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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

CASE NO. _____

10 JOSEPH DALLA BETTA,

11 Plaintiff,

12 v.

13 FLAUNT MAGAZINE, INC.; LUIS A.
14 BARAJAS, JR., an individual; MATTHEW
15 BEDARD, an individual, and DOES 4-10,

16 Defendants.

COMPLAINT

1. Harassment (Hostile Work Environment) in Violation of FEHA;
2. Harassment (Quid Pro Quo) in Violation of FEHA;
3. Failure to Prevent Discrimination in Violation of FEHA;
4. Constructive Discharge;
5. Battery;
6. Sexual Battery in Violation of Civ. Code § 1708.5;
7. Assault;
8. Intentional Infliction of Emotional Distress;
9. Failure to Pay Overtime Wages;
10. Minimum Wage Violations;
11. Rest Period Violations;
12. Meal Period Violations;
13. Unreimbursed Expenses;
14. Itemized Wage Statement Violations;
15. Unfair Competition;
16. Declaratory Relief.

JURY TRIAL DEMANDED

1 Plaintiff Joseph Dalla Betta hereby brings this action against Defendants Flaunt Magazine, Inc.,
2 Luis A. Barajas, Jr., Matthew Bedard and Does 4-10 inclusive (collectively, “Defendants”), and on
3 information and belief alleges as follows:

4 **JURISDICTION**

5 1. This Court has jurisdiction over Plaintiff’s claims based on, among other statutes,
6 California Government Code §§ 12940, *et seq.* This case falls within the Court’s unlimited jurisdiction
7 because the amount in controversy exceeds \$25,000.

8 **VENUE**

9 2. Venue as to each Defendant is proper in this judicial district pursuant to California Code
10 of Civil Procedure §§ 395(a) and 395.5, because the acts and omissions complained of herein occurred
11 in Los Angeles, California, within the County of Los Angeles. Further, Plaintiff was employed by
12 Defendants within Los Angeles County.

13 **PARTIES**

14 3. Plaintiff Joseph Dalla Betta¹ is an individual over the age of eighteen residing in the
15 County of Los Angeles. Plaintiff was formerly employed by Flaunt Magazine, Inc.

16 4. Defendant Flaunt Magazine, Inc. is and at all times mentioned herein was a Corporation
17 doing business throughout California, including the County of Los Angeles.

18 5. Defendant Luis A. Barajas, Jr. is an individual over the age of eighteen residing in the
19 County of Los Angeles. He is the Chief Executive Officer of Flaunt Magazine, Inc.

20 6. Defendant Matthew Bedard is an individual over the age of eighteen residing in the
21 County of Los Angeles. He is the Editor-in-Chief of Flaunt Magazine, Inc.

22 7. All Defendants were joint employers of Plaintiff because they (1) exercised control over
23 Plaintiff’s wages, hours, or working conditions; (2) suffered or permitted Plaintiff to work; (3) engaged
24 Plaintiff to work, thereby creating a common law employment relationship; and/or (4) operated as one
25 single enterprise.

26 8. The true names or capacities, whether individual, partner, or corporate, of the

27 ¹ Plaintiff self-identifies as gender nonconforming. Plaintiff’s pronouns are “they/them.” During the
28 time that Plaintiff worked for Defendants, they identified as male.

1 Defendants sued herein as DOES 4 to 10, inclusive, are currently unknown to Plaintiff, who therefore
2 sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will seek
3 leave from this Court to amend this Complaint when such true names and capacities are discovered.
4 Plaintiff is informed and believes, and thereon alleges, that each of said fictitious Defendants, whether
5 individual, partners, agents, or corporate, was responsible in some manner for the acts and omissions
6 alleged herein, and proximately caused Plaintiff to be subject to the unlawful discrimination, wrongs,
7 injuries and damages complained of herein.

8 9. At all times herein mentioned, each of said Defendants participated in the doing of the
9 acts hereinafter alleged to have been done by the named Defendants; and each of them, were the
10 agents, servants, and employees of each and every one of the other Defendants, as well as the agents of
11 all Defendants, and at all times herein mentioned were acting within the course and scope of said
12 agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise
13 ratified each and every one of the acts or omissions complained of herein.

14 10. At all times mentioned herein, Defendants, and each of them, were members of and
15 engaged in a joint venture, partnership, and common enterprise, and were acting within the course and
16 scope of and in pursuance of said joint venture, partnership, and common enterprise.

17 11. Each of the Defendants has aided and abetted the other Defendants in the commission
18 of the violations against Plaintiff.

19 **FACTUAL ALLEGATIONS**

20 12. Joseph Dalla Betta (“Dalla Betta” or “Plaintiff”) is 25 years old. Dalla Betta studied
21 Clinical Psychology and English Literature at Tufts University and is pursuing a career as a writer.

22 13. Flaunt Magazine, Inc. (hereinafter, “Flaunt”) is a satirical fashion and culture magazine
23 based in Los Angeles, California. Flaunt was founded in 1998. Flaunt publishes six issues per year.
24 Flaunt’s covers have featured many high-profile actors and musicians, including Pamela Anderson,
25 Beyoncé, Cate Blanchett, Christian Bale, Kate Beckinsale, Jessica Chastain, Benedict Cumberbatch,
26 Zac Efron, James Franco, Selena Gomez, Liam Hemsworth, Vanessa Hudgens, Nick Jonas, Keira
27 Knightley, Diane Kruger, Jared Leto, Bruno Mars, Leighton Meester, Shawn Mendes, Julianne Moore,
28 Carey Mulligan, Sarah Paulson, Brad Pitt, Charlie Puth, Daniel Radcliffe, Norman Reedus, Saoirse

1 Ronan, Winona Ryder, Britney Spears, Kristen Stewart, Miles Teller, Kanye West, and Ziyi Zhang.

2 14. Defendant Luis A. Barajas, Jr. (hereinafter, “Barajas”) is Flaunt’s Chief Executive
3 Officer. Barajas is the spouse of Jim Turner, the Creative Director and a co-founder of Flaunt. Barajas
4 and Turner previously ran a well-known fashion magazine called *Detour*.

5 15. Defendant Matthew Bedard (hereinafter, “Bedard”) is the Editor-in-Chief of Flaunt.

6 16. On approximately June 13, 2018, Dalla Betta started working at Flaunt two days per
7 week as an unpaid intern.

8 17. On or around June 27, 2018, Flaunt offered Dalla Betta a paid position as the Assistant
9 to the Chief Executive Officer (“CEO”), Luis Barajas. Dalla Betta accepted, and started as the
10 Assistant to the CEO on approximately July 7, 2018.

11 18. Flaunt provided Dalla Betta a document titled “Welcome Packet 2018.” It contains
12 information about parking, the dress code, and the Flaunt style guide. The “Welcome Packet 2018”
13 does not contain any information about overtime compensation, off-the-clock work, or rest and meal
14 breaks for hourly employees. It contains no policies or procedures about sexual harassment,
15 discrimination, or retaliation. It contains no contact information for a Human Resources Department.
16 The Welcome Packet states: “[W]e are a casual office. We are also provocative and have a progressive
17 and liberal attitude. Please be aware that this is not your typical ‘office experience.’”

18 19. When Dalla Betta started at Flaunt, they received no training or orientation about sexual
19 harassment, discrimination and retaliation. To Dalla Betta’s knowledge, Flaunt has no written or
20 unwritten policies against sexual harassment, discrimination and retaliation, and no Human Resources
21 Department.

22 **Sexual Harassment and Sexual Assault Allegations**

23 20. Barajas regularly made sexually explicit jokes, comments and advances toward Dalla
24 Betta. On countless occasions, Barajas said in front of Dalla Betta and their coworkers that Dalla Betta
25 was a “closeted queer.” Barajas told Dalla Betta and other Flaunt employees that he was “just waiting
26 for something to happen” between himself and Dalla Betta, or words to that effect. Barajas and
27 Bedard liked to joke about giving Dalla Betta “a raise for a raise”—insinuating that Dalla Betta would
28 get a raise if Dalla Betta gave Barajas an erection. Barajas often sent Dalla Betta sexually explicit text

1 messages and emojis.

2 21. Dalla Betta observed that, at Flaunt and beyond, Barajas had a reputation as a harasser.
3 For example, Ward Simmons, Vice President of Marketing, Advertising, and Public Relations at
4 Baccarat (a frequent advertiser in Flaunt's issues), met Dalla Betta at a party and joked, "Oh, you're
5 Luis's assistant? How many times have you been sexually harassed today?" or words to that effect.

6 22. Barajas frequently kissed Dalla Betta to greet them hello or goodbye. Dalla Betta often
7 turned away so that Barajas kissed Dalla Betta on the cheek instead of their lips. But on a number of
8 occasions, Barajas held Dalla Betta's head still and kissed Dalla Betta on the lips. Dalla Betta was
9 intensely uncomfortable with Barajas's unwanted kissing.

10 23. Soon after starting at Flaunt, Dalla Betta learned that Barajas and Bedard have a long-
11 standing sexual relationship. Barajas's and Bedard's sexual relationship is an open secret at Flaunt.
12 Barajas complained to Dalla Betta about Bedard's treatment of him. For example, Barajas showed
13 Dalla Betta the text messages Bedard sent Barajas, and said to Dalla Betta, "Why is he so cold?
14 Doesn't he love me?" In text messages and when Barajas spoke to Dalla Betta, Barajas referred to
15 Bedard as "Boo #1." Bedard started at Flaunt as an unpaid intern, like Dalla Betta, and worked his
16 way up to Editor-in-Chief. Dalla Betta's knowledge that Barajas and Bedard have a sexual
17 relationship led Dalla Betta to the belief that their career prospects at Flaunt depended, in part, on
18 tolerance of Barajas's sexual harassment.

19 24. On August 13, 2018, Dalla Betta traveled with Barajas and Matt Goodwin, Flaunt's
20 publisher, to Las Vegas, Nevada for a fashion industry trade show. In advance of the trade show,
21 Barajas asked Dalla Betta to book rooms for them in Las Vegas. Barajas requested a room with two
22 double beds, two connected rooms, or a suite with two beds to share with Dalla Betta. Per Barajas's
23 request, Dalla Betta booked a suite at the Cosmopolitan Hotel that included a master bedroom, a living
24 area with a fold-out couch, and an adjoining room with a separate bathroom. Dalla Betta's
25 understanding was that Barajas would sleep in the master bedroom, and Dalla Betta would sleep on the
26 fold-out couch. Goodwin would have the separate adjoining room to himself. Dalla Betta was nervous
27 about the sleeping arrangements, but felt uncomfortable challenging their boss.

28 25. Goodwin, Barajas and Dalla Betta attended the trade show on August 13. After the day

1 working the trade show, Goodwin, Barajas and Dalla Betta gambled and consumed alcohol. Barajas
2 gave Dalla Betta money to gamble and bought Dalla Betta drinks. Dalla Betta became intoxicated.
3 Barajas and Dalla Betta returned to their shared room. Dalla Betta began to feel ill. Dalla Betta told
4 Barajas, "I am going to take a shower and go to bed," or words to that effect.

5 26. Dalla Betta went to the bathroom to take a shower and locked the bathroom door.
6 Barajas knocked on the bathroom door and said that he wanted to check on Dalla Betta. Dalla Betta
7 felt very uncomfortable, but allowed Barajas into the bathroom. Barajas stared at Dalla Betta's naked
8 body. Dalla Betta finished showering while Barajas fetched a bathrobe and towel. Barajas asked Dalla
9 Betta to get into his bed with him. Barajas told Dalla Betta that he wanted to keep an eye on Dalla
10 Betta, since Dalla Betta was intoxicated. Dalla Betta told Barajas, "No, I am just going to sleep on the
11 couch," or words to that effect. Barajas kept insisting that Dalla Betta sleep in his bed with him. Dalla
12 Betta was very scared to say "no" to Barajas, so Dalla Betta laid down in Barajas's bed. Barajas put
13 his arm around Dalla Betta. Barajas started kissing Dalla Betta. Dalla Betta pulled away and told
14 Barajas: "No, I don't want to be doing this right now," or words to that effect. Dalla Betta said to
15 Barajas, "There are weird power dynamics at play because I really like my job and I don't want to put
16 it in jeopardy," or words to that effect. Barajas responded: "It's fine. It won't affect the job at all.
17 Don't worry about it," or words to that effect.

18 27. Barajas continued to try to kiss and touch Dalla Betta, and Dalla Betta continued pulling
19 away and saying "no." Dalla Betta told Barajas, "I feel like I am going to throw up," or words to that
20 effect. Dalla Betta rolled onto their side facing away from Barajas. Dalla Betta pretended to be asleep.
21 Barajas reached across Dalla Betta's body and grabbed Dalla Betta's penis. Barajas masturbated Dalla
22 Betta while Dalla Betta pretended to sleep for about five minutes. Barajas then masturbated himself
23 until he ejaculated. Finally, Barajas fell asleep.

24 28. When Dalla Betta and Barajas returned from Las Vegas the following day, August 14, a
25 Flaunt employee joked, "I hope Joey's ass is okay." On approximately August 19, 2018, Dalla Betta
26 confided in a trusted friend and colleague about Barajas trying to kiss them and fondling their genitals
27 against their will in the hotel room in Las Vegas. Dalla Betta told their friend that they were deeply
28 uncomfortable, but that they did not want to lose their job over the incident.

1 29. On or around September 21, 2018, Dalla Betta stayed late at the Flaunt office to help
2 Barajas. When Dalla Betta was leaving the office, Dalla Betta's hands were full of boxes and other
3 items. Barajas offered to retrieve Dalla Betta's car keys from their pants pocket. Barajas touched
4 Dalla Betta's pocket and squeezed the small stuffed bear on Dalla Betta's keychain, mistaking it for
5 Dalla Betta's penis over the pocket. Barajas made a lewd noise and facial expression at Dalla Betta.
6 When Barajas reached into Dalla Betta's pocket, Barajas realized that he had been fondling a teddy
7 bear key chain, and said to Dalla Betta, "Oh, you tease." Barajas gently hit Dalla Betta on the face
8 with the keychain. Later that night, Barajas texted Dalla Betta thanking them for staying late, and
9 informing Dalla Betta that they were getting a raise.

10 30. Flaunt frequently throws parties after regular working hours, which Flaunt employees
11 are expected to attend. On October 11, 2018, Flaunt partnered with a denim line called Neuw Denim
12 to throw a party at Madame Siam in Hollywood. Dalla Betta was required to assist Barajas at the
13 party. There was abundant alcohol on offer for party attendees and employees alike. Bedard appeared
14 to be very intoxicated and possibly under the influence of cocaine or another drug. Bedard approached
15 Dalla Betta and kissed Dalla Betta on the lips. Then Bedard slapped Dalla Betta with an open hand
16 three times on the face. Several Flaunt employees observed Bedard kiss and then hit Dalla Betta.

17 31. At the Neuw Denim party on October 11, 2018, Barajas instructed Dalla Betta to
18 follow him into the bathroom. Barajas grabbed Dalla Betta and kissed them forcefully on the lips.
19 Dalla Betta froze. Barajas and Dalla Betta left the bathroom together. After the party ended, Barajas
20 grabbed and kissed Dalla Betta again.

21 32. On October 12, 2018, the day after the Neuw Denim party, Dalla Betta had lunch with
22 Barajas and Bedard. Barajas told Dalla Betta at lunch, "I would like to make you Flaunt's Editor-in-
23 Chief one day if you can prove yourself," or words to that effect. On the heels of Barajas's and
24 Bedard's unconsented kissing and harassment of Dalla Betta the night before, Barajas's remark sent
25 Dalla Betta the message that, in order to succeed at the magazine, Dalla Betta would have to tolerate
26 sexual harassment and unconsented physical contact by Barajas and Bedard.

27 33. On November 11, 2018, in the afternoon, Dalla Betta walked into the kitchen at Flaunt
28 and found Barajas standing over the kitchen sink. Barajas appeared to be in a bad mood. Dalla Betta

1 asked Barajas what was wrong. Barajas responded, "I need something sweet," or words to that effect.
2 Dalla Betta offered him gelato that was in the freezer. Barajas responded that he wanted a kiss. Dalla
3 Betta initially refused because they did not want to kiss Barajas. But Dalla Betta allowed Barajas to
4 kiss them because, by that point, Dalla Betta felt resigned to the idea that providing sexual favors to
5 Barajas was part of the job.

6 34. On or around November 30, 2018, Dalla Betta was working at Barajas's opulent
7 mansion in the Hollywood hills. Barajas and Dalla Betta entered the elevator together. The lightbulb
8 in the elevator was out, so it was completely dark. Barajas grabbed Dalla Betta and forcibly kissed
9 them. Dalla Betta pulled away and told Barajas, "No." Barajas moved toward Dalla Betta, rubbed his
10 erection against Dalla Betta and asked, "Why are you being like that?"

11 35. On or around December 1, 2018, Flaunt held a 20th Anniversary Party at Barajas's
12 Hollywood mansion, attended by Kate Beckinsale, Ella Mai, David LaChapelle, and Dita Von Teese,
13 among other celebrities. At the party, a Flaunt editor approached Dalla Betta to report that Barajas had
14 groped him and kissed him without his consent. Dalla Betta disclosed to the editor that Barajas had
15 assaulted Dalla Betta in Las Vegas. Dalla Betta then began to understand that Barajas's treatment of
16 them was not anomalous, but instead part of a pattern and practice of sexually harassing subordinates.
17 At that point, Dalla Betta decided to speak up about Barajas to others at Flaunt.

18 36. On or around December 11, 2018, Mui-Hai Chu asked Dalla Betta if something was
19 wrong because Dalla Betta appeared upset. Dalla Betta told Chu, "Luis sexually assaulted me in Las
20 Vegas," or words to that effect, and described what had taken place. Chu was very troubled by Dalla
21 Betta's disclosure.

22 37. On or around December 12, 2018, Dalla Betta and two Flaunt editors held a meeting
23 with Barajas, Bedard and Chu. Dalla Betta and their colleagues told the management team that there
24 were major boundaries issues within the workplace at Flaunt. Barajas minimized their concerns,
25 stating: "I know that we mix professional and personal relationships in this office, and if we need to
26 separate those relationships from here on out, we can do that," or words to that effect. Barajas
27 promised, "We will stop doing cocaine with the interns," or words to that effect. Dalla Betta said to
28 Barajas, "This is about sexual assault and rape," or words to that effect. Dalla Betta demanded that

1 Barajas and Bedard get sober, attend therapy, and institute a Human Resources department in the
2 office. Barajas, Bedard and Chu nodded in agreement but did not make any commitments.

3 38. Dalla Betta and Barajas spoke privately after the group meeting disbanded. Dalla Betta
4 told Barajas, "I did not want to kiss you or do anything else with you in Las Vegas," or words to that
5 effect. Barajas told Dalla Betta that he was shocked. Barajas reassured Dalla Betta that the magazine
6 was closing for two weeks over the holidays, during which Dalla Betta and Barajas could reflect, take
7 care of themselves, and heal. Barajas offered Dalla Betta an editor position at Flaunt in 2019 so that
8 their contact would be less frequent. Barajas insisted that Dalla Betta stay at Flaunt to "see the positive
9 change you are creating," or words to that effect.

10 39. On or around December 13, 2018, Barajas informed Dalla Betta that Dalla Betta would
11 not, in fact, receive two weeks off during the holidays. Barajas explained to Dalla Betta that Flaunt's
12 policy was that employees were not entitled to a two-week break from work for winter holidays until
13 they had worked at Flaunt for longer than one year. Barajas said that Dalla Betta was to work over the
14 holiday break assisting Barajas to pack up and move the Flaunt offices. Dalla Betta understood that
15 this would mean that the two of them would be working side-by-side with no one else present. By that
16 time, Dalla Betta had realized how inappropriate Barajas's behavior was, and it was no longer
17 tolerable. Dalla Betta would not feel safe from Barajas's harassment and sexual assault under those
18 circumstances.

19 40. On December 14, 2018, Flaunt held a party at Avenue in Hollywood sponsored by
20 BCBG to honor Olivia Culpo, the 2012 Miss Universe. At the party, Dalla Betta observed Barajas
21 drinking tequila. Barajas took Dalla Betta to the bar, and told the bartender that Dalla Betta was
22 allowed to fetch him refills from his private stash of premium tequila behind the bar. At that party,
23 Dalla Betta heard a rumor that Barajas groped the boyfriend of one of Flaunt's interns. Based on
24 Barajas's behavior at the party, Dalla Betta believed that Barajas did not intend to meaningfully change
25 his conduct.

26 41. Given the intolerable circumstances described above, Dalla Betta stopped going to work
27 at Flaunt on December 17, 2018 and asked to take medical leave to address the anxiety and depression
28 Dalla Betta was experiencing as a result of the harassment and sexual assault they experienced at

1 Flaunt. Flaunt allowed Dalla Betta to take medical leave through February 4, 2019. Given the
2 intolerable working conditions described above, Dalla Betta resigned from their position at Flaunt on
3 February 6, 2019.

4 42. Dalla Betta has suffered severe emotional distress from the sexual harassment and
5 sexual assault they experienced at Flaunt. Dalla Betta has suffered and continues to suffer insomnia
6 and nightmares. Dalla Betta wakes up in physical pain from muscle tension. Dalla Betta has trouble
7 trusting people and forming relationships. The experience at Flaunt impaired Dalla Betta's confidence
8 in their writing, which is the career they still hope to pursue.

9 43. Despite looking for comparable jobs, Dalla Betta is currently unemployed with no
10 income. Dalla Betta is struggling financially to make ends meet.

11 44. Dalla Betta has satisfied all administrative prerequisites for filing this action. On March
12 11, 2019, Dalla Betta filed a charge with the Department of Fair Employment and Housing ("DFEH")
13 alleging discrimination, harassment and wrongful constructive discharge by Defendants. On March
14 11, 2019, the DFEH issued a right-to-sue letter. Dalla Betta commenced this action within one year of
15 receipt of the right-to-sue letter.

16 **Overtime and Off-The-Clock Allegations**

17 45. Dalla Betta was a non-exempt employee, primarily performing tasks that did not require
18 the exercise of discretion or judgment. Dalla Betta took instruction from Barajas, and did not
19 supervise or direct any employees. Dalla Betta's pay stubs reflect that Flaunt paid them twice a month
20 for a maximum of 86.67 hours. They initially earned \$10/hour, which was raised to \$12/hour in about
21 September 2018.

22 46. Flaunt had no time clock or paper time sheet system to track hourly employees' hours
23 worked and overtime. Dalla Betta regularly worked more than 86.67 hours in a two-week period, but
24 was never paid for more than 86.67 hours. Dalla Betta also was not paid any overtime compensation,
25 despite regularly working more than eight hours in a day and 40 hours in a week.

26 47. Shortly after Dalla Betta started, in approximately mid- to late-July 2018, Bedard held a
27 staff meeting. Bedard announced that there had been a complaint about the working hours. He stated
28 Flaunt might have to install a time clock, but would still expect employees to work more than 40 hours

1 per week. He stated that, if a time clock were installed, Flaunt would expect employees to clock out at
2 6:00 p.m., then return to their desks and continue working off-the-clock. Bedard said, "If you don't
3 feel comfortable doing that, you can leave and not work here anymore," or words to that effect.

4 48. On weekdays, Dalla Betta routinely worked from 10:00 a.m. until between 7:00 and
5 9:00 p.m. Dalla Betta worked much later into the night anytime Flaunt threw a party, or when Barajas
6 required Dalla Betta to escort Barajas to an evening event.

7 49. Dalla Betta worked at least ten parties thrown by Flaunt. When Flaunt threw a party,
8 Dalla Betta worked at the party until 1:00 or 2:00 a.m. As Barajas's assistant, Dalla Betta was required
9 to escort Barajas to the party, refill his drinks at the bar, hold his cigarettes, carry his coat, and
10 maintain custody of his keys and cell phone. Two or three times, Barajas instructed Dalla Betta to use
11 Barajas's cell phone to contact his drug dealer and coordinate with the drug dealer to deliver drugs to
12 Barajas at a party. Dalla Betta had to drive Barajas home or arrange a taxi or Rideshare to drive him
13 home from the parties at the end of the night. Barajas was always too intoxicated to drive himself.
14 Dalla Betta recalls that at one Flaunt party, they arranged a Rideshare to pick up Barajas; Dalla Betta
15 then handed Barajas his keys, phone and other belongings, and Dalla Betta then started to leave to go
16 home. Barajas yelled at Dalla Betta on the street in front of several Flaunt employees and party guests,
17 "You are not done until I am in a car going home!" or words to that effect. Barajas shoved his
18 personal belongings back into Dalla Betta's arms. Dalla Betta had to wait with Barajas and hold his
19 belongings until Barajas was inside his Rideshare.

20 50. Barajas also required Dalla Betta to escort him and Bedard to evening events that were
21 not sponsored or organized by Flaunt, such as gallery openings. Dalla Betta was required to drive
22 them to the event, hold Barajas's belonging, and then drive Barajas home or arrange transportation for
23 him. Dalla Betta recalls that once, they were at an event with Barajas and Mui-Hai Chu, Flaunt's
24 Fashion Editor. It was late and Dalla Betta was very tired. Chu said to Barajas, "Just let him go
25 home," or words to that effect. Barajas said, "If he does not drive me home, this will be all play and no
26 work."

27 51. Dalla Betta worked virtually every Saturday and Sunday. Barajas required Dalla Betta
28 to respond within 20 minutes to texts, calls and emails he sent Dalla Betta over the weekend between

1 the hours of 8:00 or 9:00 a.m. until about 8:00 or 9:00 p.m. Barajas would get angry if Dalla Betta did
2 not respond within 20 minutes. Barajas required Dalla Betta to perform tasks and run errands for him
3 every weekend. For example, one Saturday at 7:00 a.m., Dalla Betta had to accompany Barajas to pick
4 up an RV for a photo shoot.

5 52. During the entire time that Dalla Betta worked for Flaunt, they were paid twice monthly
6 for no more than 86.67 hours at \$10 per hour (until September 2018, when they received a raise to
7 \$12/hour). Dalla Betta worked more than eight hours per day and 40 hours per week, yet Flaunt did
8 not pay Dalla Betta for the hours they worked in excess of eight hours per day, or 40 hours per week—
9 not even at Dalla Betta’s straight time compensation rate, much less at the overtime rate. Dalla Betta
10 conservatively estimates that they regularly worked at least 60 to 75 hours per week, and accordingly
11 Flaunt failed to compensate them for approximately 20 to 35 hours of work per week throughout the
12 time they worked at Flaunt.

13 **Meal and Rest Break Allegations**

14 53. Flaunt did not provide Dalla Betta duty-free rest and meal breaks during the workday.
15 Barajas frequently required Dalla Betta to run errands for him during meal breaks. When Dalla Betta
16 stepped out of the office for a quick break or to get lunch, Barajas required Dalla Betta to carry and
17 monitor their cell phone throughout their break. Barajas got angry with Dalla Betta if they did not
18 answer Barajas’s phone call or immediately respond to a text message during a break.

19 54. Flaunt did not provide Dalla Betta with a second duty-free meal break when they
20 worked 10 or more hours. Flaunt did not provide Dalla Betta with a third duty-free rest break when
21 they worked twelve or more hours. Even if Dalla Betta stepped away from the office or a Flaunt party
22 or event for a breath of fresh air or to eat briefly, Barajas expected Dalla Betta to always carry and
23 monitor their cell phone, and to respond to all of Barajas’s phone calls and text messages.

24 **Unreimbursed Expenses Allegations**

25 55. Flaunt expected Dalla Betta to provide and use their own cell phone and laptop
26 computer for work purposes. Barajas sent Dalla Betta multiple text messages every day, and required
27 Dalla Betta to make countless business calls from their personal cell phone, including a number of
28 international calls. Dalla Betta used their personal laptop computer to send and review business-

1 related emails, make Barajas’s travel arrangements, conduct research for Barajas and Bedard, and draft
2 and edit copy for the magazine. Flaunt’s “Welcome Packet 2018” states, “You are expected to bring
3 your own laptop to do work at Flaunt.” Flaunt never reimbursed Dalla Betta for the business-related
4 use of their personal smartphone, data plan, and laptop computer.

5 **FIRST CAUSE OF ACTION**

6 **HARASSMENT (HOSTILE WORK ENVIRONMENT)**

7 **IN VIOLATION OF CAL. GOV’T CODE § 12940(j)(1)**

8 **(AGAINST ALL DEFENDANTS)**

9 56. Plaintiff restates and incorporates by reference each and every allegation contained in
10 the foregoing paragraphs as though fully set forth herein.

11 57. Cal. Gov’t Code § 12940(j)(1) makes it unlawful for an employer or any other person
12 “to harass an employee” because of sex or gender. An employer is strictly liable for the harassment of
13 a supervisor. *State Dept. of Health Services v. Superior Court*, 31 Cal. 4th 1026, 1041 (2003).

14 58. Defendants employed Plaintiff.

15 59. Defendants Barajas and Bedard were Plaintiff’s supervisors while Plaintiff was
16 employed at Flaunt.

17 60. Plaintiff was subject to verbal harassment by both Barajas and Bedard based on sex
18 and/or gender. Plaintiff was also subject to physical harassment by Barajas based on sex and/or
19 gender. Barajas’s verbal and physical acts against Plaintiff were unwelcome, and sufficiently severe
20 and pervasive to alter the conditions of Plaintiff’s employment.

21 61. Barajas, as Flaunt’s Chief Executive Officer, was a supervisor of Flaunt. Bedard, as
22 Flaunt’s Editor-in-Chief, was a supervisor of Flaunt. Defendants are therefore strictly liable for
23 Barajas’s and Bedard’s harassment of Plaintiff.

24 62. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiff has suffered
25 and will continue to suffer both physical and emotional injuries. Plaintiff has suffered and continues to
26 suffer loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and
27 compensatory damages in amounts to be proven at trial.

28 63. The conduct of Defendants as described herein was malicious, fraudulent, and

1 oppressive and/or done with a willful and conscious disregard for Plaintiff's rights and for the
2 deleterious consequences of their actions. Consequently, Plaintiff is entitled to punitive damages
3 against Defendants.

4 **SECOND CAUSE OF ACTION**

5 **HARASSMENT (QUID PRO QUO)**

6 **IN VIOLATION OF CAL. GOV'T CODE § 12940(j)(1)**

7 **(AGAINST ALL DEFENDANTS)**

8 64. Plaintiff restates and incorporates by reference each and every allegation contained in
9 the foregoing paragraphs as though fully set forth herein.

10 65. Cal. Gov't Code § 12940(j)(1) makes it unlawful for an employer or any other person
11 "to harass an employee" because of sex or gender. An employer is strictly liable for the harassment of
12 a supervisor. *State Dept. of Health Services v. Superior Court*, 31 Cal. 4th 1026, 1041 (2003).

13 66. Defendants employed Plaintiff.

14 67. Defendants Barajas and Bedard were Plaintiff's supervisors while Plaintiff was
15 employed at Flaunt.

16 68. Plaintiff was subject to quid pro quo sexual harassment by Defendants Barajas and
17 Bedard based on sex and/or gender. Barajas and Bedard made unwanted sexual advances to Plaintiff
18 and engaged in unwanted verbal and physical sexual conduct with Plaintiff. The terms and conditions
19 of Plaintiff's employment at Flaunt were made contingent on Plaintiff's acceptance of Barajas's and
20 Bedard's sexual advances and physical sexual conduct.

21 69. Barajas, as Flaunt's Chief Executive Officer, was a supervisor of Flaunt. Bedard, as
22 Flaunt's Editor-in-Chief, was a supervisor of Flaunt. Defendants are therefore strictly liable for
23 Barajas's and Bedard's harassment of Plaintiff.

24 70. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
25 and will continue to suffer both physical and emotional injuries. Plaintiff has suffered and continues to
26 suffer loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and
27 compensatory damages in amounts to be proven at trial.

28 71. The conduct of Defendants as described herein was malicious, fraudulent, and

1 oppressive and/or done with a willful and conscious disregard for Plaintiff's rights and for the
2 deleterious consequences of their actions. Consequently, Plaintiff is entitled to punitive damages
3 against Defendants.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT**

6 **IN VIOLATION OF CAL. GOV'T CODE § 12940(k)**

7 **(AGAINST DEFENDANT FLAUNT)**

8 72. Plaintiff restates and incorporates by reference each and every allegation contained in
9 the foregoing paragraphs as though fully set forth herein.

10 73. Cal. Gov't Code § 12940(k) makes it an unlawful employment practice for an employer
11 to "fail to take all reasonable steps to prevent discrimination and harassment from occurring" in the
12 workplace. When a plaintiff seeks to recover damages based on a claim of failure to prevent
13 discrimination, three essential elements must be shown: 1) plaintiff was subjected to discrimination
14 and/or harassment; 2) defendant failed to take all reasonable steps to prevent discrimination and/or
15 harassment; and, 3) this failure caused plaintiff to suffer injury, damage, loss, or harm.

16 74. Defendants violated Gov't Code § 12940(k) by failing to prevent the harassing conduct
17 Plaintiff suffered. Defendants were aware of the harassment to which Barajas and Bedard subjected
18 Plaintiff on the basis of sex and/or gender, yet they did nothing to stop the harassment from occurring.
19 Instead, they ignored the harassment.

20 75. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
21 and will continue to suffer both physical and emotional injuries. Plaintiff has suffered and continues to
22 suffer loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and
23 compensatory damages in amounts to be proven at trial.

24 76. The conduct of Defendants as described herein was malicious, fraudulent, and
25 oppressive and/or done with a willful and conscious disregard for Plaintiff's rights and for the
26 deleterious consequences of their actions. Consequently, Plaintiff is entitled to punitive damages
27 against Defendants.

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FOURTH CAUSE OF ACTION
WRONGFUL CONSTRUCTIVE DISCHARGE
(AGAINST ALL DEFENDANTS)

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4 77. Plaintiff restates and incorporates by reference each and every allegation contained in
5 the foregoing paragraphs as though fully set forth herein.

6 78. “In order to establish a constructive discharge, an employee must plead and prove...that
7 the employer either intentionally created or knowingly permitted working conditions that were so
8 intolerable or aggravated at the time of the employee’s resignation that a reasonable employer would
9 realize that a reasonable person in the employee’s position would be compelled to resign.” *Turner v.*
10 *Anheuser-Busch, Inc.*, 7 Cal.4th 1238, 1251 (1994). “[T]he requisite knowledge or intent must exist on
11 the part of either the employer or those persons who effectively represent the employer, i.e., its
12 officers, directors, managing agents, or supervisory employees.” *Id.*

13 79. “Even after establishing *constructive* discharge, an employee must independently prove
14 a breach of contract or tort in connection with employment termination in order to obtain damages
15 for *wrongful* discharge.” *Turner*, 7 Cal.4th at 1251. “[A]n employer has no right to terminate
16 employment for a reason that contravenes fundamental public policy as expressed in a constitutional or
17 statutory provision. [] An actual or constructive discharge in violation of fundamental public policy
18 gives rise to a tort action in favor of the terminated employee.” *Id.* at 1252 (internal citation omitted).

19 80. Defendants intentionally created and knowingly permitted working conditions that were
20 so intolerable at the time of Plaintiff’s resignation that a reasonable employer would realize that a
21 reasonable person in Plaintiff’s position would be compelled to resign.

22 81. Plaintiff was, in fact, compelled to resign by the intolerable working conditions
23 Defendants intentionally created and knowingly permitted.

24 82. Plaintiff’s constructive discharge was wrongful because the intolerable conditions
25 resulting in their discharge contravene fundamental public policy. Defendants sexually harassed
26 Plaintiff in violation of FEHA. Defendants failed to prevent Plaintiff’s sexual harassment in violation
27 of FEHA. Defendants battered, assaulted, and intentionally inflicted emotional distress on Plaintiff.

28 83. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiff has suffered

1 and will continue to suffer both physical and emotional injuries. Plaintiff has suffered and continues to
2 suffer loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and
3 compensatory damages in amounts to be proven at trial.

4 84. The conduct of Defendants as described herein was malicious, fraudulent, and
5 oppressive and/or done with a willful and conscious disregard for Plaintiff's rights and for the
6 deleterious consequences of their actions. Consequently, Plaintiff is entitled to punitive damages
7 against Defendants.

8 **FIFTH CAUSE OF ACTION**

9 **BATTERY**

10 **(AGAINST ALL DEFENDANTS)**

11 85. Plaintiff restates and incorporates by reference each and every allegation contained in
12 the foregoing paragraphs as though fully set forth herein.

13 86. A person is liable for battery if the person intentionally caused a harmful or offensive
14 touching of another person.

15 87. Defendants Barajas and Bedard acted with intent to cause a harmful or offensive
16 touching of Plaintiff, and harmful and offensive touching of Plaintiff resulted.

17 88. Defendants Barajas's and Bedard's harmful and offensive touching of Plaintiff was a
18 proximate cause of Plaintiff's harm.

19 89. Defendants Barajas and Bedard engaged in the unlawful conduct in the course and
20 scope of their employment with Flaunt. Flaunt is therefore liable for Barajas's and Bedard's conduct
21 under the doctrine of *respondeat superior*. Flaunt is also liable because it ratified and condoned
22 Barajas's and Bedard's conduct after-the-fact by failing to take any remedial action once it learned of
23 their conduct.

24 90. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
25 and will continue to suffer both physical and emotional injuries. Plaintiff has suffered and continues to
26 suffer loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and
27 compensatory damages in amounts to be proven at trial.

28 91. The conduct of Defendants as described herein was malicious, fraudulent, and

1 oppressive and/or done with a willful and conscious disregard for Plaintiff's rights and for the
2 deleterious consequences of their actions. Consequently, Plaintiff is entitled to punitive damages
3 against Defendants.

4 **SIXTH CAUSE OF ACTION**
5 **SEXUAL BATTERY IN VIOLATION OF**
6 **CAL. CIVIL CODE § 1708.5**
7 **(AGAINST ALL DEFENDANTS)**

8 92. Plaintiff restates and incorporates by reference each and every allegation contained in
9 the foregoing paragraphs as though fully set forth herein.

10 93. Cal. Civil Code § 1708.5(a) provides: "A person commits a sexual battery who does
11 any of the following: (1) Acts with the intent to cause a harmful or offensive contact with an intimate
12 part of another, and a sexually offensive contact with that person directly or indirectly results. (2) Acts
13 with the intent to cause a harmful or offensive contact with another by use of his or her intimate part,
14 and a sexually offensive contact with that person directly or indirectly results. (3) Acts to cause an
15 imminent apprehension of the conduct described in paragraph (1) or (2), and a sexually offensive
16 contact with that person directly or indirectly results."

17 94. Barajas intentionally threatened to commit, caused an imminent apprehension of, and in
18 fact committed a harmful and offensive contact with Plaintiff's genitals and other parts of Plaintiff's
19 body. Plaintiff did not consent to this contact. A reasonable person in Plaintiff's position would have
20 been offended and intimidated by the belief that Barajas intended to carry out, and in actuality did
21 carry out, his violent threatened conduct.

22 95. Defendants knew or should have known that Plaintiff was in danger of being subject to
23 sexual battery by Barajas, but failed to take any action to protect Plaintiff.

24 96. Defendant Barajas engaged in the unlawful conduct in the course and scope of his
25 employment with Flaunt. Flaunt is therefore liable for Barajas's conduct under the doctrine of
26 *respondeat superior*. Flaunt is also liable because it ratified and condoned Barajas's conduct after-the-
27 fact by failing to take any remedial action once it learned of his conduct.

28 97. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered

1 and will continue to suffer both physical and emotional injuries. Plaintiff has suffered and continues to
2 suffer loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and
3 compensatory damages in amounts to be proven at trial.

4 98. The conduct of Defendants as described herein was malicious, fraudulent, and
5 oppressive and/or done with a willful and conscious disregard for Plaintiff's rights and for the
6 deleterious consequences of their actions. Consequently, Plaintiff is entitled to punitive damages
7 against Defendants.

8 **SEVENTH CAUSE OF ACTION**

9 **ASSAULT**

10 **(AGAINST ALL DEFENDANTS)**

11 99. Plaintiff restates and incorporates by reference each and every allegation contained in
12 the foregoing paragraphs as though fully set forth herein.

13 100. A person is liable for assault if the person intentionally threatened another person
14 causing a reasonable apprehension of an imminent harmful or offensive bodily contact.

15 101. Defendants Barajas and Bedard acted with intent to threaten Plaintiff with an imminent
16 harmful or offensive bodily contact and caused Plaintiff a reasonable apprehension of such contact.

17 102. Barajas's and Bedard's acts were a proximate cause of Plaintiff's harm.

18 103. Barajas and Bedard engaged in the unlawful conduct in the course and scope of their
19 employment with Flaunt. Flaunt is therefore liable for Barajas's and Bedard's conduct under the
20 doctrine of *respondeat superior*. Flaunt is also liable because it ratified and condoned Barajas's and
21 Bedard's conduct after-the-fact by failing to take any remedial action once it learned of their conduct.

22 104. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
23 and will continue to suffer both physical and emotional injuries. Plaintiff has suffered and continues to
24 suffer loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and
25 compensatory damages in amounts to be proven at trial.

26 105. The conduct of Defendants as described herein was malicious, fraudulent, and
27 oppressive and/or done with a willful and conscious disregard for Plaintiff's rights and for the

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1 deleterious consequences of their actions. Consequently, Plaintiff is entitled to punitive damages
2 against Defendants.

3 **EIGHTH CAUSE OF ACTION**

4 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

5 **(AGAINST ALL DEFENDANTS)**

6 106. Plaintiff restates and incorporates by reference each and every allegation contained in
7 the foregoing paragraphs as though fully set forth herein.

8 107. A person is liable for intentional infliction of emotional distress if his or her conduct is
9 outrageous; the person either intended to cause another emotional distress or acted with reckless
10 disregard of the probability that the other person would suffer emotional distress; the other person
11 suffered severe emotional distress; and the conduct was a substantial factor in causing the emotional
12 distress.

13 108. Defendants engaged in outrageous conduct against Plaintiff, including but not limited to
14 harassment, battery, and assault against Plaintiff.

15 109. Defendants intended to cause, or acted in reckless disregard of the probability of
16 causing, emotional distress to Plaintiff.

17 110. Defendants' conduct proximately caused Plaintiff severe emotional suffering and
18 distress.

19 111. Defendants Barajas and Bedard engaged in the unlawful conduct in the course and
20 scope of their employment with Flaunt. Flaunt is therefore liable for Barajas's and Bedard's conduct
21 under the doctrine of *respondeat superior*. Flaunt is also liable because it ratified and condoned
22 Barajas's and Bedard's conduct after-the-fact by failing to take any remedial action once it learned of
23 their conduct.

24 112. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
25 and will continue to suffer both physical and emotional injuries. Plaintiff has suffered and continues to
26 suffer loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and
27 compensatory damages in amounts to be proven at trial.

28 113. The conduct of Defendants as described herein was malicious, fraudulent, and

1 oppressive and/or done with a willful and conscious disregard for Plaintiff's rights and for the
2 deleterious consequences of their actions. Consequently, Plaintiff is entitled to punitive damages
3 against Defendants.

4 **NINTH CAUSE OF ACTION**
5 **FAILURE TO PAY OVERTIME WAGES**
6 **(AGAINST ALL DEFENDANTS)**

7 114. Plaintiff restates and incorporates by reference each and every allegation contained in
8 the foregoing paragraphs as though fully set forth herein.

9 115. It is unlawful under California law for an employer to suffer or permit an employee to
10 work in excess of eight hours per workday or 40 hours per workweek without paying premium wages
11 under California Labor Code § 510 and IWC Wage Order 5 § 3. Employees who work more than 12
12 hours per day are entitled to an overtime premium of twice their regular rate of pay. *Id.* It is also
13 unlawful under California law for an employer to suffer or permit an employee to work in excess of 30
14 hours per workweek or six hours per day during any seven-day workweek under Labor Code §§ 550-
15 56, or to suffer or permit an employee to work on the seventh day of a seven-day workweek without
16 paying premium wages under California Labor Code § 510 and IWC Wage Order 5 § 3.

17 116. California Labor Code § 1198 makes employment of an employee for longer hours than
18 the IWC sets or under conditions the IWC prohibits unlawful. California Labor Code § 1194(a) entitles
19 an employee to recover in a civil action the unpaid balance of all overtime compensation due but not
20 paid.

21 117. California Labor Code § 558.1 states that: "Any employer or other person acting on
22 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum
23 wages or hours and days of work in any order of the [IWC]...may be held liable as the employer[.]"
24 For purposes of § 558.1, "the term 'other person acting on behalf of an employer' is...a natural person
25 who is an owner, director, officer, or managing agent of the employer[.]"

26 118. Plaintiff routinely worked in excess of eight and 12 hours per workday and in excess of
27 40 hours per workweek.

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1 119. Plaintiff also worked seven-day workweeks in excess of six hours per day and in excess
2 of 40 hours per week.

3 120. Defendants maintained a policy and/or practice of not paying Plaintiff for overtime, and
4 did not properly compensate Plaintiff properly for Plaintiff's overtime hours under California law.

5 121. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
6 sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount
7 to be established at trial, and is entitled to recover economic and statutory damages and penalties and
8 other appropriate relief from defendants' violations of the California Labor Code and IWC Wage
9 Order 5.

10 **TENTH CAUSE OF ACTION**
11 **MINIMUM WAGE VIOLATIONS**
12 **(AGAINST ALL DEFENDANTS)**

13 122. Plaintiff restates and incorporates by reference each and every allegation contained in
14 the foregoing paragraphs as though fully set forth herein.

15 123. California Labor Code §§ 1182.11 and 1197, and IWC Wage Order 5 § 4, require
16 Defendants to pay employees at or above the state minimum wage for every hour Defendants suffer or
17 permit employees to work.

18 124. California Labor Code § 1198 makes employment of an employee under conditions the
19 IWC prohibits unlawful. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer
20 that has failed to pay its employees the legal minimum wage is liable to pay those employees the
21 unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
22 unpaid and interest thereon.

23 125. California Labor Code § 558.1 states that: "Any employer or other person acting on
24 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum
25 wages or hours and days of work in any order of the [IWC]...may be held liable as the employer[.]"
26 For purposes of § 558.1, "the term 'other person acting on behalf of an employer' is...a natural person
27 who is an owner, director, officer, or managing agent of the employer[.]"

28 126. Defendants failed to pay Plaintiff at or above the California minimum wage for many

1 hours Plaintiff worked, including but not limited to mandatory hours that Defendants required Plaintiff
2 to work but failed to provide any compensation for such work (*i.e.*, “off the clock” work).

3 127. As a direct and proximate result of Defendants’ unlawful conduct as alleged herein,
4 Plaintiff has sustained economic damages, including but not limited to unpaid wages and lost interest,
5 in an amount to be established at trial, and is entitled to recover economic and statutory damages and
6 penalties and other appropriate relief from defendants’ violations of the California Labor Code and
7 IWC Wage Order 5.

8 **ELEVENTH CAUSE OF ACTION**

9 **REST BREAK VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

11 128. Plaintiff restates and incorporates by reference each and every allegation contained in
12 the foregoing paragraphs as though fully set forth herein.

13 129. California Labor Code § 226.7(a) prohibits an employer from requiring an employee to
14 work during any rest period mandated by an applicable Industrial Wage Order. IWC Wage Order No. 5
15 § 12(A) requires employers to authorize and permit employees to take a paid rest period of at least 10
16 minutes for every four hours worked or major fraction thereof, which insofar as practicable shall be in
17 the middle of each work period. Under both California Labor Code § 226.7(b) and IWC Wage Order 5
18 § 12(B), if an employer fails to provide an employee a rest period as required, the employer must pay
19 the employee one hour of pay at the employee’s regular rate of compensation for each workday that a
20 rest period is not provided as required.

21 130. California Labor Code § 1198 makes employment of an employee under conditions the
22 IWC prohibits unlawful.

23 131. Defendants had a policy or practice of failing to authorize and permit Plaintiff to take
24 the rest periods required by California Labor Code § 226.7 and IWC Wage Order 5 § 12.

25 132. Defendants also had a policy or practice of failing to pay Plaintiff an additional one
26 hour of compensation at Plaintiff’s regular rate of pay when they were not provided with a rest period.

27 133. As a direct and proximate result of Defendants’ unlawful conduct as alleged herein,
28 Plaintiff sustained economic damages, including but not limited to unpaid wages and lost interest, in an

1 amount to be established at trial. Plaintiff is entitled to recover economic and statutory damages and
2 penalties and other appropriate relief from Defendants' violations of the California Labor Code and
3 IWC Wage Order No. 5.

4 **TWELFTH CAUSE OF ACTION**

5 **MEAL BREAK VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

7 134. Plaintiff restates and incorporates by reference each and every allegation contained in
8 the foregoing paragraphs as though fully set forth herein.

9 135. California Labor Code § 512(a) prohibits an employer from employing a worker for
10 work period of more than five hours per day without providing the employee with a 30-minute meal
11 period. It also prohibits an employer from employing a worker for a work period of more than ten
12 hours per day without providing a second 30-minute meal period. Labor Code § 226.7(a) prohibits an
13 employer from requiring an employee to work during any meal period mandated by an applicable
14 Industrial Wage Order. IWC Wage Order 5 § 11(A) prohibits employers from employing a worker for
15 more than five hours without a meal period of at least 30 minutes. Under both California Labor Code §
16 226.7(b) and IWC Wage Order 5 § 11(B), if an employer fails to provide an employee a meal period as
17 required, the employer must pay the employee one hour of pay at the employee's regular rate of
18 compensation for each workday that the meal period is not provided as required.

19 136. California Labor Code § 1198 makes employment of an employee under conditions the
20 IWC prohibits unlawful.

21 137. Defendants had a policy or practice of failing to authorize and permit Plaintiff to take
22 the lawful meal periods required by California Labor Code § 226.7 and IWC Wage Order 5 § 12.

23 138. Defendants also had a policy or practice of failing to pay Plaintiff an additional one
24 hour of compensation at Plaintiff's regular rate of pay when they were not provided with a meal
25 period.

26 139. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
27 Plaintiff sustained economic damages, including but not limited to unpaid wages and lost interest, in an
28 amount to be established at trial. Plaintiff is entitled to recover economic and statutory damages and

1 penalties and other appropriate relief from Defendants' violations of the California Labor Code and
2 IWC Wage Order No. 5.

3 **THIRTEENTH CAUSE OF ACTION**

4 **UNLAWFUL FAILURE TO REIMBURSE FOR NECESSARY EXPENDITURES**

5 **(AGAINST ALL DEFENDANTS)**

6 140. Plaintiff restates and incorporates by reference each and every allegation contained in
7 the foregoing paragraphs as though fully set forth herein.

8 141. Labor Code § 2802(a) provides: "An employer shall indemnify his or her employee for
9 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
10 his or her duties, or of his or her obedience or the directions of the employer, even though unlawful,
11 unless the employee, at the time of obeying the directions, believed them to be unlawful."

12 142. Defendants had a policy of requiring Plaintiff to supply and use their own personal
13 smartphone, data plan, and laptop computer for Flaunt business. Defendants had an unlawful policy of
14 failing to reimburse or otherwise indemnify Plaintiff for the costs of purchasing a smartphone, data
15 plan and laptop computer.

16 143. Plaintiff suffered losses equal to the value of any unreimbursed necessary expenditures,
17 and therefore has not been paid all wages due and is entitled to restitution and/or payments of unpaid
18 wages in amounts to be proven at trial.

19 **FOURTEENTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

21 **(AGAINST ALL DEFENDANTS)**

22 144. Plaintiff restates and incorporates by reference each and every allegation contained in
23 the foregoing paragraphs as though fully set forth herein.

24 145. California Labor Code § 226(a) requires employers semimonthly or at time of paying
25 wages to provide to their employees the following information: gross and net wages earned, total hours
26 worked (including overtime hours), all applicable hourly rates (including overtime rates), and the name
27 and address of the legal entity that is the employer. IWC Wage Order 5 § 7(B) similarly requires
28 employers semimonthly or at the time of each payment of wages to furnish to each employee an

1 itemized statement in writing showing the correct name of the employer. These required disclosures of
2 information are essential to enable employees to determine whether they have been paid in compliance
3 with the law and to determine the identity of the employers who are responsible for any payments that
4 remain due.

5 146. California Labor Code § 1198 makes employment of an employee under conditions the
6 IWC prohibits unlawful.

7 147. California Labor Code § 558.1 states that: “Any employer or other person acting on
8 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum
9 wages or hours and days of work in any order of the [IWC], or violates, or causes to be violated,
10 Section[] 226...may be held liable as the employer[.]” For purposes of § 558.1, “the term ‘other
11 person acting on behalf of an employer’ is...a natural person who is an owner, director, officer, or
12 managing agent of the employer[.]”

13 148. Pursuant to Defendants’ unlawful policies and practices as alleged herein, Defendants
14 have knowingly and intentionally failed to pay Plaintiff overtime compensation and for all hours
15 worked. Defendants’ policies and practices meant that the itemized wage statements Plaintiff received
16 did not contain the information required by Labor Code § 226(a).

17 149. California Labor Code § 226(e) provides that an employee who suffers injury as a result
18 of a knowing and intentional failure by an employer to comply with § 226(a) may recover the greater
19 of actual damages or the penalties designated by statute of \$50 for the initial pay period in which a
20 violation occurs and \$100 per employee for each violation in a subsequent pay period up to an
21 aggregate penalty of \$4,000.

22 150. Defendants knowingly and intentionally failed to furnish Plaintiff with the information
23 required by California Labor Code § 226(a) and IWC Wage Order 5 § 7(B). The willful nature of
24 Defendants’ actions is further demonstrated by Defendants’ threat to terminate Plaintiff employees who
25 complained about not receiving overtime wages.

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1 **FIFTEENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

4 151. Plaintiff restates and incorporates by reference each and every allegation contained in
5 the foregoing paragraphs as though fully set forth herein.

6 152. Defendants have engaged in unfair and unlawful business practices in violation of
7 California Business & Professions Code §§ 17200, *et seq.*, by engaging in the unlawful conduct
8 alleged above, including but not limited to: failing to pay the overtime premiums required by state law;
9 failing to pay the minimum wage required by state law; requiring employees to work seven-day weeks
10 that include more than 30 hours of work including workdays in excess of six hours per day; failing to
11 reimburse necessary expenses; failing to provide employees information required by California Labor
12 Code §§ 226(a); and threatening retaliation against employees who complain about not receiving
13 proper overtime pay.

14 153. Plaintiff is informed and believes, and based upon such information and belief, alleges
15 that by engaging in the unfair and unlawful business practices complained of above, Defendants were
16 able to lower their labor costs and thereby obtain a competitive advantage over law-abiding employers
17 with which they compete, in violation of California Business & Professions Code §§ 17200, *et seq.*,
18 and California Labor Code § 90.5(a), which sets forth the public policy of California to enforce
19 minimum labor standards vigorously to ensure that employees are not required or permitted to work
20 under substandard and unlawful conditions and to protect law-abiding employers and their employees
21 from competitors that lower their costs by failing to comply with minimum labor standards.

22 154. As a direct and proximate result of Defendants' unfair and unlawful conduct as alleged
23 herein, Plaintiff has sustained injury and damages, including unpaid wages and lost interest, in an
24 amount to be established at trial. Plaintiff seeks restitution of all unpaid wages owed to Plaintiff,
25 disgorgement of all profits that Defendants have enjoyed as a result of their unfair and unlawful
26 business practices, penalties, and injunctive relief.

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1 **SIXTEENTH CAUSE OF ACTION**

2 **DECLARATORY RELIEF**

3 **(AGAINST ALL DEFENDANTS)**

4 155. Plaintiff restates and incorporates by reference each and every allegation contained in
5 the foregoing paragraphs as though fully set forth herein.

6 156. Under § 1060 of the California Code of Civil Procedure, any person who “who desires a
7 declaration of his or her rights or duties with respect to another . . . may, in cases of actual controversy
8 relating to the legal rights and duties of the respective parties, bring an original action or
9 crosscomplaint in the superior court for a declaration of his or her rights.”

10 157. Plaintiff desires a declaration of their rights and each Defendant’s duties to Plaintiff
11 under California’s overtime provisions, set forth in Labor Code § 510 and IWC Wage Order 5 § 3.
12 Under these provisions, it is unlawful for an employer to suffer or permit an employee to work in
13 excess of eight and twelve hours per workday or 40 hours per workweek without paying premium
14 wages. It is also unlawful under California law for an employer to suffer or permit an employee to
15 work in excess of 30 hours per workweek or six hours per day during any seven-day workweek under
16 Labor Code §§ 550-56, or to suffer or permit an employee to work on the seventh day of a seven-day
17 workweek without paying premium wages under California Labor Code §510 and IWC Wage Order 5
18 § 3. There exists an actual controversy between Plaintiff and Defendants relating to the rights and
19 duties of the parties under these laws.

20 158. Accordingly, Plaintiff brings this claim against each Defendant to obtain a declaratory
21 judgment establishing that Defendants had a policy or practice of failing to provide Plaintiff with
22 overtime pay when Plaintiff worked more than eight and twelve hours in a work day, 40 hours in a
23 workweek, or on a seventh day or work, and that such policy or practice violates California law.

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff demands a jury trial on all issues so triable.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as
5 follows:

- 6 1. For economic and special damages according to proof at trial;
- 7 2. For injunctive and declaratory relief;
- 8 3. For punitive damages and exemplary damages according to proof at trial;
- 9 4. For an award of damages in the amount of unpaid wage compensation, including for
10 unpaid overtime and double-time wages, unpaid minimum wages, and interest thereon, subject to proof
11 at trial;
- 12 5. For liquidated damages pursuant to California Labor Code §1194.2;
- 13 6. Penalties for inaccurate itemized wage statements pursuant to California Labor Code §
14 226, subject to proof at trial;
- 15 7. Restitution of all amounts owed in unpaid wage compensation, including for unpaid
16 overtime wages, unpaid minimum wages, and interest thereon, in an amount according to proof at trial,
17 pursuant to California Business & Professions Code §17203;
- 18 8. A declaratory judgment that Defendants' failure to pay proper overtime compensation
19 to Plaintiff violates provisions of the California Labor Code, IWC Wage Order 5 and constitutes unfair
20 competition in violation of Bus. & Prof. Code § 17200, *et seq.*;
- 21 9. Prejudgment and postjudgment interest on all due and unpaid wages pursuant to
22 California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

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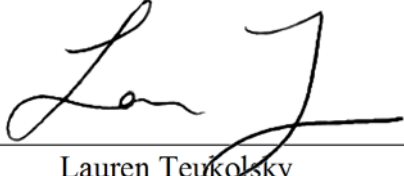
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1 10. For reasonable attorneys' fees and costs as provided by FEHA, Labor Code §§ 226,
2 1194 *et seq.*, and Code of Civil Procedure § 1021.5, and such other provisions as may be applicable;
3 and

4 11. For such other and further relief the Court may deem just and proper.
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6

7 DATED: April 11, 2018

Respectfully submitted,
TEUKOLSKY LAW, APC

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10 By:  _____
11 Lauren Teukolsky
12 Attorneys for Plaintiff JOSEPH DALLA BETTA
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