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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

BIANKA JONES,

Plaintiff,

v.

SECURITAS SECURITY SERVICES USA,
INC.; DOES 1-10, business entities, forms
unknown; DOES 11-20, individuals; and
DOES 21-30, inclusive,

Defendant.

Case No.: 20STCV17470

*(Assigned for all purposes to the Hon. Gregory Kosian,
department 61)*

**Plaintiff Bianka Jones' First Amended Complaint
for:**

- 1. Associational Disability Discrimination;**
- 2. CFRA Leave Retaliation (Gov. Code § 12945.2(l));**
- 3. Retaliation in Violation of Labor Code Sections §§ 233, 234, 246.5;**
- 4. Wrongful Termination in Violation of Public Policy;**
- 5. Failure to Pay Sick Leave (Labor Code § 246);**
- 6. Failure to Provide Rest Breaks (Labor Code § 226.7, and Wage Order 4-2001);**
- 7. Failure to Pay Wages Promptly Upon Termination (Labor Code §§ 201 and 203);**
- 8. Unfair Business Practices (Cal. Bus. & Pro. Code § 17200, et seq.);**
- 9. Intentional Infliction of Emotional Distress;**
- 10. Failure to Prevent Discrimination (Cal. Gov. Code § 12940(k); and**
- 11. Retaliation for Engaging in a Protected Activity in Violation of Cal. Gov. Code § 12940 (h).**
- 12. Private Attorneys General Act (L.C. §§ 2698, et seq.)**

[DEMAND FOR JURY TRIAL]

Action Filed: May 7, 2020

1 Plaintiff BIANKA JONES (hereinafter “Plaintiff” or “Ms. Jones”) hereby files this first amended
2 complaint against SECURITAS SECURITY SERVICES USA, INC. and DOES 1-30 (“Defendants” or
3 “Securitas” or “Company”). Plaintiff is informed and believes, and based thereupon alleges, unless
4 otherwise indicated, as follows:

5 **I. NATURE OF THE ACTION**

6 1. Plaintiff files this action to recover damages and remedies afforded to her by law for violations
7 of the California Labor Code, arising from Defendants’ unlawful practices against Plaintiff.

8 2. Plaintiff brings this action against All Defendants for retaliation, wrongful termination,
9 prejudgment interest, costs, attorneys’ fees, and other appropriate relief for Defendants’ unlawful
10 conduct.

11 **II. PARTIES, JURISDICTION, AND VENUE**

12 3. Plaintiff Bianka Jones is an individual, who, at all times relevant to the action, resided in the
13 County of Los Angeles, State of California.

14 4. Plaintiff is informed, believes and thereupon alleges that Defendant SECURITAS SECURITY
15 SERVICES USA, INC., is now, and was at all times mentioned in this Complaint, was doing business
16 in California and was Plaintiff’s employer at all times relevant herein.

17 5. Plaintiff is informed, believes, and there upon alleges that Defendant is, and at all times relevant
18 herein was, the agent of his, her, or its co-defendants, and in committing the acts alleged herein, was
19 acting with the scope of his, her, or its authority as such agent, and with the knowledge, permission, and
20 consent of his, her, or its co-defendants.

21 6. The true names and capacities, whether individual, corporate, associate, or otherwise, of
22 Defendant(s) named herein as DOES 1 through 50, inclusive, and each of them, are unknown to Plaintiff,
23 who therefore brings this action against said Defendants by their fictitious names pursuant to Cal. *Code*
24 *Civ. Pro.* § 474. Plaintiff will therefore seek leave to amend this Complaint to include the true names
25 and capacities of said DOE Defendant(s) in the event that identification of such DOE parties is
26 ascertained.

27 7. Plaintiff is informed and believes, and based thereon alleges, that at all times relevant hereto,
28 Defendants, and each of them, were the employees, managing agents, supervisors, coconspirators,

1 subsidiaries, parent company, parent corporation, joint employer, joint venturer, and/or alter ego of the
2 other Defendants, and each of them. In doing the things alleged herein, said Defendants were acting, at
3 least in part, within the course and scope of said agency, employment, conspiracy or other alter ego
4 status, with the permission and/or consent of each of the other Defendants.

5 8. Plaintiff is informed and believes, and based thereon alleges, that at all times relevant hereto,
6 Defendants, and each of them, including the DOE parties, acted in concert with one another to commit
7 the wrongful acts alleged herein, and aided, abetted, ratified, took overt actions, and/or acted jointly with
8 one another to commit the wrongful acts alleged herein. Plaintiff is further informed and believes, and
9 thereon alleges, that Defendants, and each of them, including the DOE parties, formed and executed a
10 conspiracy and/or common plan pursuant to which they would commit the wrongful acts alleged herein,
11 with all such acts alleged herein done as part and pursuant to said conspiracy or common plan, and all
12 with the intent to cause Plaintiff harm. Plaintiff is further informed and based upon this information and
13 belief alleges that at all relevant times, each act which was committed by any of the Defendants herein
14 which was outside the course and scope of said Defendants' agency, servitude, and/or employment
15 relationship was nevertheless accepted, adopted and/or ratified by said Defendants' principals, masters,
16 employers, joint venturers, employers, and/or each of them.

17 9. All defendants compelled, coerced, aided, and/or abetted the discrimination, retaliation, and
18 harassment alleged in this Complaint, which conduct is prohibited under California Government Code
19 section 12940(i). All defendants were responsible for the events and damages alleged herein, including
20 on the following bases: (a) defendants committed the acts alleged; (b) at all relevant times, one or more
21 of the defendants was the agent or employee, and/or acted under the control or supervision, of one or
22 more of the remaining defendants and, in committing the acts alleged, acted within the course and scope
23 of such agency and employment and/or is or are otherwise liable for plaintiff's damages; (c) at all
24 relevant times, there existed a unity of ownership and interest between or among two or more of the
25 defendants such that any individuality and separateness between or among those defendants has ceased,
26 and defendants are the alter egos of one another. Defendants exercised domination and control over one
27 another to such an extent that any individuality or separateness of defendants does not, and at all times
28 herein mentioned did not, exist. Adherence to the fiction of the separate existence of defendants would

1 permit abuse of the corporate privilege and would sanction fraud and promote injustice. All actions of
2 all defendants were taken by employees, supervisors, executives, officers, and directors during
3 employment with all defendants, were taken on behalf of all defendants, and were engaged in,
4 authorized, ratified, and approved of by all other defendants.

5 10. Finally, at all relevant times mentioned herein, all defendants acted as agents of all other
6 defendants in committing the acts alleged herein.

7 11. Venue is proper in the Superior Court of California, County of Los Angeles, as this Court has
8 personal jurisdiction over Defendants pursuant to Code of Civil Procedure § 395. Plaintiff worked in
9 and violations occurred in Los Angeles County, and the contract of employment was formed in Los
10 Angeles County.

11 **III. FACTUAL ALLEGATIONS**

12 12. By this reference, Plaintiff alleges and incorporates herein each and every allegation set forth in
13 all previous paragraphs of the Complaint.

14 **a. Background**

15 13. Bianka Jones (“Ms. Jones”) began working at Securitas on or around September 22, 2017 as a
16 Security Officer. Ms. Jones was regularly scheduled to work a shift from 9:00 pm to 5:00 am four (4)
17 days per week and 11:00 pm to 7:00 am on Thursdays.

18 14. Ms. Jones was a reliable employee who regularly went above and beyond to cover shifts of her
19 peers and would frequently work past the end time of her scheduled shifts so that the post would not be
20 unattended. She regularly did so two to three times each week. Such coverage was needed because the
21 employees that were scheduled to begin a shift immediately after Ms. Jones’ shift ended, would
22 frequently arrive late.

23 **b. Ms. Jones Requires Time Off for a Family Medical Emergency**

24 15. On May 15, 2019, Ms. Jones received a call from a family member during her scheduled shift,
25 informing her that her mother was being admitted to the hospital due to a serious heart condition-
26 congestive heart failure. The call came at around 4:30 am, which was thirty (30) minutes before the end
27 of her regularly scheduled shift.

28 16. Normally, Ms. Jones had no problem staying past the end of her scheduled shift as a result of

another employee's consistent late arrival (which, notably, was not a result of any protected reason). However, on May 15, 2019, Ms. Jones was unable to stay beyond the end time of her scheduled shift because of a family emergency. On this day, as was typically the case, the employee scheduled to relieve Ms. Jones from her post, was running late yet again. Although Ms. Jones waited an additional thirty (30) minutes beyond her scheduled shift, the employee had still not arrived at work. As a responsible employee does, Ms. Jones diligently attempted to reach this employee multiple time throughout those thirty (30) minutes yet was unable to get in touch with that employee. This employee made no effort to contact Ms. Jones or anyone else on site that Ms. Jones was aware of to notify of the expected late arrival or the reason for it.

17. At this point, Ms. Jones was very concerned about the health and wellbeing of her mother and told her shift supervisor about the nature of the emergency by phone and asked for permission to leave for the day, notwithstanding the fact that her shift technically ended 30 minutes prior. Her shift supervisor, Bell, approved her leaving even though the employee that was supposed to be there to relieve her had yet to arrive.

c. The Company Terminates Ms. Jones' Employment on May 16, 2019

18. On May 16, 2019, Ms. Jones was called into the office by the human resources representative, Sindhu Fernando. This was during the second shift Ms. Jones worked after leaving for her mother's medical emergency. She had reported for her first scheduled shift on May 15, 2019 at 11:00 pm and worked without incident. During the meeting, she was told by Ms. Fernando that her employment was being terminated for violation of company policy which was classified by Securitas as "Post Abandonment."

d. Wage and Hour Violations

19. During most shifts throughout her employment, Ms. Jones was not provided legally compliant rest periods as she was not permitted to leave her post because she would be breaking company policy. Taking breaks were nearly impossible especially because Ms. Jones would have to wait past her allotted schedule for the next employee to show up and relieve her from the post.

20. Despite having at least approximately eight (8) hours of unused sick time available to her immediately prior to her termination, the Company failed to provide time off for Ms. Jones or allow her

1 to use her available sick hours.

2 21. Ms. Jones' final check was given at the time of termination, but it only included hours worked
3 to date. The check that included her pay for the vacation hours she accrued was mailed out the next day
4 on May 17, 2019. She received the check the following week on or about May 20, 2019, which included
5 payment for forty (40) hours of vacation time.

6 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 22. Plaintiff has obtained a right to sue and confirmation from the DFEH that her complaint will not
8 be pursued by the DFEH. Plaintiff is therefore entitled to proceed with a civil action to pursue all
9 remedies available to her by law.

10 **V. CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION**

12 **ASSOCIATIONAL DISABILITY DISCRIMINATION**

13 **(Against All Defendants)**

14 23. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set
15 forth herein.

16 24. Plaintiff was at all times hereto an "employee" within the meaning of California Government
17 Code § 12926(c) and California Government Code §§ 12940(a) and (c), which prohibit disability
18 discrimination in employment.

19 25. Defendants were at all material times an "employer" as defined by California Government Code
20 § 12926(d) and within the meaning of California Government Code §§ 12940(a) and (c) and, as such,
21 were barred from discriminating in employment decisions on the basis of disability, as set forth in
22 California Government Code § 12940.

23 26. Defendants have discriminated against Plaintiff on the basis of her association with a person with
24 a medical condition and/or physical disability in violation of California Government Code §§ 12940(a)
25 and (c), Article I of the California Constitution and related statutes, by engaging in the course of conduct
26 more fully set forth in the Factual Allegations and all paragraphs stated above.

27 27. Plaintiff is informed and believes, and thereon alleges, that her association with a member of a
28 protected class, engagement in protected activity and or/ some combination of these protected

characteristics under Government code §12926(j) were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

28. Said conduct violates the FEHA, and such violations were a proximate cause in Plaintiff's damage as stated below.

29. As a result of Defendants' unlawful discrimination against Plaintiff, Plaintiff has suffered and continues to suffer (a) substantial humiliation, serious mental anguish, emotional and physical distress; and (b) loss of past and future earnings, and employment benefits and opportunities, on account of which Plaintiff is entitled to compensatory damages. The exact amount and nature of such damages exceed the jurisdictional limits of this court, but are presently unknown to Plaintiff, who will either seek leave to amend this Complaint upon ascertaining such information, or will prove the same at the time of trial.

30. As more fully set forth above, the disability discrimination by Defendants was committed intentionally, maliciously, wantonly, oppressively, and fraudulently with a conscious disregard for Plaintiff's rights and with the intent to vex, injure, punish, and annoy Plaintiff so as to cause the injuries sustained by Plaintiff. Such acts amounted to oppression, fraud, and malice, as described in California Civil Code § 3294. Plaintiff is therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an example out of Defendants.

31. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of attorneys' fees and costs, including expert fees pursuant to FEHA.

SECOND CAUSE OF ACTION

CFRA LEAVE RETALIATION

GOVERNMENT CODE § 12945.2(l)

(Against All Defendants)

32. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein.

33. Government Code § 12945.2(l) states that it is an unlawful employment practice for an employer "to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because of . . . an individual's exercise of the right to family care and medical leave"

1 34. Plaintiff, at all times relevant hereto, was an “employee” of Defendants, as defined by
2 Government Code § 12926(c), for the purposes of Government Code § 12940(a), which prohibits race
3 discrimination in employment.

4 35. Defendants were at all material times “employers,” as defined by Government Code § 12926(d)
5 and, as such, were barred from retaliating against any individual on the basis of that individual’s exercise
6 of the right to family care and medical leave, as set forth in Government Code § 12945.2.

7 36. Defendants have retaliated against Plaintiff on the basis of Plaintiff’s exercise of Plaintiff’s right
8 to family care and medical leave in violation of Government Code § 12945.2(l) and related statutes by
9 engaging in the course of conduct more fully set forth elsewhere herein, and such retaliatory conduct
10 was a substantial factor in causing the harm to Plaintiff alleged herein.

11 37. Defendants authorized and ratified the wrongful acts of their agents and employees, knew in
12 advance that their agents and employees were likely to commit such acts and employed them with
13 conscious disregard of the rights or safety of others, and/or their officers, directors, or managing agents
14 were themselves guilty of oppression and malice.

15 38. As a result of Defendants’ unlawful retaliation against Plaintiff, Plaintiff has suffered and
16 continues to suffer (a) substantial humiliation, serious mental anguish, and emotional and physical
17 distress; and (b) loss of past and future earnings, status and future status, and employment benefits and
18 opportunities, on account of which Plaintiff is entitled to compensatory damages in an amount to be
19 established according to proof at trial. Plaintiff claims such amount together with prejudgment interest
20 pursuant to Civil Code § 3287 or 3288 and any other applicable provision of law.

21 39. As a further direct and proximate result of Defendants’ violation of Government Code §
22 12945.2(l), Plaintiff has been compelled to retain the services of counsel and will continue to incur legal
23 fees and costs. Plaintiff requests an award of such attorneys’ fees and costs pursuant to Government
24 Code § 12965(b).

25 40. The retaliatory acts committed by Defendants were intentional, malicious, wanton, and
26 oppressive, with a conscious disregard for Plaintiff’s rights and with the intent to vex, injure, punish,
27 and annoy Plaintiff so as to cause Plaintiff the injuries alleged herein. Such acts amount to oppression
28 and malice, as described in Civil Code § 3294. Plaintiff is therefore entitled to punitive or exemplary

1 damages in an amount sufficient to punish and make an example out of Defendants.

2 **THIRD CAUSE OF ACTION**

3 **RETALIATION IN VIOLATION OF LABOR CODE § 233, 234, 246.5**

4 **(Against All Defendants)**

5 41. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set
6 forth herein.

7 42. At all times herein mentioned, Labor Code Sections 233, 234 and 246.5 were in effect and
8 binding on Defendants.

9 43. California Labor Code § 233, requires an employer to allow an employee to use accrued and
10 “available” sick leave for purposes specified in the paid sick leave law.

11 44. California Labor Code § 234 provides that an employer absence control policy that counts sick
12 leave taken pursuant to Cal. Lab. Code § 233 as an absence that may lead to or result in discipline,
13 discharge, demotion, or suspension is a per se violation of § 233.

14 45. California Labor Code § 246.5 sets forth the conditions by which an employer in California must
15 provide paid sick days to its employees.

16 46. Ms. Jones made an oral request to obtain time off work due to the fact that her mother was being
17 treated in the hospital for a serious heart condition (i.e., congestive heart failure).

18 47. Despite having eight (8) hours of unused sick time available to her, Defendant failed to provide
19 time off for Ms. Jones.

20 48. On May 15, 2019, Ms. Jones completed her scheduled shift, which was extended due to the
21 tardiness of the employee scheduled to work the next shift.

22 49. After waiting an additional 30 minutes past her shift, she explained to the shift supervisor that
23 she had to leave because her mother was being treated in the hospital and was given permission to leave.

24 50. The only reason provided to Ms. Jones for her termination was that she left without proper relief,
25 resulting in “Post Abandonment.”

26 51. Labor Code § 246.5 prohibits an employer from retaliating against any employee for using his
27 or her accrued sick days.

28 52. As a direct and proximate result of Defendants wrongful termination of Plaintiff’s employment,

1 she has suffered and continues to sustain substantial losses in earnings and other employment benefits
2 in an amount according to proof at trial.

3 53. As a further direct and proximate result of Defendants wrongful termination of her employment,
4 Plaintiff suffered humiliation, emotional distress and mental anguish, all to her damage in an amount
5 according to proof at trial.

6 54. In doing the acts herein alleged, Defendants acted with oppression, fraud, malice and in
7 conscious disregard to Plaintiff's rights and she is therefore entitled to punitive damages in an amount
8 ascertained at the time of trial.

9 55. Plaintiff has incurred and continues to incur attorneys' fees and costs in an amount according to
10 proof at trial.

11 **FOURTH CAUSE OF ACTION**

12 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

13 **(Against All Defendants)**

14 56. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set
15 forth herein.

16 57. Irrespective of any employment contract, Employer Defendant's right to discharge Plaintiff was
17 subject to limits imposed by public policy of the State of California.

18 58. It is settled that an employer's discharge of an employee in violation of a fundamental public
19 policy embodied in a constitutional or statutory provision gives rise to a tort action for wrongful
20 termination in violation of public policy.

21 59. Employer Defendant's discharge of Plaintiff violated the public policy of the State of California,
22 as expressed in provisions of the Constitution of the State of California, including Article I § 8 and
23 California Labor Code §§ 233, which prohibits employers absence policy from disciplining or otherwise
24 taking negative action against an employee for using accrued sick days and 246.5, which sets forth
25 conditions by which an employer in California must provide paid sick days to its employees.

26 60. Plaintiff is informed and believes, and thereon alleges that Defendants terminated his
27 employment in violation of the public policies set forth in California Labor Codes § 233, 234, and 246.5.

28 61. Defendants authorized and ratified the wrongful acts of their agents and employees, knew in

1 advance that their agents and employees were likely to commit such acts and employed them with
2 conscious disregard of the rights or safety of others, and/or their officers, directors, or managing agents
3 were themselves guilty of oppression and malice.

4 62. As a result of Employer Defendant's unlawful termination of Plaintiff's employment, Plaintiff
5 has suffered and will continue to suffer (a) substantial humiliation, serious mental anguish, and
6 emotional and physical distress; and (b) loss of past and future earnings, status and future status, and
7 employment benefits and opportunities, on account of which Plaintiff is entitled to compensatory
8 damages in an amount to be established according to proof at trial. Plaintiff claims such amount together
9 with prejudgment interest pursuant to Civil Code § 3287 or 3288 and any other applicable provision of
10 law.

11 63. As a further direct and proximate result of Employer Defendant's termination of Plaintiff's
12 employment in violation of California Labor Code §§ 233, 234 and 246.5, Plaintiff has been compelled
13 to retain the services of counsel and will continue to incur legal fees and costs. Plaintiff requests an
14 award of such attorneys' fees and costs pursuant to Government Code § 12965(b).

15 64. Employer Defendant's unlawful and wrongful termination of Plaintiff was intentional,
16 malicious, wanton, and oppressive, with a conscious disregard for Plaintiff's rights and with the intent
17 to vex, injure, punish, and annoy Plaintiff so as to cause Plaintiff the injuries alleged herein. Such acts
18 amount to oppression and malice, as described in Civil Code § 3294. Plaintiff is therefore entitled to
19 punitive or exemplary damages in an amount sufficient to punish and make an example out of
20 Defendants.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PAY PAID SICK LEAVE**

23 **PER LABOR CODE § 246**

24 **(Against All Defendants)**

25 65. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set
26 forth herein.

27 66. Labor Code § 246 requires employers to compensate employees who, on or after July 1, 2015,
28 work in California for the same employer for 30 or more days within a year from the commencement of

1 employment for sick days at the rate of not less than one hour per every 30 hours worked.

2 67. As of the time of her termination, Plaintiff was owed 8 hours of sick pay and was not
3 compensated for or afforded the opportunity to use the sick hours.

4 68. Defendants willfully failed to pay Plaintiff sick pay pursuant to the requirements of Labor Code
5 § 246, and therefore Plaintiff is entitled to recover those unpaid wages, interest thereon pursuant to Labor
6 Code § 218.6, plus attorneys' fees and costs pursuant to Labor Code § 218.5, in amounts to be
7 established according to proof at trial.

8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE REST BREAKS IN VIOLATION OF**

10 **WAGE ORDER 4-2001, § 12 AND LABOR CODE § 226.7**

11 **(Against All Defendants)**

12 69. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set
13 forth herein.

14 70. California Labor Code § 226.7 prohibits an employer from requiring an employee to work during
15 any rest period mandated by an applicable Industrial Wage Order.

16 71. Pursuant to Wage Order 4-2001, § 12, every employer shall authorize and permit all employees
17 to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
18 thereof.

19 72. If an employer fails to provide an employee with a rest period as required, the employer must
20 pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday
21 that a rest period is not provided as required.

22 73. Defendant failed to authorize or permit Plaintiff to take a rest period on a number of workdays.
23 Furthermore, Defendants failed to compensate Plaintiff one (1) hour of pay for each workday that a rest
24 period was not provided.

25 74. As a result of Defendants' conduct, Plaintiff has sustained economic damages, including but not
26 limited to unpaid wages and lost interest, in an amount to be established at trial, and Plaintiff is entitled
27 to recover economic and statutory damages and penalties and other appropriate relief from Defendants'
28 violations of the California Labor Code and IWC Wage Order 4-2001.

SEVENTH CAUSE OF ACTION

FAILURE TO PAY WAGES PROMPTLY UPON TERMINATION

LABOR CODE §§ 201 AND 203

(Against Employer Defendant)

75. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein.

76. Labor Code § 201 requires employers to pay all compensation due and owing to their employees immediately upon discharge.

77. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by §§ 201 and 202, then the employer is liable for “waiting time” penalties in the form of continued compensation at the employee’s regular rate of pay for each day that wages remain unpaid, up to thirty days.

78. Defendants failed to pay Plaintiff all wages due immediately upon termination as required by Labor Code § 201, including vested vacation time pay.

79. Defendants willfully failed to pay Plaintiff’s wages pursuant to the requirements of Labor Code § 201 , and therefore Plaintiff is entitled to recover interest, waiting-time penalties under Labor Code § 203, plus attorneys’ fees and costs, in an amount to be established according to proof at trial.

EIGHTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

BUS. & PROF. CODE §§ 17200, ET SEQ.

(Against All Defendants)

80. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein.

81. The unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of California Business and Professions Code § 17200. This unfair conduct includes Defendants’ wrongful termination of Plaintiff, failure to pay Plaintiff for accrued sick time pay, failure to provide rest breaks, and failure to pay timely wages upon termination. Due to their unfair business practices in violation of California Labor Code, Defendants have gained a competitive advantage over other

comparable companies doing business in the State of California that comply with their obligations under the law.

82. As a direct and proximate result of the unfair business practices of Defendants, Plaintiff is entitled to equitable relief, enjoining Defendants to cease and desist from engaging in the practices described herein.

83. As a result of Defendants unfair competition as alleged herein, Plaintiff suffered injury and in fact lost money, as described in more detail above.

NINTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(Against All Defendants)

84. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein.

85. Pursuant to *Christensen v. Superior Court*, 54 Cal.3d 868, 903 (1991), Plaintiff is entitled to recover for the intentional infliction of emotional distress where, “(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant’s outrageous conduct.”

86. As more fully alleged herein, Plaintiff was subjected to discrimination and retaliation by Defendants, and each of them, because she was engaged in a protected activity/ies and was caring for a family member who suffered from a disability and/or medical condition, categories protected under the California *Government Code*, the California Labor Code and the California Constitution, and well-established public policy.

87. As more fully alleged herein, Plaintiff was subjected to acts of retaliation/discrimination and those described as the Adverse Employment Actions by Defendants, and each of them, because Defendants discovered that Plaintiff was a member of various protected classes, all of which Defendants’ despised and/or did not want to accommodate or allow, and in whom Defendants did not want to invest or continue to employ.

88. Defendants’ extreme and outrageous conduct, as alleged herein and incorporated by reference, is

1 imputed to Defendants, and each of them, and each of them, were a managing/supervising agent of
2 Defendants' business entity(ies).

3 89. Plaintiff was forced to work in a severe and hostile work environment under the supervision of
4 all Defendants who harassed and subjected Plaintiff to acts of discrimination based on Plaintiff's family
5 member's disability/medical condition and her complaining about the same, and in an effort to
6 specifically harm Plaintiff based on said protected categories.

7 90. Defendants, and each of them, knowingly terminated Plaintiff's employment after learning of
8 Plaintiff's family member's disability/medical condition, and her need to care for said family member.

9 91. The Defendants, and each of them, ratified the above-alleged unlawful conduct when they
10 terminated Plaintiff in violation of the California statutes, Constitution, and public policies alleged
11 herein.

12 92. As a proximate result of Defendants' conduct, Plaintiff has suffered and continues to suffer
13 from severe emotional distress including embarrassment, humiliation, disappointment anxiety, and
14 anger, all to Plaintiff's damage in an amount to be proved and which is within the jurisdiction of this court.

15 93. Defendants' acts and omissions, as set forth herein above, were extreme and outrageous and
16 were undertaken in a despicable, oppressive, deceitful, fraudulent, deliberate, egregious and inexcusable
17 manner, with malice and oppression as defined by California *Civil Code* § 3294.

18 94. In committing the outrageous acts and omissions described herein above, Defendants, and each
19 of them, knew or should have known that their conduct would result in Plaintiff's severe emotional
20 distress, and Defendants' acts and omission were perpetrated with the intent to inflict and/or with
21 reckless disregard for the probability of inflicting humiliation, mental anguish and severe emotional
22 distress on Plaintiff.

23 95. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff has been
24 harmed in that Plaintiff has suffered actual, consequential and incidental financial losses, including
25 without limitations loss of salary and benefits, and the intangible loss of employment-related
26 opportunities, medical benefits and other benefits including retirement, all in an amount subject to proof
27 at the time of trial.

28 96. Plaintiff claims such amounts as damages together with prejudgment interest.

1 97. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff has
2 suffered and continues to suffer anxiety, worry, embarrassment humiliation, mental anguish, and
3 emotional distress. Plaintiff has experienced, among other things, mental anguish, psychological pain
4 and suffering, and related items such as humiliation, embarrassment, nervousness, sleeplessness,
5 irritability, agitation, annoyance, fear, anger, anxiety, frustration, hopelessness, despair, depression,
6 difficulty with concentration.

7 98. Plaintiff is informed and believes and thereon alleges that he will continue to experience said
8 pain and emotional suffering for a period in the future all in an amount subject to proof at the time
9 of trial.

10 99. The discrimination and Adverse Employment Actions taken toward Plaintiff were carried out by
11 and/or ratified by Defendants, and each of them, including DOES 1 through 50, and/or managing agent
12 employees of Defendants, all of whom acted in a despicable, oppressive, cruel, fraudulent, malicious,
13 deliberate, deceitful, egregious, and inexcusable manner in order to injure and damage Plaintiff, thereby
14 justifying an award to him of punitive damages in a sum appropriate to punish and make an example of
15 Defendants.

16 **TENTH CAUSE OF ACTION**

17 **FAILURE TO PREVENT DISCRIMINATION**

18 **IN VIOLATION OF CAL. GOV. CODE § 12940(K)**

19 **(Against All Defendants)**

20 100. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set
21 forth herein.

22 101. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

23 102. At all times relevant to the allegations set forth herein, the California Fair Employment and
24 Housing Act ("FEHA"), codified as Cal. Gov. Code § 12940, *et seq.*, was and is in full force and effect
25 and was and is binding on all corporate Defendants.

26 103. Pursuant to Cal. Gov. Code § 12940(k), an employer is required "to take all reasonable steps
27 necessary to prevent discrimination . . . from occurring."

28 104. In perpetrating the actions and omissions set forth herein, Defendants violated Cal. Gov. Code §

12940(k) these provisions by failing to take all reasonable steps necessary to prevent such discrimination based on disability and/or medical condition.

105. In violation of Cal. Gov. Code § 12940(k), these actions and omissions include, but are not limited to, the following:

- a. Failing to implement and maintain any policies and/or having implemented and maintained ineffective policies, practices, and procedures regarding Defendants' obligations to provide reasonable accommodations to employees, and to refrain from discrimination on the basis of an employee's disability and/or medical condition (including but not limited to caring for a family member with a disability and/or medical condition);
- b. Failing to implement and maintain any policies and/or having implemented and maintained ineffective policies, practices, practices, and procedures regarding the handling of complaints of such discrimination and/or harassment, including harassment/retaliation based on disability and/or medical condition, or improperly handling complaints of harassment based on disability and/or medical condition;
- c. Failing to implement and maintain any policies and/or having implemented and maintained ineffective policies, practices, policies, and procedures regarding the handling of complaints of harassment, discrimination and retaliation, otherwise improper discrimination and/or harassment by supervisors; and
- d. Failing take any or otherwise taking inappropriate or ineffective actions to investigate complaints by employees subjected to improper and unlawful discrimination and/or retaliation based on an employee's disability and/or medical condition including but not limited to an employee caring for a family member caring for a family member with a disability and/or medical condition.

106. During the entire relevant period, Defendants failed to take all reasonable steps to prevent discrimination based on protected classes outlined in this complaint.

107. During the entire relevant period, Defendants, and each of them, failed to provide any training, education, or instruction, or provided inadequate training, education, or instruction, to their personnel or, more importantly, to Defendants' management and supervisory personnel, with regard to policies

and procedures regarding discrimination or harassment.

108. During the entire relevant period, Defendants failed to take reasonable steps to prevent discrimination and the Adverse Employment Actions from being inflicted against Plaintiff, despite such discrimination, Adverse Employment Actions, and/or retaliation being a substantial factor contributing to his termination.

109. As a proximate result of Defendants' willful, knowing, and/or intentional failure to take reasonable steps to prevent their employees from being subjected to improper and unlawful discrimination, particularly discrimination on the basis of Plaintiff's caring for a family member with a disability and/or medical condition, Plaintiff has suffered and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional distress and has incurred and will likely incur medical expenses as a result.

110. As a proximate result of Defendants' willful, knowing, and intentional discrimination, Plaintiff sustained and continues to sustain substantial losses, including, but not limited to, losses in earnings and other employment benefits, the intangible loss of employment-related opportunities for growth in his field, and damage to his professional reputation, all in an amount subject to proof at the time of trial.

111. Plaintiff claims such amounts as damages together with prejudgment interest pursuant to California *Civil Code* §§ 3287 & 3288, and/or any other provision of law providing for prejudgment interest.

112. Plaintiff is informed and believes, and based thereon alleges, that she will continue to experience the above-referenced emotional pain and suffering for a period in the future she cannot presently ascertain, all in an amount subject to proof at the time of trial.

113. As a proximate result of Defendants' willful, knowing, and/or intentional failure to take reasonable steps to prevent their employees from being subjected to improper and unlawful discrimination, Plaintiff has been forced to hire attorneys to prosecute her claims herein, and has incurred and will continue to incur attorneys' fees and costs in connection therewith.

114. Plaintiff is entitled to recover such attorneys' fees and costs under California *Government Code* § 12965(b), or any other provision of law providing for attorney's fees and costs.

115. The discrimination and Adverse Employment Actions taken toward Plaintiff were carried out by

and/or ratified by Defendants, and each of them, including DOES 1 through 50, and/or managing agent employees of Defendants, all of whom acted in a despicable, oppressive, cruel, fraudulent, malicious, deliberate, deceitful, egregious, and inexcusable manner in order to injure and damage Plaintiff, thereby justifying an award to him of punitive damages in a sum appropriate to punish and make an example of Defendants

ELEVENTH CAUSE OF ACTION

RETALIATION FOR ENGAGING IN A PROTECTED ACTIVITY

IN VIOLATION OF CAL. GOV. CODE § 12940(H)

(Against All Defendants)

116. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein

117. At all times relevant to the allegations set forth herein, the California Fair Employment and Housing Act ("FEHA"), codified as Cal. Gov. Code § 12940, *et seq.*, was and is in full force and effect and was and is binding on all corporate Defendants.

118. It is an unlawful employment practice to discharge, expel, or otherwise discriminate against any person because the person has engaged in protected activity under California *Government Code* §12940. *See Cal. Gov. Code* §12940(h).

119. Plaintiff is informed and believes, and therefore alleges, that Defendants were aware that Plaintiff was a member of a protected class, including, but not limited to, caring for a family member suffering from a disability and/or medical condition and complaining about said condition.

120. Plaintiff is informed and believes, and based thereon alleges, that Defendants were aware that Plaintiff was a member of a protected class, including, but not limited to caring for a family member suffering from a disability and/or medical condition, and Plaintiff's supervisors were also aware of Plaintiff's protected characteristics. Eventually, and because of Plaintiff's protected characteristics, Defendants, and each of them, retaliated against Plaintiff while employed by Defendants, and each of them.

121. Plaintiff is informed and believes, and based thereon alleges, that Defendants discharged, conspired to discharge, orchestrated and/or ordered discharge/termination, and/or otherwise

discriminated against Plaintiff **because** Plaintiff attempted to care for a family member who was physically disabled and/or had a medical condition, and immediately after Plaintiff requested time off to care for said sick family member, she was subjected to more discrimination, disparate scrutiny, and harassment while employed by Defendants, and terminated by Defendants, and each of them, in retaliation therefore.

122. As a proximate result of Defendants' willful, knowing, and intentional discrimination, Plaintiff sustained and continues to sustain substantial losses, including, but not limited to, losses in earnings and other employment benefits, the intangible loss of employment-related opportunities for growth in his field, and damage to her professional reputation, all in an amount subject to proof at the time of trial.

123. Plaintiff claims such amounts as damages together with prejudgment interest pursuant to California *Civil Code* §§ 3287 & 3288, and/or any other provision of law providing for prejudgment interest.

124. As a proximate result of Defendants' willful, knowing, and intentional discrimination, Plaintiff has suffered and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional distress and has incurred and will likely incur, medical expenses as a result.

125. Plaintiff is informed and believes, and therefore alleges, that he will continue to experience the above-referenced and herein alleged emotional pain and suffering for a period in the future she cannot presently ascertain, all in an amount subject to proof at the time of trial.

126. As a proximate result of Defendants' willful, knowing, and intentional discrimination, Plaintiff has been forced to hire attorneys to prosecute the claims herein, and has incurred and will continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover such attorneys' fees and costs under *California Government Code* § 12965(b), or any other provision of law providing for attorney's fees and costs.

127. The discrimination and Adverse Employment Actions taken toward Plaintiff were carried out by and/or ratified by Defendants, and each of them, including DOES 1 through 50, and/or managing agent employees of Defendants, all of whom acted in a despicable, oppressive, cruel, fraudulent, malicious, deliberate, deceitful, egregious, and inexcusable manner in order to injure and damage Plaintiff, thereby

justifying an award to him of punitive damages in a sum appropriate to punish and make an example of Defendants.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

LABOR CODE §§ 2698, ET SEQ.

(Against All Defendants)

26. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

27. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations described herein. As such, she seeks to recover the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

28. Upon information and belief, upon termination of the employment relationship between Defendants and Plaintiff and other aggrieved employees, Defendants willfully failed to pay Plaintiff and other aggrieved employees all wages earned and owed, including vested unused vacation pay, in violation of California Labor Code §§ 201 and 202. Specifically, upon information and belief, Defendants maintain a practice failing to pay their employees all vested earned vacation hours at the time of involuntary termination or within 72 hours of voluntary resignation.

29. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969.

30. Plaintiff seeks to pursue remedies under PAGA pursuant to the following sections of the Labor Code:

- a. Labor Code § 201 imposes a civil penalty for failure to pay all compensation due and owing to their employees immediately upon discharge.
- b. Labor Code § 202 imposes a civil penalty for failure to pay all compensation due and owing to an employee who quits his or her employment no later than 72 hours after the time of quitting.
- c. Labor Code § 203 imposes a civil penalty for failure to willfully pay compensation

promptly upon discharge or resignation, as required by Sections 201 and 202, and for “waiting time” penalties in the form of continued compensation at the employee’s regular rate of pay for each day that wages remain unpaid, up to thirty days.

31. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), civil penalties in an amount of \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201 or 202.
- b. Pursuant to Labor Code § 256, civil penalties in an amount not exceeding 30 days pay as waiting time penalties under the terms of Labor Code § 203 for each violation of Labor Code §§ 201 or 202.

32. As a result of the acts alleged above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

33. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

34. Plaintiff has fully complied with the procedural requirements specified in Labor Code § 2699.3 as to each of the alleged violations. On January 31, 2020, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of January 31, 2020. A true and correct copy of this notice is attached hereto as “Exhibit A.” Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

35. Enforcement of statutory provisions to protect workers and to ensure proper and prompt payment of wages is a fundamental public interest. Plaintiff’s successful enforcement of important rights affecting the public interest will confer a significant benefit upon the general public. Private enforcement of these rights is necessary, as no public agency has pursued enforcement. Plaintiff is incurring a financial burden in pursuing this action, and it would be against the interest of justice to require the payment of attorneys’ fees and costs from any recovery obtained, pursuant to, *inter alia*,

Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

1. For an award of all actual, consequential, and incidental financial losses suffered by Plaintiff including lost wages, lost employment benefits, mental and emotional distress, and other special and general damages;
2. An award of one (1) hour of additional pay at the regular rate of compensation for each workday that rest periods were not provided, pursuant to California Labor Code § 226.7 and Wage Order 4-2001, § 12 and interest thereon;
3. For an award of waiting time penalties due to Plaintiff pursuant to Labor Code § 203;
4. For an award of punitive damages against Defendant;
5. For an order that Defendants make restitution to Plaintiff due to their unlawful business practices as described herein, pursuant to Business and Professions Code §§ 17200, *et seq.*;
6. For costs of suit, including attorney fees under any applicable statutory or contractual basis, including California Civil Procedure Code § 1021.5, California Labor Code §§ 218.5, 233, 234, and 246.5, and 2699; and for prejudgment interest under Civil Code §§ 3288, 3291 and Code of Civil Procedure § 998, and any other applicable statutory, or contractual basis;
7. Civil penalties pursuant to Labor Code sections 201, 202, 203, 256, and 2698 *et seq.*; and
8. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: May 14, 2020

PAYTON EMPLOYMENT LAW

By: 
Chantal McCoy Payton, Esq.
Attorney for Plaintiff
BIANKA JONES

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DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

Dated: May 14, 2020

PAYTON EMPLOYMENT LAW

By: 
Chantal McCoy Payton, Esq.
Attorney for Plaintiff
BIANKA JONES