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8 Attorneys for Plaintiffs
9 PEOPLE OF THE STATE OF CALIFORNIA and
CITY AND COUNTY OF SAN FRANCISCO

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

CGC-23-608756

13 UNLIMITED JURISDICTION

14 The PEOPLE OF THE STATE OF
CALIFORNIA, by and through David Chiu,
15 City Attorney for the City and County of San
Francisco; and the CITY AND COUNTY OF
16 SAN FRANCISCO, a Municipal Corporation

17 Plaintiffs,

18 vs.

19 QWICK, INC., a Delaware Corporation; and
DOE ONE through DOE TWENTY

20 Defendants.
21
22
23
24
25

Case No.

**COMPLAINT FOR INJUNCTIVE RELIEF,
RESTITUTION, AND PENALTIES FOR
VIOLATIONS OF:**

**(1) CALIFORNIA BUSINESS AND
PROFESSIONS CODE §§ 17200-17210;**

(2) CALIFORNIA LABOR CODE § 2786;

**(3) SAN FRANCISCO'S HEALTH CARE
SECURITY ORDINANCE;**

**(4) SAN FRANCISCO'S PAID SICK LEAVE
ORDINANCE; AND**

**(5) SAN FRANCISCO'S PAID PARENTAL
LEAVE ORDINANCE.**

[VERIFIED ANSWER REQUIRED PURSUANT
TO CODE OF CIVIL PROCEDURE SECTION
446]

1 The People of the State of California, acting by and through San Francisco City Attorney
2 David Chiu (“People”), and the City and County of San Francisco, a municipal corporation (“City”)
3 (collectively, “Plaintiffs”) file their Complaint against Qwick, Inc., a Delaware Corporation, and Doe
4 One through Doe Twenty (collectively, “Qwick” or “Defendants”). Plaintiffs hereby allege as follows:

5 INTRODUCTION

6 1. Qwick is a staffing agency boldly engaged in the wholesale misclassification of its
7 workforce. This misclassification is a form of systemic wage theft with grievous consequences for
8 workers, law-abiding businesses, and the public alike.

9 2. Qwick operates a rapidly expanding business that provides on-demand staffing for
10 employers in the food and beverage industry such as restaurants, hotels, bars, and caterers (“Clients”).
11 Qwick pledges to these Clients: “No matter what staff you need, we have you covered.” Indeed,
12 Qwick offers staffing for a wide array of positions covering front of house, back of house, and catering
13 roles. The hospitality workers (“Hospitality Workers”) performing these roles (whom Qwick refers to
14 as “freelancers”)¹ include: bussers, bartenders, mixologists, baristas, restaurant servers, dishwashers,
15 line cooks, prep cooks, food assemblers, barbacks, event chefs, banquet cooks, banquet servers,
16 banquet captains, concession workers, and event help. These workers perform traditional jobs in the
17 food and beverage industry and are Qwick’s “employees” under state and local laws.

18 3. Since Qwick began operating in California in or around January 2019, Defendants
19 misclassified and continue to misclassify Hospitality Workers as independent contractors, in direct
20 contravention of California law.

21 4. Because Qwick has made the decision to misclassify its Hospitality Workers as
22 independent contractors, these workers have never been guaranteed the basic labor protections
23 afforded to employees such as minimum wage, overtime pay, mandatory breaks, paid family leave,
24 paid sick leave, unemployment insurance, disability insurance, and workers’ compensation insurance.

25 5. If Qwick’s business model is allowed to take root, hundreds of thousands of positions
26 in the food and beverage industry in California risk illegal reclassification to the detriment of the

27 _____
28 ¹ Unless otherwise specified, all references to “Hospitality Workers” in this Complaint refer to
Qwick’s so-called “freelancers” working shifts located in California.

1 workers, their families, businesses that comply with the law, and the public at large. As the California
2 Supreme Court observed in its unanimous decision in *Dynamex Operations W., Inc. v. Superior Court*
3 (2018) 4 Cal.5th 903, reh'g. den. (June 20, 2018) (“*Dynamex*”), which set forth the test for
4 employment under the State’s wage orders, the State’s laws against employee misclassification *protect*
5 *workers* through a panoply of employment protections (*Id.* at p. 952.), *protect* “law-abiding”
6 *businesses* by preventing a “race to the bottom” that threaten jobs and worker protections across entire
7 industries (*Id.* at pp. 952, 960), and *protect the tax-paying public* from having to “assume
8 responsibility” for “the ill effects to workers and their families” of exploitative working arrangements.
9 (*Id.* at pp. 952-53.)

10 6. Recognizing the serious problem of employee misclassification, the California
11 Legislature enacted Assembly Bill 5 (“A.B. 5”). (Assem. Bill No. 5 (2019-2020 Reg. Sess.)) A.B. 5
12 codified and extended the California Supreme Court’s *Dynamex* decision. Under California law,
13 workers are generally presumed to be employees unless the hiring entities can overcome this
14 presumption by affirmatively establishing each of the three factors embodied in the strict “ABC” test.

15 7. Qwick cannot overcome this presumption with respect to its Hospitality Workers.
16 Qwick’s entire business is to supply staff to fill traditional employee positions within the food and
17 beverage industry. Qwick employs this staff. It vets and interviews its Hospitality Workers, maintains
18 an evaluation system that rates each Hospitality Worker, directly pays Hospitality Workers for their
19 hours worked, charges Clients a 40% fee for providing Hospitality Workers, and wrongfully instructs
20 both its Clients and the Hospitality Workers that the Hospitality Workers are independent contractors.

21 8. Qwick provides a wide range of staffing services to its Clients, and its Hospitality
22 Workers are the employees who provide these services. The Hospitality Workers do not negotiate
23 with, contract with, or receive payment for wages from Qwick’s Clients. Rather, Hospitality Workers
24 only have a relationship with Qwick and are paid for their services by Qwick. Qwick separately
25 contracts with its Clients and charges them for the services Qwick provides.

26 9. Qwick’s motivation for breaking the law is obvious: by misclassifying its Hospitality
27 Workers, Qwick does not “bear any of [the] costs or responsibilities” of complying with a wide-range
28 of state and local laws that protect workers. (*Dynamex, supra*, 4 Cal.5th at p. 913.) Qwick earns a 40%

1 fee from its Clients, but declines to use any of this money to comply with employment laws that
2 benefit its Hospitality Workers.

3 10. Qwick’s unlawful employee misclassification must come to an end. The People and the
4 City bring this action to ensure that Qwick’s Hospitality Workers receive the full compensation,
5 protections, and benefits they are guaranteed under the law, to restore a level playing field for
6 competing businesses, and to preserve jobs and hard-won worker protections for all Californians.

7
8 **JURISDICTION AND VENUE**

9 11. The Superior Court has original jurisdiction over this action pursuant to Article VI,
10 Section 10 of the California Constitution.

11 12. The Superior Court has jurisdiction over each Defendant named above, because: (i)
12 each Defendant is authorized to and conducts business in and across this State; (ii) each Defendant
13 otherwise has sufficient minimum contacts with and purposefully avails itself of the markets of this
14 State, thus rendering the Superior Court’s jurisdiction consistent with traditional notions of fair play
15 and substantial justice; (iii) Labor Code section 2786 confers jurisdiction on this Court; and (iv) the
16 San Francisco City Ordinances that are the subject of this Complaint confer jurisdiction on this Court.
17 (See S.F. Admin. Code, §§ 12W.8, subd. (c), 14.4, subd. (e)(3); S.F. Police Code, § 3300H.8, subd.
18 (c)(1).)

19 13. Venue is proper under Code of Civil Procedure sections 393 and 395 because each
20 Defendant named above conducts business in San Francisco, and many of the illegal acts and injuries
21 described below occurred therein.

22 **PARTIES**

23 **I. PLAINTIFFS**

24 14. The People, by and through San Francisco City Attorney David Chiu, bring this action
25 pursuant to California Business and Professions Code section 17204 and Labor Code section 2786,
26 which grant enforcement authority to “a city attorney in a city and county” to file suit in the name of
27 the People of the State of California.

28 //

1 15. The City is a consolidated charter city and county under the laws of the State of
2 California. The City brings this action under the San Francisco Health Care Security Ordinance
3 (“HCSO”), San Francisco Administrative Code (“S.F. Admin. Code”) Chapter 14, the San Francisco
4 Paid Sick Leave Ordinance (“PSLO”), S.F. Admin. Code Chapter 12W, and the San Francisco Paid
5 Parental Leave Ordinance (“PPL0”), San Francisco Police Code (“S.F. Police Code”) Article 33H.

6
7 **II. DEFENDANTS**

8 16. Defendant Qwick is a privately-held Delaware corporation incorporated in 2017. Qwick
9 registered as a foreign corporation in California in 2018, and began conducting business within the
10 state on or around January 2019. Qwick is headquartered in Phoenix, Arizona.

11 17. Defendants Doe One through Doe Twenty are sued herein under fictitious names.
12 Plaintiffs do not at this time know the true names or capacities of said defendants but pray that the
13 same may be alleged herein when ascertained. Defendants Qwick and Doe One through Doe Twenty
14 are referred to collectively as Defendants.

15
16 **FACTUAL ALLEGATIONS**

17 **I. QWICK’S OPERATION AND BUSINESS PRACTICES.**

18 *Qwick’s Business Model and Exponential Growth.*

19 18. Qwick provides staff—whom it vets, monitors, and, in the event of poor performance,
20 terminates—to food and beverage businesses on a shift-by-shift basis. Qwick directly pays its
21 Hospitality Workers for the services they perform. Separately, Qwick charges its Clients for all work
22 performed by its Hospitality Workers plus an additional 40% fee.

23 19. Qwick is a staffing agency—also referred to as a “temp agency” or a “temp staffing
24 agency.” The only substantive distinction Qwick makes between itself and traditional temp staffing
25 agencies is based on Qwick’s offering of an “easy-to-use digital platform, eliminating the
26 inefficiencies of traditional temporary staffing.”

27 20. Qwick calls its Hospitality Workers “freelancers” and tells both these workers and its
28 Clients that these workers are “independent contractors.”

1 21. But Qwick’s Hospitality Workers are not independent contractors in business for
2 themselves. Rather, they are employees that Qwick draws upon to staff its Clients’ shifts. Among
3 other things, Hospitality Workers have no ability to negotiate or control their rates of pay for a shift,
4 the duration of a shift, and the duties they will perform on a shift. Hospitality Workers are also unable
5 to promote themselves through Qwick’s website, are unable to solicit employment from Qwick’s
6 Clients directly, and cannot choose which Clients’ shifts are offered to them. Qwick interviews, hires,
7 tracks the performance of, and can terminate each Hospitality Worker. While on a shift, Qwick’s
8 Hospitality Workers perform the same duties as employees of Qwick’s Clients and provide no special
9 equipment or tools.

10 22. Qwick’s practice of providing Clients staff that it misclassifies as independent
11 contractors has fueled the company’s meteoric rise.

12 23. Since its incorporation in 2017, Qwick has grown rapidly. Qwick originally provided
13 staffing services only in the Phoenix area. In January 2019, Qwick expanded to the San Diego area, its
14 second market.

15 24. Qwick continued to expand into a number of markets. With respect to California, in
16 addition to the San Diego market, Qwick added the Los Angeles area in 2021 and the San Francisco
17 Bay Area in January 2022.

18 25. Qwick currently operates in approximately 23 regional markets, and operates in thirteen
19 states and the District of Columbia.

20 26. As of December 2022, Qwick’s Hospitality Workers nationwide had performed
21 approximately 5 million hours of work, most of which were performed in 2022.

22 *Qwick’s Hiring Practices.*

23 27. Qwick does not provide a platform that passively connects would-be Hospitality
24 Workers with businesses in the hospitality industry. Rather, Qwick requires candidates to apply to join
25 their “crew”—a process that includes completing a job application and passing an employment
26 interview. Qwick then promotes the quality of its workforce to its Clients by advertising its vetting
27 process and “guarantee[ing]” experienced workers.

28 //

1 28. Qwick’s vetting system requires Hospitality Workers to sign up with Qwick by first
2 signing Qwick’s “terms of use” agreement and creating an account via the Qwick website or the
3 Qwick mobile app.

4 29. Candidates seeking to sign up as Hospitality Workers must complete a profile that
5 includes the number of years that they have worked in the food and beverage industry and identify
6 their past employers. Candidates must identify specific prior roles and may be tested with multiple-
7 choice questions about these prior roles.

8 30. After completing the prior history section of the profile, candidates identify the shifts
9 for which they are available to work and upload a picture of themselves into their profile. Candidates
10 are then asked to schedule a “virtual orientation,” set up payment information, and upload any
11 applicable food handler cards or alcohol certifications. For individuals that do not have these
12 certifications, Qwick facilitates the opportunity to obtain them.

13 31. Qwick’s virtual orientation serves as a one-to-one interview with a Qwick
14 representative intended to vet candidates for experience and professionalism.

15 32. Before the interview, candidates must watch a seven-minute orientation video. The
16 video instructs candidates that for a successful orientation, candidates should be as professional as
17 possible and give themselves “time to prepare.”

18 33. At the interview, the candidate meets with a Qwick “specialist” who evaluates the types
19 of shifts the candidate is qualified for. Qwick determines after the orientation whether to accept or
20 reject the Hospitality Worker onto the “Qwick crew.”

21 *Qwick Controls Who Can Work What Shifts.*

22 34. Once a Hospitality Worker passes their orientation, Qwick offers the Hospitality
23 Worker shifts for its Clients through the Qwick app. Information about the shift is posted on a “shift
24 card” within the app.

25 35. Qwick decides which shifts to offer to the Hospitality Workers. Qwick refers to offered
26 shifts as a “match.”

27 //

28 //

1 36. Matches are decided by a process developed by Qwick. Qwick explains to Clients:
2 “Our system learns what and who works best for your business to pair each shift with the best possible
3 match.”

4 37. If not matched by Qwick, Qwick does not allow Hospitality Workers to request a
5 specific shift or to work with a specific Client.

6 38. Hospitality Workers sign up for shifts on a first come, first serve basis. Based on
7 information and belief, Qwick’s Clients do not get to reject a Hospitality Worker who accepts a shift.

8 *Qwick Tracks the Hours Worked.*

9 39. Shift cards list the start time and expected stop time for the shift.

10 40. Qwick Hospitality Workers clock in and clock out of their shifts using Qwick’s app. If
11 there is a discrepancy in a Hospitality Worker’s “time card” with the hours the Client reports, the
12 Hospitality Worker’s account may be suspended.

13 *Qwick Tracks and Monitors Work Performance.*

14 41. Qwick uses a rating system for each Hospitality Worker that it calls a “Qwickscore.”
15 While Clients may provide ratings that partially contribute to a Qwickscore, the Qwickscore system
16 and ratings are designed and controlled by Qwick.

17 42. Higher scores lead to the Hospitality Worker being offered higher priority shift
18 matches, and occasional bonuses.

19 43. Lower Qwickscores result in fewer shift invites and can result in suspension or removal
20 from Qwick.

21 44. According to Qwick, Qwickscores measure a Hospitality Worker’s professionalism and
22 experience, including their punctuality, job performance, the number of shifts they have worked,
23 cancellation history, and any bonus points received by accepting last-minute shifts.

24 45. A Hospitality Worker’s Qwickscore is influenced by the Worker’s attire. Shift cards
25 contain required attire for shifts. For shifts in which no specific attire is specified, Qwick instructs
26 Hospitality Workers on expectations on what to wear depending on whether the shift is front of the
27 house, back of the house, or is for a chef/cook.

28 //

1 46. Qwickscores are also influenced by attendance and punctuality to assigned shifts.
2 Hospitality Workers canceling shifts for reasons out of their control must submit documentation to
3 Qwick to avoid a negative impact on their score.

4 47. Hospitality Workers’ Qwickscores are also impacted by their performance on their
5 shift. Qwick’s pre-orientation video advises Hospitality Workers: “Just because you aren’t a full-time
6 employee of the business you are picking up a shift at, doesn’t mean that you shouldn’t present
7 yourself like one.” Following a shift, the Hospitality Worker and the Client have an opportunity to rate
8 each other. A Client’s rating is factored into the Hospitality Worker’s Qwickscore.

9 *Qwick Pays its Hospitality Workers, Not Its Clients.*

10 48. The shift card informs the Hospitality Worker the rate of pay and the total
11 compensation. The Hospitality Worker has no ability to negotiate the compensation for the shift.

12 49. The rate of pay for the shift is set by Qwick’s Client, but Qwick may recommend rates.

13 50. Qwick invoices Clients for shifts worked by its Hospitality Workers. Qwick charges
14 Clients 40% on top of the Hospitality Worker’s hourly pay. Clients pay invoices directly to Qwick
15 through the “billing tab” in Qwick’s online Client dashboard or Qwick directly withdraws from its
16 Clients’ banking or credit accounts. Qwick may charge a late fee when a Client is late in paying
17 invoices.

18 51. Qwick pays all Hospitality Workers the amounts they earn from their shifts. Qwick
19 makes these payments through Stripe, a third-party application. The only time a Client may pay a
20 worker directly is by paying the Hospitality Worker tips in cash.

21 *Qwick Prohibits Its Workers from Seeking Employment with Clients.*

22 52. Qwick prohibits its Hospitality Workers from making unsolicited requests for
23 employment directly with Clients.

24 53. Qwick also prohibits business from using Qwick “for advertising purposes” and
25 prohibits them from recruiting Hospitality Workers to work for another website without Qwick’s
26 express written consent.

27 *Qwick Misclassifies Its Hospitality Workers as Independent Contractors.*

28 54. Qwick treats its Hospitality Workers as independent contractors.

1 55. Qwick refers to its Hospitality Workers as “1099 independent contractors.” In FAQs it
2 provides to its Hospitality Workers, Qwick tells workers: “As a 1099 independent contractor, you
3 work for yourself through the Qwick platform and are not a Qwick employee.”

4 56. For a period of time, Qwick ran a beta program that offered its Hospitality Workers
5 “W-2 shifts” in select markets. This program was only offered to specific workers eligible to apply
6 and, based on information and belief, this program was not offered in California. In July 2023, Qwick
7 announced that it had decided to end this program.

8 *Qwick Does Not Comply with Employment Laws.*

9 57. Because Qwick classifies its Hospitality Workers as independent contractors, Qwick
10 does not comply with laws that afford rights and benefits to employees.

11 58. Qwick Hospitality Workers often work alongside and perform the same functions as the
12 Client’s employees. But Hospitality Workers are not provided the same statutory employment
13 protections and benefits as the Clients’ workers they work alongside.

14 59. Qwick does not pay its Hospitality Workers overtime.

15 60. Qwick Hospitality Workers do not receive required paid rest breaks.

16 61. Qwick Hospitality Workers are not provided mandatory unpaid meal breaks.

17 62. Qwick does not offer its Hospitality Workers any employer-subsidized health benefits
18 and makes no health care expenditures on their behalf.

19 63. Qwick’s Hospitality Workers do not accrue any form of paid leave.

20 64. Qwick does not post employment-law compliance notices or otherwise inform its
21 Hospitality Workers of any employee rights.

22 65. On information and belief, Qwick does not offer or make accommodations for
23 Hospitality Workers based on disability, religion, or family care-taking obligations.

24 **II. UNDER DYNAMEX AND ASSEMBLY BILL 5, CALIFORNIA USES THE ABC TEST**
25 **TO DETERMINE EMPLOYEE STATUS.**

26 66. The California Supreme Court’s 2018 decision in *Dynamex, supra*, 4 Cal.5th 903, along
27 with the passage of A.B. 5, have established that the ABC test governs the determination of whether a
28 worker is properly classified as an employee or independent contractor for purposes of the Labor

1 Code, Unemployment Insurance Code, and wage orders of the Industrial Welfare Commission
2 (“I.W.C.”).

3 67. Under the ABC test, for a worker to be properly classified as an independent contractor
4 rather than an employee, hiring parties like Defendants have the burden of establishing that each of the
5 following three requirements are satisfied: (A) the worker is free from the control and direction of the
6 hiring entity in connection with the performance of the work, both under the contract for the
7 performance of the work and in fact; (B) the worker performs work that is outside the usual course of
8 the hiring entity’s business; and (C) the worker is customarily engaged in an independently established
9 trade, occupation, or business of the same nature as the work performed. (Lab. Code, § 2775, subd.
10 (b)(1); see generally *Dynamex, supra*, 4 Cal.5th at p. 957.) These three requirements are referred to as
11 Parts A, B, and C of the ABC test, respectively.

12 68. Because the hiring entity must establish all three parts of the ABC test in order to
13 lawfully classify a worker as an independent contractor, the hiring entity’s failure to satisfy any part of
14 the ABC test results in the worker in question being classified as an employee rather than an
15 independent contractor. (*Dynamex, supra*, 4 Cal.5th at p. 963.)

16 69. Even if the ABC test did not apply to Qwick’s Hospitality Workers, these workers also
17 qualify as Qwick’s employees, not independent contractors, under the test for employment articulated
18 in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, (“*Borello*
19 *Test*”).

20
21 **III. DEFENDANTS MISCLASSIFY QWICK’S WORKERS UNDER ABC TEST.**

22 70. Since 2019, Defendants have misclassified and continue to misclassify Qwick’s
23 California Hospitality Workers as independent contractors instead of employees.

24 **A. Part A of the ABC Test (“control and direction”)**

25 71. Qwick retains all necessary control over its Hospitality Workers’ work, which is to
26 provide hospitality services to Qwick’s Clients. Among other things:

- 27 a. Qwick Hospitality Workers and Clients do not freely negotiate over the compensation or
28 specific tasks included in the services Qwick provides.

- 1 b. Qwick decides what shifts are available to its Hospitality Workers. It offers better shift
2 opportunities to Hospitality Workers that accrue a better Qwickscore.
- 3 c. Qwick monitors and controls all aspects of a Hospitality Workers performance through its
4 Qwickscore. Qwick uses this tool to ensure Hospitality Workers comply with its standards
5 for attire, shift performance, and punctuality. If a Hospitality Worker fails to perform under
6 Qwick’s scoring system, the Hospitality Worker may lose their position on Qwick’s crew.
- 7 d. Qwick invoices its Clients for the services provided by its Hospitality Workers and collects
8 payment from its Clients.
- 9 e. Defendants pay Qwick’s Hospitality Workers for the services the Hospitality Workers
10 provide to Qwick’s Clients.
- 11 f. Qwick provides real-time support services to Hospitality Workers and Clients.
- 12 g. Defendants retain and exercise the right to cease assigning Clients and shifts to Qwick’s
13 Hospitality Workers.
- 14 h. Defendants retain the right to unilaterally change any provision in the terms of use contract
15 at any time.

16 **B. Part B of the ABC Test (“usual course of business”)**

17 72. Qwick is a staffing agency. Like other staffing agencies, Qwick is in the business of
18 providing workers to businesses. Qwick’s business is to provide its Clients with a service, i.e.,
19 Hospitality Workers to fill open shifts. Qwick makes no secret of its business; it pledges to its Clients:
20 “No matter what staff you need, we have you covered.”

21 73. Qwick generates revenue by providing temporary employees to restaurants, bars, and
22 other businesses in the hospitality industry.

23 74. Qwick has described its business as “staffing-as-a-service.” Qwick leadership has
24 explained that Qwick’s core is its role as a “hospitality company.” This hospitality work is performed
25 by Qwick’s Hospitality Workers.

26 75. Qwick’s Hospitality Workers are engaged in work that is within the usual course of
27 Qwick’s business: the provision of shift-by-shift staffing for employers in the hospitality industry.

28 //

1 76. Qwick does not provide a platform that allows its Hospitality Workers to independently
2 market themselves and negotiate with potential employers who are given free rein to choose between
3 the competing Hospitality Workers.

4 **C. Part C of the ABC Test (“independently established trade, occupation, or
5 business”)**

6 77. Qwick’s Hospitality Workers are not engaged in an independently established trade,
7 occupation, or business of the same nature as the work they perform for Qwick.

8 78. The types of positions that Qwick’s Hospitality Workers perform—bussers, bartenders,
9 mixologists, baristas, restaurant servers, dishwashers, line cooks, prep cooks, food assemblers,
10 barbacks, event chefs, banquet cooks, banquet servers, banquet captains, concession workers, and
11 event help—are positions traditionally performed by employees within the food and beverage industry
12 and have no history or tradition of being part of an independently established trade, occupation, or
13 business.

14 79. Indeed, Qwick’s Hospitality Workers perform the same duties that are routinely
15 performed by employees of Qwick’s Clients.

16 80. Qwick’s Hospitality Workers do not operate their own businesses. Among other things,
17 they have no ability to negotiate the number of hours they will work on a shift; to market themselves
18 to Clients; to negotiate wage rates or benefits for shifts; to negotiate job expectations and requirements
19 for their shift; to choose which shifts from Clients are offered to them; to control the length of a shift
20 once started; or to solicit Clients for additional employment opportunities.

21
22 **IV. DEFENDANTS’ MISCLASSIFICATION OF QWICK’S WORKERS IS AN
23 UNLAWFUL AND UNFAIR BUSINESS PRACTICE AND VIOLATES LOCAL
24 EMPLOYMENT ORDINANCES.**

25 81. By misclassifying Qwick’s Hospitality Workers, Defendants devised an unlawful
26 business model that denies Hospitality Workers the protections and benefits they rightfully earn as
27 employees, and Defendants and their Clients thereby gain an unlawful and unfair competitive
28 advantage in the marketplace. Defendants’ misclassification scheme hurts vulnerable workers,
undermines law-abiding competitors (both staffing agencies and hospitality businesses), and harms

1 taxpayers who are often called upon to address the negative consequences to workers and their
2 families of Defendants’ exploitative employment practices.

3 82. With respect to the Hospitality Workers that work within the City of San Francisco,
4 Defendants’ misclassification scheme deprives these workers of the protections and standards set forth
5 in local employment ordinances, including: the HCSO, which requires employers to pay covered
6 employees minimum amounts in health care expenditures; the PPLO, which requires employers to
7 provide paid parental leave benefits to covered employees; and the PSLO, which requires employers to
8 provide paid sick leave to covered employees.

9 **FIRST CAUSE OF ACTION**
10 **FOR INJUNCTIVE RELIEF, RESTITUTION, AND PENALTIES FOR VIOLATIONS OF**
11 **BUSINESS AND PROFESSIONS CODE SECTION 17200 ET SEQ. BROUGHT BY**
12 **PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA**
13 **(Against all Defendants)**

14 83. The People reallege and incorporate by reference each allegation contained in the above
15 paragraphs as if fully set forth herein.

16 84. Defendants have engaged, and continue to engage, in acts or practices that are
17 unlawful, unfair, or fraudulent and which constitute unfair competition within the meaning of section
18 17200 et seq. of the Business and Professions Code. These acts or practices include, but are not limited
19 to, the following:

- 20 a. Failing to classify Hospitality Workers as employees as required by Labor Code
21 sections 2775 and 226.8, and I.W.C. wage order No. 4-2001, and California law
22 including the California Supreme Court’s decision in *Dynamex, supra*, 4 Cal.5th 903;
- 23 b. Failing to pay Hospitality Workers the appropriate premium for overtime hours worked
24 as required by Labor Code section 510 and I.W.C. wage order No. 4-2001, section 3;
- 25 c. Failing to provide meal periods and pay meal period premiums as required by Labor
26 Code sections 226.7 and 512, and I.W.C. wage order No. 4-2001, section 11;
- 27 d. Failing to authorize, permit, and pay for rest periods and rest period premiums for
28 Hospitality Workers as required by Labor Code section 226.7 and I.W.C. wage order
No. 4-2001, section 12;

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- e. Failing to provide Workers with itemized wage statements as required by Labor Code section 226, and failing to maintain and provide Hospitality Workers with required records as required by I.W.C. wage order No. 4-2001, section 7;
- f. Failing to provide sick leave to Hospitality Workers as required by Labor Code section 246;
- g. Failing to provide other rights and benefits to Hospitality Workers under the Labor Code, I.W.C. wage order No. 4-2001;
- h. Failing to provide required health expenditures to Hospitality Workers who worked in San Francisco, as required by the HCSO, S.F. Admin. Code Chapter 14;
- i. Failing to provided paid parental leave to Hospitality Workers who worked in San Francisco as required by the PPLO, S.F. Police Code Article 33H;
- j. Failing to provide sick leave to Hospitality Workers who worked in San Francisco as required by the PSLO, S.F. Admin. Code Chapter 12W; and
- k. Denying Hospitality Workers the protections and benefits of other local laws that apply to employees but do not protect independent contractors.

85. Defendants' misclassification of Qwick's Hospitality Workers as independent contractors and accompanying failure to comply with numerous provisions of the California Labor Code, including the employee classification provision of Labor Code section 2775, and applicable local ordinances, constitutes an unlawful and unfair business practice and, therefore, violates California's Unfair Competition Law. (Bus. & Prof. Code, § 17200 et seq.)

SECOND CAUSE OF ACTION
INJUNCTIVE RELIEF FOR VIOLATIONS OF LABOR CODE SECTION 2786 BROUGHT
BY PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA
(Against all Defendants)

86. The People reallege and incorporate by reference each allegation contained in the above paragraphs as if fully set forth herein.

87. The Labor Code permits an action for injunctive relief to prevent the continued misclassification of employees as independent contractors. (Lab. Code, § 2786.) This action may be

1 prosecuted by “a city attorney in a city and county” in the name of the People of the State of
2 California. (*Ibid.*)

3 88. Qwick has misclassified and continues to misclassify its Hospitality Workers as
4 independent contractors.

5 **THIRD CAUSE OF ACTION**
6 **RELIEF FOR VIOLATIONS OF THE SAN FRANCISCO HEALTH CARE SECURITY**
7 **ORDINANCE, BROUGHT BY PLAINTIFF CITY AND COUNTY OF SAN FRANCISCO**
8 **(Against all Defendants)**

9 89. The City realleges and incorporate by reference each allegation contained in the above
10 paragraphs as if fully set forth herein.

11 90. For Hospitality Workers that perform work in San Francisco and meet the coverage
12 provisions set for in S.F. Admin. Code section 14.1, Qwick is required to make health care
13 expenditures in accordance with S.F. Admin. Code section 14.3. Defendants have violated this
14 requirement by failing to make the required health care expenditures.

15 91. Subdivision (e)(3) of section 14.4 of the HCSO allows the San Francisco City Attorney
16 to secure restitution and to recover civil penalties and enforcement costs, including attorneys’ fees, to
17 remedy violations of the HCSO. The City Attorney is pursuing Defendants to ensure their compliance
18 with the HCSO and has, and is, incurring fees and costs.

19 **FOURTH CAUSE OF ACTION**
20 **RELIEF FOR VIOLATIONS OF THE SAN FRANCISCO PAID PARENTAL LEAVE**
21 **ORDINANCE, BROUGHT BY PLAINTIFF CITY AND COUNTY OF SAN FRANCISCO**
22 **(Against All Defendants)**

23 92. The City realleges and incorporate by reference each allegation contained in the above
24 paragraphs as if fully set forth herein.

25 93. For Hospitality Workers that work in San Francisco and meet the coverage provisions
26 of the PPLO as set for in S.F. Police Code section 3300H.3, Qwick is required to provide paid parental
27 leave in accordance with S.F. Police Code section 3300H.4. On information and belief, Qwick has
28 violated this requirement by failing to provide the required paid parental leave, and by failing to
provide notice of this benefit to Hospitality Workers.

1 violations of the PSLO. The City Attorney is pursuing Defendants to ensure their compliance with the
2 PSLO and has, and is, incurring fees and costs.

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4 **PRAYER FOR RELIEF**

5 WHEREFORE, the People and the City pray for the following relief:

6 1. Pursuant to Business and Professions Code section 17203, that the Court enter all
7 orders necessary to prevent Defendants, as well as Defendants' successors, agents, representatives,
8 employees, and all persons who act in concert with Defendants from engaging in any act or practice
9 that constitutes unfair competition in violation of Business and Professions Code section 17200,
10 including, but not limited to, the acts and practices occurring in the State of California alleged in this
11 Complaint;

12 2. Pursuant to Business and Professions Code section 17203, that the Court enter all
13 orders or judgments as may be necessary to restore to any person in interest any money or property
14 that Defendants may have acquired by violations of Business and Professions Code section 17200, as
15 may be proved at trial;

16 3. Pursuant to Business and Professions Code section 17206, that each Defendant be
17 assessed a civil penalty in an amount up to \$2,500 for each violation of Business and Professions Code
18 section 17200 et seq., as proven at trial;

19 4. Pursuant to Business and Professions Code section 17206.1, that each Defendant be
20 assessed an additional civil penalty in an amount up to \$2,500 for each violation of the UCL
21 perpetrated against a senior citizen or disabled person, as proven at trial;

22 5. Pursuant to Labor Code section 2786, an order to prevent each Defendant from
23 continuing to misclassify Qwick's Hospitality Workers as independent contractors;

24 6. All remedies available for violations of the HCSO;

25 7. All remedies available for violations of the PPLO;

26 8. All remedies available for violations of the PSLO;

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- 1 9. That the People and City recover their attorneys' fees and costs of suit; and
2 10. Such other and further relief that the Court deems appropriate and just.

3
4 Dated: August 30, 2023

Respectfully submitted,

5 DAVID CHIU
6 City Attorney
7 YVONNE R. MERÉ
8 Chief Deputy City Attorney
9 MATTHEW D. GOLDBERG
10 Chief Worker Protection Attorney
11 IAN H. ELIASOPH
12 Deputy City Attorney

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By: 

IAN H. ELIASOPH

Attorneys for Plaintiffs
CITY AND COUNTY OF SAN FRANCISCO and
PEOPLE OF THE STATE OF CALIFORNIA, acting by
and through San Francisco City Attorney DAVID CHIU