affecting only individual members

of the putative Kentucky Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' common and uniform policies and practices unlawfully fail to compensate the putative Kentucky Class. The damages suffered by individual members of the putative Kentucky Class are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation which might result in inconsistent judgments about Defendants' practices.

461. Notice (FED. R. CIV. P. 23(c)(2)(B)) – Plaintiffs intend to send notice to all members of the putative Kentucky Class to the extent provided by Rule 23.

462. Plaintiffs propose that the Kentucky Class be defined as:

All current and former exotic dancers who worked at any Spearmint Rhino location in the State of Kentucky from any time starting three years prior to February 3, 2017 until the date the case resolves.

XI. MINNESOTA STATE LAW CLAIMS

463. Plaintiffs incorporate the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

A. Controlling Minnesota State Law and Allegations

464. The foregoing conduct, as alleged, constitutes breach of contract under Minnesota law.

465. The putative Minnesota Class Members entered into implied and/or express contracts with Defendants for the former to provide services to the latter. Defendants offered employment to the putative Minnesota Class Members, and the

latter accepted. The contract was supported by consideration – Defendants received the value of the work performed by the putative Minnesota Class Members and the putative Minnesota Class Members received money.

466. Defendants breached the contracts by failing to pay the putative Minnesota Class Members all wages owed for all hours worked for Defendants.

467. The putative Minnesota Class Members suffered damages resulting from Defendants' breach of contract. Such damages include lost wages, interest, and such relief as the Court deems just and proper.

468. As a result of Defendants' failure to pay wages earned and due, and its decision to withhold wages earned and due to the putative Minnesota Class Members, Defendants have breached – and continue to breach – their implied and/or express contracts with the putative Minnesota Class Members.

469. Plaintiffs, on behalf of the putative Minnesota Class Members, seek damages in the amount of the respective unpaid wages earned, interest, attorneys' fees and costs, and such other legal and equitable relief as the Court deems just and proper.

470. Furthermore, at all relevant times Defendants agreed to and were required to pay their exotic dancer employees for all hours they worked at a rate of no less than the higher of the prevailing federal or state minimum wage.

471. Defendants requested and/or knowingly accepted valuable services from the putative Minnesota Class Members, which benefited Defendants, and for which a reasonable person would have expected to receive pay. The putative

Minnesota Class Members provided their services and labor with the reasonable expectation of receiving compensation from Defendants.

472. Defendants, however, have failed to properly compensate the putative Minnesota Class Members for all of the valuable services and labor they performed for Defendants' benefit.

473. Defendants have been unjustly enriched at the expense of the putative Minnesota Class Members.

474. It would be unjust for Defendants to retain the benefit the putative Minnesota Class Members' efforts without compensation therefore.

475. Defendants are liable to the putative Minnesota Class Members for damages caused by Defendants' failure to compensate the putative Minnesota Class Members for all hours that they worked for Defendants' benefit.

B. Class Action Allegations

476. Plaintiffs bring claims for relief under Minnesota State Law, listed above, for violations of Minnesota wage and hour laws as a class action, pursuant to FED. R. CIV. P. 23(a), (b)(2), & (b)(3).

477. Numerosity (FED. R. CIV. P. 23(a)(1)) – the Minnesota Class is so numerous that joinder of all members is impracticable. On information and belief, during the relevant time period at least one hundred individuals worked for Defendants in the State of Minnesota.

478. Commonality (FED. R. CIV. P. 23(a)(2)) – Common questions of law and fact exist as to putative members of the Minnesota Class, including, but not limited to, the following:

a. Whether Defendants unlawfully failed to pay all wages owed in violation of Minnesota law;

b. Whether Defendants maintained a policy or practice of misclassifying the putative Minnesota Class as members of an LLC as opposed to employees; and

c. The proper measure of damages sustained by the putative Minnesota Class.

479. Typicality (FED. R. CIV. P. 23(a)(3)) – Plaintiffs' claims are typical of those of the putative Minnesota Class. Plaintiffs, like the Minnesota Class members, were subjected to Defendants' policy and practice of refusing to pay wages owed to its exotic dancer employees in violation of Minnesota law. Plaintiffs' job duties and claims are typical of those of the putative Minnesota Class.

480. Adequacy (FED. R. CIV. P. 23(a)(4)) – Plaintiffs will fairly and adequately represent and protect the interests of the putative Minnesota Class.

481. Adequacy of counsel (FED. R. CIV. P. 23(g)) – Plaintiffs have retained counsel competent and experienced in complex class actions, the FLSA, and state labor and employment litigation. Plaintiffs' counsel has litigated numerous class actions on behalf of nonexempt employees asserting off-the-clock claims under the FLSA and state law. Plaintiffs' counsel intends to commit the necessary resources to prosecute this action vigorously for the benefit of all of the putative Minnesota Class.

482. Class certification of the Minnesota State Law claims is appropriate pursuant to FED. R. CIV. P. 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the putative Minnesota Class, making appropriate declaratory and injunctive relief with respect to the Minnesota Class. The Minnesota Class is entitled to injunctive relief to end Defendants' common and uniform practice of treating their exotic dancers as employees while misclassifying them as owners of an LLC.

483. Predominance and superiority (FED. R. CIV. P. 23(b)(3)) – Class certification of the Minnesota State Law claims is also appropriate under FED. R. CIV. P. 23(b)(3) because questions of law and fact common to the putative Minnesota Class predominate over any questions affecting only individual members of the putative Minnesota Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' common and uniform policies and practices unlawfully fail to compensate the putative Minnesota Class. The damages suffered by individual members of the putative Minnesota Class are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation which might result in inconsistent judgments about Defendants' practices.

484. Notice (FED. R. CIV. P. 23(c)(2)(B)) – Plaintiffs intend to send notice to all members of the putative Minnesota Class to the extent provided by Rule 23.

485. Plaintiffs propose that the Minnesota Class be defined as:

All current and former exotic dancers who worked at any Spearmint Rhino location in the State of Minnesota from any time starting three years prior to February 3, 2017 until the date the case resolves.

XII. OREGON STATE LAW CLAIMS

486. Plaintiffs incorporate the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

A. Controlling Oregon State Law and Allegations

487. The foregoing conduct, as alleged, constitutes breach of contract under Oregon law.

488. The putative Oregon Class Members entered into implied and/or express contracts with Defendants for the former to provide services to the latter. Defendants offered employment to the putative Oregon Class Members, and the latter accepted. The contract was supported by consideration – Defendants received the value of the work performed by the putative Oregon Class Members and the putative Oregon Class Members received money.

489. Defendants breached the contracts by failing to pay the putative Oregon Class Members all wages owed for all hours worked for Defendants.

490. The putative Oregon Class Members suffered damages resulting from Defendants' breach of contract. Such damages include lost wages, interest, and such relief as the Court deems just and proper.

491. As a result of Defendants' failure to pay wages earned and due, and its decision to withhold wages earned and due to the putative Oregon Class Members, Defendants have breached – and continue to breach – their implied and/or express contracts with the putative Oregon Class Members.

492. Plaintiffs, on behalf of the putative Oregon Class Members, seek damages in the amount of the respective unpaid wages earned, interest, attorneys' fees and costs, and such other legal and equitable relief as the Court deems just and proper.

493. Furthermore, at all relevant times Defendants agreed to and were required to pay their exotic dancer employees for all hours they worked at a rate of no less than the higher of the prevailing federal or state minimum wage.

494. Defendants requested and/or knowingly accepted valuable services from the putative Oregon Class Members, which benefited Defendants, and for which a reasonable person would have expected to receive pay. The putative Oregon Class Members provided their services and labor with the reasonable expectation of receiving compensation from Defendants.

495. Defendants, however, have failed to properly compensate the putative Oregon Class Members for all of the valuable services and labor they performed for Defendants' benefit.

496. Defendants have been unjustly enriched at the expense of the putative Oregon Class Members.

497. It would be unjust for Defendants to retain the benefit the putative Oregon Class Members' efforts without compensation therefore.

498. Defendants are liable to the putative Oregon Class Members for damages caused by Defendants' failure to compensate the putative Oregon Class Members for all hours that they worked for Defendants' benefit.

B. Class Action Allegations

499. Plaintiffs bring claims for relief under Oregon State Law, listed above, for violations of Oregon wage and hour laws as a class action, pursuant to FED. R. CIV. P. 23(a), (b)(2), & (b)(3).

500. Numerosity (FED. R. CIV. P. 23(a)(1)) – the Oregon Class is so numerous that joinder of all members is impracticable. On information and belief, during the relevant time period at least one hundred individuals worked for Defendants in the State of Oregon.

501. Commonality (FED. R. CIV. P. 23(a)(2)) – Common questions of law and fact exist as to putative members of the Oregon Class, including, but not limited to, the following:

a. Whether Defendants unlawfully failed to pay all wages owed in violation of Oregon law;

b. Whether Defendants maintained a policy or practice of misclassifying the putative Oregon Class as members of an LLC as opposed to employees; and

c. The proper measure of damages sustained by the putative Oregon Class.

502. Typicality (FED. R. CIV. P. 23(a)(3)) – Plaintiffs' claims are typical of those of the putative Oregon Class. Plaintiffs, like the Oregon Class members, were subjected to Defendants' policy and practice of refusing to pay wages owed to its exotic dancer employees in violation of Oregon law. Plaintiffs' job duties and claims are typical of those of the putative Oregon Class.

503. Adequacy (FED. R. CIV. P. 23(a)(4)) – Plaintiffs will fairly and adequately represent and protect the interests of the putative Oregon Class.

504. Adequacy of counsel (FED. R. CIV. P. 23(g)) – Plaintiffs have retained counsel competent and experienced in complex class actions, the FLSA, and state labor and employment litigation. Plaintiffs' counsel has litigated numerous class actions on behalf of nonexempt employees asserting off-the-clock claims under the FLSA and state law. Plaintiffs' counsel intends to commit the necessary resources to prosecute this action vigorously for the benefit of all of the putative Oregon Class.

505. Class certification of the Oregon State Law claims is appropriate pursuant to FED. R. CIV. P. 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the putative Oregon Class, making appropriate declaratory and injunctive relief with respect to the Oregon Class. The Oregon Class is entitled to injunctive relief to end Defendants' common and uniform practice of treating their exotic dancers as employees while misclassifying them as owners of an LLC.

506. Predominance and superiority (FED. R. CIV. P. 23(b)(3)) – Class certification of the Oregon State Law claims is also appropriate under FED. R. CIV. P. 23(b)(3) because questions of law and fact common to the putative Oregon Class predominate over any questions affecting only individual members of the putative Oregon Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' common and uniform policies and practices unlawfully fail to compensate the

putative Oregon Class. The damages suffered by individual members of the putative Oregon Class are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation which might result in inconsistent judgments about Defendants' practices.

507. Notice (FED. R. CIV. P. 23(c)(2)(B)) – Plaintiffs intend to send notice to all members of the putative Oregon Class to the extent provided by Rule 23.

508. Plaintiffs propose that the Oregon Class be defined as:

All current and former exotic dancers who worked at any Spearmint Rhino location in the State of Oregon from any time starting three years prior to February 3, 2017 until the date the case resolves.

XIII. TEXAS STATE LAW CLAIMS

509. Plaintiffs incorporate the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

A. Controlling Texas State Law and Allegations

510. The foregoing conduct, as alleged, constitutes breach of contract under Texas law.

511. The putative Texas Class Members entered into implied and/or express contracts with Defendants for the former to provide services to the latter. Defendants offered employment to the putative Texas Class Members, and the latter accepted. The contract was supported by consideration – Defendants received the value of the work performed by the Texas Class Members and the putative Texas Class Members received money.

512. Defendants breached the contracts by failing to pay the putative Texas Class Members all wages owed for all hours worked for Defendants.

513. The putative Texas Class Members suffered damages resulting from Defendants' breach of contract. Such damages include lost wages, interest, and such relief as the Court deems just and proper.

514. As a result of Defendants' failure to pay wages earned and due, and its decision to withhold wages earned and due to the putative Texas Class Members, Defendants have breached – and continue to breach – their implied and/or express contracts with the putative Texas Class Members.

515. Plaintiffs, on behalf of the putative Texas Class Members, seek damages in the amount of the respective unpaid wages earned, interest, attorneys' fees and costs, and such other legal and equitable relief as the Court deems just and proper.

516. Furthermore, at all relevant times Defendants agreed to and were required to pay their exotic dancer employees for all hours they worked at a rate of no less than the higher of the prevailing federal or state minimum wage.

517. Defendants requested and/or knowingly accepted valuable services from the putative Texas Class Members, which benefited Defendants, and for which a reasonable person would have expected to receive pay. The putative Texas Class Members provided their services and labor with the reasonable expectation of receiving compensation from Defendants.

518. Defendants, however, have failed to properly compensate the putative Texas Class Members for all of the valuable services and labor they performed for Defendants' benefit.

519. Defendants have been unjustly enriched at the expense of the putative Texas Class Members.

520. It would be unjust for Defendants to retain the benefit of the putative Texas Class Members' efforts without compensation therefore.

521. Defendants are liable to the putative Texas Class Members for damages caused by Defendants' failure to compensate Bedford and the putative Texas Class Members for all hours that they worked for Defendants' benefit.

B. Class Action Allegations

522. Plaintiffs bring claims for relief under Texas State Law, listed above, for violations of Texas wage and hour laws as a class action, pursuant to FED. R. CIV. P. 23(a), (b)(2), & (b)(3).

523. Numerosity (FED. R. CIV. P. 23(a)(1)) – the Texas Class is so numerous that joinder of all members is impracticable. On information and belief, during the relevant time period at least one hundred individuals worked for Defendants in the State of Texas.

524. Commonality (FED. R. CIV. P. 23(a)(2)) – Common questions of law and fact exist as to putative members of the Texas Class, including, but not limited to, the following:

a. Whether Defendants unlawfully failed to pay all wages owed in violation of Texas law;

b. Whether Defendants maintained a policy or practice of misclassifying the putative Texas Class as members of an LLC as opposed to employees; and

c. The proper measure of damages sustained by the putative Texas Class.

525. Typicality (FED. R. CIV. P. 23(a)(3)) – Plaintiffs' claims are typical of those of the putative Texas Class. Plaintiffs, like the Texas Class members, were subjected to Defendants' policy and practice of refusing to pay wages owed to its exotic dancer employees in violation of Texas law. Plaintiffs' job duties and claims are typical of those of the putative Texas Class.

526. Adequacy (FED. R. CIV. P. 23(a)(4)) – Plaintiffs will fairly and adequately represent and protect the interests of the putative Texas Class.

527. Adequacy of counsel (FED. R. CIV. P. 23(g)) – Plaintiffs have retained counsel competent and experienced in complex class actions, the FLSA, and state labor and employment litigation. Plaintiffs' counsel has litigated numerous class actions on behalf of nonexempt employees asserting off-the-clock claims under the FLSA and state law. Plaintiffs' counsel intends to commit the necessary resources to prosecute this action vigorously for the benefit of all of the putative Texas Class.

528. Class certification of the Texas State Law claims is appropriate pursuant to FED. R. CIV. P. 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the putative Texas Class, making appropriate declaratory and injunctive relief with respect to the putative Texas Class. The Texas Class is entitled to injunctive relief to end Defendants' common

1 and uniform practice of treating their exotic dancers as employees while
2 misclassifying them as owners of an LLC.

3 529. Predominance and superiority (FED. R. CIV. P. 23(b)(3)) – Class
4 certification of the Texas State Law claims is also appropriate under FED. R. CIV.
5 P. 23(b)(3) because questions of law and fact common to the putative Texas Class
6 predominate over any questions affecting only individual members of the putative
7 Texas Class, and because a class action is superior to other available methods for
8 the fair and efficient adjudication of this litigation. Defendants' common and
9 uniform policies and practices unlawfully fail to compensate the putative Texas
10 Class. The damages suffered by individual members of the putative Texas Class
11 are small compared to the expense and burden of individual prosecution of this
12 litigation. In addition, class certification is superior because it will obviate the need
13 for unduly duplicative litigation which might result in inconsistent judgments
14 about Defendants' practices.

15 530. Notice (FED. R. CIV. P. 23(c)(2)(B)) – Plaintiffs intend to send notice
16 to all members of the putative Texas Class to the extent provided by Rule 23.

17 531. Plaintiffs propose that the Texas Class be defined as:

18 **All current and former exotic dancers who worked at any**
19 **Spearmint Rhino location in the State of Texas from any time**
starting three years prior to February 3, 2017 until the date the
20 **case resolves.**

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XIV. CAUSES OF ACTION

1. First Claim for Relief – Violation of the FLSA, Failure to Pay Statutory Minimum Wage and Overtime

532. Plaintiffs incorporate the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

533. The foregoing conduct, as alleged, violated the FLSA.

534. Although misclassified as so-called members of an LLC, Plaintiffs and the putative Collective Action are nonexempt employees entitled to be paid overtime compensation for all overtime hours worked, as defined above. *See* 29 U.S.C. § 203(e)(1).

535. Defendants were, at all times relevant to this claim for relief, joint employers of Plaintiffs and the putative Collective Action. *See* 29 U.S.C. § 203(d).

536. Defendants were, and are, required to pay their employees, Plaintiffs and the putative Collective Action, at least the minimum wage for all hours worked under forty in a given workweek. 29 U.S.C. § 206.

537. Defendants failed to pay Plaintiffs and the putative Collective Action the federally-mandated minimum wage for all hours worked under forty in a given workweek. Defendants did not pay Plaintiffs and Collective Action at all.

538. Defendants were, and are, required to pay their employees, Plaintiffs and the putative Collective Action, overtime premiums in an amount of one and one half times their regular rate of pay for all hours worked over forty hours in a given workweek. 29 U.S.C. § 207.

539. Defendants failed to pay Plaintiffs and the putative Collective Action their federally mandated overtime wages for all hours worked over 40 in a given workweek.

540. Defendant also unlawfully retained certain tips paid to Plaintiffs and the putative Collective Action. Those tips were the sole property of Plaintiffs and the putative Collective Action, and were not made part of Defendants' gross receipts. 29 C.F.R. §§ 531.52, 531.53, & 531.55.

541. Furthermore, no tip credit applies to reduce or offset Defendants' liability under the FLSA, because Defendants did not inform Plaintiffs and the putative Collective Action that they would be applying a tip credit to satisfy a portion of the statutory minimum wage, nor did Plaintiffs and the putative Collective Action retain all tips except those included in a tipping pool among employees who customarily receive tips. 29 U.S.C. § 203(m).

542. Accordingly, Plaintiffs and the putative Collective Action are entitled to the full statutory minimum wages set forth in 29 U.S.C. § 206 & 207.

543. Defendants' conduct was willful and done to avoid paying minimum wages and overtime. 29 U.S.C. § 255(a). Therefore, Plaintiffs and the putative Collective Action are entitled to a three (3) year statute of limitations.

544. Plaintiffs seek all damages to which they are entitled under the FLSA, including their back minimum wages, back overtime wages, liquidated damages, attorneys' fees and costs, post-judgment interest, and specifically plead recovery for the three (3) year period preceding February 3, 2017 through its resolution.

2. Second Claim for Relief – Violations of California Unfair Competition Law, Cal. Bus. & Prof. Code, §§ 17200-17210, Brought by Byrne on Behalf of Herself and the California Class

545. Byrne incorporates the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

546. Although misclassified as so-called members of an LLC, Byrne and the putative California Class are nonexempt employees entitled to be paid overtime compensation for all overtime hours worked, as defined above. *See* Cal. Labor Code § 350(b).

547. Relevant Defendants were, at all times relevant to this claim for relief, joint employers of Byrne and the putative California Class pursuant to California law and all other relevant law. *See* Cal. Labor Code §350(a).

548. The foregoing conduct, as alleged, violates the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17210. The UCL prohibits unfair competition by prohibiting, *inter alia*, any unlawful or unfair business acts or practices.

549. Beginning at some point after the *Trauth* case,[2] which was resolved more than four years ago, Defendants committed and continue to commit, acts of unfair competition, as defined by the UCL, by, among other things, engaging in the acts and practices described herein. Defendants' conduct as herein alleged has

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[2] Amended Order Granting Plaintiffs' Renewed Motion for Final Approval of Class Action Settlement (Doc. No. 317) and Granting in Part Plaintiffs' Renewed Motion for Attorneys' Fees (Doc. No. 311) was signed on November 6, 2012. *See Trauth v. Spearmint Rhino Cos. Worldwide, Inc.*, No. EDCV 09-01316-VAP (DTBx) 2012 WL 12893448 (Nov. 7, 2012).

injured Byrne and the putative California Class by wrongfully denying them earned wages, and therefore was substantially injurious to Byrne and the putative California Class.

550. Defendants engaged in unfair competition in violation of the UCL by violating, *inter alia*, each of the following laws. Each of these violations constitutes an independent and separate violation of the UCL:

a. The Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and the Portal-to-Portal Act, 29 U.S.C. §§ 251-262;

b. California Labor Code § 1194, which provides in pertinent part:

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

c. California Labor Code § 1182.12, which provides in pertinent part:

> Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars ($9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars ($10) per hour;

d. California Labor Code § 1182.13 and MW-2017, setting minimum wage for 2017 at $10.50 for employers with 26 or more employees;

e. California Labor Code §§ 201-203, 226, 226.7, and 512;

f. California Labor Code § 1174;

g. California Labor Code § 510, which provides in relevant part:

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

and;

h. California Labor Code § 351.

551. Defendants' course of conduct, acts, and practices in violation of the California laws mentioned in the above paragraph constitute a separate and independent violation of the UCL. Defendants' conduct described herein violates the policy or spirit of such laws or otherwise significantly threatens or harms competition.

552. The unlawful and unfair business practices and acts of Defendants, described above, have injured Byrne and the putative California Class in that they were wrongfully denied payment of earned wages.

553. Byrne, on behalf of herself and the putative California Class, seeks restitution in the amount of the respective unpaid wages earned and due at a rate of not less than the minimum wage for all hours worked under 40 in a given workweek or under eight on a given day, and overtime wages earned and due at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, or eight hours in a day, or for the first eight

hours of work performed on the seventh consecutive day of work, and double the regular rate of pay for work performed in excess of twelve hours per day and for all work over eight hours on the seventh consecutive day of work in a workweek.

554. Byrne seeks recovery of attorneys' fees and costs of this action to be paid by Defendants, as provided by the UCL and California Labor Code §§ 218, 218.5, & 1194.

3. Third Claim for Relief – Minimum Wage Violations, Cal. Wage Order No. MW-2017; Cal. Labor Code §§ 1182.11, 1182.12, & 1194, Brought by Byrne on Behalf of Herself and the California Class

555. Byrne incorporates the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

556. Although misclassified as so-called members of an LLC, Byrne and the putative California Class are nonexempt employees entitled to be paid overtime compensation for all overtime hours worked, as defined above. *See* Cal. Labor Code § 350(b).

557. Relevant Defendants were, at all times relevant to this claim for relief, joint employers of Byrne and the putative California Class pursuant to California law and all other relevant law. *See* Cal. Labor Code §350(a).

558. The California Labor Code requires that all employees be paid minimum wages by their employers. The current California Minimum Wage is $10.50. Cal. Labor Code. § 1182.12, MW-2017. Before January 1, 2017, the California Minimum Wage was $10.00; before January 1, 2016, the California

Minimum Wage was $9.00; and before July 1, 2014, the California Minimum Wage was $8.00.[3]

559. The California Minimum Wage is and has, at all times relevant to this lawsuit, always been higher than the minimum wage required by the FLSA. Therefore, the higher California Minimum Wage applies to Byrne and all members of the putative California Class, defined below. 29 U.S.C. § 218(a).

560. Defendants' policy and practice of classifying Byrne and the putative California Class as so-called members of an LLC while treating them otherwise as employees resulted in a violation of these minimum wage provisions.

561. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Byrne and the putative California Class have sustained damages, including loss of earnings for hours worked under forty in a workweek, or under eight hours per day ("straight time") during the period relevant to this lawsuit in an amount to be established at trial, prejudgment interest, liquidated damages in an amount equal to the back wages[4] and costs and attorneys' fees, pursuant to statute and other applicable law.

[3] *See generally*, State of Cal. Dep't of Indus. Relations, *History of California Minimum Wage* https://www.dir.ca.gov/iwc/MinimumWageHistory.htm (last accessed March 14, 2017).

[4] *See* Cal. Labor Code § 1194.2 (authorizing liquidated damages for an employer's failure to pay minimum wages).

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4. Fourth Claim for Relief – Overtime Violations, Cal. Wage Order No. 10-2001; Cal. Labor Code §§ 510, 1194, Brought by Byrne on Behalf of Herself and the California Class

562. Byrne incorporates the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

563. Although misclassified as so-called members of an LLC, Plaintiffs and the putative California Class are nonexempt employees entitled to be paid overtime compensation for all overtime hours worked, as defined above. *See* Cal. Labor Code § 350(b).

564. Relevant Defendants were, at all times relevant to this claim for relief, joint employers of Byrne and the putative California Class pursuant to California law and all other relevant law. *See* Cal. Labor Code §350(a).

565. California law requires an employer to pay overtime compensation to all nonexempt employees at a rate of overtime compensation at a rate of one and one-half times the regular rate of pay for all hours worked over forty per week, or over eight per day, or for the first eight hours of work on the seventh consecutive day of work in a workweek, and at a rate of twice the regular rate of pay for all hours worked in excess of 12 hours in one day, and for any hours worked in excess of eight hours on the seventh consecutive day of work in a workweek. Cal. Labor Code § 510.

566. California wage and hour laws provide greater protections for workers than the FLSA. Therefore, California wage and hour laws apply to Byrne and all

members of the putative California Class, defined below, where they provide greater protections to workers. 29 U.S.C. § 218(a).

567. Throughout the time period relevant to this claim for relief, Byrne and the putative California Class worked in excess of eight hours in a workday and/or forty hours in a workweek. Byrne and the putative California Class also sometimes worked in excess of 12 hours in one day and for over eight hours on a seventh consecutive day of work.

568. Defendants' policy and practice of classifying Byrne and the putative California Class as so-called members of an LLC while treating them otherwise as employees resulted in a violation of these overtime wage provisions.

569. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Byrne and the putative California Class have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendants in an amount to be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable law.

5. Fifth Claim for Relief – California Meal and Rest Provisions, Cal. Wage Order No. 10-2001; Cal. Labor Code §§ 218.5, 226.7, & 512, Brought by Byrne on Behalf of Herself and the California Class

570. Byrne incorporates the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

571. Although misclassified as so-called members of an LLC, Byrne and the putative California Class are nonexempt employees entitled to be paid overtime

compensation for all overtime hours worked, as defined above. *See* Cal. Labor Code § 350(b).

572. Relevant Defendants were, at all times relevant to this claim for relief, joint employers of Byrne and the putative California Class pursuant to California law and all other relevant law. *See* Cal. Labor Code §350(a).

573. Byrne and the putative California Class routinely work and have worked in excess of five-hour shifts without being afforded at least a half-hour meal break in which they were relieved of all duty, and more than ten-hour shifts without being afforded a second half-hour meal break in which they were relieved of all duty, as required by California Labor Code §§ 226.7 & 512 and Wage Order No. 10-2001, § 11(A) & (B).

574. In addition, Byrne and the putative California Class regularly work and have worked without being afforded at least one ten-minute rest break, in which they were relieved of all duty, per four hours of work performed or major fraction thereof, as required by California Labor Code § 226.7 and Wage Order No. 10-2001, § 12.

575. As a result of Defendants' failure to afford proper meal periods, they are liable to Byrne and the putative California Class for one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided, pursuant to California Labor Code § 226.7 and Wage Order No. 10-2001, § 11(D).

576. As a result of Defendants' failure to afford proper rest periods, they are liable to Byrne and the putative California Class for one hour of additional pay

at the regular rate of compensation for each workday that the proper rest periods were not provided, pursuant to § 226.7 and Wage Order No. 10-2001, § 12(B).

6. Sixth Claim for Relief – California Record-Keeping Provisions, Cal. Wage Order No. 10-2001; Cal. Labor Code §§ 226, 1174, &1174.5, Brought by Byrne on Behalf of Herself and the California Class

577. Byrne incorporates the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

578. Although misclassified as so-called members of an LLC, Byrne and the putative California Class are nonexempt employees entitled to be paid overtime compensation for all overtime hours worked, as defined above. *See* Cal. Labor Code § 350(b).

579. Relevant Defendants were, at all times relevant to this claim for relief, joint employers of Byrne and the putative California Class pursuant to California law and all other relevant law. *See* Cal. Labor Code §350(a).

580. Defendants knowingly and intentionally failed to provide timely, accurate, itemized wage statements including, *inter* alia, hours worked, to Byrne and the putative California Class in accordance with California Labor Code § 226(a) and the applicable IWC Wage Order. Such failure caused injury to Byrne and the putative California Class by, among other things, impeding them from knowing the amount of wages to which they were and are entitled. On information and belief, at all times relevant herein, Defendants have failed to maintain records of hours worked by Byrne and the putative California Class as required under California Labor Code § 1174(d).

581. Byrne and the putative California Class are entitled to and seek injunctive relief requiring Defendants to comply with Labor Code §§ 226(e) &

1174(d), and further seek the amount provided under Labor Code §§ 226(e) & 1174.5, including the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period.

7. Seventh Claim for Relief – California Wage Payment Provisions, Cal. Labor Code §§ 201, 202, &203, Brought by Byrne on Behalf of Herself and the California Class

582. Byrne incorporates the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

583. Although misclassified as so-called members of an LLC, Byrne and the putative California Class are nonexempt employees entitled to be paid overtime compensation for all overtime hours worked, as defined above. *See* Cal. Labor Code § 350(b).

584. Relevant Defendants were, at all times relevant to this claim for relief, joint employers of Byrne and the putative California Class pursuant to California law and all other relevant law. *See* Cal. Labor Code §350(a).

585. California Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due within the time specified by law. California Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

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586. Byrne and the putative California Class members who ceased employment with Defendants are entitled to unpaid compensation and other monies, as alleged above, but to date have not received such compensation.

587. More than thirty days have passed since Byrne and certain putative California Class members left Defendants' employ.

588. As a consequence of Defendants' willful conduct in not paying compensation for all hours worked, Byrne and the putative California Class members whose employment ended during the class period are entitled to thirty days' wages under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

8. Eighth Claim for Relief – California PAGA Claims Cal. Wage Order No. 10-2001; Cal. Labor Code §§ 2698-2699.5, Brought by Byrne on Behalf of Herself and the California Class

589. Byrne incorporates the preceding paragraphs by reference as if set forth fully in this section, unless inconsistent.

590. Although misclassified as so-called members of an LLC, Byrne and the putative California Class are nonexempt employees entitled to be paid overtime compensation for all overtime hours worked, as defined above. *See* Cal. Labor Code § 350(b).

591. Relevant Defendants were, at all times relevant to this claim for relief, joint employers of Byrne and the putative California Class pursuant to California law and all other relevant law. *See* Cal. Labor Code §350(a).

592. Under the California Private Attorneys General Act ("PAGA") of 2004, Cal. Labor Code §§ 2698-2699.5, an aggrieved employee, on behalf of himself or herself and other current or former employees as well as the general public, may bring a representative action as a private attorney general to recover penalties for an employer's violations of the California Labor Code and IWC Wage Orders. These civil penalties are in addition to any other relief available under the California Labor Code, and must be allocated 75% to California's Labor and Workforce Development Agency and 25% to the aggrieved employee. Cal. Labor Code § 2699.

593. Pursuant to Cal. Labor Code § 1198, Defendants' failure to pay proper compensation to Byrne and the putative California Class, failure to keep and furnish them with records of hours worked, failure to provide them with meal and rest breaks, misappropriation of tips, and failure to pay them all wages due immediately upon discharge and within the time required by law after their employment ended is unlawful and constitutes violations of the California Labor Code, each actionable under PAGA.

594. Byrne alleges, on behalf of herself and the putative California Class, as well as the general public, that Defendants have violated the following provisions of the California Labor Code and the following provisions of California Wage Orders that are actionable through the Cal. Labor Code and PAGA, as previously alleged herein: Cal. Wage Order No. 10-2001, Cal. Labor Code §§ 201-203, 510, 512, 1174, 1174.5, 1182.11, 1182.12, 1194. Each of these violations entitles Byrne, as a private attorney general, to recover the applicable statutory

civil penalties on her own behalf, on behalf of all aggrieved employees, and on behalf of the general public.

595. Cal. Labor Code § 2699(a), which is part of PAGA, provides in pertinent part:

> Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

596. Cal. Labor Code § 2699(f), which is part of PAGA, provides in pertinent part:

597. Byrne is entitled to civil penalties to be paid by Defendants and allocated as PAGA requires, pursuant to Cal. Labor Code § 2699(a), for Defendants' violations of the California Labor Code and relevant IWC Wage Orders for which violations a civil penalty is already specifically provided by law. Further, Byrne is entitled to civil penalties to be paid by Defendants and allocated as PAGA requires, pursuant to § 2699(f) for Defendants' violations of the California Labor Code and IWC Wage Orders for which violations a civil penalty is not already specifically provided.

598. On March 21, 2017, Plaintiff Lauren Byrne provided written notice by certified mail and electronic submission to the California Labor & Workforce Development Agency ("LWDA") and to Defendants through their respective registered agents of the legal claims and theories of this case contemporaneously

with the filing of the Complaint in this action. As of May 25, 2017, the LWDA had not notified Byrne whether it intended to investigate the allegations described in her March 21, 2017, written notice. Pursuant to Cal. Labor Code § 2699.3(a)(2)(A), "[u]pon receipt of [notice to aggrieved employee that LWDA does not intend to investigate alleged violation] or if no notice is provided within 65 calendar days of the postmark date of the notice given . . . the aggrieved employee may commence a civil action pursuant to Section 2699." Accordingly, Byrne has exhausted her administrative remedies and may now assert this claim pursuant to Cal. Labor Code § 2699.3(a)(2).

599. Under PAGA, Byrne and the State of California are entitled to recover the maximum civil penalties permitted by law for the violations of the California Labor Code and Wage Order No. 5 that are alleged in this Complaint.

9. Ninth Claim for Relief – State Law Breach of Contract, Brought by Plaintiffs on Behalf of Themselves and the Florida, Idaho, Iowa, Kentucky, Minnesota, Oregon, and Texas Classes

600. Plaintiffs, on behalf of themselves and all members of the Florida, Idaho, Iowa, Kentucky, Minnesota, Oregon, and Texas Classes (the "State Law Classes"), reallege and incorporate by reference the preceding paragraphs as if they were set forth again herein.

601. The State Law Class Members entered into implied and/or express contracts with Defendants for the former to provide services to the latter. Defendants offered employment to putative State Law Class Members, and the latter accepted. The contract was supported by consideration – Defendants received

the value of the work performed by Plaintiffs and putative State Law Class Members and the putative State Law Class Members received money.

602. Defendants breached the contracts by failing to pay Plaintiffs and the putative State Law Class Members all wages owed for all hours worked for Defendants.

603. Plaintiffs and the putative State Law Class Members suffered damages resulting from Defendants' breach of contract. Such damages include lost wages, interest, and such relief as the Court deems just and proper.

604. As a result of Defendants' failure to pay wages earned and due, and its decision to withhold wages earned and due to Plaintiffs and the putative State Law Class Members, Defendants have breached – and continue to breach – their implied and/or express contracts with Plaintiffs and the putative State Law Class Members.

605. Plaintiffs, on behalf of themselves and the putative State Law Class Members, seeks damages in the amount of the respective unpaid wages earned, interest, attorneys' fees and costs, and such other legal and equitable relief as the Court deems just and proper.

10. Tenth Claim for Relief – State Law Quantum Meruit/Unjust Enrichment, Brought by Plaintiffs on Behalf of Themselves and the Florida, Idaho, Iowa, Kentucky, Minnesota, Oregon, and Texas Classes

606. Plaintiffs, on behalf of themselves and all members of the Florida, Idaho, Iowa, Kentucky, Minnesota, Oregon, and Texas Classes (the "State Law

Classes"), reallege and incorporate by reference the preceding paragraphs as if they were set forth again herein.

607. At all relevant times Defendants agreed to and were required to pay their exotic dancer employees for all hours they worked at a rate of no less than the higher of the prevailing federal or state minimum wage.

608. Defendants requested and/or knowingly accepted valuable services from Plaintiffs and the putative State Law Class Members, which benefited Defendants, and for which a reasonable person would have expected to receive pay. Plaintiffs and the putative State Law Class Members provided their services and labor with the reasonable expectation of receiving compensation from Defendants.

609. Defendants, however, have failed to properly compensate Plaintiffs and the putative State Law Class Members for all of the valuable services and labor they performed for Defendants' benefit.

610. Defendants have been unjustly enriched at the expense of Plaintiffs and the putative State Law Class Members.

611. It would be unjust for Defendants to retain the benefit of Plaintiffs and the putative State Law Class Members' efforts without compensation therefore.

612. Defendants are liable to Plaintiffs and the putative State Law Class Members for damages caused by Defendants' failure to compensate Plaintiffs and the putative State Law Class Members for all hours that they worked for Defendants' benefit.

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XV. JURY DEMAND

613. Plaintiffs hereby demand a jury trial on all causes of action and claims for relief with respect to which they and the putative Collective and Class Action Members have a right to jury trial.

XVI. DAMAGES AND PRAYER

614. Plaintiffs asks that the Court issue summonses for Defendants to appear and answer, and that Plaintiffs and the Collective and Class Action Members be awarded a judgment against Defendants or order(s) from the Court for the following:

a. An order conditionally certifying this case as an FLSA collective action and requiring notice to be issued to all putative Collective Action Members;

b. An order certifying that the California, Florida, Idaho, Iowa, Kentucky, Minnesota, Oregon, and Texas State Law Claims may be maintained as (a) class action(s) pursuant to Federal Rule of Civil Procedure 23;

c. Designation of attorneys Todd Slobin and Ricardo J. Prieto, of Shellist Lazarz Slobin, LLP, and Melinda Arbuckle, of Baron & Budd, P.C., as Class Counsel for the California, Florida, Idaho, Iowa, Kentucky, Minnesota, Oregon, and Texas Class Action Members;

d. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and California, Florida, Idaho, Iowa, Kentucky, Minnesota, Oregon, and Texas State law;

e. An injunction against Defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with Defendants, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;

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f. An award of damages including all unpaid wages at the FLSA or state-mandated minimum wage rate, overtime compensation for all hours worked over forty in a workweek or, in California, over eight hours in a day and for the first eight hours worked on the seventh consecutive day of work in a workweek at the time rate for hours worked over 12 in a given day and for all hours over eight worked on the seventh consecutive day of work in a workweek, and all misappropriated tips, liquidated damages, and restitution to be paid by Spearmint Rhino;

g. Appropriate statutory penalties;

h. Costs of action incurred herein, including expert fees;

i. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216;

j. Pre-judgment and post-judgment interest, as provided by law;

k. Such other injunctive and equitable relief as the Court may deem just and proper.

DATED: November 1, 2017.

Respectfully submitted,

By: s/Melinda Arbuckle
Melinda Arbuckle

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