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**THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

MARIA MATEO, an individual,

Plaintiff

vs.

J'S MAINTENANCE SERVICE
INCORPORATED, a California
corporation; SHIFTPIXY, INC., a
Wyoming corporation; and DOES 1
through 100, inclusive,

Defendants

Case No.: 20STCV20383

COMPLAINT FOR:

1. Disability Based Discrimination (Govt. Code § 12940, *et seq.* [FEHA]);
2. Failure to Engage in Good Faith Interactive Process (Govt. Code §§ 12940 (n), *et seq.* [FEHA]);
3. Failure to Accommodate (Govt. Code §§ 12940 (m), *et seq.* [FEHA]);
4. Retaliation (Govt. Code §§ 12940(h), *et seq.* [FEHA]);
5. Retaliation (Labor Code § 1102.5);
6. Failure to Prevent Discrimination and Retaliation (Violation of Govt. Code §12940 (k) [FEHA]);
7. Failure to Pay State Minimum Wage, including Overtime (Labor Code §§ 510, 1194, 1194.2, 1197, 1198, IWC Wage Order No. 7-2001, § 3);
8. Failure to Pay Overtime Compensation (Labor Code §§ 510, 1194 *et seq.*, 1197.1, 1198, IWC Wage Order No. 7-2001, § 3);
9. Failure to Pay Wages When Due and Waiting Time Penalties (Labor Code §§ 200-204, 558);
10. Failure to Provide Meal Periods (Labor Code §§226.7, 512, IWC Wage

- Order No. 7-2001, § 11);
11. Failure to Provide Rest Periods (Labor Code §§226.7, 512, IWC Wage Order No. 7-2001, § 12);
 12. Failure to Reimburse Business Expenses (Labor Code § 2802, IWC Wage Order No. 7-2001, § 9);
 13. Failure to Provide Accurate Itemized Statements (Labor Code §226, 226.3, and 1174, IWC Wage Order No. 7-2001, §7);
 14. Failure to Provide Change Rooms and Resting Facilities (IWC Wage Order No. 7-2001, § 13).
 15. Wrongful Termination in Violation of Public Policy;
 16. Unfair Competition (Business and Professions Code § 17200, *et seq.* [UCL]); and
 17. Private Attorney General Act (California Labor Code § 2698 *et seq.* [PAGA]).

DEMAND FOR JURY TRIAL

Plaintiff Maria Mateo ("Plaintiff" or "Mateo") hereby brings this action against the above-named Defendants, and with respect to each allegation, Plaintiff is informed and believes and based thereon alleges as follows:

PARTIES

1. At all times herein mentioned, and at the time the cause of action arose, Plaintiff Maria Mateo was an individual and resident of the County of Los Angeles, State of California, and was employed by Defendants in the County of Los Angeles.

2. At all times mentioned herein J's Maintenance Service Incorporated ("Defendant" or "J's Maintenance" or collectively as "Defendants"), was, and is, a California Corporation, doing business in the State of California, County of Los Angeles, City of Glendale, including operating the following location: 3550 Foothill Boulevard, Glendale, California 91214. Plaintiff is also informed and believes and based thereon alleges that at all times mentioned herein Defendant J's Maintenance Service

1 Incorporated also does business as J's Maintenance. Plaintiff is informed and believes
2 and based thereon alleges that at all times mentioned herein Defendant J's
3 Maintenance employed more than five persons and was an employer as defined in the
4 California Fair Employment and Housing Act (FEHA) at Government Code section
5 12926(d), and that J's Maintenance was an employer as defined in the Labor Code, the
6 Industrial Wage Orders ("IWC") and under various law, including *Martinez v. Combs*
7 (2010) 49 Cal.th 35. In addition, Plaintiff is informed and believes and based thereon
8 alleges that at all times mentioned herein Defendant J's Maintenance compelled,
9 coerced, aided, and abetted the discrimination and retaliation, which is prohibited under
10 California Government Code section 12940 (j).

11 3. At all times mentioned herein ShiftPixy, Inc. ("Defendant"
12 or "ShiftPixy" or collectively as "Defendants"), was, and is, a Wyoming corporation,
13 doing business in the State of California, County of Orange, City of Irvine, including
14 operating the following location: 1 Venture, Suite 150, Irvine CA 92618. Plaintiff is also
15 informed and believes and based thereon alleges that at all times mentioned herein
16 Defendant ShiftPixy, Inc., also does business as ShiftPixy. Plaintiff is informed and
17 believes and based thereon alleges that at all times mentioned herein Defendant
18 ShiftPixy employed more than five persons and was an employer as defined in the
19 California Fair Employment and Housing Act (FEHA) at Government Code section
20 12926(d). In addition, Plaintiff is informed and believes and based thereon alleges that
21 at all times mentioned herein Defendant ShiftPixy compelled, coerced, aided, and
22 abetted the discrimination and retaliation, which is prohibited under California
23 Government Code section 12940 (j). Plaintiff is informed and believes, and based
24 thereon alleges, that at all relevant times, ShiftPixy was an employer as defined in the
25 Labor Code, the Industrial Wage Orders ("IWC") and under various law, including
26 *Martinez v. Combs* (2010) 49 Cal.th 35.

27 4. Plaintiff is unaware and ignorant of the true names and capacities of
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1 Defendants sued herein as Does 1 through 100, inclusive, and for that reason sues said
2 Defendants by such fictitious names. Plaintiff will file and serve an amendment to this
3 complaint alleging the true names and capacities of said fictitiously named Defendants if
4 and when such true names and capacities become known to Plaintiff.

5 5. Plaintiff is informed and believes and based thereon alleges that each of
6 the fictitiously named Defendants is responsible in some manner for, and proximately
7 caused, the harm and damages alleged herein below, and that each of the fictitiously
8 named Defendants was acting as agent for the others. Plaintiff is informed and
9 believes, and based thereon alleges, that each of the Defendants named herein acted
10 as the employee, agent, spouse, partner, alter-ego and/or joint venture of each of the
11 other Defendants named herein and, in doing the acts and in carrying out the wrongful
12 conduct alleged herein, each of said Defendants acted within the scope of said
13 relationship and with the permission, consent and ratification of each of the other
14 Defendants named herein.

15 6. At all times relevant herein, Defendants, and each of them, were
16 employers of Plaintiff as that term is defined and used in California Government Code §
17 12926, et seq., and the California Labor Code, and otherwise were subject to such
18 statutes in connection with their actions alleged herein, and as such, Defendants are
19 prohibited from committing various acts, including discrimination, retaliation, wage and
20 hour violations, and other violations of law as alleged herein.

21 7. Whenever in this complaint reference is made to any act, deed, or conduct
22 of Defendant or Defendants, the allegation means that Defendants engaged in the act,
23 deed, or conduct by or through one or more of its officers, directors, managers,
24 supervisors, agents, employees, or representatives acting in the course and scope of
25 their position, and who was actively engaged in the management, direction, control, or
26 transaction of the ordinary business and affairs of Defendants.

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RELATIONSHIPS BETWEEN DEFENDANTS

8. Plaintiff is informed and believes and on that basis alleges, that at all relevant times, Defendants, and each of them, including each of said fictitiously named DOE defendants, was a business entity or individual person who owned, controlled, or managed the business for which Plaintiff worked, and who directly exercised control over Plaintiff's hours, working conditions, and who had decision-making responsibility for hiring and firing and establishment and implementation of the illegal practices alleged herein which have damaged Plaintiffs, and is therefore individually liable to Plaintiffs.

9. Plaintiff is informed and believes and on that basis alleges, that at all relevant times, Defendants, and each of them, were in some fashion, by contract or otherwise, the successor, assignor, indemnitor, guarantor, or third-party beneficiary of one or more of the remaining Defendants, and at all relevant times to Plaintiff's claim alleged herein, was acting within that capacity. Plaintiff further alleges Defendants and each of them, assumed the liabilities of the other Defendants, by virtue of the fact that each to some degree, wrongfully received and/or wrongfully benefited from the flow of assets from the other Defendants, to the detriment of Plaintiff. Plaintiff further alleges that by wrongfully receiving and/or benefiting from Defendants' assets, and in the consummation of such transactions, a de facto merger of the Defendants, and each of them, resulted, such that Defendants, and each of them, may be treated as one employer of Plaintiff.

10. Plaintiff is informed and believes and on that basis alleges, that at all relevant times mentioned herein, Defendants, and each of them, were the partners, agents, servants, employees, joint venturers or co-conspirators of each other Defendant, and that each Defendant was acting within the course, scope and authority of such partnership, agency, employment, joint venture or conspiracy, and that each Defendant, directly or indirectly, authorized, ratified and approved the acts of the remaining Defendants, and each of them.

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1 play and substantial justice. Defendants have done and are doing business throughout
2 California, including by maintaining and operating locations for the provision of services
3 in Los Angeles and Orange counties. Venue is proper in this Court because one or
4 more of the Defendants resides, transacts business, or has offices in this County and
5 the unlawful acts or omissions alleged herein took place in this County. Specifically,
6 various unlawful practices under the Fair Employment and Housing Act occurred in this
7 County and Defendant J's Maintenance maintains an office, conducts operations, and
8 employs or has employed Plaintiff from and in this County. The California Superior
9 Court also has jurisdiction in this matter because there is no federal question at issue,
10 as the issues herein are based on California statutes and law, including, without
11 limitation, the California Government Code, the Labor Code, and the California Code of
12 Civil Procedure.

13 **WAGE-AND-HOUR ALLEGATIONS**

14 16. Plaintiff is informed and believes that she was hired by Defendant J's
15 Maintenance and ShiftPixy sometime on December 2, 2017, and was terminated on
16 January 23, 2020. Throughout her entire employment, Plaintiff worked as an hourly
17 non-exempt employee, as a "janitorial service provider," primarily at the Home Depot
18 store in Monrovia located at 1625 Mountain Avenue, Monrovia, California 91016. J's
19 Maintenance Service Incorporated is self-described as a company providing commercial
20 janitorial services since 1969 throughout Texas and California. At all relevant times
21 during Plaintiff's employment, J's Maintenance directed Plaintiff's schedule, hours of
22 work, set her wages, and told Plaintiff when and where to report to work. ShiftPixy, Inc.,
23 provided staffing and payroll services for J's Maintenance Service Incorporated,
24 including determined the amount of pay due to Plaintiff for her hours worked and paid
25 Plaintiff for her work. Pursuant to *Martinez v. Combs* (2010) 49 Cal.4th 35, J's
26 Maintenance and ShiftPixy are jointly and severally liable as jointly Plaintiff's employers
27 because they each performed the following: (a) exercised control over Plaintiff's wages,
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hours, or working conditions; (b) suffered or permitted Plaintiff to work for their benefit; or (c) engaged Plaintiff, thereby creating an employment relationship.

17. Throughout her employment, Plaintiff received various rates of compensation and Plaintiff has properly and competently performed her job duties, and received positive reviews, comments, and commendations in connection with her work.

18. As a result of Defendants' policy requiring that Plaintiff perform off-the-clock work, Defendants failed to pay Plaintiff state minimum wage, including overtime compensation at the minimum wage rate, in violation of Labor Code sections 1194, 1197, and 1198, and the IWC Wage Order No. 7-2001. For example, Plaintiff was required to punch in by dialing in through a telephonic system and this time was unpaid. Plaintiff was also required to don and doff her uniform off-the-clock. Plaintiff also occasionally worked more more than forty (40) hours per week or eight hours per day, yet Defendants failed to properly pay Plaintiff the required overtime compensation (time-and-a-half and double time) for her many overtime hours worked throughout her employment, in violation of Labor Code sections 1194, 1197, and 1198, and the applicable IWC Wage Order No. 7-2001.

19. Plaintiff was prevented from taking her legally owed uninterrupted meal and rest periods during work shifts of more than six (6) hours and/or more than ten (10) hours per day. In this regard, Defendants enforced a policy requiring that Plaintiff work through her breaks and/or preventing Plaintiff from taking her meal and rest breaks within the legally required timeframe.

20. Defendants failed to reimburse Plaintiff for various business expenses incurred in the discharge of her duties. Plaintiff was required to wear a uniform, but never received payment for its upkeep or maintenance. Despite imposing a requirement to wear a uniform, Defendants failed to provide suitable lockers or the equivalent for the safekeeping of employees' outer clothing during working hours, and failed to provide change rooms or equivalent space for the employees to change their clothing in reasonable privacy and comfort. Plaintiff was also required to use her

1 personal cellular phone in the discharge of her duties, but Defendants did not reimburse
2 these expenses.

3 **TORT ALLEGATIONS**

4 21. On or about May 2, 2019, Plaintiff sustained on the job and work-
5 related injuries. Plaintiff slipped and fell while discharging her duties, severely injuring
6 her shoulder, including her arm and hand. Plaintiff's disability affected various bodily
7 systems, including the musculoskeletal system, and the disability limited Plaintiff's ability
8 to participate in various major life activities, including Plaintiff's ability to work. As a
9 result of Plaintiff's shoulder injury, Plaintiff required some reasonable accommodations,
10 including accommodations regarding the amount of weight that Plaintiff was medically
11 permitted to lift and the types of movements that she could perform. Although the
12 requested accommodations were reasonable, Defendants refused to accommodate
13 Plaintiff's disability and terminated her in retaliation of her disability when Plaintiff
14 refused to violate her medical restrictions and otherwise engaged in protected activity
15 as described in more detail below.

16 22. Shortly after Plaintiff's fall, Plaintiff returned to work with a medical note
17 providing for modified duties and restrictions which allowed Plaintiff to lift and push/pull
18 up to 15lbs, with limited overhead reach.

19 23. Upon receiving the note, Plaintiff communicated her restrictions to
20 Defendants, including to her superiors, and requested alternate duties which were
21 available and did not require Plaintiff to violate her restrictions. For example, Plaintiff
22 requested to work the early morning shift which would not require to operate heavy
23 cleaning machinery. In response, Plaintiff's supervisor denied all of Plaintiff's requests.
24 Defendants refused to accommodate Plaintiff's restrictions, refused to permit Plaintiff to
25 work in any alternate duties which did not violate Plaintiff's restrictions, and forced
26 Plaintiff to continue work in violation of her restrictions and through pain.

27 24. On December 23, 2019, Plaintiff's restrictions were modified to allow
28 Plaintiff to lift and push/pull up to 20 lbs. Plaintiff communicated these restrictions but

1 was again forced to continue to work performing duties which violated these restrictions.

2 25. On many occasions, Plaintiff complained to human resources personnel,
3 and Plaintiff is informed and believes that other upper management personnel already
4 had notice of Plaintiff's condition and the supervisor's refusal to accommodate Plaintiff.
5 Unfortunately, Plaintiff's complaints fell on deaf ears and Plaintiff was required to
6 continue work performing duties which violated her restrictions.

7 26. On or around January 13, 2020, Defendants' workers' compensation carrier
8 provided notice that Plaintiff had sustained a permanent disability in connection with her
9 shoulder injury.

10 27. On or around January 21, 2020, following Plaintiff's complaints and the
11 determination by Defendants' workers' compensation carrier, Plaintiff was informed that
12 she would not longer be permitted to work in Monrovia. Instead, Plaintiff was
13 transferred to the Glendale location of Home Depot under the promise that Plaintiff
14 "would be more comfortable to work there." Plaintiff drove to Glendale hoping that her
15 restrictions would at last be accommodated.

16 28. Upon arrival at the Glendale store, Plaintiff was tasked to push the same
17 heavy cleaning machinery as in Monrovia. Plaintiff communicated her restrictions but
18 was forced to start the job. Upon pushing the machine over the threshold, Plaintiff
19 experienced a sudden and sharp pain in her back. Plaintiff stopped her work. Then,
20 Plaintiff communicated to her supervisor regarding her pain and that she could no
21 longer perform work because she was forced to push the machine in violation of her
22 restrictions. Defendants were not willing to accommodate her restrictions and
23 terminated her employment on or about January 23, 2020.

24 29. Plaintiff is informed and believes that the true reason for her termination
25 and retaliation was her disability and need for an accommodation, in violation of Labor
26 Code section 1102.5 and Government Code section 12940, *et seq.*

27 30. At all relevant times, Defendants were aware that Plaintiff's physical
28 condition affected various bodily systems, including her shoulder, and that the disability

1 limited Plaintiff's ability to participate in various major life activities, including Plaintiff's
2 ability to work, and required some reasonable accommodation. However, Defendants
3 failed to provide any reasonable accommodation or engage in any interactive process.

4 31. Plaintiff contends that Defendants failed to adequately engage in the
5 interactive process and failed to meaningfully address or remedy the unlawful treatment,
6 including by terminating Plaintiff from her job with Defendants, instead of
7 accommodating her, and by doing so, Defendants and its corporate management
8 ratified the unlawful conduct. As a result of this discrimination, retaliation, and
9 termination of employment, Plaintiff has experienced severe emotional distress and
10 physical symptoms include but are not limited to: bouts of intense anxiety, headaches,
11 anxiety, loss of sleep, nightmares, depression, hopelessness, sleeplessness,
12 embarrassment, humiliation and loss of self-esteem, among other things. Defendants'
13 conduct has also resulted in Plaintiff's loss of income and other employment benefits.

14 32. Defendants' conduct and adverse treatment of Plaintiff has been
15 unlawfully discriminatory and retaliatory towards Plaintiff, and also violative of Plaintiff's
16 other rights and protections under California law, and Defendants' related obligations as
17 further alleged herein.

18 33. All of the foregoing and following actions taken toward Plaintiff that are
19 alleged in this complaint were carried out by Defendants' officers, directors, and/or their
20 managerial agents, and acting in a deliberate, cold, callous, malicious, oppressive, and
21 intentional manner in order to injure and damaged the Plaintiff. Those acts which were
22 carried out by non-managerial agents were subsequently ratified by Defendants'
23 officers, directors, and/or managerial agents partially by the managerial agents' failure
24 to take prompt and remedial measures, their condoning of the contract, and lack of
25 discrimination and retaliation prevention policies actually being followed.

26 34. As a result of the above-mentioned wage-and-hour violations, Defendants
27 failed to pay Plaintiff her earned wages in a timely manner upon her termination,
28 including for time worked and wages owed, in violation of Labor Code sections 200-204.

1 To date, Plaintiff is still owed compensation for her hours worked, as described herein.
2 Similarly, the paystubs that Plaintiff received during her employment did not accurately
3 reflect the amount of wages owed. Accordingly, Defendants failed to provide Plaintiff
4 with timely and accurate wage and hour statements, in violation of Code section 226
5 and the IWC Wage Order No. 7-2001.

6 **First Cause of Action**

7 **Disability Discrimination**

8 **(Govt. Code §§ 12940(a), *et seq.* [FEHA])**

9 **(Against All Defendants)**

10 35. Plaintiff incorporates by reference and re-alleges every allegation
11 contained above as though fully set forth herein.

12 36. Plaintiff had, or was perceived to have, a past, current, or future disability
13 that limited at least one major life activity.

14 37. Defendants knew or should have known that Plaintiff was, or was
15 perceived to be, an individual with a past, current, or future disability that limited at least
16 one major life activity.

17 38. At all times material to this complaint, Plaintiff was able to perform the
18 essential functions of her position with or without reasonable accommodation of her
19 disability.

20 39. At all times herein mentioned, Government Code § 12940, *et seq.* (the
21 Fair Employment and Housing Act, or “FEHA”) was in full force and effect and was
22 binding on Defendants. The FEHA required Defendants and their agents to refrain from
23 discriminating against any employee, including Plaintiff, on the basis of, among other
24 things, disability. Further, the FEHA required Defendants to take all reasonable steps
25 necessary to prevent such discrimination from occurring.

26 40. As alleged above, Defendants, through their managers and agents,
27 knowingly and intentionally took steps to discriminate against Plaintiff as described
28 above and further violated the FEHA by failing to take all reasonable steps necessary to

1 prevent disability discrimination against Plaintiff from occurring.

2 41. Plaintiff's disability was at least a substantial motivating factor in
3 Defendants' discrimination and adverse action against Plaintiff. Such discrimination is
4 in violation of FEHA and has resulted in damage and injury to Plaintiff as alleged herein.

5 42. As a proximate result of Defendants' willful, knowing, and intentional
6 discrimination against Plaintiff, she has sustained and continues to sustain economic
7 losses, humiliation, emotional distress, and mental and physical pain and anguish in an
8 amount subject to proof.

9 43. The persons who committed the unlawful acts described herein were
10 officers, directors, or managing agents of Defendants acting within the scope of their
11 employment. Moreover, Defendants and their agents aided, abetted, incited,
12 compelled, and/or coerced the commission of the alleged discrimination. The unlawful
13 acts described herein were committed with oppression, fraud and/or malice and were
14 authorized, ratified or both by such officers, directors, or managing agents. As a result
15 of Defendants' willful, knowing, and intentional discrimination against Plaintiff, Plaintiff
16 seeks an award of punitive damages in an amount according to proof.

17 44. Due to Defendants' discrimination, Plaintiff has incurred and continues to
18 incur legal expenses and attorneys' fees, all to Plaintiff's damage in a sum according to
19 proof.

20 **Second Cause of Action**

21 **Failure to Engage in Good Faith Interactive Process**

22 **(Govt. Code §§ 12940 (n), et seq. [FEHA])**

23 **(Against All Defendants)**

24 45. Plaintiff incorporates by reference and re-alleges every allegation
25 contained above as though fully set forth herein.

26 46. Plaintiff had, or was perceived to have, a past, current, or future disability
27 that limited at least one major life activity.

28 47. Defendants knew or should have known that Plaintiff was, or was

1 perceived to be, an individual with a past, current, or future disability that limited at least
2 one major life activity.

3 48. At all times material to this complaint, Plaintiff was able to perform the
4 essential functions of her position, with or without reasonable accommodation.

5 49. As alleged in part above, Plaintiff sought a reasonable accommodation of
6 her disability and/or Defendants and its agents were on actual or constructive notice
7 that reasonable accommodation was warranted.

8 50. Defendants failed to engage in a timely, good-faith interactive process to
9 determine a reasonable accommodation of Plaintiff's disability in violation of § 12940(n)
10 of the Government Code.

11 51. As a proximate result of Defendants' willful, knowing, and intentional
12 failure to engage in an interactive process to determine a reasonable accommodation of
13 Plaintiff's disability, Plaintiff has sustained and continues to sustain economic losses,
14 humiliation, emotional distress, and mental and physical pain and anguish in an amount
15 subject to proof.

16 52. The persons who committed the unlawful acts described herein were
17 officers, directors, or managing agents of Defendants acting within the scope of their
18 employment. Moreover, Defendants and its agents aided, abetted, incited, compelled,
19 and/or coerced the commission of such unlawful acts. The unlawful acts described
20 herein were committed with oppression, fraud and/or malice and were authorized,
21 ratified or both by such officers, directors, or managing agents. As a result of
22 Defendants' willful, knowing, and intentional discrimination against Plaintiff, Plaintiff
23 seeks an award of punitive damages in an amount according to proof.

24 53. Due to Defendants' violation of the FEHA, Plaintiff has incurred and
25 continues to incur legal expenses and attorneys' fees, all to Plaintiff's damage in a sum
26 according to proof.

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Third Cause of Action

Failure to Accommodate

(Govt. Code §§ 12940 (m), et seq. [FEHA])

(Against All Defendants)

54. Plaintiff incorporates by reference and re-alleges every allegation contained above as though fully set forth herein.

55. Plaintiff had, or was perceived to have, a past, current, or future disability that limited at least one major life activity.

56. Defendant knew or should have known that Plaintiff was, or was perceived to be, an individual with a past, current, or future disability that limited at least one major life activity.

57. At all times material to this complaint, Plaintiff was able to perform the essential functions of her position, including at times with reasonable accommodation of her disability.

58. Despite being on actual or constructive notice that Plaintiff had requested or required a reasonable accommodation of her disability, Defendant and their agents failed to provide such a reasonable accommodation in violation of § 12940(k)(m) of the Government Code and 2 C.C.R. § 7293.9.

59. As a proximate result of Defendants' willful, knowing, and intentional failure to reasonably accommodate her disability, Plaintiff has sustained and continues to sustain economic losses, humiliation, emotional distress, and mental and physical pain and anguish in an amount subject to proof.

60. The persons who committed the unlawful acts described herein were officers, directors, or managing agents of Defendants acting within the scope of their employment. Moreover, Defendants and their agents aided, abetted, incited, compelled, and/or coerced the commission of such unlawful acts. The unlawful acts described herein were committed with oppression, fraud and/or malice and were authorized, ratified or both by such officers, directors, or managing agents. As a result

1 of Defendants' willful, knowing, and intentional discrimination against Plaintiff, Plaintiff
2 seeks an award of punitive damages in an amount according to proof.

3 61. Due to Defendants' violation of the FEHA, Plaintiff has incurred and
4 continues to incur legal expenses and attorneys' fees, all to Plaintiff's damage in a sum
5 according to proof.

6 **Fourth Cause of Action**

7 **Retaliation**

8 **(Govt. Code §§ 12940(h), *et seq.* [FEHA])**

9 **(Against All Defendants)**

10 62. Plaintiff incorporates by reference and re-alleges every allegation
11 contained above as though fully set forth herein. At all times material to the complaint,
12 Government Code § 12940(h) was in full force and effect and was binding on
13 Defendants. This section of the FEHA requires Defendant to refrain from retaliating
14 against any employee for asserting their rights under the FEHA. Plaintiff engaged in
15 protected activity by requesting and/or requiring a reasonable accommodation for her
16 disability, and participating in asserting her rights, including by refusing to work in
17 violation of her restrictions and by filing a workers' compensation claim against
18 Defendants. As alleged in part above, Plaintiff exercised these rights under the FEHA
19 and engaged in protected activity.

20 63. Plaintiff's exercise of such rights under the FEHA was at least a
21 substantial motivating factor in Defendants' decision to take various adverse
22 employment actions against Plaintiff, for example, as alleged in part above.

23 64. As a proximate result of Defendants' willful, knowing, and intentional
24 violation of the FEHA, Plaintiff has sustained and continues to sustain economic losses,
25 humiliation, emotional distress, and mental and physical pain and anguish in an amount
26 subject to proof.

27 65. The persons who committed the unlawful acts described herein were
28 officers, directors, or managing agents of Defendants acting within the scope of their

1 employment. Moreover, Defendants and their agents aided, abetted, incited,
2 compelled, and/or coerced the commission of such unlawful acts. The unlawful acts
3 described herein were committed with oppression, fraud and/or malice and were
4 authorized, ratified or both by such officers, directors, or managing agents. As a result
5 of Defendants' willful, knowing, and intentional discrimination and retaliation against
6 Plaintiff, Plaintiff seeks an award of punitive damages in an amount according to proof.

7 66. Due to Defendants' violation of the FEHA, Plaintiff has incurred and
8 continues to incur legal expenses and attorneys' fees, all to Plaintiff's damage in a sum
9 according to proof.

10 **Fifth Cause of Action**

11 **Retaliation**

12 **(Labor Code § 1102.5)**

13 **(Against All Defendants)**

14 67. Plaintiff incorporates by reference and re-alleges every allegation
15 contained above as though fully set forth herein.

16 68. At all times material to the complaint, the California Labor Code was in full
17 force and effect and was binding on Defendants.

18 69. An employer, or any person acting on behalf of the employer, shall not
19 retaliate against an employee for disclosing information, or because the employer
20 believes that the employee disclosed or may disclose information... to a person with
21 authority over the employee or another employee who has the authority to investigate,
22 discover, or correct the violation or noncompliance. Labor Code § 1102.5(b). A cause
23 of action for retaliation lies where the Plaintiff shows he or she engaged in a protected
24 activity, the employer subjected that person to an adverse employment action, and
25 there is a causal nexus between the two.

26 70. Plaintiff exercised rights afforded to Plaintiff under Labor Code section
27 1102.5 and was engaged in such protected activity, including, without limitation, by
28 reporting activity that was in violation of law, rule, or regulation, and/or that Plaintiff had

1 reasonable cause to believe was in violation of law, rule, or regulation; disclosing
2 information to a person who had the authority to investigate, discover, or correct such
3 violations and/or noncompliance; and/or opposing and refusing to participate in activity
4 and a course of conduct that would result, or upon reasonable belief could result, in
5 violation or noncompliance with law, rule, or regulation.

6 71. Plaintiff's exercise of rights afforded to Plaintiff and the engagement in
7 such protected activity was at least a substantial motivating factor in Defendants'
8 discrimination, retaliation, and other adverse employment actions against Plaintiff, as
9 alleged above.

10 72. As a proximate result of Defendants' willful, knowing, and intentional
11 violations, Plaintiff has sustained and continues to sustain economic losses, including,
12 without limitation, lost wages and loss of other employment benefits, humiliation,
13 emotional distress, and mental and physical pain and anguish in an amount subject to
14 proof.

15 73. The persons who committed the unlawful acts described herein were
16 officers, directors, or managing agents of Defendants acting within the scope of their
17 employment. Moreover, Defendants and its agents aided, abetted, incited, compelled,
18 and/or coerced the commission of such unlawful acts. The unlawful acts described
19 herein were committed with oppression, fraud and/or malice and were authorized,
20 ratified or both by such officers, directors, or managing agents. As a result of
21 Defendants' willful, knowing, and intentional discrimination and retaliation against
22 Plaintiff, Plaintiff seeks an award of punitive damages in an amount according to proof.
23 Due to Defendants' violations as alleged herein, Plaintiff has incurred and
24 continues to incur legal expenses and attorneys' fees, all to Plaintiff's damage in a sum
25 according to proof.

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78. The persons who committed the unlawful acts described herein were officers, directors, or managing agents of Defendants acting within the scope of their employment. Moreover, Defendants and its agents aided, abetted, incited, compelled, and/or coerced the commission of such unlawful acts. The unlawful acts described herein were committed with oppression, fraud and/or malice and were authorized, ratified or both by such officers, directors, or managing agents. As a result of Defendants' willful, knowing, and intentional unlawful acts against Plaintiff, Plaintiff seeks an award of punitive damages in an amount according to proof.

79. Due to Defendants' violation of the FEHA, Plaintiff has incurred and continues to incur legal expenses and attorneys' fees, all to Plaintiff's damage in a sum according to proof. Pursuant to Government Code section 12965(b), Plaintiff is entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

Seventh Cause of Action

Failure to Pay State Minimum Wage, including Overtime Compensation

(Labor Code §§ 510, 1194, 1194.2, 1197, 1198;

IWC Wage Order No. 7-2001)

(Against All Defendants)

80. Plaintiff incorporates by reference and re-alleges every allegation contained above as though fully set forth herein.

81. The Code and the Wage Order provide that an employer must pay a minimum wage to an employee for all hours worked.

82. The Code and the Wage Order provide that a workday consists of eight hours, a workweek consists of 40 hours, and an employer must compensate an employee who works overtime hours with either one-and-one-half times or double the employee's regular rate of compensation. The Code and the Wage Order also provide that the employee's regular rate of compensation equals one fortieth (1/40) of the employee's weekly salary.

1 83. Defendants employed Plaintiff for more than eight hours per day and more
2 than 40 hours per workweek, but Defendants failed to pay Plaintiff minimum wage for
3 his work, including overtime compensation at the minimum wage rate for his overtime
4 hours, as required by the Code and the Wage Order.

5 84. Defendants thus required Plaintiff to work under conditions prohibited by
6 order of the IWC, in violation of those orders.

7 85. Defendants deprived Plaintiff of his rightfully earned minimum wage
8 compensation, including overtime compensation at the minimum wage rate, as a direct
9 and proximate result of Defendants' failure to pay said compensation. Under Code
10 section 1194, Plaintiff is entitled to recover such amounts, plus interest thereon,
11 reasonable attorney's fees, and costs.

12 86. In addition, under Code section 1194.2, Plaintiff is entitled to recover
13 liquidated damages in an amount equal to the minimum wages unlawfully unpaid, and
14 interest thereon.

15 87. In committing the foregoing acts, Defendants were guilty of oppression,
16 fraud, or malice, and, in addition to the actual damages caused thereby, Plaintiff is
17 entitled to recover damages for the sake of example and by way of punishing
18 Defendants. Plaintiff also is entitled to attorneys' fees pursuant to Code of Civil
19 Procedure section 1021.5, and pursuant to Labor Code section 2699(g)(1), Plaintiff is
20 entitled to an award of reasonable attorney's fees and costs in connection with her
21 claims for civil penalties.

22 **Eighth Cause of Action**

23 **Failure to Pay Overtime Compensation**

24 **(Labor Code §§ 510, 558, 1194 et seq.,**

25 **1197.1, 1198, IWC Wage Order No. 7-2001, § 3)**

26 **(Against All Defendants)**

27 88. Plaintiff incorporates by reference and re-alleges every allegation
28 contained above as though fully set forth herein.

1 89. At all times relevant, the IWC Wage Order No. 7-2001, the wage order
2 applicable to Plaintiff's employment by Defendants provided that employees working for
3 more than eight (8) hours in a day or forty (40) hours in a workweek are entitled to
4 overtime compensation at the rate of one and one-half times the regular rate of pay for
5 all hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek.
6 Labor Code § 510 codifies the right to overtime compensation at the rate of one
7 and one-half times the regular rate of pay for all hours worked in excess of eight (8)
8 hours in a day or forty (40) hours in a work week and to overtime compensation at twice
9 the regular rate of pay for hours worked in excess of twelve (12) hours in a day or in
10 excess of eight (8) hours in a day on the seventh day of work in a particular work week.
11 Although Plaintiff worked in excess of eight (8) hours in a day and/or forty (40)
12 hours in a week, Defendants did not properly pay Plaintiff overtime compensation as
13 required by law, including at one-half times her regular rate of pay for hours worked
14 subject to overtime compensation.

15 90. At all times relevant, Plaintiff regularly performed non-exempt work,
16 including in excess of 50% of the time in which Plaintiff was working for Defendant J's
17 Maintenance, and thus, was subject to the minimum wage and overtime requirements of
18 the applicable IWC Wage Order and the Labor Code.

19 91. Defendants' failure to pay Plaintiff such premium overtime compensation
20 violates the provisions of Labor Code § 510 and § 1198, and the applicable IWC Wage
21 Order and is therefore unlawful.

22 92. Defendants owe Plaintiff overtime wages, yet have failed and refused, and
23 continue to fail and refuse, to pay the overtime wages owed.
24 Pursuant to Labor Code § 1194, Plaintiff is entitled to recover unpaid overtime
25 compensation, as well as interest, costs, and attorneys' fees. Plaintiff also is entitled to
26 attorneys' fees pursuant to Code of Civil Procedure section 1021.5, and pursuant to
27 Labor Code section 2699(g)(1), Plaintiff is entitled to an award of reasonable attorney's
28 fees and costs in connection with her claims for civil penalties.

1 **Ninth Cause of Action**

2 **Failure to Pay Wages When Due and Waiting Time Penalties**

3 **(Labor Code §§ 200-204, 558)**

4 **(Against All Defendants)**

5 93. Plaintiff incorporates by reference and re-alleges every allegation
6 contained above as though fully set forth herein.

7 94. Sections 201 and 202 of the California Labor Code require Defendant to
8 pay employees all wages due within 72 hours of termination of employment. Section
9 203 of the Labor Code provides that if an employer willfully fails to timely pay such
10 wages the employer must, as a sanction and amount owed, continue to pay the subject
11 employee's wages until the back wages are paid in full or an action is commenced. The
12 sanction and amount owed cannot exceed 30 days of wages.

13 95. Plaintiff is entitled to compensation for all forms of wages earned,
14 including, but not limited to, regular and overtime wages that were improperly and/or
15 insufficiently paid and compensation for non-provided meal and rest periods and
16 business expenses, but to date has not received such compensation, therefore entitling
17 Plaintiff to Labor Code section 203 amounts and penalties.

18 96. More than 30 days have passed since Plaintiff has left Defendant Saigon's
19 Bakery's employ, and Plaintiff has not received payment pursuant to Labor Code
20 section 203.

21 97. As a consequence of Defendants' willful conduct in not paying all earned
22 wages, Plaintiff is entitled to 30 days' wages under Labor Code section 203 for failure to
23 pay legal wages. Plaintiff is also entitled to an additional 30 days' wages under Labor
24 Code section 203 for willful failure to pay one hour wages for rest and meal period
25 violations and failure to pay all wages owed, together with interest thereon and
26 attorneys' fees and costs. Plaintiff also is entitled to attorneys' fees pursuant to Code of
27 Civil Procedure section 1021.5, and pursuant to Labor Code section 2699(g)(1), Plaintiff
28

1 is entitled to an award of reasonable attorney's fees and costs in connection with her
2 claims for civil penalties.

3 **Tenth Cause of Action**

4 **Failure to Provide Meal Periods**

5 **(Labor Code §§226.7, 512, IWC Wage Order No. 7-2001, § 11)**

6 **(Against All Defendants)**

7 98. Plaintiff incorporates by reference and re-alleges every allegation
8 contained above as though fully set forth herein.

9 99. Pursuant to the IWC Wage Order applicable to Plaintiff's employment by
10 Defendants, in order for an "on duty" meal period to be permissible, the nature of the
11 work of the employee must prevent an employee from being relieved of all duties
12 relating to his or her work for the employer, and the employee must consent in writing to
13 the "on duty" meal period. Plaintiff did not validly consent in writing to an "on duty" meal
14 period. Further, the nature of the work of Plaintiff was not such that Plaintiff was
15 prevented from being relieved of all duties by Defendants to properly warrant an on duty
16 meal period. Despite said requirements of the IWC wage orders applicable to Plaintiff's
17 employment by Defendants and Labor Code § 512 and § 226.7, Plaintiff was not
18 provided with timely, uninterrupted meal periods.

19 100. Defendants failed to provide Plaintiff all required meal breaks of not less
20 than thirty (30) minutes pursuant to the IWC wage orders applicable to Plaintiff's
21 employment by Defendants. In addition, Defendants failed to record meal breaks (and
22 the absence thereof) in compliance with the Labor Code and applicable IWC wage
23 order provisions. As a proximate result of the aforementioned violations, Plaintiff has
24 been harmed in an amount according to proof at time of trial.

25 101. Pursuant to Labor Code § 226.7, Plaintiff is entitled to recover one (1)
26 hour of premium pay for each day in which a lawful meal period was not provided.
27 Plaintiff also is entitled to attorneys' fees pursuant to Code of Civil Procedure section
28

1 1021.5, and pursuant to Labor Code section 2699(g)(1), Plaintiff is entitled to an award
2 of reasonable attorney's fees and costs in connection with her claims for civil penalties.

3 **Eleventh Cause of Action**

4 **Failure to Provide Rest Periods**

5 **(Labor Code §§226.7, 512, IWC No. 7-2001, § 12)**

6 **(Against All Defendants)**

7 102. Plaintiff incorporates by reference and re-alleges every allegation
8 contained above as though fully set forth herein.

9 103. Pursuant to the IWC wage orders applicable to Plaintiff's employment by
10 Defendants, "[e]very employer shall authorize and permit all employees to take rest
11 periods, which insofar as practicable shall be in the middle of each work period.... [The]
12 authorized rest period time shall be based on the total hours worked daily at the rate of
13 ten (10) minutes net rest time per four (4) hours worked or major fraction thereof....
14 Authorized rest period time shall be counted as hours worked, for which there shall be
15 no deduction from wages." Labor Code § 226.7(a) prohibits an employer from requiring
16 any employee to work during any rest period mandated by an applicable order of the
17 IWC. Defendants were required to authorize and permit its employees such as Plaintiff
18 to take rest periods, based upon the total hours worked at a rate of ten (10) minutes net
19 rest per four (4) hours, or major fraction thereof, with no deduction from wages. Despite
20 said requirements of the IWC Wage Orders applicable to Plaintiff's employment by
21 Defendants, Defendants failed to authorize and permit Plaintiff ten (10) minute rest
22 periods due to Defendant's job requirements, and Defendant's customer and other work
23 demands and pressure to meet them, which Defendant's management personnel
24 placed upon such employees. As a result, Defendants failed and refused to validly and
25 properly authorize and permit Plaintiff to take ten (10) minute rest periods for every four
26 (4) hours worked, or major fraction thereof.

27 104. Defendants failed to provide the required rest periods pursuant to the IWC
28

1 Wage Orders applicable to Plaintiff's employment by Defendants and Labor Code §
2 226.7. As a proximate result of the aforementioned violations, Plaintiff has been
3 damaged in an amount according to proof at time of trial.

4 105. In addition, Defendants' requirement that Plaintiff work a schedule which
5 did not validly and lawfully provide Plaintiff with all authorized rest periods during
6 Plaintiff's shifts was willful and deliberate, and on information and belief, Defendants
7 have failed to cease its unlawful policies and practices addressed herein, despite being
8 on notice of them.

9 106. Pursuant to Labor Code § 226.7, Plaintiff is entitled to recover one (1)
10 hour of premium pay for each day in which a rest period was not provided. Plaintiff also
11 is entitled to attorneys' fees pursuant to Code of Civil Procedure section 1021.5, and
12 pursuant to Labor Code section 2699(g)(1), Plaintiff is entitled to an award of
13 reasonable attorney's fees and costs in connection with her claims for civil penalties.

14 **Twelfth Cause of Action**

15 **Failure to Reimburse Business Expenses**

16 **(Violation of Labor Code § 2802, IWC Wage Order. No. 7-2001, § 9)**

17 **(Against All Defendants)**

18 107. Plaintiff incorporates by reference and re-alleges every allegation
19 contained above as though fully set forth herein.

20 108. Pursuant to Labor Code section 2802(a), "[a]n employer shall indemnify
21 his or her employee for all necessary expenditures or losses incurred by the employee
22 in direct consequence of the discharge of his or her duties, or of his or her obedience to
23 the directions of the employer, even though unlawful, unless the employee, at the time
24 of obeying the directions, believed them to be unlawful." IWC Wage Order No. 7-2001,
25 section 9 mandates that when "uniforms are required by the employer to be worn by the
26 employee as a condition of employment, such uniforms shall be provided and
27 maintained by the employer," entitling employees to a reimbursement for the same.

1 115. In discharging her duties, Plaintiff was required to incur unpaid expenses in
2 connection with using her personal cellular phone to discharge her duties on behalf of
3 Defendants. Plaintiff was also required to wear a uniform at work as a condition of her
4 employment incurring expenses for its upkeep and maintenance. However, Defendants
5 failed to reimburse Plaintiff for these business expenses, as required by Labor Code §
6 2802.

7 109. Pursuant to Labor Code section 2802, Plaintiff is entitled to recover
8 unreimbursed business expenses. As a proximate result of the aforementioned
9 violations, Plaintiff has been damaged in an amount according to proof at time of trial.
10 Pursuant to Labor Code section 2802 (c), Plaintiff is also entitled to recover interest,
11 costs, and attorneys' fees. Plaintiff also is entitled to attorneys' fees pursuant to Code
12 of Civil Procedure section 1021.5, and pursuant to Labor Code section 2699(g)(1),
13 Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection
14 with her claims for civil penalties.

15 **Thirteenth Cause of Action**

16 **Failure to Provide Accurate Itemized Statements**

17 **(Labor Code §226, 226.3, and 1174, IWC Wage Order No. 7-2001, § 7)**

18 **(Against All Defendants)**

19 110. Plaintiff incorporates by reference and re-alleges every allegation
20 contained above as though fully set forth herein.

21 111. Section 226(a) of the California Labor Code requires Defendants to
22 accurately report on wage statements various information as specified in the statute,
23 including, without limitation, total hours worked by Plaintiff that Defendants have
24 knowingly and intentionally failed to comply with Labor Code section 226(a) on wage
25 statements which should have been properly provided to Plaintiff, and such violations
26 flow from Defendants' improper policies and practices, their implementation and
27 enforcement, and the violations alleged in the preceding causes of action and herein.

28 112. Section 1174 of the California Labor Code also requires Defendants to

1 maintain and preserve, in a centralized location, among other items, records showing
2 the names and addresses of employees employed and payroll records showing the
3 hours worked daily by employees, and the wages paid to employees. Defendants have
4 knowingly and intentionally failed to comply with Labor Code section 1174, including by
5 implementing the policies and procedures and committing the violations alleged in the
6 causes of action herein. Defendants' failure to comply with Labor Code section 1174 is
7 unlawful pursuant to Labor Code section 1175.

8 113. Under section 226 of the Labor Code, and applicable IWC wage orders,
9 the wage statements Defendants provide to their employees must show all payments
10 and deductions and reimbursements from payment of wages, and must provide the
11 name and address of the legal entity that is the employer, among other requirements
12 stated in the statute. Employers such as Defendants must also accurately report total
13 hours worked by employees such as Plaintiff, and all applicable hourly rates in effect
14 during the hours worked, along with the total hours worked during the pay period at
15 each applicable hourly rate. The wage statements Defendants provided to Plaintiff
16 failed to comply with these requirements.

17 114. Defendants have failed to record many of the items delineated in
18 applicable Industrial Wage Orders and Labor Code section 226, and required under
19 Labor Code Section 1174, including, without limitation, as a result of each wage
20 statement that failed to compensate Plaintiff for all hours worked (and at appropriate
21 rates) and for missed and non-provided rest periods and meal periods, or which
22 calculated overtime or premium wages based upon an improper rate of pay or an
23 inaccurate number of hours worked, or failed to state the applicable hourly rate in effect,
24 and this has resulted in inaccurate wage statements. Defendants failed to implement
25 and preserve a proper and lawful record keeping method to record all non-provided rest
26 and meal periods owed to Plaintiff or all hours worked, as required for non-exempt
27 employees under California Labor Code section 226 and applicable California Wage
28 Orders. In order to determine if Plaintiff has been paid the correct amount and rate for

1 all hours worked, Plaintiff has been and is compelled to try to discover the required
2 information missing from Plaintiff's wage statements and to perform various calculations
3 and take further actions in light of the inaccuracies and incompleteness of the wage
4 statements Defendants provided. Additionally, the wage statements Defendants
5 provided to Plaintiff failed to advise and pay one hour of pay at Plaintiff's regular rate for
6 days in which meal and/or rest periods were not provided.

7 115. Given such violations as discussed above and the resulting inaccuracies
8 in the wage statements provided by Defendants, Defendants' Labor Code 226 violations
9 further injured Plaintiff by rendering Plaintiff unaware of the full compensation to which
10 Plaintiff was entitled under applicable provisions of the California Labor Code and
11 applicable IWC Wage Orders.

12 116. Pursuant to Labor Code § 226, and in light of Defendant's violations
13 addressed above, Plaintiff is entitled to recover up to a maximum of \$4,000.00, along
14 with an award of costs and reasonable attorneys' fees. Plaintiff also is entitled to
15 attorneys' fees pursuant to Code of Civil Procedure section 1021.5, and pursuant to
16 Labor Code section 2699(g)(1), Plaintiff is entitled to an award of reasonable attorney's
17 fees and costs in connection with her claims for civil penalties.

18 **Fourteenth Cause of Action**

19 **Failure to Provide Change Rooms and Resting Facilities**

20 **(IWC Wage Order No.7-2001, § 13)**

21 **(Against All Defendants)**

22 117. Plaintiff incorporates by reference and re-alleges every allegation
23 contained above as though fully set forth herein.

24 118. Pursuant to Section 13 of the IWC Wage Order 7-2001, applicable to
25 Plaintiff's employment by Defendant, "[e]mployers shall provide suitable lockers,
26 closets, or equivalent for the safekeeping of employees' outer clothing during working
27 hours, and when required, for their work clothing during non-working hours. When the
28 occupation requires a change of clothing, change rooms or equivalent space shall be

provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.”

119. Notwithstanding Defendants’ policy that Plaintiff wear a uniform, Defendants failed to provide suitable lockers, closets or the equivalent for the safekeeping of employees’ outer clothing, or change rooms, pursuant to Section 13 of the IWC Wage Order 7-2001 applicable to Plaintiff’s employment by Defendants. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial.

120. In addition, Defendants’ requirement that Plaintiff wear a uniform to work without providing suitable lockers or equivalent spaces for the safekeeping of employees’ clothing, and Defendants’ failure to provide change rooms where the employees may change their clothing in reasonable privacy and comfort, was willful and deliberate, and on information and belief, Defendants have failed to cease its unlawful policies and practices addressed herein despite being on actual and/or constructive notice of them.

130. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff is entitled to recover reasonable attorneys’ fees and costs for enforcing the public interest underpinning the aforementioned IWC Wage Order violation, and pursuant to Labor Code section 2699(g)(1), Plaintiff is entitled to an award of reasonable attorney’s fees and costs in connection with her claims for civil penalties.

Fifteenth Cause of Action

Wrongful Termination in Violation of Public Policy (Against All Defendants)

121. Plaintiff incorporates by reference and re-alleges every allegation contained above as though fully set forth herein.

122. At all times mentioned in this complaint, the California Labor Code and the

1 California Government Code § 12940, *et seq.*, were in full force and effect and binding
2 on Defendants. Pursuant to the Labor Code, an employer, or any person acting on
3 behalf of the employer, shall not retaliate against an employee for disclosing
4 information, or because the employer believes that the employee disclosed or may
5 disclose information... to a person with authority over the employee or another
6 employee who has the authority to investigate, discover, or correct the violation or
7 noncompliance. Labor Code § 1102.5(b).

8 123. Through various statutes, the Labor Code and the applicable IWC Wage
9 Order also set forth minimum standards and requirements for employers with respect to
10 the payment of wages and the terms and conditions of employment for employees, as
11 alleged herein.

12 124. As alleged herein, Defendants and their related parties and managing
13 agents wrongfully subjected Plaintiff to various statutory wage and hour violations, failed
14 to pay Plaintiff all wages due, discriminated against, and retaliated against Plaintiff for
15 reporting, and refusing to participate in such objectionable activity, and otherwise
16 engaging in protected activity, and engaged in adverse actions including wrongfully
17 terminated Plaintiff.

18 125. In terminating Plaintiff for these reasons and under the circumstances
19 alleged, Defendants violated fundamental public policies of this state, as reflected and
20 embodied in the above-referenced laws and regulations.

21 126. As a proximate result of Defendants' willful, knowing, and intentional
22 wrongful termination of Plaintiff, she has sustained and continues to sustain economic
23 losses, including, for example, substantial losses in earnings and losses in other
24 employment benefits, as well as suffer humiliation, severe emotional distress, and
25 mental and physical pain and anguish, all to her damage in a sum according to proof.

26 127. The persons who committed the unlawful acts described herein were
27 officers, directors, or managing agents of Defendants acting within the scope of their
28 employment. Moreover, Defendants and their agents aided, abetted, incited,

1 compelled, or coerced the commission of such unlawful acts. The unlawful acts
2 described herein were committed with oppression, fraud and/or malice and were
3 authorized, ratified or both by Defendants' officers, directors, or managing agents. As a
4 result of Defendants' willful, knowing, and intentional unlawful acts against Plaintiff,
5 Plaintiff seeks an award of punitive and exemplary damages in an amount according to
6 proof.

7 **Sixteenth Cause of Action**

8 **Unfair Competition**

9 **(Business and Professions Code § 17200, *et seq.*[UCL])**

10 **(Against All Defendants)**

11 128. Plaintiff incorporates by reference and re-alleges every allegation
12 contained above as though fully set forth herein.

13 129. Defendant's conduct, as alleged in this complaint, has been, and
14 continues to be, unfair, unlawful, and harmful to Plaintiff, Defendant's competitors, and
15 the general public. Plaintiff seeks to enforce important rights affecting the public interest
16 within the meaning of the California Code of Civil Procedure § 1021.5.

17 130. Defendant's policies, activities, and actions as alleged herein, are
18 violations of California law and constitute unlawful business acts and practices in
19 violation of California Business and Professions Code § § 17200, *et seq.*

20 131. A violation of California Business and Professions Code § § 17200, *et*
21 *seq.*, may be predicated on the violation of any state or federal law. Defendant's policy
22 and practice of failing to accurately pay and timely pay Plaintiff's wages violates the
23 Labor Code. Defendant's practice of failing to lawfully provide meal periods or rest
24 periods or pay the one (1) hour of premium pay when either was not lawfully provided
25 also violates the Labor Code. Similarly, the various other legal violations and causes of
26 action alleged herein, including inter alia for unlawful discrimination, failure to provide
27 reasonable accommodation, failure to engage in interactive process, and retaliation,
28 constitute § § 17200, *et seq.* violations.

1 132. Plaintiff has been personally aggrieved by Defendants' unlawful and unfair
2 business acts and practices alleged herein by the loss of money and/or property.

3 133. Pursuant to California Business and Professions Code § § 17200, et seq.,
4 Plaintiff is entitled to restitution of the wages withheld and retained by Defendant
5 Ironworks during the relevant time period; an award of attorneys' fees pursuant to Labor
6 Code § 1194; and California Code of Civil Procedure § 1021.5; interest; and an award
7 of costs.

8 **Seventeenth Cause of Action**
9 **Private Attorney General Act**
10 **(California Labor Code § 2698 et seq. [PAGA])**
11 **(Against All Defendants)**

12 134. Plaintiff incorporates by reference and re-alleges every allegation
13 contained above as though fully set forth herein.

14 135. PAGA authorizes an aggrieved employee, on behalf of herself or other
15 current or former employees, to bring a civil action to recover civil penalties against her
16 employers pursuant to the procedures specified in Labor Code section 2699.3. Plaintiff
17 is an aggrieved employee within the meaning of the PAGA, and pursuant to the PAGA,
18 Plaintiff is entitled to recover civil penalties on behalf of herself and other similarly
19 aggrieved persons who are, or were employed, by Defendants and against whom one
20 or more of the alleged violations were committed. If the employee prevails as private
21 attorney general, the employer may be subject to civil penalties, of which the aggrieved
22 employee is entitled to 25 percent. Cal. Lab. Code, § 2699, subd. (h).

23 147. Plaintiff has complied with the applicable procedures for bringing suit
24 under PAGA for notices filed with the agency after July 1, 2016. Specifically, by letter
25 dated and postmarked – February 21, 2020, Plaintiff gave written notice by certified mail
26 to the California Labor & Workforce Development Agency ("LWDA") and to Defendants
27 of the specific provisions of the California Labor Code alleged to have been violated,
28 including the facts and theories to support the alleged violations. More than 65 days

1 have passed since the notice and the LWDA did not provide the parties notice that it
2 intended to investigate Plaintiff's claims.

3 148. During the one-year period preceding the filing of Plaintiff's notice to the
4 LWDA, Defendant violated the Labor Code and IWC Wage Order provisions, as alleged
5 in more detail above.

6 149. Pursuant to California Labor Code §§ 2699(a) and (f), and 2699.5, and
7 2699 (g)(1), Plaintiff is entitled to an award of reasonable attorney's fees and costs in
8 connection with his claims for civil penalties.

9 150. As such, Plaintiff seeks all relief entitled under PAGA for any penalties
10 assessed against Defendants in connection with its Labor Code violations, plus
11 attorneys' fees and costs.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for an award and judgment against Defendants
14 jointly and severally as follows:

15 1. For compensatory damages in amounts equal to the unpaid wages and
16 other compensation owed to Plaintiff, according to proof at the time of trial, but for
17 not less than \$150,000;

18 2. For general damages, including, without limitation, for physical harm
19 and/or mental and severe emotional distress according to proof on applicable causes of
20 action, but for no less than \$275,000;

21 3. For penalties arising from the wage statement violations as to Plaintiff
22 individual, of \$4,000;

23 3. For punitive damages on applicable causes of action, but not less than
24 \$300,000;

25 3. For amounts owed and penalties imposable to the extent provided by law,
26 as to Andrade and other similarly aggrieved current and former employees of
27 Defendants, according to the PAGA, of at least \$500,000;

28 4. For applicable penalties;

- 1 5. For injunctive relief on applicable causes of action to permanently enjoin
2 Defendants from the prohibited acts and practices described herein;
3 6. For an award of interest, including prejudgment interest, at the legal rate;
4 7. For an award of attorneys' fees on the applicable causes of action;
5 8. For costs of suit incurred; and
6 9. For such other and further relief as the Court deems appropriate.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a jury trial in this matter on all matters triable to a jury.

9 Respectfully submitted,

10 SOLMER LAW FIRM

11
12 Dated: May 28, 2020

By: Lilit Solmer
Lilit Solmer
Thomas Solmer
Attorney for Plaintiff MARIA MATEO

EXHIBIT A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

May 29, 2020

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202005-10276428
Right to Sue: Mateo / J's Maintenance Service Incorporated et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

May 29, 2020

Maria Mateo
, California

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 202005-10276428
Right to Sue: Mateo / J's Maintenance Service Incorporated et al.

Dear Maria Mateo,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective May 29, 2020 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Maria Mateo

DFEH No. 202005-10276428

Complainant,

vs.

J's Maintenance Service Incorporated
3550 Foothill Boulevard
Glendale, California 91214

ShiftPixy, Inc.
1 Venture, Suite 150
Irvine, California 92618

Respondents

1. Respondent **J's Maintenance Service Incorporated** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **Maria Mateo**, resides in the City of State of **California**.

3. Complainant alleges that on or about **January 23, 2020**, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's disability (physical or mental), medical condition (cancer or genetic characteristic) and as a result of the discrimination was terminated, laid off, forced to quit, denied hire or promotion, reprimanded, denied any employment benefit or privilege, denied reasonable accommodation for a disability, denied work opportunities or assignments, denied or forced to transfer.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment, requested or used a disability-related accommodation and as a result was terminated, laid off, forced to quit, denied hire or

1 promotion, reprimanded, demoted, denied any employment benefit or privilege,
2 denied reasonable accommodation for a disability, denied or forced to transfer.

3 **Additional Complaint Details:** A non-exhaustive list of the violations is as follows:

4 Ms. Mateo is informed and believes, and based thereon alleges this non-exhaustive
5 list of violations that she was subjected to, as follows:

6 At all relevant times throughout Ms. Mateo's employment and continuing through her
7 termination by Respondents and their affiliate entities and owners, directors, and
8 agents, Ms. Mateo experienced discrimination and retaliation, based on her following
9 actual or perceived protected characteristics: disability, medical condition, report or
10 resistance of discrimination, request of a disability-related accommodation and other
11 engagement in protected activity. As a result of this unlawful conduct by
12 Respondents, their affiliate entities and agents, Ms. Mateo was denied a work
13 environment free of discrimination and/or retaliation, denied reasonable
14 accommodation for a disability, denied good faith interactive process, denied
15 employment benefits or privileges, denied work opportunities or assignments,
16 retaliated and discriminated against, forced to transfer and then forced to quit, laid
17 off and/or terminated, in response to Ms. Mateo's engagement in protected activity,
18 including exercising her right to work in an environment free from discrimination and
19 other improper conduct, exercising her right to request a reasonable accommodation
20 for a disability, exercising her right to report discrimination and failure to
21 accommodate a disability, and because Ms. Mateo reported and resisted
22 discrimination by her supervisor.
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1 VERIFICATION

2 I, **Lilit Solmer**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On May 29, 2020, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Huntington Beach, CA**
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