

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

DKN HOTEL, LLC, DBA DOUBLETREE BY HILTON HOTEL SAN BERNARDINO, Additional Parties Form is Attached.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ANA MALDONADO, as an Individual, and On Behalf of Herself and Other Aggrieved Employees, Additional Parties Form is Attached.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 10 2020

BY 
GLORIA MARIN, DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Superior Court of California, County of San Bernardino, San Bernardino Superior Court Civil Division, 247 West 3rd Street, San Bernardino, California 92415

CASE NUMBER:
(Número del Caso):

CIVDS2023579

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): Ronald L. Zambrano, 350 South Grand Avenue, Suite 3325, Los Angeles, California 90071; 213-927-3700

DATE:

(Fecha)

NOV 10 2020

Clerk, by
(Secretario)

Gloria Marin

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

COPY

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

DIFAX

SHORT TITLE:

Maldonado v. DK HOTEL, LLC, et al.

CASE NUMBER:

CIVDS2023579

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

a California Corporation; NK INVESTMENTS, LP, a California business organization; and DOES 1 through 10, inclusive,

Page ____ of ____

Page 1 of 1

SHORT TITLE:

Maldonado v. DK HOTEL, LLC, et al.

CASE NUMBER:

CIVDS2023579

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☒ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

and On Behalf of the General Public as Private Attorneys General;

Page _____ of _____

1 Neama Rahmani (State Bar No. 223819)
2 Ronald L. Zambrano (State Bar No. 255613)
3 *ron@westcoasttriallawyers.com*
4 Melineh Kasbarian (State Bar No. 329033)
5 *melineh@westcoasttriallawyers.com*
6 WEST COAST EMPLOYMENT LAWYERS, APLC
7 350 South Grand Avenue, Suite 3325
8 Los Angeles, California 90071
9 Telephone: (213) 927-3700
10 Facsimile: (213) 927-3701
11 *efilings@westcoasttriallawyers.com*

12 Attorneys for Plaintiff,
13 ANA MALDONADO and Other
14 Aggrieved Employees

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

13 ANA MALDONADO, as an Individual,
14 and On Behalf of Herself and Other
15 Aggrieved Employees, and On Behalf of the
16 General Public as Private Attorneys
17 General;

18 Plaintiff;

19 v.

20 DKN HOTEL, LLC, DBA DOUBLETREE
21 BY HILTON HOTEL SAN
22 BERNARDINO, a California corporation;
23 NK INVESTMENTS, LP, a California
24 business organization; and DOES 1
25 through 10, inclusive,

26 Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 30 2020

BY Nicole O'Dwyer
NICOLE O'DWYER, DEPUTY

Case No.: **CIV DS 2023579**

COMPLAINT FOR DAMAGES

- 1) RETALIATION IN VIOLATION OF FEHA;
2) DISCRIMINATION IN VIOLATION OF FEHA;
3) FAILURE TO ACCOMMODATE IN VIOLATION OF FEHA;
4) FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN VIOLATION OF FEHA;
5) WRONGFUL CONSTRUCTIVE TERMINATION IN VIOLATION OF FEHA;
6) VIOLATION OF LABOR CODE §§ 226.7 & 512 (FAILURE TO PROVIDE MEAL AND REST BREAKS);
7) VIOLATION OF LABOR CODE § 226(A) (INACCURATE WAGE STATEMENTS);
8) VIOLATION OF LABOR CODE §§ 200-204 (WAITING TIME PENALTIES);
9) VIOLATION OF LABOR CODE §§ 2698 ET SEQ. ("PAGA"); AND
10) VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ.

DEMAND FOR JURY TRIAL

By Fax

COMES NOW the Plaintiff, ANA MALDONADO (who hereinafter shall be referred to as the “Plaintiff” or as “MALDONADO”), who hereby alleges and avers, as follows:

INTRODUCTION

1. This is an action brought by the Plaintiff, MALDONADO, pursuant to California statutory, decisional, and regulatory laws. Plaintiff was an employee of Defendants DKN HOTEL, LLC, DBA DOUBLETREE BY HILTON HOTEL SAN BERNARDINO and Defendants NK INVESTMENTS, LP, (hereinafter collectively referred to as “DKN HOTEL”), at all times herein mentioned.

2. Plaintiff alleges that California statutory, decisional, and regulatory laws prohibit the conduct by Defendants herein alleged, and therefore Plaintiff has an entitlement to monetary relief on the basis that Defendants violated such statutes, decisional law, and regulations.

JURISDICTION AND VENUE

3. Jurisdiction is proper in this court by virtue of the California statutes, decisional law, and regulations, and the local rules under the San Bernardino County Superior Court Rules.

4. Venue in this Court is proper in that DKN HOTEL has a principal business address located in the City of San Bernardino, County of San Bernardino, State of California.

5. California Labor Code sections 2699 et seq., the “Labor Code Private Attorneys General Act” (“PAGA”), authorizes aggrieved employees to sue directly for various civil penalties under the California Labor Code.

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1 6. Plaintiff timely provided notice to the California Labor Workforce Development Agency
2 (“LWDA”) and to Defendant, pursuant to California Labor Code section 2699.3(a), on or about
3 March 16, 2020.
4

5 **PARTIES**
6

7 7. At all times herein mentioned, Plaintiff is and has been a resident of San Bernardino County,
8 State of California.
9

10 8. Defendants DKN HOTEL is and at all times herein mentioned has been a California business
11 organization with the capacity to sue and to be sued, and doing business, with a principal place
12 of business located at 285 East Hospitality, San Bernardino, California 92408.
13

14 9. Plaintiff is informed and believes and thereon alleges that each of the Defendants herein were
15 at all times the agent, employee, or representative of each remaining Defendant and were at all
16 times herein acting within and outside the scope and purpose of said agency and employment.
17 Plaintiff further alleges that as to each Defendant, whether named, or referred to as a fictitious
18 name, said Defendants supervised, ratified, controlled, acquiesced in, adopted, directed,
19 substantially participated in, and/or approved the acts, errors, or omissions, of each remaining
20 Defendant.
21

22 10. The true names and capacities of the Defendants named herein as DOES 1 through 10, inclusive,
23 whether individual, corporate, partnership, association, or otherwise, are unknown to Plaintiff
24 who therefore sues these Defendants by such fictitious names. Plaintiff will request leave of
25 court to amend this Complaint to allege their true names and capacities at such time as they are
26 ascertained.
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FACTUAL ALLEGATIONS

11. In or about February 22, 2019, Plaintiff MALDONADO became employed by Defendants DKN HOTEL as a Line Cook.

12. In or about November 2019, Plaintiff informed Defendants that she was pregnant.

13. Immediately following Plaintiff's notice to Defendants of her pregnancy, Defendants began reducing her hours, changing her schedule, and making comments related to her pregnancy. Specifically, Angie Huff, of Human Resources, informed Plaintiff that she would be a "burden" to the company because of her pregnancy. Furthermore, Plaintiff's supervisor, Salvador Hernandez, informed Plaintiff to "keep in mind that sometimes its better to lose your job than your baby."

14. In or about December 2019, Plaintiff provided Defendants with a doctor's note and requested workplace accommodations due to her pregnancy. Specifically, Plaintiff requested ten-minute breaks due to nausea caused by the pregnancy. Furthermore, Plaintiff's workplace restrictions included no lifting exceeding forty pounds and no excessive exposure to heat sources.

15. Defendants responded by informing Plaintiff that she can take her breaks, but that she will get in trouble if she does so. Moreover, Defendants switched Plaintiff's shift to the night shift, despite Plaintiff's requests for day shifts due to her responsibility for child care of her daughter. Prior to Plaintiff's pregnancy, Plaintiff always worked the morning shift.

16. In or about January 2020, Plaintiff complained to Angie Huff regarding Defendant's refusal to accommodate her, to no avail.

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- 1 17. On or about January 7, 2020, Plaintiff woke up with sharp pains which required her to go to the
2 emergency room. Plaintiff provided Defendants with a doctor's note that she will be out of
3 work for three days. As a result, Defendants informed Plaintiff that her scheduling was being
4 switched to the night shift, and that she would be terminated if she did not show up.
5
- 6 18. On or about January 13, 2020, Plaintiff was forced to resign due to the intolerable working
7 conditions as described above.
8
- 9 19. Additionally, during the entirety of her employment with Defendants, Plaintiff was denied a
10 timely meal break on a daily basis. Specifically, Plaintiff was explicitly told by her supervisors
11 to clock out before the end of her fifth hour, continue working, then take her lunch when there
12 was time. When Plaintiff was denied a timely meal break, she was not paid a meal break
13 premium.
14
- 15 20. During the entirety of her employment with Defendants, Plaintiff was denied her rest breaks on
16 a daily basis. When Plaintiff was denied rest breaks, she was not paid a rest break premium.
17
- 18 21. Accordingly, because Plaintiff was denied timely meal and rest breaks and was not paid meal
19 or rest break premiums, she was subjected to inaccurate timekeeping by Defendants which
20 resulted in inaccurate wage statements.
21
- 22 22. Plaintiff has timely filed a Complaint of Discrimination with the Department of Fair
23 Employment and Housing and obtained a Right to Sue letter dated January 21, 2020. As such,
24 Plaintiff has exhausted her administrative remedies to pursue claims under the Fair Employment
25 and Housing Act ("FEHA").

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FIRST CAUSE OF ACTION

Retaliation in Violation of FEHA

(Plaintiff MALDONADO Against All Defendants)

23. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs.

24. At all times mentioned in this complaint, Defendants regularly employed five or more persons, bringing Defendants within the provisions of the FEHA, Gov. Code, § 12926(d).

25. This cause of action is brought pursuant to the FEHA, Gov. Code, § 12940(h) preventing Defendants from discharging or otherwise discriminating against any employee, such as Plaintiff, for exercising rights protected under the FEHA.

26. In or about November 2019, Plaintiff informed Defendants that she was pregnant.

27. Immediately following Plaintiff's notice to Defendants of her pregnancy, Defendants began reducing her hours, changing her schedule, and making comments related to her pregnancy. Specifically, Angie Huff, of Human Resources, told Plaintiff that she would be a "burden" to the company because of her pregnancy. Furthermore, Plaintiff's supervisor, Salvador Hernandez, informed Plaintiff to "keep in mind that sometimes it's better to lose your job than your baby."

28. In or about December 2019, Plaintiff provided Defendants with a doctor's note and requested workplace accommodations due to her pregnancy. Specifically, Plaintiff requested ten-minute breaks due to nausea caused by the pregnancy. Furthermore, Plaintiff's workplace restrictions included no lifting exceeding forty pounds and no excessive exposure to heat sources.

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- 1 29. Defendants responded by informing Plaintiff that she can take her breaks, but that she will get
2 in trouble if she does so. Moreover, Defendants switched Plaintiff's shift to the night shift,
3 despite Plaintiff's requests for day shifts due to her responsibility for child care of her daughter.
4 Prior to Plaintiff's pregnancy, Plaintiff always worked the morning shift.
5
- 6 30. In or about January 2020, Plaintiff complained to Angie Huff regarding Defendant's refusal to
7 accommodate her, to no avail.
8
- 9 31. On or about January 7, 2020, Plaintiff woke up with sharp pains which required her to go to the
10 emergency room. Plaintiff provided Defendants with a doctor's note that she will be out of
11 work for three days. As a result, Defendants informed Plaintiff that her scheduling was being
12 switched to the night shift, and that she would be terminated if she did not show up.
13
- 14 32. On or about January 13, 2020, Plaintiff was forced to resign due to the intolerable working
15 conditions as described above.
16
- 17 33. Defendants engaged in a pattern and practice of retaliating against employees, including
18 Plaintiff, for exercising protected rights. Defendants adverse actions, including, but not limited
19 to, Plaintiff's reduction in hours, and failure to accommodate, were at least in part, in retaliation
20 for Plaintiff informing Defendants that she was pregnant.
21
- 22 34. Plaintiff timely filed a charge of discrimination and received a Notice of Right to Sue from the
23 DFEH. Thus, Plaintiff has exhausted her administrative remedies.
24
- 25 35. As the legal result of Defendants conduct, Plaintiff has suffered and continues to suffer
26 substantial losses of wages, salary, benefits and additional amounts of money that she would
27 have received if Defendants had not retaliated against her as alleged above. As a result of
28 Defendants actions and consequent harm, Plaintiff has suffered such damages in an amount

1 according to proof. Plaintiff's claims such amounts as damages pursuant to California Civil
2 Code § 3287 and/or § 3288 and/or any other provision of law providing for prejudgment
3 interest.

4
5 36. As the further legal result of Defendants conduct, Plaintiff has suffered and continues to suffer
6 embarrassment, anxiety, humiliation and emotional distress, all to her damage in an amount
7 according to proof.

8
9 37. As the further legal result of Defendants conduct, Plaintiff has been harmed in that she has
10 suffered the intangible loss of such employment-related opportunities as experience and status
11 in the positions previously held by her, those she would have held, all to her damage in an
12 amount according to proof.

13
14 38. The above-cited conduct of Defendants was done with malice, fraud and oppression, and in
15 reckless disregard of Plaintiff's rights under the FEHA. Defendants consciously, intentionally
16 and in conscious disregard of her rights, retaliated against Plaintiff. Plaintiff is thus entitled to
17 recover punitive damages from Defendants in an amount according to proof. As the result of
18 Defendants discriminatory and retaliatory acts as alleged herein, Plaintiff is entitled to
19 reasonable attorneys' fees and costs of suit as provided by California Government Code, §
20 12965(b).

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1 46. In or about December 2019, Plaintiff provided Defendants with a doctor's note and requested
2 workplace accommodations due to her pregnancy. Specifically, Plaintiff requested ten-minute
3 breaks due to nausea caused by the pregnancy. Furthermore, Plaintiff's workplace restrictions
4 included no lifting exceeding forty pounds and no excessive exposure to heat sources.

5
6 47. Defendants responded by informing Plaintiff that she can take her breaks, but that she will get
7 in trouble if she does so. Moreover, Defendants switched Plaintiff's shift to the night shift,
8 despite Plaintiff's requests for day shifts due to her responsibility for child care of her daughter.
9 Prior to Plaintiff's pregnancy, Plaintiff always worked the morning shift.

10
11 48. In or about January 2020, Plaintiff complained to Angie Huff regarding Defendant's refusal to
12 accommodate her, to no avail.

13
14 49. On or about January 7, 2020, Plaintiff woke up with sharp pains which required her to go to the
15 emergency room. Plaintiff provided Defendants with a doctor's note that she will be out of
16 work for three days. As a result, Defendants informed Plaintiff that her scheduling was being
17 switched to the night shift, and that she would be terminated if she did not show up.

18
19 50. On or about January 13, 2020, Plaintiff was forced to resign due to the intolerable working
20 conditions as described above.

21
22 51. Plaintiff timely filed a charge of discrimination and received a Notice of Right to Sue from the
23 DFEH. Thus, Plaintiff has exhausted her administrative remedies.

24
25 52. As the legal result of Defendants conduct, Plaintiff has suffered and continues to suffer
26 substantial losses of wages, salary, benefits and additional amounts of money that Plaintiff
27 would have received if Defendants had not discriminated against her as alleged above. As a
28 result of such discrimination and consequent harm, Plaintiff has suffered such damages in an

1 amount according to proof. Plaintiff claims such amounts as damages pursuant to California
2 Civil Code § 3287 and/or § 3288 and/or any other provision of law providing for prejudgment
3 interest.
4

5 53. As the further legal result of Defendants conduct, Plaintiff has suffered and continues to suffer
6 embarrassment, anxiety, humiliation and emotional distress, all to her damage in an amount
7 according to proof.
8

9 54. As the further legal result of Defendants conduct, Plaintiff has been harmed in that she has
10 suffered the intangible loss of such employment-related opportunities as experience and status
11 in the positions previously held by her, all to her damage in an amount according to proof.
12

13 55. The above-cited conduct of Defendants was done with malice, fraud and oppression, and in
14 reckless disregard of Plaintiff's rights under the FEHA. Defendants consciously, intentionally
15 and in conscious disregard of her rights discriminated against Plaintiff because of her
16 pregnancy. Plaintiff is thus entitled to recover punitive damages from Defendants in an amount
17 according to proof.
18

19 56. As the result of Defendants discriminatory acts as alleged herein, Plaintiff is entitled to
20 reasonable attorneys' fees and costs of suit as provided by FEHA, Gov. Code § 12965(b).
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THIRD CAUSE OF ACTION

Failure to Accommodate in Violation of FEHA

(Plaintiff MALDONADO Against All Defendants)

57. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs.

58. At all times mentioned in this complaint, Defendants regularly employed five or more persons, bringing Defendants within the provisions of the FEHA, Gov. Code, § 12926(d).

59. This cause of action is brought pursuant to the FEHA, Gov. Code, §§ 12940(m) and 12945(b) requiring employers to make reasonable accommodation for disabilities and pregnancy-related medication conditions of employees, such as Plaintiff.

60. Plaintiff informed Defendants she was pregnant in or about November 2019. Plaintiff's schedule was changed and her hours were cut by Defendants immediately after she had informed them of her pregnancy. Instead of providing such reasonable accommodations, Defendants used Plaintiff's pregnancy as justification for changing her schedule and cutting her hours. Accordingly, Defendants interfered with and failed to provide Plaintiff with the reasonable accommodations she required and was owed due to her pregnancy in violation of California Government Code § 12945(b).

61. Plaintiff timely filed a charge of discrimination and received a Notice of Right to Sue from the DFEH. Thus, Plaintiff has exhausted her administrative remedies.

62. As a proximate result of the aforesaid acts of Defendants, and each of them, Plaintiff has suffered actual, consequential and incidental financial losses, including without limitation, loss of salary and benefits, and the intangible loss of employment-related opportunities in her field and damage to her professional reputation, all in an amount subject to proof at the time of trial.

1 Plaintiff claims such amounts as damages pursuant to Civil Code § 3287 and/or § 3288 and/or
2 any other provision of law providing for prejudgment interest.

3
4 63. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff has
5 suffered and continues to suffer emotional distress, humiliation, mental anguish and
6 embarrassment, all to Plaintiff's damage in in an amount according to proof.

7
8 64. The above-cited conduct of Defendants was done with malice, fraud and oppression, and in
9 reckless disregard of Plaintiff 's rights under the FEHA. Defendants consciously, intentionally
10 and in conscious disregard of her rights discriminated against Plaintiff by refusing to reasonably
11 accommodate her pregnancy, disability and/or pregnancy-related medical conditions.
12 Defendants is thus entitled to recover punitive damages from Defendants in an amount
13 according to proof.

14
15 65. As the result of Defendants discriminatory acts as alleged herein, Plaintiff is entitled to
16 reasonable attorneys' fees and costs of suit as provided by California Government Code section
17 12965(b).

18
19 **FOURTH CAUSE OF ACTION**

20 **Failure to Engage in the Interactive Process in Violation of FEHA**

21 **(Plaintiff MALDONADO Against All Defendants)**

22
23 66. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs.

24
25 67. At all times mentioned in this complaint, Defendants regularly employed five or more persons,
26 bringing Defendants within the provisions of the FEHA, Gov. Code, § 12926(d).

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68. This cause of action is brought pursuant to the FEHA, Gov. Code, § 12940(n) prohibiting employers from refusing to engage in a timely, good faith interactive process.

69. In or about January 2020, Plaintiff complained to Human Resources regarding defendant's lack of accommodations to no avail.

70. As a result of Plaintiff's pregnancy-related medication conditions, she required reasonable accommodations to fully perform the duties of her job with Defendants. Defendants, however, refused to reasonably accommodate Plaintiff although Defendants easily could have done so, instead Defendants terminated Plaintiff.

71. Moreover, by changing Plaintiff's schedule and reducing her hours, Defendants failed to engage in a timely, good faith interactive process with Plaintiff to determine effective reasonable accommodations.

72. Plaintiff timely filed a charge of discrimination and received a Notice of Right to Sue from the DFEH. Thus, Plaintiff has exhausted her administrative remedies.

73. As the legal result of Defendants conduct, Plaintiff has suffered and continues to suffer substantial losses of wages, salary, benefits and additional amounts of money that Plaintiff would have received if Defendants had not discriminated against her, had reasonably accommodated her, and/or had engaged in the interactive process as alleged above. As a result of Defendants actions and consequent harm, Plaintiff has suffered such damages in an amount according to proof. Plaintiff's claims such amounts as damages pursuant to California Civil Code § 3287 and/or § 3288 and/or any other provision of law providing for prejudgment interest.

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1 74. As the further legal result of Defendants conduct, Plaintiff has suffered and continues to suffer
2 embarrassment, anxiety, humiliation and emotional distress, all to her damage in an amount
3 according to proof.

4
5 75. As the further legal result of Defendants conduct, Plaintiff has been harmed in that she has
6 suffered the intangible loss of such employment-related opportunities as experience and status
7 in the positions previously held by her, to her damage in an amount according to proof.

8
9 76. The above-cited conduct of Defendants was done with malice, fraud and oppression, and in
10 reckless disregard of Plaintiff's rights under the FEHA. Defendants consciously, intentionally
11 and in conscious disregard of her rights discriminated against Plaintiff by refusing to engage in
12 a timely, good faith interactive process. Plaintiff is thus entitled to recover punitive damages
13 from Defendants in an amount according to proof.

14
15 77. As the result of Defendants acts as alleged herein, Plaintiff is entitled to reasonable attorneys'
16 fees and costs of suit as provided by California Government Code § 12965(b).

17
18 **FIFTH CAUSE OF ACTION**

19 **Constructive Discharge in Violation of FEHA**

20 **(Plaintiff MALDONADO Against All Defendants)**

21
22 78. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs.

23
24 79. At all times herein mentioned in this complaint, California's Fair Employment & Housing Act
25 was in full force and effect and binding on the Defendants and the Defendants were subject to
26 its terms. Defendants intentionally created or knowingly permitted working conditions to exist
27 that were so intolerable that a reasonable person in Plaintiff's position would have had no
28 reasonable alternative except to resign.

1 80. In or about November 2019, Plaintiff informed Defendants that she was pregnant.

2
3 81. On or about January 13, 2020, Plaintiff was forced to resign due to the intolerable working
4 conditions as described above, including reduction in her hours, changing her schedule,
5 switching her to the night shift, and making comments related to her pregnancy.

6
7 82. Defendants' conduct in creating intolerable working conditions that led to the adverse
8 employment action of constructive termination, as set forth above, is in violation of various
9 statutes and state law decisions, including California Government Code Section 12940 et seq.

10
11 83. As a direct and legal result of Defendants' actions, Plaintiff has suffered and continues to suffer
12 general, consequential, and special damages, including but not limited to substantial losses in
13 earnings, other employment benefits, physical injuries, physical sickness, as well as emotional
14 distress, plus medical expenses, future medical expenses, and attorneys' fees, all to her damage
15 in an amount according to proof.

16
17 84. Defendant conduct forcing Plaintiff to quit was wrongful and justifies the imposition of punitive
18 damages since it was against public policy. In doing so, Defendants acted maliciously,
19 fraudulently and oppressively, with the wrongful intention of injuring Plaintiff. Based upon the
20 foregoing, Plaintiff is entitled to recover punitive damages from Defendants and each of them,
21 in an amount according to proof.

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SIXTH CAUSE OF ACTION

Violation of Labor Code §§ 226.7 & 512

Failure to Provide Meal and Rest Periods

(Plaintiff MALDONADO Against All Defendants)

85. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs.

86. Plaintiff is informed and believes, and thereon allege that California Labor Code §§ 226.7 and 512 were in full force and effect and binding on Defendant during all times mentioned in this Complaint. Said section requires employers to comply with all Industrial Welfare Commission Wage Orders governing meal and rest periods.

87. Plaintiff is informed and believes, and thereon alleges, that the IWC Wage Orders were in full force and effect and govern when employers, including Defendants, must give employee breaks for meal and rest periods. The Wage Orders state in pertinent part that employers must provide at least thirty minutes of meal periods for every five hours of work and another thirty-minute period if the work period is ten hours or more. Furthermore, the IWC Wage Orders state in pertinent part that employees must be given at least a ten-minute rest period for every four (4) hours or major fraction thereof.

88. During the entirety of her employment with Defendants, Plaintiff was denied a timely meal break on a daily basis. Specifically, Plaintiff was explicitly told by her supervisors to clock out before the end of her fifth hour, continue working, then take her lunch when there was time. When Plaintiff was denied a timely meal break, she was not paid a meal break premium.

89. During the entirety of her employment with Defendants, Plaintiff was denied her rest breaks on a daily basis. When Plaintiff was denied a rest breaks, she was not paid a rest break premium.

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1 90. Plaintiff is informed and believes, and thereon alleges, that The Wage Orders and the
2 California Labor Code mandate that Defendants must pay Plaintiff one hour of pay at
3 Plaintiff's regular rate of pay for every missed meal and rest period. Plaintiff is thereby
4 entitled to these penalties in an amount to be proven at trial, and also prays for all other
5 remedies available under the law.

6
7 **SEVENTH CAUSE OF ACTION**

8 **Violation of Labor Code § 226(A)**

9 **Inaccurate Wage Statements**

10 **(Plaintiff MALDONADO Against All Defendants)**
11

12 91. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs.
13

14 92. At all material times set forth herein, California Labor Code § 226(a) provides that every
15 employer shall furnish each of his or her employees an accurate itemized wage statement in
16 writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours
17 worked by the employee, (3) the number of piece-rate units earned and any applicable piece
18 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions
19 made on written orders of the employee may be aggregated and shown as one item, (5) net
20 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
21 of the employee and the last four digits of his or her social security number or an employee
22 identification number other than a social security number, (8) the name and address of the legal
23 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period
24 and the corresponding number of hours worked at each hourly rate by the employee.
25

26 93. Because Plaintiff was denied meal and rest breaks and was not paid meal and rest break
27 premiums, she was subjected to inaccurate timekeeping by Defendants which resulted in
28 inaccurate wage statements.

94. Defendants intentionally and willfully failed to provide Plaintiff with accurate wage statements.

95. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff suffered injury and damage to her statutorily protected rights.

96. Specifically, Plaintiff was injured by Defendants' intentional violation of California Labor Code section 226(a) because she was denied both her legal right to receive, and her protected interest in receiving, accurate, itemized wage statements under California Labor Code section 226(a).

97. Plaintiff was also injured as a result of having to bring this action to attempt to obtain correct wage information following Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

98. Under California Labor Code section 226(e), Plaintiff is entitled to recover from Defendants the greater of her actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000).

EIGHTH CAUSE OF ACTION

Violation of Labor Code §§ 200-204

Waiting Time Penalties

(Plaintiff MALDONADO Against All Defendants)

99. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs.

100. At all times herein set forth, California Labor Code §§ 200 through 204 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the

1 employee has given 72 hours previous notice of his or her intention to quit, in which case the
2 employee is entitled to his or her wages at the time of quitting.

3
4 101. Plaintiff's final paycheck did not include all wages owed to Plaintiff as Defendant failed to pay
5 Plaintiff meal and rest break premiums that Plaintiff was entitled to.

6
7 102. Defendant's failure to pay Plaintiff's wages earned and unpaid at the time of discharge is in
8 violation of California Labor Code §§ 200 through 204.

9
10 103. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in
11 accordance with sections 201 and 202, then the wages of the employee shall continue as a
12 penalty from the due date, and at the same rate until paid or until an action is commenced; but
13 the wages shall not continue for more than 30 days.

14
15 104. Plaintiff is entitled to recover from Defendants additionally accruing wages for each day not
16 paid, at the regular daily rate of pay, up to 30 days maximum pursuant to California Labor
17 Code § 203.

18
19 **NINTH CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 2698, et Seq**

21 **Private Attorney General Act**

22 **(Plaintiff and Aggrieved Employees Against All Defendants)**

23
24 105. Plaintiff and aggrieved employees incorporate by reference and reallege each of the foregoing
25 paragraphs.

26
27 106. California Labor Code §§ 2698, et seq. ("PAGA") permits Plaintiffs to recover civil penalties
28 for the violation(s) of the Labor Code.

1 107. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

2
3 108. At all times herein set forth, PAGA provides that any provision of law under the California
4 Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for
5 violations of the California Labor Code may, as an alternative, be recovered through a civil
6 action brought by an aggrieved employee on behalf of herself and other current or former
7 employees pursuant to procedures in California Labor Code section 2699.3, for the denial of a
8 second meal break and a third rest breaks where Plaintiffs and aggrieved employees word an
9 excess of 10 hours in a day.

10
11 109. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee,"
12 who is any person that was employed by the alleged violator and against whom one or more of
13 the alleged violations was committed.

14
15 110. Plaintiff and aggrieved employees were employed by Defendant and the alleged violations were
16 committed against them during their time of employment and they are, therefore, an Aggrieved
17 Employee. Plaintiff and other employees are Aggrieved Employees as defined by California
18 Labor Code section 2699(c) in that they are all current or former employees of Defendants who
19 are or were employed as non-exempt employees, and one or more of the alleged violations were
20 committed against them.

21
22 111. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee,
23 including Plaintiffs, may pursue a civil action arising under PAGA after the following
24 requirements have been met: The aggrieved employee shall give written notice by certified
25 mail (hereinafter "Employee's Notice") to the LWDA and the employer of the specific
26 provisions of the California Labor Code alleged to have been violated, including the facts and
27 theories to support the alleged violations. The LWDA shall provide notice (hereinafter "LWDA
28 Notice") to the employer and the aggrieved employee by certified mail that it does not intend

1 to investigate the alleged violation within thirty (30) calendar days of the postmark date of the
2 Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided
3 within thirty-three (33) calendar days of the postmark date of the Employee's Notice, the
4 aggrieved employee may commence a civil action pursuant to California Labor Code section
5 2699 to recover civil penalties in addition to any other penalties to which the employee may be
6 entitled.

7
8 112. On or about March 16, 2020, Plaintiff and aggrieved employees provided written notice by
9 certified mail to the LWDA and to Defendants of the specific provisions of the California Labor
10 Code alleged to have been violated, including the facts and theories to support the alleged
11 violations.

12
13 113. Plaintiff and aggrieved employees will have satisfied the administrative prerequisites under
14 California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in
15 addition to other remedies, for violations of California Labor Code §§ 201, 202, 203, 204,
16 226(a), 510, 1194, 1197, 1198, 1770-1773 et seq.

17
18 114. Pursuant to California Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff and all other
19 Aggrieved Employees are entitled to recover civil penalties against Defendants, in addition to
20 other remedies, for violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 510,
21 1194, 1197, 1198, 1770-1773 et seq.

22
23 115. Further, Plaintiff and aggrieved employees are entitled to seek and recover reasonable attorneys'
24 fees and costs pursuant to California Labor Code § 2699 and any other applicable

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1 121. Defendants' denial of rest and meal breaks violated Labor Code §§ 226.7 & 512, as alleged in
2 detail above, constitutes unlawful and/or unfair activity prohibited by Business and Professions
3 Code § 17200, et seq.

4
5 122. Defendants' discrimination and retaliation in violation of FEHA, as alleged in detail above,
6 constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §
7 17200, et seq.

8
9 123. Pursuant to California Business & Professions Code § 17200, et seq., Plaintiffs are entitled to
10 restitution, including but not limited to, of wages withheld and retained by Defendants during a
11 period from four years prior to the filing of this complaint and for employer payroll taxes; a
12 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff; an
13 award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other
14 applicable laws; and an award of costs.

15
16 **PRAYER**

17
18 1. For damages according to proof, including unpaid wages;

19
20 2. For interest on the amount of unpaid wages, and other employee benefits at the
21 prevailing legal rate;

22
23 3. For general unpaid wages at overtime wage rates and such general and special
24 damages as may be appropriate;

25
26 4. For statutory penalties pursuant to California Labor Code § 226(e);

27
28 5. For statutory wage penalties pursuant to California Labor Code §§ 1770-1773;

1 6. For restitution of unpaid wages to Plaintiff and prejudgment interest from the day
2 such amounts were due and payable;

3
4 7. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
5 Code of Civil Procedure § 1021.5;

6
7 8. For injunctive relief pursuant to California Business & Professions Code § 17200, et
8 seq.;

9
10 9. For civil penalties pursuant to California Labor Code § 2699(a) and/or 2699(f) and
11 (g) in the amount of at least one hundred dollars (\$100) for each violation per pay period for the
12 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
13 subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 201,
14 202, 203, 204, 226(a), 510, 1194, 1197, 1198, and 1770-1773 et seq., Wage Orders and 8 CCR §
15 3364;

16
17 10. For costs incurred by Plaintiff, including reasonable attorneys' fees and costs of suit,
18 in obtaining the benefits due Plaintiff and for violations of Plaintiff's civil rights as set forth above;
19 and pursuant to the Labor Code §§ 218.5, 218.6, 226(e), 1194(a), 2699; and California Code of Civil
20 Procedure section 1021.5; and

21
22 11. For such other and further relief as the court deems just and proper.

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1 Dated: October 29, 2020

WEST COAST EMPLOYMENT LAWYERS, APLC

2
3 By: 

4 Ronald L. Zambrano, Esq.
5 Melineh Kasbarian, Esq.
6 Attorneys for Plaintiff,
7 ANA MALDONADO and Other
8 Aggrieved Employees

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands trial by jury.

11
12 Dated: October 29, 2020

WEST COAST EMPLOYMENT LAWYERS, APLC

13
14 By: 

15 Ronald L. Zambrano, Esq.
16 Melineh Kasbarian, Esq.
17 Attorneys for Plaintiff,
18 ANA MALDONADO and Other
19 Aggrieved Employees
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