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

ANDREA LOZANO, an individual,

Plaintiff,

vs.

R.V. NUCCIO & ASSOCIATES
INSURANCE BROKERS, INC., a
California corporation; ADP, LLC, a
Delaware corporation; KERRI
MCDONALD, an individual; LEYKIN
ALARCON, an individual; CHRISTIAN
BAIR, an individual; and DOES 1-100,
inclusive,

Defendant(s).

CASE NO. 20STCV24764

COMPLAINT FOR DAMAGES

1. Discrimination Based on Race/Color and National Origin (including Language) and Ancestry in Violation of Cal. Gov't Code § 12940(a)
2. Harassment Based on Gender/Sex, Race/Color, National Origin (including Language) and Ancestry in Violation of Cal. Gov't Code § 12940(j)(1)
3. Failure to Accommodate Disability in Violation of Cal. Gov't Code § 12940(m)
4. Failure to Enter into Good Faith Process in Violation of Cal. Gov't Code § 12940(n)
5. Unlawful Medical Inquiry in Violation of G.C. §12940(f)(1)

6. Retaliation for Opposing Unlawful Discrimination and for the Exercise of Rights in Violation of Cal. Gov't Code § 12940(h)
7. Aiding & Abetting Discrimination in Violation of Cal. Gov't Code § 12940(i)
8. Failure to Prevent Discrimination & Harassment from Occurring in Violation of Cal. Gov't Code § 12940(k)
9. Interference with Civil Rights- Retaliation in Violation of Cal. Civ. Code § 52.1(a)
10. Discrimination and Retaliation in Violation of Cal. Labor Code § 98.6
11. Retaliation for Disclosing Information Reasonably Believed to Constitute a Violation of State or Federal Statute, Local, State or Federal Rule or Regulation in Violation of Cal. Labor Code § 1102.5(b)
12. Retaliation for Engaging in Protected Activities Under Cal. Labor Code §§ 1102.5 (b) in Violation of Cal. Labor Code § 1102.5(d)
13. Failure to Maintain Safe and Healthful Work Environment in Violation of Cal. Labor Code §§ 6400, *et seq.* [§§ 6400-6403]
14. Unlawful Collection of Wages in Violation of Labor Code § 221
15. Failure to Indemnify for all Expenses Incurred in Violation of Cal. Labor Code § 2802

16. Illegal Employment Contract in Violation of Cal. Labor Code § 432.5
17. Individual and Representative Claim for Penalties Pursuant to the California Private Attorney General Act of 2004 [Cal. Labor Code § 2699, *et seq.*]
18. Contract in Violation of Public Policy [Cal. Civ. Code § 1668]
19. Unfair Business Practices in Violation of Bus. & Prof. Code §§ 17200, *et seq.*
20. Wrongful Constructive Termination in Violation of Public Policy
21. Invasion of Privacy
22. Intentional Infliction of Emotional Distress

DEMAND FOR JURY TRIAL

Plaintiff ANDREA LOZANO, an individual, on information and belief, makes the following allegations to support her unverified Complaint.

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants because they are residents of and/or are doing business in the State of California.

2. Venue is proper in this county in accordance with Section 395(a) of the California Code of Civil Procedure because the defendants, or some of them, reside in the County of Los Angeles and/or the alleged wrongs occurred in this county. Venue is further proper in this county pursuant to Cal. Gov't Code § 12965(b) because it is the county where Plaintiff would have worked but for the alleged unlawful practices of defendants and where the wrongs were alleged to have been committed. Venue is also proper in this county because it was the county where Plaintiff was paid.

NATURE OF ACTION

3. This action arises out of, *inter alia*, Defendants' violations of the Fair Employment & Housing Act ("FEHA") (Cal. Gov't Code §§ 12940, *et seq.*), violations of the California Labor Code, California Civil Code and intentional torts. Specifically, this action alleges twenty-two (22) causes of action for violations of the FEHA including discrimination and harassment based on gender/sex, race/color, national origin (including language) and ancestry; retaliation for opposing/reporting unlawful conduct, aiding and abetting discrimination and harassment; and, failure to prevent discrimination and harassment from occurring. Violations of the California Labor Code include, retaliation in violation of §§ 1102.5(b),(d) and 98.6; failure to maintain a safe and healthful work environment in violation of Cal. Labor Code § 6400, *et seq.* [§§ 6400-6403]; unlawful collection of wages in violation of Cal. Labor Code § 221; failure to indemnify for all reasonable expenses in violation of Cal. Labor Code § 2802; illegal employment contract in violation of Cal. Labor Code § 423.5; contract in violation of public policy pursuant to Cal. Civ. Code § 1668; unfair business practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*; contract in violation of public policy in violation of Cal. Civ. Code § 1688; and, intentional torts, including wrongful constructive termination in violation of public policy, invasion of privacy and intentional infliction of emotional distress. Defendants unlawful conduct caused Plaintiff to suffer emotional and financial distress and caused the deprivation of civil rights more fully alleged herein.

4. Plaintiff also brings a representative action on behalf of herself and other employees similarly aggrieved to obtain penalties against Defendants pursuant to the California Private Attorney's General Act of 2004 (Cal. Labor Code § 2699, *et seq.*) based on violations of California Labor Code §§ 98.6, 221, 432.5, 1102.5(b)(d), 2802 and § 6400, *et seq.* [§§ 6400-6403]. Defendant's unlawful conduct caused Plaintiff to suffer emotional and financial distress and caused the deprivation of civil rights more fully alleged herein.

PLAINTIFF

5. Plaintiff ANDREA LOZANO (hereinafter "Plaintiff" or "Ms. Lozano") is a 28-year-old, Hispanic woman. Plaintiff is, and at all relevant times mentioned herein was, a resident of the State of California, County of Los Angeles and a member of protected classes of persons within the meaning of the FEHA and the California Labor Code.

6. At all relevant times herein, Ms. Lozano was employed by Defendant R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS, INC. ("RVNA"), a California corporation, as a Customer Service Representative. At all relevant times mentioned herein, Ms. Lozano reported to and was supervised by Kerri McDonald, Associates' Insurance Broker for RVNA, and worked alongside her co-workers, Leykin Alarcon, Customer Service Representative, and Christian Bair, Customer Service Representative.

DEFENDANTS

7. Defendant R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS, INC. ("RVNA"), is a California corporation licensed to do business in the State of California, County of Los Angeles. Defendant is an "employer" of Plaintiff within the meaning of both the California Government Code (§12926(d)) and the California Labor Code. Defendant RVNA, "operates nationwide as an insurance broker and program administrator, exclusively developing and managing insurance product lines for A+ rated carriers for over 25 years." Defendant advertises their services through various mediums, including on their website at www.RVNuccio.com. Defendants and each of them, are therefore "persons" as defined under Business and Professions Code § 17021.35. Each of the directors, officers and/or agents of Defendant are equally responsible for the acts of the others as set forth in Business and Professions Code §17095.

8. Defendant ADP, LLC ("ADP"), is a Delaware corporation, licensed to do business in the State of California, County of Los Angeles, with 17 locations throughout the State of California. Defendant ADP conspired with RVNA to deny a reasonable accommodation to Plaintiff by making illegal determinations regarding her rights to reasonable accommodations including the right to take a finite leave of absence and the right to a continuation of medical benefits during any period of leave. ADP substantially assisted, encouraged, aided and abetted the denial of reasonable accommodations, including the failure to enter into a good faith process before terminating her health insurance.

9. Defendant KERRI MCDONALD ("Ms. McDonald") is an individual and resident of the State of California, and on information and belief, County of Los Angeles. Ms. McDonald was, at all relevant times, an Associates' Insurance Broker of Defendant RVNA and supervisor of Ms. Lozano. At all times mentioned herein, Ms. McDonald discriminated against and harassed

1 Plaintiff because of race/color and national origin (including language), gender/sex, disability
2 and request for reasonable accommodations which ultimately resulted in Ms. Lozano's
3 constructive termination.

4 10. Defendant LEYKIN ALARCON ("Mr. Alarcon") is an individual and resident of
5 the State of California, and on information and belief, County of Los Angeles. Mr. Alarcon was,
6 at all relevant times, employed by Defendant RVNA as the Customer Service Representative and
7 was a co-worker of Plaintiff. Mr. Alarcon personally engaged in, participated in, encouraged and
8 ratified decisions to discriminate, retaliate, and harass the Plaintiff.

9 11. Defendant CHRISTIAN BAIR ("Mr. Bair") is an individual and resident of the
10 State of California, and on information and belief, County of Los Angeles. Ms. Juarez was, at all
11 relevant times, employed by Defendant RVNA as a Customer Service Representative and was a
12 co-worker to Plaintiff. Mr. Bair personally engaged in, participated in, encouraged and ratified
13 decisions to discriminate, retaliate, and harass the Plaintiff.

14 12. In doing the acts herein alleged, Defendants' employees, subcontractors, and
15 agents acted within the course and scope of their employment and agency; and, engaged in the
16 acts alleged herein and/or condoned, permitted, authorized, and/or ratified the conduct of its
17 employees, subcontractors, and agents, and is vicariously liable for the wrongful conduct of its
18 employees, subcontractors, and agents alleged herein.

19 13. Defendants DOES 1 through 100, inclusive, are other possible Defendants
20 responsible for the wrongful conduct alleged herein. The true names and capacities of
21 Defendants named herein as DOES 1 through 100, inclusive, whether individual, corporate,
22 associate, or otherwise, are unknown to Plaintiff who therefore sues such Defendants by such
23 fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiff is informed and
24 believes that the DOE Defendants are California residents. Plaintiff will amend this Complaint to
25 show true names and capacities when they have been determined. Plaintiff is informed and
26 believes, and on grounds of such information and belief alleges, that each Defendant DOE herein
27 is in some manner responsible for the discrimination based on sex/gender, sexual orientation and
28 disability, and damages herein alleged.

14. Plaintiff is informed and believes and thereon alleges that each Defendant is, and
at all times mentioned was, the agent, employee or representative of each other Defendant. Each

Defendant, in doing the acts, or in omitting to act as alleged in this Complaint, was acting within the scope of her or her actual or apparent authority or the alleged acts and omissions of each Defendant as agent subsequently were ratified and adopted by each other Defendant as principal.

EXHAUSTION OF REMEDIES

15. On August 27, 2019, Plaintiff timely filed complaints against Defendants with the Department of Fair Employment & Housing and received a notice of case closure and right to sue as to all Defendants. On April 22, 2020, Plaintiff amended her DFEH Right to Sue to include additional incidents of discrimination including her termination. Plaintiff has therefore exhausted her administrative remedies as to her state law discrimination claims under the Fair Employment & Housing Act.

16. On April 27, 2020, Plaintiff filed a PAGA Claim Notice against Defendant RVNA with the Labor Workforce Development Agency ("LWDA"). More than 65 days elapsed since the filing of her PAGA claim without response from the LWDA. Therefore, Plaintiff has exhausted her administrative remedies as to her PAGA claim under Labor Code § 2699.3(a).

17. On April 27, 2020, Plaintiff filed a complaint with the California Department of Industrial Relations- Occupational Safety & Health ("Cal. OSHA") against Defendant for violations of Cal. Labor Code §§ 6300, *et seq.* Cal. OSHA did not respond to Plaintiff's complaint. Plaintiff has exhausted her administrative remedies prior to bringing a PAGA claim for violations of Labor Code §§ 6300, *et seq.* pursuant to Labor Code § 2699.3(b).

FACTS COMMON TO ALL CAUSES OF ACTION

18. Ms. Lozano is a 27-year-old Hispanic woman with one child. She is a first generation Mexican American and is bilingual in English and Spanish. In or about May 2018, Ms. Lozano was interviewed by Kerri McDonald, Associates' Insurance Broker for RVNA to work as a Customer Service Representative. Ms. McDonald is a Caucasian female in her early forties. During the interview, Ms. Lozano asked several impermissible non-job-related inquiries including questions about her family and child and questioning the extent of her childcare responsibilities. Ms. McDonald indicated that taking time off from work for her child was disfavored because it would interfere with her job responsibilities. Although Ms. Lozano was intimidated and rightly offended by Ms. McDonald's questions and remarks, she answered her

1 questions and remained quiet because she needed the job and did not want to hurt her chances
2 of being hired.

3 19. Because Ms. Lozano was so professional in her interview, on May 28, 2018, she
4 was notified that she was hired and would report to Ms. McDonald. She was paid \$21.33 per
5 hour and later put on salary at \$44,000 per year. However, she was also required to sign an
6 employment contract (“Contract”) that, as written, was enforceable constituting a contract of
7 adhesion. The Contract required, as a condition of employment that the employee waive their
8 fundamental right to privacy entirely, while employed with RVNA, including while at work on
9 RVNA’s premises “or in another location.” The provision is unambiguous—clearly stating in
bold font, “**NO RIGHT OF PRIVACY.**”

10 20. The Contract also contained an arbitration provision which, in conjunction with
11 the explicit right to privacy waiver, also constituted a waiver of both her right to arbitration and a
12 jury trial with respect to any claims against RVNA for violations of, or invasion of the right to
13 privacy. The arbitration provision did not otherwise cure the unenforceable waiver of the right to
14 bring privacy claims against RVNA by including an “opt-out” provision within 30 days of
15 signing, because privacy claims are waived in their entirety under the agreement regardless of
16 any “opt-out.” Notwithstanding, the procedure for employees to notify RVNA of opting out was
17 onerous and burdensome requiring the use of a specific form, or use of specific words, personal
18 delivery, certified with proof of return receipt, etc. Significantly, the “opt-out form” was required
19 to be attached to the Contract for Ms. Lozano to retain, however no form was provided to Ms.
Lozano.

20 21. Other new hire documents containing illegal and discriminatory provisions that
21 Ms. Lozano was required to sign in conjunction with (and referring back to) the Contract
22 included, the “RVNA Employee Dress Code Policy,” which contains of list of vague and overly
23 gender specific clothing prohibitions that disparately target and impact female employees,
24 including, in relevant part, without limitation, “revealing clothing that exposes your back, chest,
25 stomach or navel, ... or that reveals too much cleavage, [t]ops with spaghetti straps, halter tops,
26 transparent or see-through, short skirts, beachwear including swimwear, swimsuit cover-ups.”
27 While the dress code does include references to items typically worn by men, such as no “muscle

1 shirts,” “excessively baggy clothing,” “hats” or “athletic shoes or workout attire,” these do not
2 refer to male body parts and are not gender specific.

3 22. Despite their contractual promise to “indemnify” Ms. Lozano for all expenses
4 incurred on behalf of RVNA, they simultaneously required her to sign a May 31, 2018 Memo
5 advising the employee that “*upon termination of employment with RV Nuccio & Associates*
6 *Insurance Brokers, Inc. the key must be returned or a \$25.00 charge will be deducted from your*
7 *final paycheck.*” For Ms. Lozano, that meant losing almost an hour of pay if she lost the key or
8 was unable to locate it at the time of employment separation.

9 23. In or about June 2019, because of her exemplary job performance, she was given
10 a 6% pay increase to \$46,640 per year. However, when RVNA converted her hourly pay to
11 salary in June 2018, they misclassified her as an exempt employee who was not entitled to
12 overtime compensation or meal/rest periods—specifically stating that the reason for the change
13 to salary was so that Ms. Lozano could “work through meetings” without taking a lunch. Ms.
14 Lozano has only been permitted to take meal/rest periods intermittently when time permits and
15 has worked overtime hours for which she was never compensated.

16 24. Ms. McDonald’s discrimination and harassment towards Ms. Lozano continued
17 and escalated. McDonald engaged in daily barrage of racist, sexist, anti-immigrant jokes and
18 derogatory comments to Ms. Lozano and in her presence. Ms. McDonald also repeatedly asked
19 Ms. Lozano non-job-related questions regarding her childcare responsibilities, her English
20 language capabilities and personal details about her medical conditions and medical
21 appointments whenever she requested time off and subjecting her to differential treatment.
22 Although other employees requested time off approval for any time off directly through her
23 instead of the Office Manager.

24 25. Without limitation, Ms. McDonald displayed the following discriminatory and
25 harassing conduct to Ms. Lozano and in her presence on a daily basis:

- 26 a) On July 10, 2018, she asked Ms. Lozano if she “could read English,”
27 requiring her to re-read a sentence repeatedly even though Ms. Lozano
28 speaks and reads English fluently.
- b) Commenting to Ms. Lozano and another male employee that “women are
scornful and don’t know how to make friends as well as men.” She explained

to Ms. Lozano why the male-employee could “handle relationships with marketing contacts so much better than women and are better at business.”

- c) McDonald speaks gently with the men and explains tasks in detail. However, when speaking with women, she is aggressive, loud and demeaning in tone. She also provides male employees with more work opportunities than female employees with respect to assignments and responsibilities.
- d) On one occasion Ms. Lozano requested time off because she was sick and in response Ms. McDonald asked her if she was pregnant in an insulting manner. Ms. Lozano was stunned that she would ask such a personal question and offended that she would assume she was pregnant simply because she requested time off.
- e) Required Ms. Lozano to seek approval from her any time she needed time off for medical or childcare responsibilities, while all other employees request time off through the Office Manager.
- f) Criticized mothers for having to take off of work for their sick children stating “it's a privilege to even have children and mothers shouldn't complain about getting paid less money, but they deserve less pay than men for not working as much.”
- g) Told Ms. Lozano that it is in black men's culture to be abusers and disrespect women which was extremely offensive to her.
- h) On April 4, 2019 she installed a “doggy door” in the office without addressing staff with a sign that said, "have you called?" this was an attempt to separate the back office and front office but was dehumanizing and belittling to everyone.
- i) In April 2019, she told Ms. Lozano that she did not feel sorry for the women who accused Joe Biden of harassing them because they "should have known what they were getting into-- they are working with men!"
- j) On June 18, 2019, Ms. McDonald brought up the “MeToo” movement with respect to claims of sexual assault and criticized women involved in the movement, stating to Ms. Lozano and others that it was “an excessive culture

of bullying against men.” She then pulled up a web-page which listed men who committed sexual offenses and defended them—stating that many shouldn't be listed even those guilty of sexual misconduct with minors.”

k) On June 20, 2019 she emailed Ms. Lozano and several other staff members regarding the “TheKnot.com” marketing campaign (sale of wedding insurance) and criticized the “face” of the campaign. The “re” line stated, “bad marketing,” and went on to say that “you have to be ethnic, gay or fat” to be shown on “TheKnot.com,” website and that “no pretty white people are allowed on screen.”

20. Because of Ms. McDonald’s unabated racist and sexist remarks, other employees were encouraged by her example to share their own racist and sexist beliefs in the workplace. Specifically, without limitation, in or around December 2018, two of Ms. Lozano’s co-workers, Leykin Alarcon, Customer Service Representative and Christian Bair, Customer Service Representative began discussing their anti-immigrant beliefs and talking about a convicted rapist, “R. Kelly,” stating that they “didn't believe his victims.” Ms. Lozano was so offended that she reported her co-workers to management. Management took no action in response to her complaints, other than a verbal counseling with Mr. Alarcon.

21. From the date of her hire in May 2018 until she was terminated on September 4, 2019, McDonald was relentless in her unsolicited inquiries into Ms. Lozano’s medical conditions. When Ms. Lozano responded that she would be out of the office from time to time for her medical condition, Ms. McDonald pressured her even more, demanding to know the reason for treatment and demands to know why she needed to see the doctor. Ms. McDonald went so far as to “kept track” of each day Ms. Lozano requested to leave work for medical reasons, how long she was gone (to the minute), even pressuring Ms. Lozano to disclose whether she intended to use her lunch break to see her doctor. Anytime Ms. Lozano needed to leave work for medical reasons, personal or to care for her son or a family member, Ms. McDonald made a point of making sure Ms. Lozano disclosed every detail of the reason for leave which she meticulously wrote down, including the time, date and specific details. For example, in or about March 2019, it became necessary for Ms. Lozano to request the day off for a family emergency. When Ms. McDonald asked her what the “emergency” was, Ms. Lozano

1 felt pressured to respond, and disclosed that her brother was seriously injured, unconscious and
2 bleeding and she needed to take him to the hospital. Ms. McDonald responded that she was
3 missing too much work already for being sick and that while she would approve the leave, she
4 needed to make sure that Ms. Lozano understood she should not miss more work.

5 22. By July 2019 Ms. McDonald's harassment and unlawful medical inquiries
6 escalated. When Ms. Lozano would not answer her questions about her medical condition Ms.
7 McDonald called a friend that worked for Kaiser and sought to obtain Ms. Lozano's HIPAA
8 protected health care information. When she was unsuccessful, she began retaliating against Ms.
9 Lozano for missing work for medical reasons and falsely accused her of taking extended lunch
10 periods to see her doctor or to take care of a personal matter. In fact, Ms. Lozano never
11 requested an extended lunch period to see her doctor. She saw her doctor during her lunch
12 period from 11:32 a.m. to 12:31 p.m. and returned to work before the expiration of her lunch
13 period. What Ms. Lozano did during her "off the clock" lunch period was none of Ms.
14 McDonald's business. Significantly, Ms. McDonald did not subject any of Ms. Lozano's non-
15 disabled co-workers to such scrutiny.

16 23. As a result, the harassment and discrimination continued and escalated to the
17 point that Ms. Lozano could no longer work in that environment; and on July 10, 2019, Ms.
18 Lozano's doctor put her on a medical leave of absence through July 19, 2019 due to her severe
19 distress. Ms. Lozano tried to return to work following her leave, but the work environment
20 remained hostile requiring Ms. Lozano to seek further medical treatment.

21 24. On or about July 22, 2019, Ms. Lozano advised Ms. McDonald that she needed
22 to see her doctor before resuming work and had medical appointments set for July 24, 2019 and
23 August 1, 2019, at which point she would provide a further medical certification as soon as
24 practicable.

25 25. On August 1, 2019 Ms. Lozano went in for a mental health consultation where
26 she was diagnosed with a mental disability in association with work stress. Her doctor
27 recommended that she begin treating with a therapist or enroll in Kaiser Permanente's, "On the
28 Job" occupational health clinic - a three (3) week program. Ms. Lozano first went to see a
therapist for evaluation who recommended that she enroll in the occupational health clinic
instead of individual therapy sessions. Unfortunately, between August 7 and August 26, 2019,

Ms. Lozano first became sick with food poisoning and then became ill with the flu—each time notifying Ms. McDonald that she was sick and could not come into work.

26. Ms. Lozano was not able to see her mental health doctor again until Friday, August 28, 2019, at which time he certified her to be off work entirely through September 4, 2019 and thereafter to attend the work clinic though September 19, 2019 to attend the program. Ms. Lozano provided the medical certification to Ms. McDonald who submitted the request to ADP to whom RVNA illegally delegates all human resources functions and determinations on medical leave or reasonable accommodations. Defendant ADP conspired with RVNA to deny a reasonable accommodation to Plaintiff by making illegal determinations regarding her rights to reasonable accommodations including the right to take a finite leave of absence and the right to a continuation of medical benefits during any period of leave. ADP substantially assisted, encouraged, aided and abetted the denial of reasonable accommodations, including the failure to enter into a good faith process before terminating her health insurance.

27. On Monday, September 9, 2019, Ms. Lozano began attending the Kaiser work clinic. However, unknown to her at the time, on September 4, 2019, ADP denied her request for a medical leave of absence and terminated her health benefits (effective August 31, 2019) on grounds that she did not qualify for FMLA leave. Instead, they granted her provisional leave under ADP's "Non FMLA Leave Approval," which allows for employees to take a medical leave of absence if they do not qualify for FMLA leave. However, unlike an FMLA or CFRA protected leave, there is no guarantee of reinstatement and during the leave, the employee may be required to "submit information regarding [thei]r leave, including, but not limited to, why it is medically necessary."

28. Significantly, the September 4, 2019 Notice made no mention of Ms. Lozano's rights under the FEHA to request and receive reasonable accommodations for a finite leave, guarantee of reinstatement or RVNA's obligation to engage in the interactive process or offer alternative accommodations. There was simply no discussion of disability related accommodations or leaves, only a "Non FMLA Leave Policy" that failed to provide notice of any employee protections as afforded under the FEHA, Cal. Gov't Code § 12940(m), (n).

29. Because the notice was mailed, Ms. Lozano did not receive it until September 11, 2019, but not before she attempted to attend another day of the work health clinic and

1 learned that she could no longer attend because her insurance was terminated. Significantly,
2 ADP's September 4, 2019 Notice did not explain how Ms. Lozano would be able to "submit
3 additional information to them regarding [her] leave or provide information showing that her
4 leave was medically necessary," because, by terminating her insurance, they terminated her
5 ability to obtain treatment.

6 30. Ms. Lozano could neither obtain medical treatment nor see a doctor to obtain a
7 further certification for leave. She could not alternatively return to work to a hostile work
8 environment. Faced with a *Hobson's* choice, Ms. Lozano was forced to decide between her job
9 and her health and wellbeing—something no employee should ever be required to do. In this
10 case, Ms. Lozano simply could not go back to a workplace permeated with discrimination and
11 harassment. On that basis, and according to ADP's September 4, 2019 Notice, Ms. Lozano was
12 effectively terminated August 31, 2019.

13 31. Ms. Lozano continues to suffer from severe emotional and financial distress as a
14 result of Ms. McDonald's actions and RVNA's actions in ratifying her conduct and the
15 decisions to discriminate, harass, retaliate against and constructively terminate Ms. Lozano's
16 employment.

17 **FIRST CAUSE OF ACTION**

18 **Discrimination Based on Disability, Sex/Gender, Race/Color, National Origin (including 19 Language) and Ancestry in Violation of Cal. Gov't Code § 12940(a)**

20 **(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS, 21 INC., a California corporation; and DOES 1-100, inclusive)**

22 32. Plaintiff realleges and incorporates by reference, as though fully set forth herein,
23 each and every allegation set forth in paragraphs 1-31, above.

24 33. Cal. Gov't Code § 12940(a) makes it an unlawful employment practice to
25 discriminate against someone because of disability, sex/gender, race/color, national origin
26 (including language) or based on ancestry. Harassment of an employee on these grounds
27 constitutes disparate treatment and is a form of discrimination. (See Cal. Code Regs., tit. 2, §
28 7291.1, subd. (f)(1)) Similarly, the failure to accommodate is a form of disability discrimination.

(see, e.g., *Jensen v. Wells Fargo Bank*, (2000) 85 Cal. App.4th 245; Cal. Gov't Code § 12940(m)).

34. As more fully alleged herein, and in violation of California Government Code § 12940(a), Defendants, and each of them, engaged in discrimination and differential treatment of Ms. Lozano based on her disability and request for reasonable accommodations, based on her sex/gender, race/color, national origin (including language) and ancestry. The discrimination included, without limitation, severe and pervasive sexual, racial, and national origin/ ancestry. Defendants further violated Ms. Lozano's rights to a discrimination-free work environment by failing to take all reasonable steps necessary to prevent discrimination and harassment from occurring as required by California Government Code § 12940(k).

35. By aforesaid acts and omissions of defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, medical expenses and special damages, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

36. As a further direct and legal result of the acts and conduct of defendants, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all the injuries are reasonably certain to be permanent in character.

37. As a result of defendants' retaliatory and discriminatory acts as alleged herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b) of the California Government Code.

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SECOND CAUSE OF ACTION

**Harassment Based on Sex/Gender, Race/Color, National Origin (including Language) and
Ancestry in Violation of Cal. Gov't Code § 12940(j)(1)**

**(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS,
INC., a California corporation; KERRI MCDONALD, an individual; LEYKIN
ALARCON, an individual; CHRISTIAN BAIR, an individual; and DOES 1-100, inclusive)**

38. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-37, above.

39. Cal. Gov't Code § 12940(j)(1) makes it an unlawful employment practice for any person to harass an employee on the basis of their disability, sex/gender, race/color, national origin (including language) or ancestry. If the harasser is a supervisor, the employer is strictly liable for the conduct of the harassing supervisor. The employer is similarly liable if in the case of co-worker/ co-worker harassment the employer knew or should have known of the harassment but failed to undertake immediate and appropriate action. *Id.*

40. As more fully alleged herein, and in violation of California Government Code § 12940(j)(1), Defendants, and each of them, engaged in severe and pervasive harassment against Ms. Lozano based on her disability, sex/gender, race/color, national origin (including language) and ancestry. The harassment was by a supervisor, defendant Ms. McDonald who is individually liable for her own harassing conduct and RVNA is strictly liable for the harassment under Gov't Code § 12940(j)(1). Because defendant RVNA knew Ms. Lozano made complaints of harassment against her co-workers, defendants Mr. Alarcon and Mr. Bair, but failed to investigate or remediate it, RVNA is also strictly liable for the harassment by Mr. Alarcon and Mr. Bair. Defendant further violated Ms. Lozano's rights to a discrimination-free work environment by failing to take all reasonable steps necessary to prevent discrimination and harassment from occurring as required by California Government Code § 12940(k).

41. By aforesaid acts and omissions of defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

42. As a further direct and legal result of the acts and conduct of defendants, and each

of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

43. Plaintiff is informed and believes and thereon alleges that defendants and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount according to proof. Cal. Civ. Code §3294.

44. As a result of defendants' retaliatory and discriminatory acts as alleged herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b) of the California Government Code.

THIRD CAUSE OF ACTION

Failure to Accommodate Disability in Violation of Cal. Gov't Code § 12940(m)

**(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS,
INC., a California corporation; and DOES 1-100, inclusive)**

45. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-44, above.

46. Pursuant to G.C. §12940(m), it is unlawful for an employer to deny a request for a reasonable accommodation for a known disability. A request for a finite leave of absence constitutes a request for a reasonable accommodation. (See *Schmidt v. Safeway Inc.* (D.Or.1994) 864 F.Supp. 991, 996; *Corbett v. National Products Co.* (E.D.Pa.1995) 4 A.D. Cases 987, 990, 1995 WL 133614; *Atlantic Richfield Co. v. Kimbro* (1990) 498 U.S. 814, 878-879) California

Courts have determined that reasonable accommodations are to be construed liberally and further that no “magic words” are required.

47. As more fully alleged herein, Ms. Lozano was a qualified person with a known mental disability. Defendants failed and refused to accommodate her, without discussion and without offering any alternatives and instead constructively terminated her employment for pretextual reasons. In this case, Ms. Lozano’s request for leave together with a request for the continuation of insurance coverage during the period of leave constituted a request for reasonable accommodation and Defendant was required to grant her request because it was presumptively reasonable and did not create an undue hardship on the employer. Clearly, Ms. Lozano’s leave of absence was contingent upon receipt of medical treatment. Even Defendant’s own Non-FMLA Leave policy requires updates on the leave and medical providers such that defendant knew that cutting off her insurance benefits was tantamount to a denial of the leave request. Accordingly, Defendants violated Cal. Gov’t Code § 12940(m). Defendants further violated Ms. Lozano’s rights to a discrimination free work environment by failing to take all reasonable steps necessary to prevent discrimination from occurring as required by California Government Code § 12940(k).

48. By aforesaid acts and omissions of defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, medical expenses and special damages, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

49. As a further direct and legal result of the acts and conduct of defendants, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

50. As a result of defendants’ retaliatory and discriminatory acts as alleged herein, Plaintiff is entitled to reasonable attorney’s fees and costs of suit as provided in Section 12965(b) of the California Government Code.

FOURTH CAUSE OF ACTION

Failure to Enter into a Good Faith Process in Violation of

Cal. Gov't Code § 12940(n)

(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS, INC., a California corporation; and DOES 1-100, inclusive)

51. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-50, above.

52. Pursuant Gov't Code §12940(n), employers have a mandatory obligation to engage in an interactive process with the employee to identify and implement appropriate reasonable accommodations. An employer who denies a reasonable accommodation without offering alternatives is liable for violation of Gov't Code § 12940(n) as a matter of law.

53. As more fully alleged herein, Ms. Lozano was a qualified person with a known mental disability. Defendants failed and refused to accommodate her, without discussion and without offering any alternatives and instead constructively terminated her employment for pretextual reasons. ADP misclassified Ms. Lozano's request for a finite leave as an unprotected discretionary leave under ADP's "Non-FMLA Leave" instead of a request for a reasonable accommodation under the FEHA. Because Defendant did not consider Ms. Lozano's request for a leave of absence a request for reasonable accommodation— RVNA similarly did not engage in an interactive process with Ms. Lozano before cutting off her insurance and effectively denying her request for accommodation. Clearly, Ms. Lozano's leave of absence was contingent upon receipt of medical treatment. Even Defendant's own Non-FMLA Leave policy requires updates on the leave and medical providers such that defendant knew that cutting off her insurance benefits was tantamount to a denial of the leave request. Accordingly, Defendants violated Cal. Gov't Code § 12940(m). Defendants further violated Ms. Lozano's rights to a discrimination free work environment by failing to take all reasonable steps necessary to prevent discrimination from occurring as required by California Government Code § 12940(k).

54. By aforesaid acts and omissions of defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, medical expenses and special damages, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

55. As a further direct and legal result of the acts and conduct of defendants, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

56. As a result of defendants' retaliatory and discriminatory acts as alleged herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b) of the California Government Code.

FIFTH CAUSE OF ACTION

Unlawful Medical Inquiry in Violation of Cal. Gov't Code § 12940(f)(1)
(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS,
INC., a California corporation; and DOES 1-100, inclusive)

57. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1 through 56 above.

58. G.C. § 12940(f)(1) makes it an unlawful employment practice to make any “medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.”

59. As alleged herein, Ms. McDonald made repeated harassing inquiries to Ms. Lozano regarding the reason(s) she was sick, why she was going to the doctor, what her conditions were and why she required a leave of absence. Ms. McDonald went so far as to make inquiries directly to Ms. Lozano's healthcare provider at Kaiser regarding the nature and extent of her medical conditions and diagnosis/treatment. No non-disabled employees were subjected to such treatment. The medical inquiries were neither job-related nor consistent with any legitimate business necessity but were solely meant to harass and intimidate Ms. Lozano. Accordingly, defendants violated G.C. § 12940(f)(1).

60. By aforesaid acts and omissions of defendants, and each of them, plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

61. As a further direct and legal result of the acts and conduct of defendants, and each of them, as aforesaid, plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to plaintiff, but she is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

62. Plaintiff is informed and believes and thereon alleges that defendants and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of plaintiff's rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, plaintiff is entitled to recover punitive damages from defendants in an amount according to proof. Cal. Civ. Code §3294.

63. As a result of defendant's retaliatory and discriminatory acts as alleged herein, plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b) of the California Government Code.

SIXTH CAUSE OF ACTION

Retaliation for Opposing Unlawful Discrimination and for the Exercise of Rights in

Violation of Cal. Gov't Code § 12940(h)

(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS, INC., a California corporation; and DOES 1-100, inclusive)

64. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-63, above.

65. Gov't Code Section 12940(h) makes it unlawful for an employer to retaliate against an employee for making a complaint of discrimination and/or opposing or protesting unlawful employment practices.

66. As more fully alleged herein, Defendant retaliated against Ms. Lozano for engaging in protected reporting activities, opposing unlawful practices, exercise of rights (Cal. Gov. Code § 12940(f)(1); and making complaints of discrimination and harassment. Defendants knew that Ms. Lozano required a leave of absence for her disability and that she required and relied on her employer provided health insurance through Kaiser in order to see her doctors. Notwithstanding, they denied her leave, in writing and cut off her health insurance without prior notice less than a week after she requested a leave of absence and within months of her complaints against her co-workers. Defendants further violated Ms. Lozano's rights to a discrimination-free work environment by failing to take all reasonable steps necessary to prevent discrimination from occurring as required by California Government Code § 12940(k).

67. By aforesaid acts and omissions of defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, medical expenses and special damages, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

68. As a further direct and legal result of the acts and conduct of defendants, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all the injuries are reasonably certain to be permanent in character.

69. Plaintiff is informed and believes and thereon alleges that defendants and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount

1 according to proof. Cal. Civ. Code §3294.

2 70. As a result of defendants' retaliatory and discriminatory acts as alleged herein,
3 Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b)
4 of the California Government Code.

5 **SEVENTH CAUSE OF ACTION**

6 **Aiding & Abetting Discrimination in Violation of Cal. Gov't Code § 12940(i)**
7 **(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS, INC., a**
8 **California corporation; ADP, INC., a Delaware corporation; and DOES 1-100, inclusive)**

9 71. Plaintiff realleges and incorporates by reference, as though fully set forth herein,
10 each and every allegation set forth in paragraphs 1-70, above.

11 72. Cal. Gov't Code § 12940(i) makes it unlawful "[f]or any person to aid, abet,
12 incite, compel or coerce the doing of any of the acts forbidden under this part, or to attempt to do
13 so."

14 73. Defendant RVNA is an employer subject to the FEHA; and Defendant ADP is an
15 agent of RVNA providing services pursuant to contract and is therefore a "person" within the
16 meaning of Cal. Gov't Code §§ 12940(i)

17 74. As more fully alleged herein, Defendant ADP conspired with RVNA to deny a
18 reasonable accommodation to Plaintiff by making illegal determinations regarding her rights to
19 reasonable accommodations including the right to take a finite leave of absence and the right a
20 continuation of medical benefits during any period of leave. In an effort to avoid liability, RVNA
21 illegally attempted to delegate its duty to comply with the law to ADP, a third-party benefits
22 provider who is not subject to the FEHA. See *Weyer v. Twentieth Century Fox Film*
23 *Corporation*, 198 F.3d 1104, 1113 (2000). ADP substantially assisted, encouraged, aided, and
24 abetted the denial of reasonable accommodations, including the failure to enter into a good faith
25 process before terminating her health insurance.

26 75. Because RVNA attempted to contract away a non-delegable duty to ADP to
27 reasonably accommodate Ms. Lozano and engage in the interactive process, RVNA is strictly
28 liable for violations of law by its agents. ADP is further liable for its own illegal employment

1 decisions which aided and abetted the discrimination by ADP, resulting in her constructive
2 termination.

3 76. By aforesaid acts and omissions of defendants, and each of them, Plaintiff has
4 been directly and legally caused to suffer actual damages including, but not limited to, medical
5 expenses and special damages, loss of earnings and future earning capacity, and other pecuniary
6 loss not presently ascertained.

7 77. As a further direct and legal result of the acts and conduct of defendants, and each
8 of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer
9 emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain,
10 discomfort, and anxiety. The exact nature, duration, and extent of said injuries is presently
11 unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all of
12 the injuries are reasonably certain to be permanent in character.

13 78. Plaintiff is informed and believes and thereon alleges that defendants and their
14 managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently,
15 and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper
16 and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
17 rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified
18 the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or
19 malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount
20 according to proof. Cal. Civ. Code §3294.

21 79. As a result of defendants' retaliatory and discriminatory acts as alleged herein,
22 Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b)
23 of the California Government Code.

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EIGHTH CAUSE OF ACTION

**Failure to Prevent Discrimination & Harassment from Occurring in Violation of
Cal. Gov't Code § 12940(k)**

**(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS,
INC., a California corporation; and DOES 1-100, inclusive)**

80. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-79, above.

81. G.C. §12940(k) provides as follows: "It shall be an unlawful employment practice, [f]or an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination ... from occurring."

82. As more fully alleged herein, Defendant failed and knowingly refused to investigate or undertake remedial measures to protect Ms. Lozano or to prevent the harassment and discrimination from occurring in violation of Cal. Gov't Code § 12940(k). Despite having direct knowledge of the discrimination, harassment and retaliation Ms. Lozano was subjected to, Defendant took no action to investigate or undertake remedial measures to protect Ms. Lozano. Instead, Defendant ignored Ms. Lozano's complaints and ratified the misconduct of its supervisors and employees and denied her request for a reasonable accommodation thereby constructively terminating her employment.

83. By failing to investigate or undertake remedial measures to protect Ms. Lozano or to prevent further discrimination, harassment and retaliation, Defendant failed to comply with their obligations under Cal. Gov't Code § 12940(k) as a matter of law.

84. By aforesaid acts and omissions of defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, medical expenses and special damages, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

85. As a further direct and legal result of the acts and conduct of defendants, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain,

1 discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently
2 unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all
3 the injuries are reasonably certain to be permanent in character.

4 86. Plaintiff is informed and believes and thereon alleges that defendants and their
5 managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently,
6 and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper
7 and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
8 rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified
9 the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or
10 malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount
11 according to proof. Cal. Civ. Code §3294.

12 87. As a result of defendants' retaliatory and discriminatory acts as alleged herein,
13 Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b)
14 of the California Government Code.

15 **NINTH CAUSE OF ACTION**

16 **Interference with Civil Rights- Retaliation in Violation of Cal. Civ. Code § 52.1(a)**

17 **[Tom Bane Civil Rights Act]**

18 **(Against Defendants ANTELOPE VALLEY HOSPITAL, Inc.; PROACTIVE 19 WORK HEALTH MEDICAL CENTER, INC.; and DOES 1-100, inclusive**

20 88. Plaintiff realleges and incorporates by reference, as though fully set forth herein,
21 each and every allegation set forth in paragraphs 1-87, above.

22 89. California Civil Code § 52.1(a), known as the "Tom Bane Civil Rights Act,"
23 prohibits:

24 [A] person or persons, whether or not acting under color of law, [from] interference by
25 threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or
26 coercion, with the exercise or enjoyment by any individual or individuals of rights
27 secured by the Constitution or laws of the United States, or of the rights secured by the
28 Constitution or laws of this state[.]

90. As more fully alleged herein, defendants, and each of them intentionally
discriminated against, harassed, coerced, threatened and intimidated Ms. Lozano based on her

1 disability, requests for reasonable accommodations, sex/gender, race/color, national origin
2 (including language); ancestry, and, denied her request for reasonable accommodations in order
3 to coerce her resignation in violation of her rights afforded by the California State and Federal
4 Constitutions and California law. (Cal. Constit. Art. 1, § 1; U.S. Constit. Amend. 14; Gov't Code
5 §§ 12940(a),(m),(n),(f)(1),(h),(j)(1) and (k); Cal. Labor Code §§ 98.6, 221, 432.5, 1102.5(b) and
6 (d), 2802; and, 6400, *et seq.* [§§ 6400-6403].

7 91. By aforesaid acts and omissions of defendants, and each of them, Plaintiff has
8 been directly and legally caused to suffer actual damages including, but not limited to, medical
9 expenses and special damages, loss of earnings and future earning capacity, and other pecuniary
10 loss not presently ascertained.

11 92. As a further direct and legal result of the acts and conduct of defendants, and each
12 of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer
13 emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain,
14 discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently
15 unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all the
16 injuries are reasonably certain to be permanent in character.

17 93. Plaintiff is informed and believes and thereon alleges that defendants and their
18 managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently,
19 and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper
20 and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
21 rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified
22 the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or
23 malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount
24 according to proof. Cal. Civ. Code §3294. See also Cal. Civ. Code § 52(b)(1) (affording
25 exemplary damages).

26 94. As a result of Defendants' discrimination in violation of Cal. Civ. Code § 52.1,
27 Plaintiff is entitled to injunctive and equitable relief, actual damages for each and every offense,
28 and any amount that may be determined by a jury, or a court sitting without a jury, up to a
maximum of three times the amount of actual damage but in no case less than four thousand
dollars (\$4,000), and any attorney's fees that may be determined by the court in addition thereto,

suffered by any person denied the rights provided in Section 52.1. Cal. Civ. Code § 52(a) and §§ 52.1(i).

TENTH CAUSE OF ACTION

Discrimination and Retaliation in Violation of Cal. Labor Code § 98.6 (Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS, INC., a California corporation; and DOES 1-100, inclusive)

95. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-94, above.

96. Cal. Labor Code § 98.6(a)-(b)(1) makes it unlawful to discharge an employee or retaliate “in any manner” or take any adverse action against an employee because the employee exercised any rights afforded to her under the Labor Code.

97. As more fully alleged herein, Defendants, and each of them, retaliated against Ms. Lozano for engaging in protected reporting activities, opposing unlawful practices, disclosing violations of law and making complaints of discrimination and harassment. Despite having direct knowledge of the discrimination, harassment, retaliation against Ms. Lozano Defendant took no action to investigate or undertake remedial measures to protect Ms. Lozano. Instead, Defendant ignored Ms. Lozano’s complaints and ratified the misconduct of its employees and third-party administrator, ADP, and further retaliated by terminating her insurance while on a protected leave. The time between Ms. Lozano’s protected opposing and reporting activities and her termination was significantly close in proximity to establish retaliatory motive. See *Flait v. North American Watch Co., Inc.* (1992) 3 Cal.App.4th 471, 479 (pretext can be inferred from timing between the exercise of rights and the adverse employment action).

98. Defendant’s decisions to discriminate, harass and retaliate against Ms. Lozano because she engaged in protected speech violates Cal. Labor Code §§1102.5(b),(d) and 6400, *et seq.* [§§ 6400-6403]; and therefore triggers the anti-retaliation protections of Labor Code § 98.6.

99. Pursuant to § (b)(3) of § 98.6, “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee ... who suffered the violation.

100. Defendant's violation of Cal. Labor Code § 98.6 with respect to Plaintiff and other employees similarly aggrieved trigger the protections for the PAGA. As a result of the aforesaid violations of § 98.6, Plaintiff is entitled to civil penalties on behalf of herself and other employees similarly aggrieved in the amount of \$100.00 for each aggrieved employee per pay period for the initial violation and \$200.00 per employee per pay period for each subsequent violation. Cal. Labor Code § 2699(f)(2). Plaintiff is further entitled to attorney's fees pursuant to the PAGA for any violation of Labor Code § 98.6, pursuant to Labor Code § 2699(g)(1).

101. Plaintiff is alternatively entitled to an award of attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5, governing "public interest fee awards." By engaging in violations of well settled public policies codified in California statutes, Defendant sought to chill the freedom of speech without retribution, for the purpose of avoiding liability to Defendant's sole benefit. As such, Plaintiff's claims seek to vindicate the important public rights of free speech and equal protection of the laws which confer a significant benefit on California taxpayers and to all American citizens. The financial benefit to Plaintiff is far less than to the public at large since Plaintiff's damages are limited by statute, entitling Plaintiff to an award for reasonable attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

ELEVENTH CAUSE OF ACTION

**Retaliation for Disclosing Information Reasonably Believed to be a Violation of
State or Federal Statute, Local, State or Federal Rule or Regulation in Violation of
Cal. Labor Code § 1102.5(b)**

(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS, INC., a California corporation; and DOES 1-100, inclusive)

102. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-101, above.

103. California Labor Code §1102.5(b) prohibits an employer from retaliating against an employee because the employer believes that the employee disclosed or may disclose information to a government or law enforcement agency, or to a person with authority over the employee if the employee has reasonable cause to believe that the information discloses a

violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

104. As more fully alleged herein, Ms. Lozano repeatedly complained to Defendants regarding discrimination and harassment. Less than a week after she requested a reasonable accommodation for leave, commencing August 28, 2019, and within months of her complaints of sexual and racial harassment, Defendant denied her request for a leave and terminated her health insurance rendering her constructively terminated and without the ability to see her doctors. Ms. Lozano reasonably believed that Defendant's conduct constituted violations of law, including, without limitation, violation of the Cal. Constit. Art. 1, § 1; U.S. Constit. Amend. 14; Gov't Code §§ 12940(a),(f)(1),(h),(j)(1) and (k); Cal. Labor Code §§ 98.6, 221, 2802, 432.5, 6400, *et seq.*, [6400-6403], and § 1102.5(d) (a violation of § (b) is a violation of § (d)).

105. By retaliating against Ms. Lozano, because she disclosed conduct, she reasonably believed constituted a violation of state or federal law, Defendants violated Cal. Labor Code § 1102.5(b) and caused injury and damage to Ms. Lozano.

106. By aforesaid acts and omissions of defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, medical expenses and special damages, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained. Cal. Labor Code § 1105.

107. As a further direct and legal result of the acts and conduct of defendants, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all the injuries are reasonably certain to be permanent in character. Cal. Labor Code § 1105.

108. Plaintiff is informed and believes and thereon alleges that defendants and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or

malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount according to proof. Cal. Civ. Code §3294.

109. Defendant's violation of Cal. Labor Code § 1102.5(b) with respect to Plaintiff and other employees similarly aggrieved trigger the protections for the PAGA. As a result of the aforesaid violations of § 1102.5(b), Plaintiff is entitled to civil penalties on behalf of herself and other employees similarly aggrieved in the amount of \$100.00 for each aggrieved employee per pay period for the initial violation and \$200.00 per employee per pay period for each subsequent violation. Cal. Labor Code § 2699(f)(2). Plaintiff is further entitled to attorney's fees pursuant to the PAGA for any violation of Labor Code § 1102.5(b), pursuant to Labor Code § 2699(g)(1).

110. Plaintiff is alternatively entitled to an award of attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5, governing "public interest fee awards." By engaging in violations of well settled public policies codified in California statutes, Defendant sought to chill the freedom of speech without retribution, for the purpose of avoiding liability to Defendant's sole benefit. As such, Plaintiff's claims seek to vindicate the important public rights of free speech and equal protection of the laws which confer a significant benefit on California taxpayers and to all American citizens. The financial benefit to Plaintiff is far less than to the public at large since Plaintiff's damages are limited by statute, entitling Plaintiff to an award for reasonable attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

TWELFTH CAUSE OF ACTION

Retaliation for Engaging in Protected Activities in Violation of Cal. Labor Code §§ 1102.5(b) Pursuant to Cal. Labor Code § 1102.5(d) (Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS, INC., a California corporation; and DOES 1-100, inclusive)

111. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-110, above.

112. California Labor Code §1102.5(d) provides in pertinent part that it is unlawful for an employer to retaliate against an employee for having exercised her rights under subdivisions (b) of § 1102.5.

1 113. As more fully alleged herein, Ms. Lozano repeatedly complained to Defendants
2 regarding discrimination and harassment. Less than a week after she requested a reasonable
3 accommodation for leave, commencing August 28, 2019, and within months of her complaints of
4 sexual and racial harassment, Defendant denied her request for a leave and terminated her health
5 insurance rendering her constructively terminated and without the ability to see her doctors. Ms.
6 Lozano reasonably believed that Defendant's conduct constituted violations of law, including,
7 without limitation, violation of the Cal. Constit. Art. 1, § 1; U.S. Constit. Amend. 14; Gov't
8 Code §§ 12940(a),(f)(1),(h),(j)(1) and (k); Cal. Labor Code §§ 98.6, 221, 2802, 432.5, 6400, *et*
seq., [6400-6403], and § 1102.5(d).

9 114. A violation of Labor Code § 1102.5(b) triggers the non-retaliation provision of
10 section (d) of Cal. Labor Code § 1102.5.

11 115. By retaliating against Plaintiff as alleged herein in violation of Cal. Labor Code §
12 1102.5(b), Defendants violated Cal. Labor Code § 1102.5(d) and caused injury and damage to
13 Plaintiff.

14 116. By aforesaid acts and omissions of defendants, and each of them, Plaintiff has
15 been directly and legally caused to suffer actual damages including, but not limited to, medical
16 expenses and special damages, loss of earnings and future earning capacity, and other pecuniary
loss not presently ascertained. Cal. Labor Code § 1105.

17 117. As a further direct and legal result of the acts and conduct of defendants, and each
18 of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer
19 emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain,
20 discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently
21 unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all the
22 injuries are reasonably certain to be permanent in character. Cal. Labor Code § 1105.

23 118. Plaintiff is informed and believes and thereon alleges that defendants and their
24 managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently,
25 and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper
26 and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
27 rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified
28 the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or

malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount according to proof. Cal. Civ. Code §3294.

119. Defendant's violation of Cal. Labor Code § 1102.5(d) with respect to Plaintiff and other employees similarly aggrieved trigger the protections for the PAGA. As a result of the aforesaid violations of § 1102.5(d), Plaintiff is entitled to civil penalties on behalf of herself and other employees similarly aggrieved in the amount of \$100.00 for each aggrieved employee per pay period for the initial violation and \$200.00 per employee per pay period for each subsequent violation. Cal. Labor Code § 2699(f)(2). Plaintiff is further entitled to attorney's fees pursuant to the PAGA for any violation of Labor Code § 1102.5(d), pursuant to Labor Code § 2699(g)(1).

120. Plaintiff is alternatively entitled to an award of attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5, governing "public interest fee awards." By engaging in violations of well settled public policies codified in California statutes, Defendant sought to chill the freedom of speech without retribution, for the purpose of avoiding liability to Defendant's sole benefit. As such, Plaintiff's claims seek to vindicate the important public rights of free speech and equal protection of the laws which confer a significant benefit on California taxpayers and to all American citizens. The financial benefit to Plaintiff is far less than to the public at large since Plaintiff's damages are limited by statute, entitling Plaintiff to an award for reasonable attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

THIRTEENTH CAUSE OF ACTION

Failure to Maintain a Safe and Healthful Work Environment in Violation of Cal. Labor Code § 6400, et seq. [§§ 6400-6403]

(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS, INC., a California corporation; and DOES 1-100, inclusive)

121. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-120, above.

122. California Labor Code § 6400(a) sets for the general obligation of employers to "furnish employment and a place of employment that is safe and healthful for the employees therein." California Labor Code §§ 6401-6403 set forth the specific requirements of employers necessary to comply with § 6400 to maintain a safe and healthful work environment as follows:

California Labor Code § 6401 requires that “every employer furnish and use safety devices and safeguards, ... adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful.”

California Labor Code § 6402 prohibits employers from requiring or permitting any employee to work in an unsafe work environment.

California Labor Code § 6403 further makes it unlawful for any employer to fail or neglect to provide safety devices and safeguards, ... adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful.”

123. As more fully alleged herein, without limitation, RVNA knowingly and with reckless disregard failed to maintain, implement or train employees on anti-discrimination and anti-retaliation policies, failed to undertake a reasonable investigation into Ms. Lozano’s complaints of sexual and racial harassment, failed and refused to maintain confidentiality; and failed and refused undertake appropriate remedial measures. When Ms. Lozano could no longer endure the harassment, she requested a medical leave of absence. Instead of granting her request, RVNA conspired with ADP to illegally deny her leave and terminated her insurance benefits. Without limitation, these acts and others demonstrate a *prima facie* case for Defendants refusal to provide a “safe and healthful” working environment in violation of Labor Code § 6400-6403.

124. Plaintiff is therefore entitled to the remedies of lost wages for violation of this Code section pursuant to Cal. Labor Code § 6311.

125. Defendant’s violation of Cal. Labor Code §§ 6400-6403 with respect to Plaintiff and other employees similarly aggrieved trigger the protections for the PAGA. As a result of the aforesaid violations of §§ 6400-6403, Plaintiff is entitled to civil penalties on behalf of herself and other employees similarly aggrieved in the amount of \$100.00 for each aggrieved employee per pay period for the initial violation and \$200.00 per employee per pay period for each subsequent violation. Cal. Labor Code § 2699(f)(2).

126. Plaintiff is further entitled to an award of attorney’s fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5, governing “public interest fee awards.” By engaging in violations of well settled public policies codified in California statutes, Defendant sought to chill the freedom of speech without retribution, for the purpose of avoiding liability to Defendant’s sole benefit. As

1 such, Plaintiff's claims seek to vindicate the important public rights of free speech and equal
2 protection of the laws which confer a significant benefit on California taxpayers and to all
3 American citizens. The financial benefit to Plaintiff is far less than to the public at large since
4 Plaintiff's damages are limited by statute, entitling Plaintiff to an award for reasonable attorney's
5 fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

6 **FOURTEENTH CAUSE OF ACTION**

7 **Unlawful Collection of Wages in Violation of Cal. Labor Code § 221**

8 **(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS,**
9 **INC., a California corporation; and DOES 1-100, inclusive)**

10 127. Plaintiff realleges and incorporates by reference, as though fully set forth herein,
11 each and every allegation set forth in paragraphs 1-126, above.

12 128. California Labor Code § 221 provides that, "[i]t [is] unlawful for any employer to
13 collect or receive from an employee any part of wages theretofore paid by said employer to said
14 employee.

15 129. As more fully alleged herein, Defendant's policy of deducting \$25.00 from
16 Plaintiff's final paycheck for reimbursement of a lost RVNA building key constitutes an
17 unlawful collection of wages pursuant to Labor Code § 221.

18 130. Plaintiff is entitled to civil penalties for Defendant's violation of Labor Code §
19 221 pursuant to Labor Code § 225.5 for any initial violation, one hundred dollars (\$100) for each
20 failure to pay each employee; and, for each subsequent violation, or any willful or intentional
21 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of
22 the amount unlawfully withheld. Section 225.5 provides for penalties in addition to any other
23 applicable provision. Plaintiff is further entitled to an award of reasonable attorney's fees and
24 costs pursuant to Cal. Labor Code § 218.5 for any violation of Labor Code § 221.

25 131. Defendant's violation of Cal. Labor Code § 221 with respect to Plaintiff and other
26 employees similarly aggrieved trigger the protections for the PAGA. As a result of the aforesaid
27 violations of § 221, Plaintiff is entitled to civil penalties on behalf of herself and other employees
28 similarly aggrieved in the amount of \$100.00 for each aggrieved employee per pay period for the
initial violation and \$200.00 per employee per pay period for each subsequent violation. Cal.

Labor Code § 2699(f)(2). Plaintiff is further entitled to attorney's fees pursuant to the PAGA for any violation of Labor Code § 221, pursuant to Labor Code § 2699(g)(1).

FIFTEENTH CAUSE OF ACTION

Failure to Indemnify Employee for Necessary Expenditures or Losses Incurred

[Cal. Labor Code § 2802]

**(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS,
INC., a California corporation; and DOES 1-100, inclusive)**

132. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-131, above.

133. Pursuant to California Law, as set forth in Labor Code § 2802(a)

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

134. As more fully alleged herein, as a condition of her hire, Defendant RVNA forced Ms. Lozano to sign "Memo" advising the employee that *"upon termination of employment with RV Nuccio & Associates Insurance Brokers, Inc. the key must be returned or a \$25.00 charge will be deducted from your final paycheck."* For Ms. Lozano, that meant losing almost an hour of pay if she lost the key or was unable to locate it at the time of employment separation.

135. As a direct and proximate result of defendants' failure to indemnify Plaintiff for necessary expenditures incurred, Plaintiff has been damaged in an amount subject to proof at the time of trial, and pursuant to Labor Code § 2802, is entitled to the amount for which she should have been indemnified and for interest thereon. Plaintiff is further entitled to an award of attorney's fees for any violation of Labor Code § 2802 pursuant to Labor Code § 2802(c).

136. Defendant's violation of Cal. Labor Code § 2802 with respect to Plaintiff and other employees similarly aggrieved trigger the protections for the PAGA. As a result of the aforesaid violations of § 2802, Plaintiff is entitled to civil penalties on behalf of herself and other employees similarly aggrieved in the amount of \$100.00 for each aggrieved employee per pay

1 period for the initial violation and \$200.00 per employee per pay period for each subsequent
2 violation. Cal. Labor Code § 2699(f)(2).

3 **SIXTEENTH CAUSE OF ACTION**

4 **Illegal Employment Contract Provisions in Violation of**

5 **Cal. Labor Code § 432.5**

6 **(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS, INC., a**
7 **California corporation; and DOES 1-100, inclusive)**

8 137. Plaintiff realleges and incorporates by reference, as though fully set forth herein,
9 each and every allegation set forth in paragraphs 1-136, above.

10 138. Cal. Labor Code § 432.5 provides: “No employer, or agent, manager,
11 superintendent, or officer thereof, shall require any employee or applicant for employment to
12 agree, in writing, to any term or condition which is known by such employer, or agent, manager,
13 superintendent, or officer thereof to be prohibited by law.”

14 139. As more fully alleged herein, as a condition of her hire, Plaintiff was forced to
15 sign a Contract and several conditional hire documents that contained multiple illegal terms and
16 conditions including, without limitation, requiring employees to sign employment contracts that
17 require that they both waive their fundamental right to privacy in its entirety and therefore agree
18 to waive their right to arbitration and a jury trial with respect to any claims against RVNA for
19 violations of, or invasion of the right to privacy; an unlawful “take-back” of wages and failure to
20 indemnify; and, a discriminatory gender based “Dress-Code Policy.”

21 140. Defendant’s violation of Cal. Labor Code § 432.5 with respect to Plaintiff and
22 other employees similarly aggrieved trigger the protections for the PAGA. As a result of the
23 aforesaid violations of § 432.5, Plaintiff is entitled to civil penalties on behalf of herself and
24 other employees similarly aggrieved in the amount of \$100.00 for each aggrieved employee per
25 pay period for the initial violation and \$200.00 per employee per pay period for each subsequent
26 violation. Cal. Labor Code § 2699(f)(2). Plaintiff is further entitled to attorney’s fees pursuant to
27 the PAGA for any violation of Labor Code § 432.5, pursuant to Labor Code § 2699(g)(1).

28 141. Plaintiff is alternatively entitled to an award of attorney’s fees and costs pursuant
to Cal. Code Civ. Proc. § 1021.5, governing “public interest fee awards.” By engaging in violations

of well settled public policies codified in California statutes, Defendant sought to chill the freedom of speech without retribution, for the purpose of avoiding liability to Defendant's sole benefit. As such, Plaintiff's claims seek to vindicate the important public rights of free speech and equal protection of the laws which confer a significant benefit on California taxpayers and to all American citizens. The financial benefit to Plaintiff is far less than to the public at large since Plaintiff's damages are limited by statute, entitling Plaintiff to an award for reasonable attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

SEVENTEENTH CAUSE OF ACTION

Individual and Representative Claim for Penalties Pursuant to the California Private Attorney General Act of 2004 [Cal. Labor Code § 2699, *et seq.*] for Violations of Cal. Labor Code:

§§ 98.6, 221, 432.5, 1102.5(b),(d), 2802, 6310(a)(4), 6400-6403.

(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS, INC., a California corporation; and DOES 1-100, inclusive)

142. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-141, above.

143. Plaintiff brings this action on behalf of herself and on behalf of similarly aggrieved current and former employees of Defendant RVNA that were employed in California four years before the date this action was filed to the present that have been retaliated against for engaging in protected reporting activities involving a reasonable belief that the conduct would violate state or federal law and for reporting violations of the Labor Code. (Cal. Labor Code §§ 98.6 and 1102.5(b), (d). Plaintiff also seeks relief for herself and other current and former employees who have been required to sign illegal contracts, waive their privacy or other fundamental rights as a condition of employment, comply with a discriminatory dress-code (Labor Code § 432.5), required to agree to illegal take-backs from wages (Labor Code §§ 221 and 2802); and who have been denied a safe and healthful work environment in violation of Cal. Labor Code §§ 6400-6403, caused by Defendants' failure and refusal to maintain, implement or train employees on anti-discrimination and anti-retaliation policies, failure to undertake a reasonable investigation complaints of harassment and discrimination, refusal to maintain

confidentiality in the investigative process, failure and refusal undertake appropriate remedial measures; and, for RVNA's conduct in conspiring with ADP to illegally deny, without hardship, any employee requests for reasonable accommodation that involve a leave of absence under Cal. Gov't Code § 12940(m).

144. On April 27, 2020, Plaintiff filed a PAGA Claim Notice with the Labor Workforce & Development Agency ("LWDA") online and served the PAGA Claim Notice via certified mail in full compliance with Cal. Labor Code § 2699.3.

145. On April 27, 2020, Plaintiff filed a claim for violation of Labor Code §§ 6400-6403 with Cal. OSHA and has therefore exhausted administrative remedies pursuant to Cal. Labor Code § 2699.3(b)(1).

146. The LWDA did not respond to Plaintiff's complaint letter within 65 days of submission. Accordingly, Plaintiff has exhausted her administrative remedies as to her claim for penalties on behalf of herself and on behalf of other employees similarly aggrieved by defendants Labor Code violations pursuant to the Private Attorney General's Act of 2004.

147. Plaintiff is therefore entitled to penalties and damages on behalf of herself and on behalf of all similarly aggrieved current and former employees of Defendant that were employed in California four years before the date this action was filed to the present, pursuant to Cal. Labor Code §2698, *et seq.*

148. As a result of the foresaid violations, Plaintiff is entitled to civil penalties against Defendant for the knowing and intentional failure to comply with Cal. Labor Code §§ 98.6, 1102.5(b),(d) and 6400-6403; and, is further entitled to an award of reasonable attorney's fees and costs pursuant to Cal. Labor Code § 2699(g)(1).

EIGHTEENTH CAUSE OF ACTION

Contract in Violation of Public Policy

[Cal. Civ. Code § 1668]

(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS, INC., a California corporation; and DOES 1-100, inclusive)

149. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-148, above.

1 150. Cal. Civ. Code § 1668 provides, that “[a]ll contracts which have for their object,
2 directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to
3 the person or property of another, or violation of law, whether willful or negligent, are against
4 the policy of the law.”

5 151. As more fully alleged herein, RVNA required that Ms. Lozano sign a an
6 employment contract containing a waiver of her fundamental right to privacy as a condition of
7 employment and in violation of the California Constitution, Art. 1, § 1, the United States
8 Constitution, Amendments 1st, 4th, 5th, 9th and 14th, and numerous statutory authorities including,
9 without limitation, Labor Code § 432.5 and Civil Code 3513. Contracts like the one Ms. Lozano
10 signed with RVNA that contain waivers of fundamental rights are void and unenforceable in
11 violation of the public policy of the state of California and therefore the public interest at large.

12 152. As a result of the aforesaid violation, Ms. Lozano is entitled to the right to rescind
13 the Contract entirely and unilaterally without RVNA’s consent and is further entitled to any
14 damages incurred as a result of being forced to waive her rights. Cal. Civ. Code § 1689(b)(6) (a
15 contract may be rescinded “[i]f the public interest will be prejudiced by permitting the contract to
16 stand.”)

17 153. Plaintiff is further entitled to an award of attorney’s fees and costs pursuant to Cal.
18 Code Civ. Proc. § 1021.5, governing “public interest fee awards.” By engaging in violations of
19 well settled public policies codified in California statutes, Defendant sought to chill the freedom
20 of speech without retribution, for the purpose of avoiding liability to Defendant’s sole benefit. As
21 such, Plaintiff’s claims seek to vindicate the important public rights of free speech and equal
22 protection of the laws which confer a significant benefit on California taxpayers and to all
23 American citizens. The financial benefit to Plaintiff is far less than to the public at large since
24 Plaintiff’s damages are limited by statute, entitling Plaintiff to an award for reasonable attorney’s
25 fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

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NINETEENTH CAUSE OF ACTION

Unfair Business Practices in Violation of

Cal. Business & Prof. Code §§ 17200, *et seq.*

**(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS,
INC., a California corporation; and DOES 1-100, inclusive)**

154. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-153, above.

155. Cal. Bus. & Prof. Code § 17200 provides: “As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising [or] act[.]”

156. Defendants, and each of them, are "persons" as defined under Business and Professions Code § 17021.35. Each of the directors, officers and/or agents of Defendant are equally responsible for the acts of the others as set forth in Business and Professions Code §17095.

157. Defendant RVNA operates nationwide as an insurance broker and program administrator, exclusively developing and managing insurance product lines for A+ rated carriers for over 25 years.” Defendant advertises their services through various mediums, including on their website at www.RVNuccio.com. As such, RVNA is a covered entity as defined in Business and Professions Code §§ 17022 and 17024.

158. As more fully alleged herein, Defendant engaged in unfair business practices by, *inter alia*, failing to maintain anti-discrimination and anti-retaliation policies, theft of wages including the failure to indemnify employees, unlawful collection of wages, requiring employees to sign employment contracts that require that they both waive their fundamental right to privacy in its entirety and therefore agree to waive their right to arbitration and a jury trial with respect to any claims against RVNA for violations of, or invasion of the right to privacy. Defendant RVNA further conspired with Defendant ADP to deny a reasonable accommodation to Plaintiff by delegating its duty to comply with the FEHA and making illegal determinations regarding her rights to reasonable accommodations including the right to take a finite leave of absence and the right a continuation of medical benefits during any period of leave resulting in her constructive termination. Defendant’s acts and omissions constitute violations of, without limitation, the

California Labor Code §§ 98.6, 221, 432.5, 1102.5(b),(d), 2802, 6400-6403 and 2699, *et seq.* (“PAGA”) and the Fair Employment & Housing Act, California Government Code §§ 12940, *et seq.*

159. Defendant has engaged in these acts for the sole purpose of financial gain and in conscious disregard of civil rights.

160. Violations of the FEHA, Labor Code and other laws and regulations as alleged by this complaint, caused actual injury to Plaintiff, and in and among other wrongful, tortious and illegal acts and omissions and constitute unfair business practices in violation of the Unfair Competition Law, Business & Professions Code § 17200, *et seq.*

161. Shareholders, owners, directors, officers, managing agents and/or sole proprietors misappropriated and converted to themselves for their individual advantage all profits derived from their failures to comply with workplace laws and regulations governing fair wages and anti-retaliation provisions as alleged throughout this complaint.

162. As a result of Defendant’s unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff, and ultimately to members of the public. Defendant’s utilization of such unfair business practices constitutes unfair competition and provides an unfair economic advantage to the Defendant.

163. Defendant's unfair business practices entitle Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to orders that the Defendant account for, disgorge and restore to Plaintiff the compensation unlawfully withheld from them and for which they were unjustly enriched by such unlawful practices.

164. Pursuant to Business and Professions Code § 17203, Plaintiff requests restitution and/or disgorgement of all monies wrongfully retained by Defendant in violation of Business and Professions Code § 17000 *et seq.* and 17200 *et seq.*

165. By engaging in violations of well settled public policies codified in California statutes, defendant sought to chill the freedom of speech without retribution, for the purpose of avoiding liability to Defendant’s sole benefit. As such, Plaintiff’s claims seek to vindicate the important public rights of free speech and equal protection of the laws which confer a significant benefit on California taxpayers and all-American citizens. The financial benefit to Plaintiff is far

less than to the public at large since Plaintiff's damages are limited by statute. Based thereon, Plaintiff is entitled to reasonable attorney's fees pursuant to C.C.P. §1021.5.

TWENTIETH CAUSE OF ACTION

Wrongful Termination Constructive Termination in Violation of Public Policy (Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS, INC., a California corporation; and DOES 1-100, inclusive)

166. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-165, above.

167. As more fully alleged herein, at all times during her employment with Defendant, Ms. Lozano performed her job duties in an exemplary manner and complied with all employment related policies made known to her. Thus, Defendant's decisions to discriminate, deny reasonable accommodations, fail to enter into the good faith process, retaliate and constructively terminate her employment were in retaliation for engaging in protected activities and opposing unlawful conduct. Defendant cut off Ms. Lozano's health insurance with knowledge that she would be unable to obtain medical care during her leave of absence and could not alternatively return to work without an accommodation, forcing her to quit or compromise her health. Defendant RVNA further conspired with Defendant ADP to deny a reasonable accommodation to Plaintiff by making illegal determinations regarding her rights to reasonable accommodations including the right to take a finite leave of absence and the right a continuation of medical benefits during any period of leave. Defendant's reasons were pretextual and motivated in whole or part by their efforts to silence Ms. Lozano's speech and to interfere with the exercise of her rights.

168. As further alleged herein, the aforementioned discrimination, harassment, retaliation and wrongful constructive termination have resulted in damage and injury to Plaintiff prohibited by law and are therefore in direct contravention of the public policies of the State of California and the United States that seek to protect employees from discrimination and actions in reporting and advocating corrective action of statutory violations.

169. By reason of the aforementioned conduct and circumstances, Defendants, and

each of them, violated the fundamental public policies of the State of California, as set forth in Cal. Gov't Code § 12940, *et seq.*, and the Cal. Labor Code §§ 98.6, 221, 432.5, 1102.5(b) and (d), 2802 and § 6400-6403, which mandate that employees be free from unlawful discrimination, harassment, retaliation, unlawful collection wages, protection from unsafe work environments and wrongful constructive termination. As a further result of the aforesaid conduct of Defendants, and each of them, Plaintiff has been deprived of her right to a work environment free from discrimination and harassment pursuant to Cal. Gov't Code § 12940(k).

170. Plaintiff is informed and believes and thereon alleges that any other reasons proffered by Defendants were and are pretextual in nature.

171. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

172. As a further direct and legal result of the acts and conduct of Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all the injuries are reasonably certain to be permanent in character.

173. Plaintiff is informed and believes and thereon alleges that defendants and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount according to proof. Cal. Civ. Code §3294.

174. By engaging in violations of well settled public policies codified in California statutes, Defendant sought to chill the freedom of speech without retribution, for the purpose of avoiding liability to Defendant's sole benefit. As such, Plaintiff's claims seek to vindicate the important public rights of free speech and equal protection of the laws which confer a significant

benefit on California taxpayers and to all American citizens. The financial benefit to Plaintiff is far less than to the public at large since Plaintiff's damages are limited by statute. Based thereon, Plaintiff is entitled to reasonable attorney's fees pursuant to C.C.P. §1021.5.

TWENTY-FIRST CAUSE OF ACTION

Invasion of Privacy

(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS, INC., a California corporation; KERRI MCDONALD, an individual; and DOES 1-100, inclusive)

175. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-174, above.

176. Ms. Lozano had a reasonable expectation of privacy in her personal, medical, and family affairs.

177. As more fully alleged herein, Defendants and each of them intentionally and with reckless disregard for Ms. Lozano's right to privacy in her personal medical condition or disability and personal matters or family affairs, intrusions that would be highly offensive to a reasonable person.

178. Plaintiff is informed and believes and thereon alleges that any other reasons proffered by Defendants were and are pretextual in nature.

179. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

180. As a further direct and legal result of the acts and conduct of Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all the injuries are reasonably certain to be permanent in character.

181. Plaintiff is informed and believes and thereon alleges that defendants and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently,

1 and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper
2 and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
3 rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified
4 the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or
5 malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount
6 according to proof. Cal. Civ. Code §3294.

7 182. By engaging in violations of well settled public policies codified in California
8 statutes, Defendant sought to chill the freedom of speech without retribution, for the purpose of
9 avoiding liability to Defendant's sole benefit. As such, Plaintiff's claims seek to vindicate the
10 important public rights of free speech and equal protection of the laws which confer a significant
11 benefit on California taxpayers and to all American citizens. The financial benefit to Plaintiff is
12 far less than to the public at large since Plaintiff's damages are limited by statute. Based thereon,
13 Plaintiff is entitled to reasonable attorney's fees pursuant to C.C.P. §1021.5.

14 **TWENTY-SECOND CAUSE OF ACTION**

15 **Intentional Infliction of Emotional Distress**

16 **(Against Defendants R.V. NUCCIO & ASSOCIATES INSURANCE BROKERS,**
17 **INC., a California corporation; KERRI MCDONALD, an individual; LEYKIN**
18 **ALARCON, an individual; CHRISTIAN BAIR, an individual; and DOES 1-100, inclusive)**

19 183. Plaintiff realleges and incorporates by reference, as though fully set forth herein,
20 each and every allegation set forth in paragraphs 1-182, above.

21 184. As more fully set forth herein, Defendants, and each of them acting in the course
22 and scope of their employment, engaged in extreme and outrageous conduct towards Ms. Lozano
23 with the intention to cause, or with reckless disregard for the probability of causing her to suffer
24 emotional distress, and with wanton and reckless disregard for the injurious result to Ms.
25 Lozano. As set forth in detail under "Facts Common to All Causes of Action," Defendants
26 deprived her of her civil rights under law and sought to hide and obfuscate the discrimination,
27 harassment, retaliation and pretextual reasons for denying her requests for reasonable
28 accommodations including a leave of absence and maintaining her health insurance; and
terminating her employment for exercising her rights, and engaging in protected reporting

activities and disclosure of RVNA's violations of law. Defendant cut off Ms. Lozano's health insurance with knowledge that she would be unable to obtain medical care during her leave of absence and could not alternatively return to work without an accommodation. Defendants' conduct is extreme and outrageous by any measure constitutes despicable conduct and a conscious disregard of Plaintiff's rights.

185. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, medical expenses, loss of earnings and future earning capacity, costs of suit, and other pecuniary loss not presently ascertained.

186. As a further direct and legal result of the acts and conduct of Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but she is informed and believes and thereon alleges that some if not all the injuries are reasonably certain to be permanent in character.

187. As a further proximate result of the acts of Defendants and each of them, Plaintiff has been damaged in that she has been required to expend money and to incur obligations and may continue to do so in the future to expend money and incur obligations, for treatment and/or medication reasonably required in the relief of the injuries herein alleged.

188. Plaintiff is informed and believes and thereon alleges that defendants and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount according to proof. Cal. Civ. Code §3294.

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PRAYER FOR DAMAGES

WHEREFORE, the Plaintiff, on behalf of herself prays as follows:

1. That the Plaintiff be awarded all costs and litigation expenses incurred in bring this action;
2. For reasonable attorneys' fees and costs incurred in bringing this action as follows:
 - a. For Plaintiff's First through Eighth Causes of Action pursuant to Cal. Gov't Code § 12965(b);
 - b. For Plaintiff's Ninth Cause of Action pursuant to Cal. Civ. Code § 52.1(i);
 - c. For Plaintiff's Tenth through Thirteenth and Sixteenth Causes of Action pursuant to Cal. Labor Code § 2699(g)(1);
 - d. For Plaintiff's Tenth through Thirteenth, Sixteenth and Eighteenth through Twentieth Causes of Action pursuant to Cal. Code Civ. Proc. § 1021.5;
 - e. For Plaintiff's Fourteenth Cause of Action pursuant to Cal. Labor Code § 218.5;
 - f. For Plaintiff's Fifteenth Cause of Action pursuant to Cal. Labor Code § 2802(c);
3. For penalties for violation of Cal. Labor Code §§ 98.6, 1102.5(b) and (d), 6400-6403, 221, 2802 and 432.5 pursuant to Labor Code §2699(f)(2);
4. For an award of prejudgment and post judgment interest;
5. For injunctive and equitable relief;
6. For general and emotional distress damages, according to proof;
7. For special damages, including medical expenses, and loss of earnings and earnings capacity, in an amount according to proof;

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- 1 8. For punitive damages pursuant to Cal. Civ. Code §§ 3294 and 52.1(b)(1);
2 9. For such other and further relief as the Court deems just and proper.

3 Dated: July 1, 2020

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5 By:

LAW OFFICE OF PEGGY A. FARRELL, APC

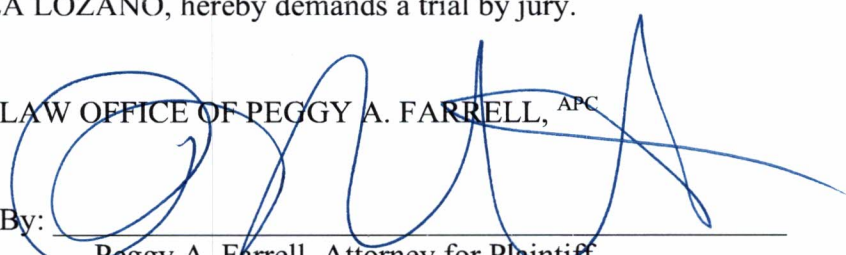
6 Peggy A. Farrell, Attorney for Plaintiff
7 ANDREA LOZANO
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DEMAND FOR JURY TRIAL

Plaintiff, ANDREA LOZANO, hereby demands a trial by jury.

Dated: July 1, 2020

LAW OFFICE OF PEGGY A. FARRELL, APC

By: 

Peggy A. Farrell, Attorney for Plaintiff
ANDREA LOZANO