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County of Los Angeles

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9 Individually, and on behalf of all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 ADRIANA HERNANDEZ, individually, and
13 on behalf of all others similarly situated,

14 Plaintiffs,

15 v.

16 2523 E. ANAHEIM, INC. dba XS
17 AFTERHOURS GENTLEMENS CLUB, a
18 California corporation; and DOES 1 through
19 100, inclusive,

20 Defendants.

Case No.: 19STCV16831

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) Failure to Provide Meal Breaks in Violation of Labor Code § 226.7;
- (2) Failure to Provide Rest Breaks in Violation of Labor Code § 512;
- (3) Failure to Pay Wages in Violation of Labor Code §§ 510 and 1194;
- (4) Failure to Pay All Wages Upon Separation of Employment in Violation of Labor Code § 203;
- (5) Failure to Provide Complete and Accurate Wage Statements in Violation of Labor Code § 226;
- (6) Failure to Provide Reimbursement of Expenses in Violation of Labor Code § 2802;
- (7) Failure to Keep Accurate Payroll Records in Violation of Labor Code § 1198.5 *et seq.*;
- (8) Violation of Business and Professions Code § 17200, *et seq.*;
- (9) Failure to Maintain Workers Compensation Insurance Coverage in Violation of Labor Code § 3700 *et seq.* and;
- (10) Violation of Labor Code § 2698, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff ADRIANA HERNANDEZ (hereinafter “Plaintiff”), hereby, brings this Class
2 Action Complaint for Damages (“COMPLAINT”) against Defendant 2523 E. ANAHEIM,
3 INC. dba XS AFTERHOURS GENTLEMEN’S CLUB, a California corporation (hereinafter
4 “Defendant” and/or “XS”) and DOES 1-100, inclusive, on behalf of herself, other current and
5 former aggrieved employees of Defendant, and the Class of other similarly situated current and
6 former employees of Defendant, for, *inter alia*, meal period and rest break wages, minimum
7 and overtime wages, failure to have workers compensation insurance coverage and damages as
8 follows:

9 INTRODUCTION

10 1. This class/representative action is brought pursuant to violations of California
11 *Labor Code* §§ 201, 202, 203, 204, 226(a), 226.2, 226.7, 210, 218, 218.5, 218.6, 221, 226,
12 226.2, 226.3, 226.7, 351, 510, 511, 512(a), 558, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 2802,
13 3700;the California Code of Regulations, Title 8, section 11000 *et seq.*;provisions of the
14 Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions
15 Code § 17200 *et seq.* (Unfair Competition Law (“UCL”)); and Labor Code § 2698 *et seq.* (the
16 Private Attorneys General Act of 2004 (“PAGA”)).

17 2. This Complaint challenges Defendant’s systemic illegal employment practices
18 resulting in violations of the stated provisions of the Labor Code and corresponding IWC
19 Wage Order against the putative class of independent contractor dancers (collectively,
20 “dancers” or “Plaintiffs”).

21 3. Under *Dynamex Operations W v. Superior Court*, 4 Cal.5th 903, 935, 416 P.3d
22 1, 20 (2018), *reh'g denied* (June 20, 2018) the California Supreme Court held that workers are
23 considered employees “unless the hiring entity establishes (A) that the worker is free from the
24 control and direction of the hiring entity in connection with the performance of the work, both
25 under the contract for the performance of the work and in fact, (B) that the worker performs
26 work that is outside the usual course of the hiring entity’s business, and (C) that the worker is
27 customarily engaged in an independently established trade, occupation, or business.”

1 4. The first part of the *Dynamex* test cannot be met by Defendant. Defendant has
2 complete control over the Exotic Dancers. For example, Exotic Dancers who are classified by
3 Defendant as Independent Contractors:

- 4 a. Have a set price for the dances they perform that is dictated by the employer.
- 5 b. Must participate in promotions, sales, and other contests and policies set by the
6 employer.
- 7 c. Must perform for a minimum number of hours each week or they will be fired.
- 8 d. Have a strict set of rules regarding dress, hygiene, work hours, promotion
9 participation and other rules which if not followed result in termination of
10 employment.

11 5. The second and third parts of the *Dynamex* test cannot be met by Defendant as
12 well. The employer owns and operates strip clubs. The strip clubs cannot function without
13 exotic dancers. The usual course of the employer’s business is providing adult entertainment to
14 patrons of their clubs. In fact, the employer sets “prices” for the adult entertainment. The most
15 significant revenue generated by the employer is based off the work performed by the exotic
16 dancers. Therefore, even if there was no control over the exotic dancers, the work performed by
17 them is in the middle of the usual course of the hiring entities business.

18 6. Therefore because at least one, if not all three, of the *Dynamex* factors cannot be
19 met by Defendant, the exotic dancers are being improperly misclassified as independent
20 contractors.

21 7. Plaintiff is informed and believes and thereon alleges Defendant acted
22 intentionally and with deliberate indifference and conscious disregard to the rights of all
23 dancers for reasons including but not limited to: (1) by misclassifying them as independent
24 contractors; (2) by failing to pay them all meal period wages and rest break wages; (3) by
25 failing to pay them all minimum and overtime wages; (4) by failing to pay them all wages due
26 and owing upon termination of employment; (5) by failing to provide them accurate wage
27 statements; (6) by failing to reimburse business expenses; (7) failing to have and maintain
28 workers compensation insurance coverage; and (8) by engaging in unfair business practices.

1 **JURISDICTION AND VENUE**

2 8. This class action is brought pursuant to California Code of Civil Procedure §
3 382.

4 9. The monetary damages sought by Plaintiff exceed the minimal jurisdictional
5 limits of the Superior Court and will be established according to proof at trial.

6 10. This Court has jurisdiction over this action pursuant to the California
7 Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all
8 causes except those given by statute to other courts. The statutes under which this action is
9 brought do not specify any other basis for jurisdiction.

10 11. This Court has jurisdiction over the violations of PAGA, *Labor Code* §§ 201,
11 202, 203, 204, 226(a), 226.2, 226.7, 210, 218, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 351,
12 510, 511, 512(a), 558, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 2802, 3700 and the California
13 Code of Regulations, Title 8, section 11000 *et seq.*; provisions of the Industrial Welfare
14 Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et*
15 *seq.*

16 12. This Court has jurisdiction over all Defendants because, on information and
17 belief, each party has sufficient minimum contacts in California, or otherwise intentionally
18 avails itself of California law so as to render the exercise of jurisdiction over it by the
19 California courts consistent with traditional notions of fair play and substantial justice.

20 13. Venue is proper in this Court because, upon information and belief, the named
21 Defendant transacts business and/or has offices in this county, and the acts and omissions
22 alleged herein took place in this county.

23 **PARTIES**

24 14. Plaintiff is an individual residing in the State of California, County of Los
25 Angeles. Defendant employed Plaintiff as an independent contractor dancer during the Class
26 Period. (“Class Period” as defined herein means May 13, 2015 through the date of preliminary
27 approval.)
28

1 15. Defendant is a California corporation, with its principal place of business
2 located in the County of Los Angeles at 2523 E. Anaheim Street, Wilmington, California
3 90774.

4 16. The true names and capacities of Defendants sued herein as Does 1 through
5 100, inclusive are unknown to Plaintiff at this time, but Plaintiff will amend this Complaint if
6 and when the true names of said Defendants become known to her. Upon information and
7 belief, each of the Defendants sued herein as a Doe is legally responsible in some manner for
8 the events and happenings referred to herein; and any reference to “Defendant” or
9 “Defendants” shall mean “Defendants and each of them.”

10 17. Defendants are individually, jointly, and severally liable for the wrongful
11 conduct alleged herein because each Defendant directly or indirectly, or through an agent or
12 any other person, has exercised control over one another. Plaintiff is informed and believes and
13 based thereon alleges that at all relevant times, each Defendant has been the agent and
14 employee of its Co-Defendants, and in doing the things alleged in this Complaint has been
15 acting within the course and scope of that agency and employment.

16 18. As such, and based upon all the Complaints and circumstances incident to
17 Defendants’ business in California, all Defendants are subject to PAGA and *Labor Code* §§
18 201, 202, 203, 204, 226(a), 226.2, 226.7, 210, 218, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
19 351, 510, 511, 512(a), 558, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 2802, 3700 and the
20 California Code of Regulations, Title 8, section 11000 *et seq.*; provisions of the Industrial
21 Welfare Commission (IWC) Wage Order(s); and California *Business & Professions Code* §
22 17200 *et seq.*

23 **STATEMENT OF FACTS**

24 19. Defendant operates one or more adult entertainment clubs in Los Angeles
25 County.

26 20. Dancers are misclassified by Defendant as “independent contractors” when they
27 are in fact Defendant’s “employees” under California and Federal law.

28 21. Defendant has directly and/or indirectly exercised extensive control over the

1 manner in which dancers perform their jobs and conduct themselves while working at XS,
2 including but not necessarily limited to the following: Defendant retains the right to terminate
3 dancers at-will, and specifically for failure to maintain certain appearance and grooming
4 standards and failures to meet “dance performance minimums” (i.e. minimum hours of
5 performing per week); dancers are required to, upon request, participate in Defendant’s
6 promotional activities in venues of Defendant’s choosing; dancers’ rates of pay are unilaterally
7 set by Defendant; dancers are prohibited from engaging in numerous acts while performing;
8 dancers are required to have their hair styled in a certain manner, and are required to wear
9 bikini attire and high heels; dancers are required to offer special promotions in connection with
10 lap dances, and are required to attempt to sell company merchandise; dancers are required to
11 check in at the beginning of their shifts and check out at the end of their shifts; and dancers are
12 required to perform on stages of Defendant’s choosing, regardless of whether one stage or
13 another was more profitable.

14 22. Defendant is in the business of providing adult entertainment to their patrons.
15 Dancers perform services in the usual course of the Defendant’s businesses, and without
16 dancers’ services, Defendant would have no business.

17 23. Dancers are not required to have any particular level of education to work as
18 dancers at XS.

19 24. In order to perform their jobs, dancers are required to pay significant “house
20 fees” to Defendant.

21 25. Dancers have not received wages from Defendant. Instead, any compensation
22 dancers receive comes directly from patrons in the form of gratuities or tips. Out of these
23 gratuities or tips, dancers are required to pay a portion back to Defendant, as well as share their
24 tips with other employees who are not eligible to share in tips, including managers and non-
25 service employees (such as disc jockeys).

26 26. Even if payments from patrons were deemed to be dancers’ “wages,” dancers
27 have not been permitted to retain the full amount of these wages, since Defendant has
28 subtracted various fines, charges, and fees from these amounts (as well as requiring dancers to

1 share them with other of Defendant's employees).

2 27. Based on their misclassification as independent contractors, dancers have been
3 required to bear expenses of their employment, including expenses for wardrobe, foot wear,
4 make-up and grooming that meets Defendant's requirements.

5 28. Defendant has failed to provide dancers with itemized wage statements showing
6 their hours worked, total wages earned, all deductions from wages, and all other information
7 required Labor Code § 226(a).

8 29. Defendant has also failed to keep dancers' records as required by Labor Code §
9 1174.5.

10 30. Defendant has failed to have and maintain workers compensation insurance
11 under Labor Code § 3700.

12 31. As a result of their failure to pay class members minimum wage, Defendant has
13 also failed to pay dancers their wages when due.

14 32. On or about May 13, 2019 Plaintiff provided Notice to the PAGA Administrator
15 *via* online submission and certified mail and having received no response from the Attorney
16 General of the State of California Plaintiff is proceeding as a deputized attorney general to
17 pursue this action.

18 **CLASS ACTION ALLEGATIONS**

19 33. **Definition:** Plaintiff seeks class certification pursuant to California Code of
20 Civil Procedure § 382 of all current and former dancers of Defendant who worked in California
21 and were classified as non-exempt employees and/or independent contractors at any time
22 during the Class Period, including the following Subclasses:

23 (a) **Meal Period Subclass:** all Defendant's dancers who worked one or more shifts
24 in excess of six (6) hours in California at any time during the Class Period;

25 **As an alternative to Subclass (a):** (a)(1) all Defendant's dancers who worked
26 one or more shifts in excess of six (6) hours in California who were not
27 provided a 30-minute break during which they were relieved of all duties, at any
28 time during the Class Period;

1 **(b) Rest Break Subclass:** all Defendant’s dancers who worked one or more shifts
2 of three and one-half (3.5) hours or more in California at any time during the
3 Class Period;

4 **As an alternative to Subclass (b):** (b)(1) all Defendant’s dancers who worked
5 one or more shifts of three and one-half (3.5) hours or more in California who
6 were not provided a paid 10-minute break during which they were relieved of
7 all duties, at any time during the Class Period;

8 **(c) Overtime Subclass:** all Defendant’s dancers who worked in excess of eight (8)
9 hours in a day or forty (40) hours in a workweek in California at any time
10 during the Class Period;

11 **(d) Minimum Wage Subclass:** all Defendant’s dancers who worked in California
12 and were not properly paid all minimum wages at any time during the Class
13 Period;

14 **(e) Terminated Employee Subclass:** all Defendant’s dancers who worked in
15 California at any time during the Class Period, and who were not properly paid
16 all wages pursuant to Labor Code 201, 202 & 203;

17 **(f) Wage Statement Subclass:** all Defendant’s dancers who worked in California
18 and did not receive a wage statement at any time during the Class Period;

19 **(g) Reimbursement Subclass:** all Defendant’s dancers who worked in California
20 and who were not reimbursed for business expenses incurred on Defendant’s
21 behalf;

22 **(h) Workers Compensation Subclass:** all Defendant’s dancers who worked in
23 California and who were not covered by workers compensation insurance
24 coverage.

25 34. **Ascertainability:** It is administratively feasible to determine the members of the
26 putative class through Defendant’s records, because Defendant maintains class members’
27 relevant information, including contact information and certain pay records.

28 35. **Numerosity:** The members of the Class are so numerous that joinder of all

1 members would be impractical, if not impossible. The identities of the members of the Class
2 are readily ascertainable by review of Defendant's records, including payroll records.

3 **36. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
4 steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's
5 attorneys are ready, willing and able to fully and adequately represent the Class and individual
6 Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the
7 past.

8 **37.** Defendant uniformly administered a corporate policy, practice and/or procedure
9 (1) by misclassifying all dancers as independent contractors, (2) by failing to pay them all meal
10 period wages and rest break wages, (3) by failing to pay them all minimum and overtime
11 wages, (4) by failing to pay them all wages due and owing upon termination of employment,
12 (5) by failing to provide them accurate wage statements, (6) by failing to reimburse business
13 expenses, (7) by failing to have and maintain workers compensation insurance coverage, and
14 (8) by engaging in unfair business practices. Plaintiff alleges this corporate conduct has been
15 accomplished with the advance knowledge and designed with intent to willfully withhold
16 appropriate wages for work performed by members of the Class.

17 **38. Common Questions of Law and Fact:** There are predominant common
18 questions of law and Complaint and a community of interest amongst Plaintiff and the claims
19 of the Class concerning whether Defendant's policies and practices regularly denied Class
20 Members meal and rest break wages, minimum and overtime wages, accurate wage statements,
21 all wages due and owing upon termination of employment, failing to have and maintain
22 workers compensation coverage and business expense reimbursements.

23 **39. Typicality:** Plaintiff's claims are typical of the claims of all members of the
24 Class. Plaintiff is a member of the Class and has suffered the alleged violations of *Labor Code*
25 §§ 201, 202, 203, 204, 210, 218, 218.5, 218.6, 221, 226, 226(a), 226.2, 226.3, 226.7, 351, 510,
26 511, 512(a), 558, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 2802, 3700 and the California Code
27 of Regulations, Title 8, section 11000 *et seq.*; provisions of the Industrial Welfare Commission
28 (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

1 40. The Labor Code upon which Plaintiff bases her claims is broadly remedial in
2 nature. These laws and labor standards serve an important public interest in establishing
3 minimum working conditions and standards in California. These laws and labor standards
4 protect the average working employee from exploitation by employers who may seek to take
5 advantage of superior economic and bargaining power in setting onerous terms and conditions
6 of employment.

7 41. The nature of this action and the format of laws available to Plaintiff and
8 members of the Class identified herein make the class action format a particularly efficient and
9 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
10 file an individual lawsuit, Defendant would necessarily gain an unconscionable advantage
11 since it would be able to exploit and overwhelm the limited resources of each individual
12 plaintiff with its vastly superior financial and legal resources. Requiring each Class Member to
13 pursue an individual remedy would also discourage the assertion of lawful claims by
14 employees who would be disinclined to file an action against their former and/or current
15 employer for real and justifiable fear of retaliation and permanent damage to their careers at
16 subsequent employment.

17 42. The prosecution of separate actions by the individual Class Members, even if
18 possible, would create a substantial risk of (a) inconsistent or varying adjudications with
19 respect to individual Class Members against the Defendant and would establish potentially
20 incompatible standards of conduct for the Defendant, and/or (b) adjudications with respect to
21 individual Class Members which would, as a practical matter, be dispositive of the interest of
22 the other Class Members not parties to the adjudications or which would substantially impair
23 or impede the ability of the Class Members to protect their interests. Further, the claims of the
24 individual members of the Class are not sufficiently large to warrant vigorous individual
25 prosecution considering all of the concomitant costs and expenses.

26 43. Such a pattern, practice and uniform administration of corporate policy
27 regarding illegal employee compensation described herein is unlawful and creates an
28 entitlement to recovery by the Plaintiff and the Class identified herein, in a civil action, for the

1 unpaid balance of the full amount of meal period and rest break wages, minimum and overtime
2 wages, failing to have and maintain workers compensation insurance coverage for employees,
3 including interest thereon, attorneys' fees and costs of suit, as well as consequential damages.

4 44. Proof of a common business practice or pattern, which Plaintiff experienced and
5 is representative of, will establish the right of each Class Member to recovery on the causes of
6 action alleged herein.

7 45. The Class is commonly entitled to a specific fund with respect to the
8 compensation illegally and unfairly retained by Defendant. This action is brought for the
9 benefit of the entirety of all Class and will result in the creation of a common fund.

10 **FIRST CAUSE OF ACTION**

11 **(Failure to Provide Meal Breaks in Violation of Labor Code § 226.7)**

12 46. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 45 as
13 though fully set forth herein.

14 47. In accordance with the mandates of Labor Code § 226.7 and the applicable IWC
15 Wage Order, Plaintiff and the Class and Subclasses (a), (b), (c), (d), and (e) had the right to
16 take a 10-minute rest break for every four (4) hours worked or major fraction thereof, and a 30-
17 minute meal period for every five (5) hours worked.

18 48. As a pattern and practice, Defendant did not provide dancers with meal periods
19 and rest breaks and did not provide proper compensation for this failure.

20 49. Defendant's policy of failing to provide Plaintiff and the Class and Subclasses
21 (a), (b), (c), (d), and (e) with legally mandated meal periods and rest breaks is a violation of
22 California law.

23 50. Such a pattern, practice and uniform administration of corporate policy as
24 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the
25 Class Members identified herein, in a civil action, for the balance of the unpaid premium
26 compensation pursuant to Labor Code § 226.7 and the applicable IWC Wage Order, including
27 interest thereon.

1 **THIRD CAUSE OF ACTION**

2 **(Failure to Pay Wages in Violation of Labor Code §§ 510 and 1194)**

3 58. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 57 as
4 though fully set forth herein.

5 59. At all times relevant herein, Defendant was required to compensate its dancers
6 for all hours worked and overtime wages for all hours worked in excess of eight (8) hours in a
7 day or forty (40) hours in a workweek.

8 60. As a pattern and practice, Defendant failed to compensate its dancers for all
9 hours worked, resulting in a failure to pay minimum wages and overtime wages, where
10 applicable. For example, Defendant regularly required dancers to pay “house fees” that
11 resulted in Plaintiff and the Class and Subclasses (a), (b), (c), (d), (e), and (f) receiving total
12 wages in an amount less than minimum wage.

13 61. Such a pattern, practice and uniform administration of corporate policy
14 regarding illegal employee compensation as described herein is unlawful and creates an
15 entitlement to recovery by Plaintiff and the Class and Subclasses (a), (b), (c), (d), (e), and (f),
16 in a civil action, for the unpaid balance of the full amount of minimum and overtime wages
17 owing, including liquidated damages, interest, attorneys’ fees, and costs of suit according to the
18 mandate of California Labor Code § 1194.

19 62. Defendant’s willful failure to provide Plaintiff and the Class Subclasses (d), (e),
20 (f), and (g) the wages due and owing them upon separation from employment results in
21 continuation of wages up to thirty (30) days from the time the wages were due. Therefore,
22 Plaintiff and Class Members who have separated from employment are entitled to
23 compensation pursuant to Labor Code § 203.

24 **FOURTH CAUSE OF ACTION**

25 **(Failure to Pay All Wages Upon Separation of Employment in**
26 **Violation of Labor Code § 203)**

27 63. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 62 as
28 though fully set forth herein.

1 64. At all times relevant herein, Defendant was required to pay its dancers all wages
2 owed in a timely fashion at the end of employment pursuant to California Labor Code §§ 201
3 to 204.

4 65. As a result of Defendant's alleged Labor Code violations alleged above,
5 Defendant regularly failed to pay Plaintiff and the Class and Subclasses (a), (b), (c), (d), and
6 (e) their final wages pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time
7 penalties pursuant to Labor Code § 203.

8 66. The conduct of Defendant and its agents and employees as described herein was
9 willfully done in violation of Plaintiff and Class Members' rights, and done by managerial
10 employees of Defendant.

11 67. Defendant's willful failure to provide Plaintiff and the Class and Subclasses (a),
12 (b), (c), (d), and (e) the wages due and owing them upon separation from employment results
13 in a continuation of wages up to thirty (30) days from the time the wages were due. Therefore,
14 Plaintiff and Class Members who have separated from employment are entitled to
15 compensation pursuant to Labor Code § 203.

16 **FIFTH CAUSE OF ACTION**

17 **(Failure to Provide Complete and Accurate Wage Statements**

18 **in Violation of Labor Code § 226)**

19 68. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 67 as
20 though fully set forth herein.

21 69. In violation of Labor Code § 226, Defendants failed in their affirmative
22 obligation to keep *accurate* records regarding the rates of pay for their non-exempt California
23 dancers. For example, as a result of Defendants' various Labor Code violations, Defendants
24 failed to keep accurate records of Plaintiff and Class Members' gross wages earned, total hours
25 worked, all deductions, net wages earned, and all applicable hourly rates and the number of
26 hours worked at each hourly rate.

27 70. Such a pattern, practice and uniform administration of corporate policy as
28 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the

1 Class and Subclasses (a), (b), (c), (d) and (f) in a civil action, for all damages and/or penalties
2 pursuant to Labor Code § 226, including interest thereon, penalties, reasonable attorneys’ fees,
3 and costs of suit according to the mandate of California Labor Code § 226.

4 **SIXTH CAUSE OF ACTION**

5 **(Failure to Provide Reimbursement of Expenses in Violation of Labor Code § 2802)**

6 71. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 70 as
7 though fully set forth herein.

8 72. California Labor Code § 2802 requires an employer to “indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties.”

11 73. Plaintiff and the other class members incurred necessary business-related
12 expenses and costs for which they were not fully reimbursed by Defendant.

13 74. Defendant has intentionally and willfully failed to reimburse Plaintiff and the
14 other class members for all necessary business-related expenses and costs.

15 75. As a result, Plaintiff and the other class members are entitled to recover from
16 Defendant their business-related expenses and costs incurred during the course and scope of
17 their employment, plus interest accrued from the date on which the employee incurred the
18 necessary expenditures at the same rate as judgments in civil actions in the State of California.

19 **SEVENTH CAUSE OF ACTION**

20 **(Failure to Keep Accurate Payroll Records in Violation of Labor Code § 1198.5, et seq.)**

21 76. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 75 as
22 though fully set forth herein.

23 77. Defendant has violated California Labor Code § 1198.5, et seq. by willfully
24 failing to keep required payroll records showing the actual hours worked by Plaintiff and the
25 class.

26 ///

27 ///

28 ///

1 **Failure to Pay Minimum and Overtime Wages**

2 92. Defendant has failed to pay dancers minimum wages for all hours worked and
3 overtime wages for all hours worked in excess of eight (8) hours in a day or forty (40) hours in
4 a workweek, pursuant to the mandate of Labor Code §§ 510, 1194, 1197, and 1198.

5 93. At all times relevant herein, Defendant was required to compensate their
6 dancers at a rate of one and one-half times their respective regular rates of pay for the first
7 eight hours worked on the seventh workday in a workweek, and twice the respective regular
8 rates of pay for any work in excess of eight hours on the seventh workday in a workweek,
9 pursuant to the mandate of Labor Code §§ 510 and 1198.

10 94. As a pattern and practice, Defendant failed to compensate Plaintiff and other
11 aggrieved current and former dancers for all hours worked, resulting in a failure to pay all
12 minimum wages and overtime wages, where applicable.

13 95. As a pattern and practice, Defendant failed to compensate Plaintiff and other
14 aggrieved current and former dancers the required premium pay for hours worked on the
15 seventh workday in a workweek.

16 **Failure to Provide Meal Periods and Rest Breaks**

17 96. In accordance with the mandates of Labor Code § 226.7, and 512, Defendant
18 was required to authorize and permit its dancers to take a 10-minute rest break for every four
19 (4) hours worked or major fraction thereof, and was further required to provide its non-exempt
20 employees with a 30-minute meal period for every five (5) hours worked.

21 97. As a pattern and practice, Defendant failed to provide Plaintiff and other
22 aggrieved current and former dancers with legally-mandated meal periods and rest breaks and
23 failed to pay proper compensation for this failure.

24 **Failure to Timely Pay Wages During Employment**

25 98. At all times relevant herein, Defendant was required to pay its dancers within a
26 specified time period pursuant to the mandate of Labor Code § 204.

1 99. As a pattern and practice, Defendant regularly failed to pay Plaintiff and other
2 aggrieved current and former dancers all wages due and owing them within the required time
3 period.

4 **Failure to Timely Pay Wages Upon Termination**

5 100. At all times relevant herein, Defendant was required to pay its dancers all wages
6 owed in a timely fashion at the end of employment pursuant to California Labor Code §§ 201
7 to 204.

8 101. As a result of Defendant’s Labor Code violations alleged above, Defendant
9 failed to pay Plaintiff and other aggrieved current and former dancers their final wages
10 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to
11 Labor Code § 203.

12 **Failure to Provide Complete and Accurate Wage Statements**

13 102. At all times relevant herein, Defendant was required to keep accurate records
14 regarding its California dancers pursuant to the mandate of Labor Code §§ 226 and 1174(d).

15 103. As a result of Defendant’s various Labor Code violations, Defendant failed to
16 keep accurate records regarding Plaintiff and other aggrieved current and former dancers. For
17 example, Defendant failed in its affirmative obligation to keep accurate records regarding
18 Plaintiff and other aggrieved current and former employees’ gross wages earned, total hours
19 worked, all deductions, net wages earned, and all applicable hourly rates and the number of
20 hours worked at each hourly rate.

21 **Failure to Provide Business Expense Reimbursements**

22 104. At all times relevant herein, Defendant was required to reimburse its dancers for
23 all necessary business-related expenses and costs which they incurred for or on behalf of
24 Defendant.

25 105. As a result of Defendant’s Labor Code violations alleged above, Defendant
26 failed to reimburse Plaintiff and the other class members for all necessary business-related
27 expenses and costs for which Plaintiff and the other class members are entitled to
28 reimbursement.

1 **Failure to Comply with Labor Code § 2810.05**

2 106. At all times relevant herein, Defendant was required to provide notice to
3 dancers, complying with California’s Wage Theft and Prevention Act of 2011, as set forth in
4 Labor Code § 2810.5. With regard to its dancers, Defendant failed to comply with Section
5 2810.5 both “[a]t the time of hiring” and “within seven calendar days” after the time of any
6 changes to the notice information.

7 107. As a result of Defendant’s Labor Code violations alleged above, Defendant
8 failed to provide required notice to Plaintiff and the other class members, and thus they are
9 entitled to seek civil penalties under PAGA.

10 **Illegal Tip Pooling**

11 108. At all times relevant herein, Defendant compelled dancers to participate in
12 unlawful tip pooling arrangements in violation of Labor Code §§ 350, 351, 353, 354, and 356.

13 109. As a result of Defendant’s Labor Code violations alleged above, dancers were
14 deprived of tips and/or wages to which Plaintiff and the other class members are entitled.

15 **Violation of Labor Code § 432, *Et. Seq.***

16 110. At all times relevant herein, Defendant compelled dancers, as a condition of
17 employment, to sign documents that contained terms and conditions which Defendant knew
18 violated California law. By virtue of forcing its dancers to sign these documents, Defendant
19 violation Labor Code §§ 432, 432.5, and 433.

20 111. As a result of Defendant’s Labor Code violations alleged above, Plaintiff and
21 the other class members are entitled to seek civil penalties under PAGA.

22 **Failure to Maintain Records**

23 112. At all times relevant herein, Defendant failed to maintain employment records
24 of dancers, including, but not limited to, personnel files and payroll records in violation of
25 Labor Code §§ 1174, 1174.5, and 1175.

26 113. As a result of Defendant’s Labor Code violations alleged above, Plaintiff and
27 the other class members are entitled to seek civil penalties under PAGA.

1 **Failure to Provide Workers Compensation**

2 114. At all times relevant herein, Defendant failed to maintain workers compensation
3 insurance to cover dancers.

4 115. As a result of Defendant’s Labor Code violations alleged above, Plaintiff and
5 the other class members are entitled to seek civil penalties under PAGA.

6 **PAGA Relief**

7 116. Pursuant to California Labor Code § 2699, Plaintiff, individually, and on behalf
8 of other current and former aggrieved dancers, request and are entitled to recover from
9 Defendant unpaid wages, civil penalties, interest, attorneys’ fees and costs pursuant, as well as
10 all statutory penalties against Defendant, including but not limited to:

11 1) Penalties under Labor Code § 2699 in the amount of a hundred dollars (\$100) for
12 each aggrieved dancer per pay period for the initial violation, and two hundred dollars (\$200)
13 for each aggrieved dancer per pay period for each subsequent violation;

14 2) Penalties under Code of Regulations Title 8 § 11040 in the amount of fifty dollars
15 (\$50) for each aggrieved dancer per pay period for the initial violation, and one hundred dollars
16 (\$100) for each aggrieved dancer per pay period for each subsequent violation;

17 3) Penalties under Labor Code § 210 in addition to, and entirely independent and
18 apart from, any other penalty provided in the Labor Code in the amount of a hundred dollars
19 (\$100) for each aggrieved dancer per pay period for the initial violation, and two hundred dollars
20 (\$200) for each aggrieved dancer per pay period for each subsequent violation;

21 4) Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100)
22 for each aggrieved dancer per pay period for the initial violation, and two hundred fifty dollars
23 (\$250) for each aggrieved dancer per pay period for each subsequent violation;

24 5) An amount sufficient to recover unpaid wages under Labor Code § 558;

25 6) An amount sufficient to recover unpaid wages under Labor Code § 1197.1;

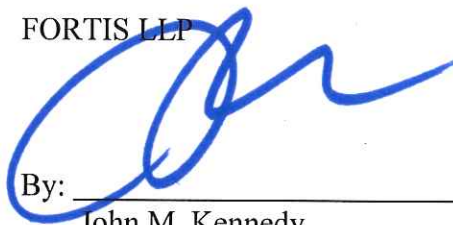
26 7) Any and all additional penalties and sums as provided by the Labor Code and/or
27 other statutes; and

1 13. Upon the Tenth Cause of Action, for civil penalties and wages pursuant to statute
2 as set forth in Labor Code § 2698 *et seq.*, for Defendant's violations of Labor
3 Code §§ 201, 201.5, 202, 203, 204, 204b, 210, 215, 216, 218, 218.5, 218.6, 223,
4 225, 225.5, 226, 226(a), 226.2, 226.3, 226.6, 226.7, 350, 351, 353, 354, 356, 432,
5 432.5, 433, 510, 512(a), 558, 558.1, 1174, 1174(d), 1174.5, 1175, 1182.12, 1194,
6 1194.2, 1194.3, 1197, 1197.1, 1197.2, 1198, 1198, and 2802, and the applicable
7 IWC Wage Orders; and

8 14. On all Causes of Action, for attorneys' fees, interest, and costs as provided by
9 California Labor Code §§ 210, 218.6, 226, 1194, Code of Civil Procedure §
10 1021.5, and any other applicable statute; and for such other further relief the
11 Court may deem just and proper.

12
13 Dated: August 7, 2019

FORTIS LLP



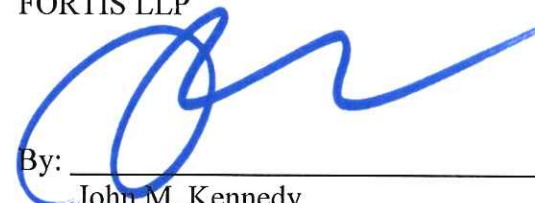
14
15
16 By: _____
17 John M. Kennedy
18 Attorneys for Plaintiff
ADRIANA HERNANDEZ, individually, and
on behalf of all others similarly situated

19
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff, for herself and the Class and Subclasses, hereby demands a jury trial as
22 provided by California law.

23 Dated: August 7, 2019

FORTIS LLP



24
25
26 By: _____
27 John M. Kennedy
28 Attorneys for Plaintiff
ADRIANA HERNANDEZ, individually, and
on behalf of all others similarly situated

1 **PROOF OF SERVICE**

2 I am employed in the County of Orange, State of California. I am over the age of 18 and
3 not a party to the within action. My business address is 650 Town Center Drive, Suite 1530,
4 Costa Mesa, California 92626. On August 7, 2019, I served the within document(s) described
5 as:

6 **PLAINTIFF ADRIANA HERNANDEZ'S FIRST AMENDED CLASS ACTION
7 COMPLAINT FOR DAMAGES**

8 on the interested parties in this action as stated below:

9 *Attorneys for Defendant 2523 E. Anaheim,
10 Inc. dba XS Afterhours Gentlemens Club:*

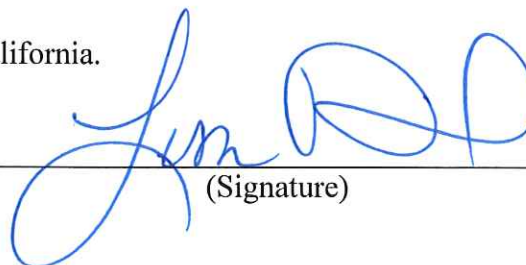
11 Andrea Cook, Esq.
12 Andrea Cook & Associates
13 555 E. Ocean Blvd., Suite 430
14 Long Beach, CA 90802
15 Tel: (562) 951-9135
16 Fax: (562) 951-9126
17 alcook@alcooklaw.com

- 18 BY FACSIMILE: I transmitted the attached document(s) by facsimile transmission from
19 a facsimile machine whose telephone number is (714) 795-2995 to the fax numbers listed
20 above on August 7, 2019. The transmission report was complete and without error.
- 21 BY MAIL: By placing a true copy of the foregoing document(s) in a sealed envelope
22 addressed as set forth above. I am readily familiar with this firm's practice for collection
23 and processing of correspondence for mailing. Under that practice it would be deposited
24 with the U.S. Postal Service on that same day with postage thereon fully prepaid in the
25 ordinary course of business. I am aware that on motion of the party served, service is
26 presumed invalid if postal cancellation date or postage meter date is more than one day
27 after date of deposit for mailing contained in affidavit.

28 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed on August 7, 2019, at Costa Mesa, California.

Lisa Dancel
(Type or print name)


(Signature)