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9 MARGOTH SIGUENZA

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**
12 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

13 MARGOTH SIGUENZA, an individual,

14 Plaintiff,

15 vs.

16 BROOKDALE EMPLOYEE SERVICES,
17 LLC, a Delaware limited liability company;
18 PHILIPPE DIDIER, an individual; and DOES
19 1 through 20, inclusive,

20 Defendants.

Case No.: 20STCV13898

COMPLAINT FOR DAMAGES

1. DISCRIMINATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;
2. HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;
3. RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;
4. FAILURE TO PREVENT DISCRIMINATION, HARASSMENT AND RETALIATION IN VIOLATION OF GOV'T CODE §12940(k);
5. FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;
6. FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;
7. RETALIATION IN VIOLATION OF GOV'T CODE §§12945.2 ET. SEQ.;
8. FOR DECLARATORY JUDGMENT;
9. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
10. DENIAL OF AND DISCRIMINATION BASED UPON THE USE OF SICK LEAVE (LABOR CODE §§ 233, 234, AND 246.5;
11. RETALIATION (LABOR CODE §98.6);
12. RETALIATION FOR DISCLOSING

VIOLATIONS OF LAW (LABOR
CODE §§ 1102.5, 1102.6);
13. DEFAMATION;
14. FAILURE TO PAY WAGES (CAL.
LABOR CODE §§201, 1182.12, 1194,
1194.2);
15. FAILURE TO PROVIDE MEAL AND
REST PERIODS (LAB. CODE §§226.7,
512);
16. FAILURE TO PROVIDE
ITEMIZED WAGE STATEMENTS
(CAL. LABOR CODE §§226 ET SEQ.);
17. WAITING TIME PENALTIES (CAL.
LABOR CODE §§201-203);
18. PRIVATE ATTORNEY GENERAL
ACT; AND
19. UNFAIR COMPETITION (CAL. BUS.
& PROF. CODE §17200 ET SEQ.).

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, MARGOTH SIGUENZA, and for causes of action against
Defendants and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Los Angeles County, because Defendants' obligations and liability arise therein, because Defendants maintain offices and transact business within Los Angeles County, and because the work that is the subject of this action was performed by Plaintiff in Los Angeles County.

THE PARTIES

2. Plaintiff MARGOTH SIGUENZA (hereinafter referred to as "Plaintiff") at all times relevant to this action, resided in the County of Los Angeles, California.

3. Plaintiff is informed and believes, and based thereupon alleges, that Defendant BROOKDALE EMPLOYEE SERVICES, LLC (hereinafter referred to as "BROOKDALE") was and is a Delaware limited liability company. Plaintiff is informed and believes BROOKDALE operates senior living and retirement communities in the United States.

1 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
2 hereto, Defendant PHILIPPE DIDIER (hereinafter referred to as “DIDIER”) was an individual residing
3 in the County of Los Angeles, State of California, and was a supervisor or managerial employee of
4 BROOKDALE.

5 5. At all times herein, Defendant BROOKDALE was Plaintiff’s employer within the
6 meaning of Government Code §§ 12926, subdivision (d), 12940, subdivisions (a),(h),(1), (h)(3)(A), and
7 (i), and 12950, and regularly employ five (5) or more persons and are therefore subject to the
8 jurisdiction of this Court.

9 6. At all times herein, Defendant BROOKDALE was Plaintiff’s employer within the
10 meaning of the Labor Code and Industrial Welfare Commission Order No. 5-2001.

11 7. The true names and capacities, whether individual, corporate, associate, or otherwise, of
12 the Defendants named herein as DOES 1 through 20, inclusive, are unknown to Plaintiff at this time and
13 therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
14 Complaint to insert the true names and capacities of said Defendants when the same become known to
15 Plaintiff. Plaintiff is informed and believes, and based thereupon allege, that each of the fictitiously-
16 named Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff
17 as alleged hereinafter.

18 8. BROOKDALE, DIDIER, and DOES 1 through 20 are referred to collectively as the
19 “Defendants.”

20 9. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
21 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
22 coconspirators, parent corporation, joint employers, alter ego, and/or joint ventures of the other
23 Defendants, and each of them, and in doing the things alleged herein, were acting at least in part within
24 the course and scope of said agency, employment, conspiracy, joint employer, alter ego status, and/or
25 joint venture and with the permission and consent of each of the other Defendants.

26 10. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
27 of them, including those Defendants named as DOES 1 through 20, acted in concert with one another to
28 commit the wrongful acts alleged herein, and aided, abetted, incited, compelled, and/or coerced one

1 another in the wrongful acts alleged herein, and/or attempted to do so, including pursuant to
2 Government Code §12940(i). Plaintiff is further informed and believes, and based thereupon alleges,
3 that Defendants, and each of them, formed and executed a conspiracy or common plan pursuant to
4 which they would commit the unlawful acts alleged herein, with all such acts alleged herein done as part
5 of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff harm.

6 11. Whenever and wherever reference is made in this Complaint to any act or failure to act
7 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
8 and/or failures to act by each Defendant acting individually, jointly and severally.

9 12. On January 30, 2020, Plaintiff filed a complaint under Government Code §§12940, et
10 seq., the California Fair Employment and Housing Act (hereinafter referred to as the “FEHA”) with the
11 California Department of Fair Employment and Housing (hereinafter referred to as the “DFEH”), and
12 has satisfied her administrative prerequisites with respect to these and all related filings. As a result, on
13 January 30, 2020, Plaintiff received a Notice of Case Closure and Right to Sue Letter from the DFEH.

14 12. Plaintiff subsequently amended her DFEH complaint on April 9, 2020, and received an amended version
15 of her Right-to-Sue letter. As stated in the amended Right-to-Sue letters, the amended DFEH complaint
16 are deemed to have the same filing date as the original DFEH complaint per California Code of
17 Regulations. Tit. 2, § 10022.

18
19 **ALTER EGO, AGENCY AND JOINT EMPLOYER**

20 13. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
21 of interest and ownership between Defendants and DOES 1 through 20 that the individuality and
22 separateness of Defendants have ceased to exist.

23 14. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
24 purported corporate existence, Defendants and DOES 1 through 20 are, in reality, one and the same,
25 including, but not limited to because:

26 a. Defendants are completely dominated and controlled by each other Defendant
27 and DOES 1 through 20, who personally committed the frauds and violated the laws as set forth in
28

1 this complaint, and who have hidden and currently hide behind Defendants to perpetrate frauds,
2 circumvent statutes, or accomplish some other wrongful or inequitable purpose.

3 b. DOES 1 through 20 and each other Defendant derive actual and significant
4 monetary benefits by and through Defendants' unlawful conduct, and by using Defendants as the
5 funding source for their own personal expenditures.

6 c. Plaintiff is informed and believes, and based thereon alleges Defendants and
7 DOES 1 through 20, while really one and the same, were segregated to appear as though separate and
8 distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other
9 wrongful or inequitable purpose.

10 d. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 and DOES 1 through 20 do not comply with all requisite corporate formalities to maintain a legal and
12 separate corporate existence.

13 e. Plaintiff is informed and believes, and based thereon alleges, that the business
14 affairs of Defendants and DOES 1 through 20 are, and at all times relevant were, so mixed and
15 intermingled that the same cannot reasonably be segregated, and the same are in inextricable
16 confusion. Defendants are, and at all times relevant hereto was, used by DOES 1 through 20 as a mere
17 shell and conduit for the conduct of certain of Defendants' affairs, and is, and was, the alter ego of
18 DOES 1 through 20. The recognition of the separate existence of Defendants and DOES 1 through 20
19 from one another would not promote justice, in that it would permit Defendants to insulate themselves
20 from liability to Plaintiff for violations of the Government Code, Labor Code, and other statutory
21 violations. The corporate existence of Defendants and DOES 1 through 20 should be disregarded in
22 equity and for the ends of justice because such disregard is necessary to avoid fraud and injustice to
23 Plaintiff herein.

24 15. Accordingly, Defendants and DOES 1 through 20 constitute the alter egos of one another,
25 and the fiction of their separate corporate existence must be disregarded.

26 16. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
27 thereon alleges that Defendants and DOES 1 through 20 are Plaintiff's joint employers by virtue of a
28 joint enterprise, and that Plaintiff was an employee of Defendants and DOES 1 through 20. Plaintiff

1 performed services for each and every one of Defendants, and to the mutual benefit of all Defendants,
2 and all Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the
3 manner in which Defendants' business was and is conducted.

4
5 **FACTUAL ALLEGATIONS**

6 17. On or about November 2003, Plaintiff was hired by Defendants as a full-time non-exempt
7 cook.

8 18. Plaintiff was a loyal and devoted employee of Defendants and her work performance has
9 been satisfactory and at times above-average. Plaintiff fulfilled, and substantially performed, all of her
10 job duties and all the terms and conditions of employment.

11 19. From on or about April 9, 2016 through on or about February 11, 2019, Plaintiff worked
12 six days a week, Monday through Saturday, 6:30 a.m. through 2:00 p.m.-4:30 p.m.

13 20. From on or about April 9, 2016 through on or about March 11, 2017, Plaintiff was paid at
14 a rate of \$16.32 per hour.

15 21. From on or about March 12, 2017 through on or about March 10, 2018, Plaintiff was paid
16 at a rate of \$16.65 per hour.

17 22. From on or about March 11, 2018 through on or about February 11, 2019, Plaintiff was
18 paid at a rate of \$16.98 per hour.

19 23. From on or about April 9, 2016 through on or about February 11, 2019, Plaintiff was not
20 permitted to take her statutory 30-minute meal periods for days on which Plaintiff worked at least 5
21 hours.

22 24. On or about April 2015, Plaintiff injured her back and informed her supervisor of her
23 injury. Plaintiff's medical provider placed her off work for approximately ten days thereafter.

24 25. On or about September 2016, Plaintiff injured her left shoulder and informed her
25 supervisor of her injury. Plaintiff was placed on work restrictions for ten days thereafter. Plaintiff's work
26 restrictions were not accommodated and she reported to BROOKDALE's Human Resources department
27 to no avail.

1 26. On or about September 2017, Plaintiff sprained her spine and right shoulder. Despite her
2 medical provider placing her on work restrictions, BROOKDALE did not accommodate her once again.

3 27. On or about Spring 2018, Plaintiff began suffering from pain in her knee and began
4 receiving medical treatment for her disability.

5 28. On or about December 19, 2018, Plaintiff made a written complaint about having to work
6 through her meal breaks and her supervisor DIDIER management.

7 29. On or about February 10, 2019, Plaintiff informed DIDIER that she intended to take
8 time-off the following month in order to seek treatment and recuperate from her injuries. As a result of
9 Plaintiff's prior to complaints of DIDIER and her requests for accommodations, DIDIER became
10 verbally aggressive toward Plaintiff by yelling at her and instructing her cancel her upcoming medical
11 appointments.

12 30. Later that day, DIDIER forcefully escorted Plaintiff to the Human Resources department
13 where he falsely accused her of being drunk at work in order to cause her termination.

14 31. On or about February 11, 2019, Plaintiff was constructively terminated/forced to quit her
15 job because she no longer felt comfortable working for Defendants as a result of the harassment, lack of
16 accommodations and her need to receive treatment for her injuries. At no time since the separation of
17 her employment has Plaintiff been paid all outstanding wages owing her.

18 32. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
19 Defendants and their officers and/or managing agents, including those identified herein as DOES 1
20 through 20, who were authorized and empowered to make decisions that reflect and/or create policy for
21 Defendants. The aforementioned conduct of said managing agents and individuals was therefore
22 undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions and
23 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
24 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore
25 identified and designated herein as DOES 1 through 20, inclusive.

26 33. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer
27 general and special damages, including severe and profound pain and emotional distress, anxiety,
28

1 depression, headaches, tension, and other physical ailments, as well as medical expenses, expenses for
2 psychological counseling and treatment, and past and future lost wages and benefits.

3 34. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
4 commissions, and benefits.

5 35. Plaintiff claims general damages for emotional and mental distress and aggravation in a
6 sum in excess of the jurisdictional minimum of this Court.

7 36. Because the acts taken toward Plaintiff were carried out by managerial employees acting
8 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's rights
9 and in order to injure and damage them, Plaintiff requests that punitive damages be levied against
10 Defendants and each of them, in sums in excess of the jurisdictional minimum of this Court.

11
12 **FIRST CAUSE OF ACTION**

13 **BY PLAINTIFF**

14 **FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**

15 **AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE**

16 37. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as
17 though fully set forth herein.

18 38. At all times hereto, the FEHA was in full force and effect and was binding upon
19 Defendants and each of them.

20 39. FEHA requires Defendants to refrain from discriminating against an employee on the
21 basis of disabilities and/or perceived disabilities, engagement in protected activities, medical condition,
22 medical leave and to prevent discrimination on the basis of the aforementioned protected classes from
23 occurring.

24 40. Plaintiff was a member of a protected class as a person with a disability, medical
25 condition and who used medical leave.

26 41. At all times relevant hereto, Plaintiff was performing competently in the position she held
27 with Defendants.

1 42. Plaintiff suffered the adverse employment actions of discrimination, harassment
2 retaliation, denied transfer, denied medical leave, denied reasonable accommodation for a disability,
3 denied a work environment free of discrimination and/or retaliation, forced to quit, constructively
4 terminated and was harmed thereby.

5 43. Plaintiff is informed and believes that her disabilities and/or perceived disabilities,
6 engagement in protected activities, medical condition and medical leave were a substantial motivating
7 reason and/or factor in the decisions to subject Plaintiff to the aforementioned adverse employment
8 actions.

9 44. Said conduct violates the FEHA, and such violations were a proximate cause in
10 Plaintiff's damages as stated below.

11 45. The damage allegations of the Paragraphs above, inclusive, are herein incorporated by
12 reference.

13 46. The foregoing conduct of Defendants individually, or by and through their managing
14 agents, was intended by Defendants to cause injury to Plaintiff or was despicable conduct carried on by
15 Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel
16 and unjust hardship in conscious disregard of Plaintiff's right to be free from interference by threats,
17 intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, such as to
18 constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive
19 damages in an amount appropriate to punish or make an example of Defendants.

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

22
23 **SECOND CAUSE OF ACTION**

24 **BY PLAINTIFF**

25 **FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**

26 **AGAINST DEFENDANTS AND DOES 1 THROUGH 20, INCLUSIVE**

27 48. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as
28 though fully set forth herein.

1 49. At all times hereto, the FEHA was in full force and effect and was binding upon
2 defendants and each of them.

3 50. As such term is used under FEHA, “on the bases enumerated in this part” means or refers
4 to harassment on the bases of one or more of the protected characteristics under FEHA.

5 51. These laws set forth in the preceding paragraph require defendants to refrain from
6 harassing, or creating, or maintaining a hostile work environment against an employee based upon her
7 disabilities and/or perceived disabilities, engagement in protected activities, medical condition and
8 medical leave, as set forth hereinabove, which includes an obligation to protect its employees from third
9 party harassment to which the employee is subjected at work.

10 52. Defendants’ harassing conduct was severe or pervasive, was unwelcome by Plaintiff, and
11 a reasonable person in Plaintiff’s circumstances would have considered the work environment to be
12 hostile or abusive.

13 53. Defendants violated the FEHA and the public policy of the State of California which is
14 embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of her
15 disabilities and/or perceived disabilities, engagement in protected activities, medical condition, medical
16 leave and/or some combination of these protected characteristics, as set forth hereinabove.

17 54. The above said acts were perpetrated upon Plaintiff by a supervisor, and/or defendants
18 knew or should have known of the conduct but failed to take immediate and appropriate corrective
19 action.

20 55. The above said acts of defendants constitute violations of the FEHA and violations of the
21 public policy of the State of California. Such violations were a proximate cause in Plaintiff’s damage as
22 stated below.

23 56. The damage allegations above, inclusive, are herein incorporated by reference.

24 57. The foregoing conduct of defendants individually, or by and through their managing
25 agents, was intended by the defendants to cause injury to the Plaintiff or was despicable conduct carried
26 on by the defendants with a willful and conscious disregard of the rights of Plaintiff or subjected
27 Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff’s right to be free from
28 interference by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or

1 coercion, such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
2 Plaintiff to punitive damages in an amount appropriate to punish or make an example of defendants.

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

5
6 **THIRD CAUSE OF ACTION**

7 **BY PLAINTIFF**

8 **FOR RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**

9 **AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE**

10 59. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as
11 though fully set forth herein.

12 60. At all times hereto, the FEHA was in full force and effect and was binding upon
13 Defendants and each of them.

14 61. These laws set forth in the preceding paragraph require Defendants to refrain from
15 retaliating against an employee for engaging in protected activity.

16 62. Plaintiff engaged in the protected activities of reporting her disabilities, requesting
17 accommodations, complaining about and protesting Defendants' discriminatory conduct towards
18 Plaintiff based upon her disabilities.

19 63. Plaintiff suffered the adverse employment actions of discrimination, harassment
20 retaliation, denied transfer, denied medical leave, denied reasonable accommodation for a disability,
21 denied a work environment free of discrimination and/or retaliation, forced to quit, constructively
22 terminated and was harmed thereby.

23 64. Plaintiff is informed and believes that her engagement in the aforementioned protected
24 activities were substantial motivating reasons and/or factors in the decisions to subject her to the
25 aforementioned adverse employment actions.

26 65. Defendants violated the FEHA by retaliating against Plaintiff and terminating her
27 employment for attempting to exercise her protected rights, as set forth hereinabove.

66. Plaintiff is informed and believes, and based thereon alleges, that the above acts of retaliation committed by Defendants were done with the knowledge, consent, and/or ratification of, or at the direction of, each other Defendant and the other managers.

67. The above said acts of Defendants constitute violations of the FEHA, and were a proximate cause in Plaintiff's damages as stated below.

68. The damage allegations of the Paragraphs above, inclusive, are herein incorporated by reference.

69. The foregoing conduct of Defendants individually, or by and through their managing agents, was intended by Defendants to cause injury to Plaintiff or was despicable conduct carried on by Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's right to be free from interference by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

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

FOURTH CAUSE OF ACTION

BY PLAINTIFF

FAILURE TO PREVENT DISCRIMINATION, HARASSMENT AND RETALIATION

IN VIOLATION OF GOV'T CODE §12940(k)

AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE

71. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as though fully set forth herein.

72. At all times hereto, the FEHA, including in particular Government Code §12940(k), was in full force and effect and was binding upon Defendants. This subsection imposes a duty on Defendants to take all reasonable steps necessary to prevent discrimination, harassment and retaliation from occurring. As alleged above, Defendants violated this subsection and breached their duty by

1 failing to take all reasonable steps necessary to prevent discrimination, harassment and retaliation from
2 occurring.

3 73. The above said acts of Defendants constitute violations of the FEHA, and were a
4 proximate cause in Plaintiff's damages as stated below.

5 74. The damage allegations of the Paragraphs above, inclusive, are herein incorporated by
6 reference.

7 75. The foregoing conduct of Defendants individually, or by and through their managing
8 agents, was intended by Defendants to cause injury to Plaintiff or was despicable conduct carried on by
9 Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel
10 and unjust hardship in conscious disregard of Plaintiff's right to be free from interference by threats,
11 intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, such as to
12 constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive
13 damages in an amount appropriate to punish or make an example of Defendants.

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

16
17 **FIFTH CAUSE OF ACTION**

18 **BY PLAINTIFF**

19 **FOR FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS**

20 **IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**

21 **AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE**

22 77. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as
23 though fully set forth herein.

24 78. At all times hereto, the FEHA, including in particular Government Code §12940(m), was
25 in full force and effect and was binding upon Defendants. This subsection imposes a duty on
26 Defendants to make reasonable accommodation for the known disability of an employee.

1 79. At all relevant times, Plaintiff was a member of a protected class within the meaning of
2 particular Government Code §§12940(a) & 12986(1) et seq. because she had disabilities that affected
3 her major life activities, of which Defendants had both actual and constructive knowledge.

4 80. At all times herein, Plaintiff was willing and able to perform the duties and functions of
5 the position in which she was employed, or could have performed the duties and functions of those
6 positions with reasonable accommodations. At no time would the performance of the functions of the
7 employment positions, with reasonable accommodations for Plaintiff's disabilities or her disabilities as
8 they were perceived by Defendants, have been a danger to Plaintiff's or any other person's health or
9 safety. Accommodation of Plaintiff's disabilities or disabilities as they were perceived by Defendants
10 would not have imposed an undue hardship on Defendants. Defendants failed and refused to
11 accommodate Plaintiff and failed to engage in the interactive process with Plaintiff.

12 81. The above said acts of Defendants constitute violations of the FEHA, and were a
13 proximate cause in Plaintiff's damages as stated below.

14 82. The damage allegations of the Paragraphs above, inclusive, are herein incorporated by
15 reference.

16 83. The foregoing conduct of Defendants individually, or by and through their managing
17 agents, was intended by Defendants to cause injury to Plaintiff or was despicable conduct carried on by
18 Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel
19 and unjust hardship in conscious disregard of Plaintiff's right to be free from interference by threats,
20 intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, such as to
21 constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive
22 damages in an amount appropriate to punish or make an example of Defendants.

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

SIXTH CAUSE OF ACTION
BY PLAINTIFF
FOR FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS
IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE

85. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as though fully set forth herein.

86. At all times hereto, the FEHA, including in particular Government Code §12940(n), was in full force and effect and was binding upon Defendants. This subsection imposes a duty on Defendants to engage in a timely, good faith, interactive process with the employee to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee with a known disability or known medical condition.

87. At all relevant times, Plaintiff was a member of a protected class within the meaning of particular Government Code §§12940(a) & 12986(1) et seq. because she had disabilities that affected her major life activities, of which Defendant had both actual and constructive knowledge.

88. Plaintiff reported her disabilities to Defendants, triggering Defendants' obligation to engage in the interactive process with Plaintiff, but at all times herein, Defendants failed and refused to do so.

89. The above said acts of Defendants constitute violations of the FEHA, and were a proximate cause in Plaintiff's damages as stated below.

90. The damage allegations of the Paragraphs above, inclusive, are herein incorporated by reference.

91. The foregoing conduct of Defendants individually, or by and through their managing agents, was intended by Defendants to cause injury to Plaintiff or was despicable conduct carried on by Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's right to be free from interference by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, such as to

1 constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive
2 damages in an amount appropriate to punish or make an example of Defendants.

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

5
6 **SEVENTH CAUSE OF ACTION**

7 **BY PLAINTIFF**

8 **FOR RETALIATION IN VIOLATION OF GOV'T CODE §§12945.2 ET SEQ.**

9 **AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE**

10 93. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as
11 though fully set forth herein.

12 94. At all times hereto, the California Family Rights Act, codified by Government Code
13 §§12945.2, et al. (the "CFRA") was in full force and effect and was binding upon Defendants and each
14 of them.

15 95. At all times hereto, Plaintiff was an employee eligible for CFRA leave. At all times
16 hereto, Plaintiff had been employed by Defendants for more than 12 months, and had worked at least
17 1250 hours during the previous 12 months. Further, Defendants employed at least 50 employees within
18 75 miles of the worksite at which Plaintiff worked.

19 96. CFRA requires Defendants to refrain from retaliating against an employee for engaging
20 in protected activity.

21 97. Plaintiff engaged in the protected activity of exercising her right to medical leave.

22 98. Plaintiff suffered the adverse employment actions of discrimination, harassment
23 retaliation, denied transfer, denied medical leave, denied reasonable accommodation for a disability,
24 denied a work environment free of discrimination and/or retaliation, forced to quit, constructively
25 terminated and was harmed thereby.

26 99. Plaintiff is informed and believes that exercising her right to medical leave was a
27 substantial motivating reason and/or factor in the decisions to subject Plaintiff to the aforementioned
28 adverse employment actions.

1 100. Defendants violated the CFRA by retaliating against Plaintiff for attempting to exercise
2 her protected rights, as set forth hereinabove.

3 101. Plaintiff is informed and believes, and based thereon alleges, that the above act of
4 retaliation committed by Defendants were done with the knowledge, consent, and/or ratification of, or at
5 the direction of, each other Defendant and the other Managers.

6 102. The above said acts of Defendants constitute violations of the CFRA, and were a
7 proximate cause in Plaintiff's damage as stated below.

8 103. The damage allegations of the Paragraphs above, inclusive, are herein incorporated by
9 reference.

10 104. The foregoing conduct of Defendants individually, or by and through their managing
11 agents, was intended by the Defendants to cause injury to the Plaintiff or was despicable conduct carried
12 on by the Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected
13 Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's right to be free from
14 interference by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or
15 coercion, such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
16 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

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

19
20 **EIGHTH CAUSE OF ACTION**

21 **BY PLAINTIFF**

22 **FOR DECLARATORY JUDGMENT**

23 **AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE**

24 106. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as
25 though fully set forth herein.

26 107. Government Code §12920 sets forth the public policy of the State of California as
27 follows:

28 It is hereby declared as the public policy of this state that it is necessary to
 protect and safeguard the right and opportunity of all persons to seek,
 obtain, and hold employment without discrimination or abridgment on

1 account of race, religious creed, color, national origin, ancestry, physical
2 disability, mental disability, medical condition, genetic information,
3 marital status, sex, gender, gender identity, gender expression, age, or
4 sexual orientation.

5 It is recognized that the practice of denying employment opportunity and
6 discriminating in the terms of employment for these reasons foments
7 domestic strife and unrest, deprives the state of the fullest utilization of its
8 capacities for development and advancement, and substantially and
9 adversely affects the interests of employees, employers, and the public in
10 general.

11 Further, the practice of discrimination because of race, color, religion, sex,
12 gender, gender identity, gender expression, sexual orientation, marital
13 status, national origin, ancestry, familial status, source of income,
14 disability, or genetic information in housing accommodations is declared
15 to be against public policy.

16 It is the purpose of this part to provide effective remedies that will
17 eliminate these discriminatory practices.

18 This part shall be deemed an exercise of the police power of the state for
19 the protection of the welfare, health, and peace of the people of this state.

20 108. Government Code §12920.5 embodies the intent of the California legislature and states:

21 In order to eliminate discrimination, it is necessary to provide effective
22 remedies that will both prevent and deter unlawful employment practices
23 and redress the adverse effects of those practices on aggrieved persons. To
24 that end, this part shall be deemed an exercise of the Legislature's
25 authority pursuant to Section 1 of Article XIV of the California
26 Constitution.

27 109. Moreover, Government Code §12921, subdivision (a) says in pertinent part:

28 The opportunity to seek, obtain, and hold employment without
discrimination because of race, religious creed, color, national origin,
ancestry, physical disability, mental disability, medical condition, genetic
information, marital status, sex, gender, gender identity, gender
expression, age, or sexual orientation is hereby recognized as and declared
to be a civil right.

110. An actual controversy has arisen and now exists between Plaintiff and Defendants
concerning their respective rights and duties as it is believed that Defendants may allege that they did
not discriminate or retaliate against Plaintiff; that Plaintiff was not terminated as a result of her
disabilities and/or perceived disabilities, engagement in protected activities, medical condition, medical
leave, and/or some combination of these protected characteristics. Plaintiff contends that Defendants
did discriminate and retaliate against her on the basis of her disabilities and/or perceived disabilities,

1 engagement in protected activities, medical condition, medical leave and/or some combination of these
2 protected characteristics; and that she was ultimately wrongfully terminated and denied reinstatement as
3 a result of these protected characteristics. Plaintiff is informed and believes, and on that basis alleges,
4 that Defendants shall dispute Plaintiff's contentions.

5 111. Pursuant to Code of Civil Procedure §1060, Plaintiff desires a judicial determination of
6 her rights and duties, and a declaration that Defendants discriminated against her on the basis of her
7 perceived disabilities and/or disabilities, engagement in protected activities, medical condition, medical
8 leave, and/or some combination of these protected characteristics.

9 112. Pursuant to Code of Civil Procedure §1060, Plaintiff seeks a judicial determination of her
10 rights and duties, and a declaration that her disabilities and/or perceived disabilities, engagement in
11 protected activities, medical condition, medical leave, and/or some combination of these protected
12 characteristics was a substantial motivating factor in the decisions to subject her to the aforementioned
13 adverse employment actions.

14 113. A judicial declaration is necessary and appropriate at this time under the circumstances in
15 order that Plaintiff, for herself and on behalf of employees in the State of California and in conformity
16 with the public policy of the State, obtain a judicial declaration of the wrongdoing of Defendants and to
17 condemn such discriminatory employment policies or practices prospectively. *Harris v. City of Santa*
18 *Monica* (2013) 56 Cal.4th 203.

19 114. A judicial declaration is necessary and appropriate at this time such that Defendants may
20 also be aware of their obligations under the law to not engage in discriminatory practices and to not
21 violate the law in the future.

22 115. Government Code §12965(b) provides that an aggrieved party, such as Plaintiff herein,
23 may be awarded reasonable attorney's fees and costs: "In civil actions brought under this section, the
24 court, in its discretion, may award to the prevailing party, including the department, reasonable
25 attorney's fees and costs, including expert witness fees." Such fees and costs expended by an aggrieved
26 party may be awarded for the purpose of redressing, preventing, or deterring discrimination and
27 harassment.
28

NINTH CAUSE OF ACTION
BY PLAINTIFF
FOR WRONGFUL TERMINATION
IN VIOLATION OF THE PUBLIC POLICY OF THE STATE OF CALIFORNIA
AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE

116. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as though fully set forth herein.

117. At all times mentioned in this Complaint, the FEHA was in full force and effect and was binding on Defendants. This law requires Defendants to refrain, among other things, from discriminating or retaliating against any employee on the basis of disabilities and/or perceived disabilities, engagement in protected activities, medical condition, and medical leave.

118. At all times mentioned in this Complaint, it was a fundamental policy of the State of California that Defendants cannot discriminate and/or retaliate against any employee on the basis of disabilities and/or perceived disabilities, engagement in protected activities, medical condition, and medical leave.

119. At all times mentioned in this Complaint, the CFRA was in full force and effect and was binding on Defendants. This law requires Defendants to refrain, among other things, from discriminating or retaliating against any employee on the basis of the use of CFRA leave.

120. At all times mentioned in this Complaint, it was a fundamental policy of the State of California that Defendants cannot discriminate and/or retaliate against any employee on the basis of use of CFRA leave.

121. Plaintiff believes and based thereon alleges that her disabilities and/or perceived disabilities, engagement in protected activities, medical condition, medical leave, and/or some combination thereof, were factors in Defendants' conduct as alleged hereinabove.

122. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's employment on the basis of disabilities and/or perceived disabilities, engagement in protected activities, medical condition, medical leave, and/or some combination thereof, were a proximate cause in Plaintiff's damages as stated below.

1 123. The above said acts of Defendants constitute violations of the Government Code and the
2 public policy of the State of California embodied therein as set forth above. Defendants violated these
3 laws by discriminating and retaliating against Plaintiff and terminating her employment in
4 discrimination of her protected classes and in retaliation for her exercise of protected rights.

5 124. The damage allegations of the Paragraphs above, inclusive, are herein incorporated by
6 reference.

7 125. The foregoing conduct of Defendants individually, or by and through their managing
8 agents, was intended by Defendants to cause injury to Plaintiff or was despicable conduct carried on by
9 Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel
10 and unjust hardship in conscious disregard of Plaintiff's right to be free from interference by threats,
11 intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, such as to
12 constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive
13 damages in an amount appropriate to punish or make an example of Defendants.

14
15 **TENTH CAUSE OF ACTION**

16 **BY PLAINTIFF**

17 **DENIAL OF AND DISCRIMINATION BASED UPON THE USE OF SICK LEAVE (LABOR**

18 **CODE §§ 233, 234, and 246.5)**

19 **AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE**

20 126. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as
21 though fully set forth herein.

22 127. Labor Code §233 states that "Any employer who provides sick leave for employees shall
23 permit an employee to use in any calendar year the employee's accrued and available sick leave
24 entitlement, in an amount not less than the sick leave that would be accrued during six months at the
25 employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section
26 246.5."

1 128. Labor Code §246.5(a) states that upon oral or written request by an employee, an
2 employer shall provide paid sick days for the “Diagnosis, care, or treatment of an existing health
3 condition of, or preventive care for, an employee or an employee’s family member.”

4 129. Both Labor Code §233(c) and §246.5(c)(1) state that an employer shall not deny an
5 employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any
6 manner discriminate against an employee for using or attempting to use sick leave to attend to an illness,
7 or for opposing any policy or practice or act that is prohibited by this article.

8 130. Labor Code §234 states that “An employer absence control policy that counts sick leave
9 taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion,
10 or suspension is a per se violation of Section 233. An employee working under this policy is entitled to
11 appropriate legal and equitable relief pursuant to Section 233.”

12 131. This is further emphasized by the fact that Labor Code §246.5(c)(2) creates a “...
13 rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use
14 accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates
15 against an employee within 30 days of ... [o]pposition by the employee to a policy, practice, or act that
16 is prohibited by this article.”

17 132. Labor Code §233(d) states that “Any employee aggrieved by a violation of this section
18 shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to
19 appropriate equitable relief.” Labor Code §233(e) then explicitly creates a private right of action for an
20 employee to seek these remedies, and permits the Court to Plaintiff reasonable attorney’s fees if Plaintiff
21 prevails.

22 133. Plaintiff attempted to use accrued sick leave to seek treatment for a medical condition. In
23 response, Defendants ultimately terminated Plaintiff. Indeed, Defendants counted Plaintiff’s sick leave
24 as absences which subjected her to discipline, discharge, and suspension.

25 134. As a result of Defendants’ failure and refusal to comply with Labor Code §§233, 234,
26 and 246.5, Plaintiff is entitled to recover from Defendants actual damages, including emotional distress
27 damages, equitable relief, attorney’s fees, and costs.

1 **ELEVENTH CAUSE OF ACTION**

2 **BY PLAINTIFF**

3 **FOR RETALIATION**

4 **LABOR CODE §98.6**

5 **AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE**

6 135. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as
7 though fully set forth herein.

8 136. At all times hereto, Labor Code §98.6 was in full force and effect, and was binding upon
9 Defendants. These laws prohibit an employer from discharging an employee or in any manner
10 discriminating, retaliating, or taking any adverse action against any employee because, among other
11 things, the employee made a written or oral complaint that she or she is owed unpaid wages, or because
12 of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of
13 any rights afforded him or her.

14 137. On or about December 19, 2018, Plaintiff made a complaint to Defendants about their
15 labor code violations.

16 138. Defendants discriminated and retaliated against Plaintiff by constructively terminating
17 her employment, because of her complaint and because she exercised her rights under the Labor Code.

18 139. Said conduct violates Labor Code §98.6, and such violations were a proximate cause in
19 Plaintiff's damage as stated below.

20 140. The damage allegations above, inclusive, are herein incorporated by reference.

21 141. The foregoing conduct of Defendants individually, or by and through their managing
22 agents, was intended by the Defendants to cause injury to the Plaintiff or was despicable conduct carried
23 on by the Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected
24 Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute
25 malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive damages in
26 an amount appropriate to punish or make an example of Defendants.

142. In addition to all other remedies available to Plaintiff, Plaintiff is entitled to a civil penalty of \$10,000.00 pursuant to Labor Code §98.6(b)(3), for Defendant's violation of Labor Code §98.6.

143. Pursuant to Labor Code §1194, Plaintiff requests a reasonable award of attorneys' fees and costs.

TWELFTH CAUSE OF ACTION

BY PLAINTIFF

FOR RETALIATION FOR DISCLOSING VIOLATIONS OF LAW

LABOR CODE §§1102.5, 1102.6

AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE

144. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as though fully set forth herein.

145. At all times hereto, Labor Code §1102.5 was in full force and effect, and was binding upon Defendants. These laws prohibit an employer, or any person acting on behalf of the employer, from adopting, or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

146. Further, Labor Code §1102.5 also prohibits an employer, or any person acting on behalf of the employer, from retaliating against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing

1 information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if
2 the employee has reasonable cause to believe that the information discloses a violation of state or federal
3 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of
4 whether disclosing the information is part of the employee's job duties.

5 147. On or about December 19, 2018, Plaintiff made a complaint to Defendants about their
6 labor code violations, resulting in her constructive termination which is in breach of Labor Code
7 §1182.12.

8 148. Defendants subjected Plaintiff to adverse employment actions in retaliation for the
9 aforementioned, including constructive termination.

10 149. The damage allegations above, inclusive, are herein incorporated by reference.

11 150. The foregoing conduct of Defendants individually, or by and through their managing
12 agents, was intended by Defendants to cause injury to Plaintiff or was despicable conduct carried on by
13 Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel
14 and unjust hardship in conscious disregard of Plaintiff's right to be free from interference by threats,
15 intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, such as to
16 constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive
17 damages in an amount appropriate to punish or make an example of Defendants.

18 151. In addition to all other remedies available, Plaintiff is entitled to a civil penalty of
19 \$10,000.00 pursuant to Labor Code §1102.5(f), for each of Defendant's violation of Labor Code
20 §1102.5.

21
22 **THIRTEENTH CAUSE OF ACTION**

23 **BY PLAINTIFF**

24 **FOR DEFAMATION**

25 **AGAINST DEFENDANTS AND DOES 1 THROUGH 20, INCLUSIVE**

26 152. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as
27 though fully set forth herein.

1 153. On or about February 11, 2019, Defendants, by and through their agents DIDIER and
2 DOES 1 through 20, published the following words of and concerning Plaintiff without believing them
3 to be true:

4 a. that Plaintiff was drunk while during working hours, as alleged in paragraph 29.

5 154. On or about February 11, 2019, on information and belief, DIDIER made this false
6 statement intentionally with no basis whatsoever for believing it was true, and in retaliation for
7 Plaintiff's complaining about the unlawful harassment.

8 155. The publications of these statements were motivated by hatred or ill will towards
9 Plaintiff, because of Plaintiff's opposition to Defendants' violations of the Government Code, Labor
10 Code, and Civil Code, among other things, and such statements were published to managerial and non-
11 managerial employees, and those with no legitimate need to know in the workplace and others, and, on
12 information and belief, were permanently recorded in Plaintiff's personnel records.

13 156. Such statements were patently false, and known to be false at the time they were made.
14 Defendants had no reasonable basis for believing the defamatory statements to be true. With actual
15 knowledge of their falsity, Defendants published the foregoing defamatory statements nonetheless,
16 evidencing that such statements were made with actual malice. To the extent that any defamatory
17 statements were or could have been protected by a qualified privilege, Defendants' actual malice and
18 over-publication destroyed any such qualified privilege the statements may have otherwise enjoyed.

19 157. Plaintiff, at all times relevant hereto, was not drunk during working hours, consistently
20 performed her duties competently and properly and never performed unsatisfactorily, as long as Plaintiff
21 was employed with Defendants.

22 158. The statements of paragraphs 29 above were made with malice, express and implied, by
23 management-level employees, agents, and/or officers of Defendants, with the designed intent to injure
24 Plaintiff and her good name. By maintaining those individuals defaming Plaintiff in its employ, in
25 conscious disregard of the rights of Plaintiff, BROOKDALE allowed Defendants to make the statements
26 that constitute defamation of Plaintiff.

1 159. The statements are libelous *per se* pursuant to Civil Code §§46 (3), and (5), in that the
2 statements (3) tend to injure Plaintiff in her trade or business; and (5) by natural consequence cause
3 actual damage to Plaintiff.

4 160. Plaintiff is informed and believes, and based thereupon alleges, that the statements were
5 published to non-managerial employees of Defendants, and other persons who reside in and around Los
6 Angeles County, California, including employees and managers of BROOKDALE, whose identities are
7 not yet known to Plaintiff, but are known to Defendants, and whose identities shall be ascertained during
8 discovery in this action, as well as the exact contents of the defamatory statements.

9 161. As a proximate result of the above-described publications, Plaintiff has suffered loss of
10 reputation, shame, mortification, and hurt feelings, all to her general damage in a sum to be proven at
11 time of trial.

12 162. Defendants' publication of false statements regarding Plaintiff was malicious and a
13 further example of retaliation against Plaintiff for opposing Defendants' violations of the Government
14 Code, and Labor Code, among other things, and was made in conscious disregard of Plaintiff's rights.
15 Plaintiff is therefore entitled to an award of punitive damages against all Defendants and each of them.

16 163. The damage allegations of Paragraphs above, inclusive, are herein incorporated by
17 reference.

18
19 **FOURTEENTH CAUSE OF ACTION**

20 **BY PLAINTIFF**

21 **FOR FAILURE TO PAY WAGES DUE**

22 **LABOR CODE §§201, 1182.12, 1194, 1194.2**

23 **AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE**

24 164. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as
25 though fully set forth herein.

26 165. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and
27 required by 8 Code of Regulations §11060, as set forth hereinabove. As alleged herein, Plaintiff was not
28

1 paid an additional hour compensation at her regularly hourly rate for each day on which she was not
2 provided a statutory meal and rest break.

3 166. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8
4 Code of Regulations §11050, and Industrial Welfare Commission Order No. 5-2001.

5 167. Plaintiff has been deprived of her rightfully earned compensation as a direct and
6 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to
7 recover such amounts, plus interest thereon, attorneys' fees and costs.

8
9 **FIFTEENTH CAUSE OF ACTION**

10 **BY PLAINTIFF**

11 **FOR FAILURE TO PROVIDE MEAL AND REST PERIODS**

12 **LABOR CODE §§226.7, 512**

13 **AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE**

14 168. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as
15 though fully set forth herein.

16 169. Labor Code §512 requires employers to provide every employee with an uninterrupted
17 meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

18 170. Labor Code §226.7 requires an employer to provide every employee with an
19 uninterrupted rest period of not less than 10 minutes, for every period worked in excess of four hours.

20 171. Plaintiff regularly worked in excess of five hours per day, and was thereby entitled to
21 take uninterrupted 30-minute meal periods and 10-minute rest periods on each day of work.

22 172. At all relevant times, Defendants failed and refused to provide Plaintiff with meal and
23 rest periods during her work shifts, and failed to compensate Plaintiff for missed meal and rest periods,
24 as required by Labor Code §§226.7 and the applicable sections of 8 Code of Regulations §11050 and
25 Industrial Welfare Commission Order No. 5-2001.

26 173. As alleged herein, Plaintiff is not exempt from the meal and rest breaks requirements of 8
27 Code of Regulations §11050 and Industrial Welfare Commission Order No. 5-2001. Consequently,
28

1 Plaintiff is owed one hour of pay at her regular hourly rate, or the requisite minimum wage, whichever is
2 greater, for each day that she was denied such meal and rest periods.

3 174. Plaintiff has been deprived of her rightfully earned compensation for meal and rest breaks
4 as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

5 175. From on or about April 9, 2016 through on or about March 11, 2017, Defendants failed to
6 provide Plaintiff with the statutory meal period for those days on which she worked at least five hours
7 on 288 separate days. Consequently, Plaintiff is owed one hour of pay at her normal hourly rate of
8 \$16.32 for each day that she was denied such a meal period pursuant to Labor Code §226.7, or
9 \$4,700.16, plus interest therein.

10 176. From on or about April 9, 2016 through on or about March 11, 2017, Plaintiff worked
11 approximately 288 separate days without being permitted to take any 10 minute rest breaks. Therefore,
12 as a direct and proximate result of Defendant's violation of Labor Code §226.7, Defendant owes
13 Plaintiff \$16.32 for each of the 288 days on which rest periods were missed, totaling \$4,700.16, plus
14 interest therein.

15 177. From on or about March 12, 2017 through on or about March 10, 2018, Defendants failed
16 to provide Plaintiff with the statutory meal period for those days on which she worked at least five hours
17 on 312 separate days. Consequently, Plaintiff is owed one hour of pay at her normal hourly rate of
18 \$16.65 for each day that she was denied such a meal period pursuant to Labor Code §226.7, or
19 \$5,194.00, plus interest therein.

20 178. From on or about March 12, 2017 through on or about March 10, 2018, Plaintiff worked
21 approximately 312 separate days without being permitted to take any 10 minute rest breaks. Therefore,
22 as a direct and proximate result of Defendant's violation of Labor Code §226.7, Defendant owes
23 Plaintiff \$16.65 for each of the 312 days on which rest periods were missed, totaling \$5,194.00, plus
24 interest therein.

25 179. From on or about March 11, 2018 through on or about February 11, 2019, Defendants
26 failed to provide Plaintiff with the statutory meal period for those days on which she worked at least five
27 hours on 288 separate days. Consequently, Plaintiff is owed one hour of pay at her normal hourly rate of
28

1 \$16.98 for each day that she was denied such a meal period pursuant to Labor Code §226.7, or
2 \$4,890.24, plus interest therein.

3 180. From on or about March 11, 2018 through on or about February 11, 2019, Plaintiff
4 worked approximately 288 separate days without being permitted to take any 10 minute rest breaks.
5 Therefore, as a direct and proximate result of Defendant's violation of Labor Code §226.7, Defendant
6 owes Plaintiff \$16.98 for each of the 288 days on which rest periods were missed, totaling \$4,890.24,
7 plus interest therein.

8 181. Plaintiff is entitled to recover such amounts in the combined amount of \$29,570.40,
9 pursuant to Labor Code §226.7(b), plus interest thereon and costs of suit.

10
11 **SIXTEENTH CAUSE OF ACTION**

12 **BY PLAINTIFF**

13 **FOR FAILURE TO FURNISH WAGE AND HOUR STATEMENTS**

14 **LABOR CODE §§226 ET SEQ.**

15 **AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE**

16 182. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as
17 though fully set forth herein.

18 183. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
19 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
20 total deductions and net wages earned. An employer who violates these code sections is liable to its
21 employees for the greater of actual damages suffered by the employee, or \$50 in civil penalties for the
22 initial pay period in which a violation occurred, and \$100 per employee for each subsequent pay period,
23 up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is deemed to
24 suffer injury for purposes of this subdivision if the employer fails to provide a wage statement at all.

25 184. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates
26 Labor Code §226 is subject to a \$250 civil penalty for the initial pay period in which a violation
27 occurred, and \$1,000 per employee for each subsequent pay period, with no maximum.
28

1 185. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
2 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
3 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
4 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
5 by Plaintiff. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

6 186. This failure has injured Plaintiff, by misrepresenting and depriving her of hour, wage, and
7 earnings information to which she is entitled, causing her difficulty and expense in attempting to
8 reconstruct time and pay records, causing her not to be paid wages she is entitled to, causing her to be
9 unable to rely on earnings statements in dealings with third parties, eviscerating her right under Labor
10 Code §226(b) to review itemized wage statement information by inspecting the employer's underlying
11 records, and deceiving her regarding their entitlement to meal period and rest period wages.

12 187. From on or about April 9, 2016 through on or about February 11, 2019, Plaintiff was paid
13 bi-weekly, and therefore Defendants violated Labor Code §226 approximately 74 times during this time
14 period. Consequently, Defendants are liable to Plaintiff for \$4,000.00, the statutory maximum, in
15 damages for her injuries.

16 188. In addition thereto, Plaintiff is entitled civil penalties pursuant to Labor Code §226.3 in
17 the amount of \$73,250.00 (\$250 + \$1,000 x 73 subsequent pay periods).

18 189. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
19 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and
20 other applicable provisions, as well as attorneys' fees and costs.

21
22 **SEVENTEENTH CAUSE OF ACTION**

23 **BY PLAINTIFF**

24 **FOR WAITING TIME PENALTIES**

25 **LABOR CODE §§201-203**

26 **AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE**

27 190. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as
28 though fully set forth herein.

1 191. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
2 other compensation due immediately upon termination or within seventy-two hours of resignation, as
3 required. These wages refer to, at a minimum, unpaid meal and rest period compensation that
4 Defendants should have paid, but did not pay to Plaintiff during the term of her employment and which
5 were, at the latest, due within the time restraints of Labor Code §§201-203.

6 192. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
7 203.

8 193. As a direct and proximate result of Defendants' willful failure to pay these wages,
9 Plaintiff is entitled to payment of her meal and rest periods as previously pleaded herein, and more than
10 \$4,165.20 in wait time penalties, calculated based on 30 days of Plaintiff's normal hourly rate of \$16.98
11 per hour, including overtime (i.e., \$138.84 per day for 30 days).

12 194. Based on Defendants' conduct as alleged herein, Defendants are liable for \$4,165.20 in
13 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
14 fees and costs.

15
16 **EIGHTEENTH CAUSE OF ACTION**

17 **BY PLAINTIFF**

18 **FOR PRIVATE ATTORNEY GENERAL ACT**

19 **LABOR CODE §2699**

20 **AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE**

21 195. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as
22 though fully set forth herein.

23 196. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action
24 against Defendants, on behalf of herself and other current or former employees, seeking statutory civil
25 penalties for Defendants' violations of the California Labor Code.

26 197. Plaintiff was an aggrieved employee within the meaning of Labor Code §2699(a), as
27 Defendants committed multiple California Labor Code violations against her, as previously pleaded in
28 this Complaint.

1 198. On February 4, 2020, more than 65 calendar days before filing this Complaint, Plaintiff
2 gave written notice by online filing with the Labor and Workforce Development Agency and provided
3 notice via certified mail to Defendants of the specific provisions of the California Labor Code that
4 Defendants violated, thereby satisfying the requirements of Labor Code §2699.3.

5 199. As of the filing of this complaint, Plaintiff has not received any response from the Labor
6 and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently,
7 Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

8 200. As a direct and proximate result of Defendants' California Labor Code violations as set
9 forth in this Complaint, Plaintiffs are entitled to civil penalties of \$100 for each aggrieved employee per
10 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
11 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
12 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do
13 expressly provide for a penalty.

14 201. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered
15 civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

16
17 **NINETEENTH CAUSE OF ACTION**

18 **BY PLAINTIFF**

19 **FOR UNFAIR COMPETITION**

20 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

21 **AGAINST BROOKDALE AND DOES 1 THROUGH 20, INCLUSIVE**

22 202. Plaintiff incorporate, by reference, all the foregoing paragraphs of this Complaint as
23 though fully set forth herein.

24 203. Defendants' violations of 8 Code of Regulations §11050, Industrial Welfare Commission
25 Order No. 5-2001, Labor Code §§201, 203, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, and
26 other applicable provisions, as alleged herein, including Defendants' failure to provide meal and rest
27 break, Defendants' failure to provide timely and accurate wage and hour statements, Defendants' failure
28 to pay compensation due in a timely manner upon termination or resignation, and Defendants' failure to

1 maintain complete and accurate payroll records for the Plaintiff, constitute unfair business practices in
2 violation of Business & Professions Code §§17200, et seq.

3 204. As a result of Defendants' unfair business practices, Defendants have reaped unfair
4 benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be
5 made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

6 205. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent
7 injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and
8 restore to the Plaintiff the other monies and benefits unlawfully withheld from her.

9
10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff seeks judgment against BROOKDALE and DOES 1 through 20, each
12 of them, in an amount according to proof, as follows:

13 1. For a money judgment representing compensatory damages including lost wages,
14 earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money,
15 together with interest on these amounts; for other special damages; and for general damages for mental
16 pain and anguish and emotional distress;

17 2. For a civil penalty pursuant to Labor Code §1102.5(f), for no less than of \$10,000.00;

18 3. For a civil penalty pursuant to Labor Code §98.6(b)(3) of \$10,000.00;

19 4. For payment of meal and rest period compensation pursuant to Labor Code §226.7, in
20 the amount of no less than \$29,570.40;

21 5. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;

22 6. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
23 less than \$73,250.00;

24 7. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
25 than \$4,165.20;

26 8. For statutory penalties pursuant to Labor Code §2699(f), in the amount to be
27 determined at the time of trial;

1 9. For prejudgment interest on each of the foregoing at the legal rate from the date the
2 obligation became due through the date of judgment in this matter;

3 10. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
4 condemning Defendants' discriminatory practices;

5 11. For injunctive relief barring Defendants' discriminatory employment policies and
6 practices in the future;

7 12. For punitive damages, pursuant to Civil Code §3294 in an amount sufficient to punish
8 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

9 13. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, the Labor
10 Code, the Civil Code, and/or any other basis;

11 14. For post-judgment interest; and

12 15. For any other relief that is just and proper.

13 **WHEREFORE**, Plaintiff seeks judgment against DIDIER and DOES 1 through 20, each of
14 them, as follows:

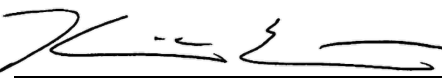
15 1. For a money judgment representing general damages for mental pain and anguish and
16 emotional distress;

17 2. For punitive damages, pursuant to Civil Code §3294 in amounts sufficient to punish
18 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future; and

19 3. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA and/or
20 any other basis.

21 DATED: April 9, 2020

EMPLOYEE JUSTICE LEGAL GROUP

22
23 By: 
24 Kaveh S. Elihu, Esq.
Attorneys for Plaintiff

25 **DEMAND FOR JURY TRIAL**

26 Plaintiff demands a trial by jury on all claims as provided by California law.
27
28

1 DATED: April 9, 2020

EMPLOYEE JUSTICE LEGAL GROUP

2
3 By: 
4 Kaveh S. Elihu, Esq.
Attorneys for Plaintiff