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JESUS VELAZQUEZ AND
KRYSTLE GARCIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

JESUS VELAZQUEZ and KRYSTLE
GARCIA, in their individual capacities and
as aggrieved employees under the California
Labor Code Private Attorneys General Act
of 2004;

Plaintiffs,

vs.

MODERN WIRELESS, INC., a California
corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No. 30-2020-01166897-CU-WT-CXC

**PLAINTIFFS JESUS VELAZQUEZ AND
KRYSTLE GARCIA'S COMPLAINT
DEMAND FOR TRIAL BY JURY**

Assigned for all purposes to: Judge Peter Wilson

Dept: CX102

1 Plaintiffs JESUS VELAZQUEZ (“Velazquez”) and KRYSTLE GARCIA (“Garcia”)
2 (collectively “Plaintiffs”) bring this action against Defendant MODERN WIRELESS, INC. and
3 DOES 1 through 10 (“MWI” or “Defendant”) and allege as follows:

4 **NATURE OF ACTION**

5 1. Plaintiffs bring this action against their employer for violation of the California
6 Fair Employment and Housing Act (as to Velazquez) and violations of the California Labor
7 Code (as to both Plaintiffs) for damages, including but not limited to unpaid wages, interest,
8 civil penalties under the Private Attorney General Act, statutory penalties under the California
9 Labor Code, costs and, where applicable, attorney’s fees, resulting from MWI’s unlawful
10 employment practices in violation of California law.

11 **THE PARTIES**

12 2. Velazquez is, and at all relevant times herein was, an individual residing within
13 Los Angeles County, California. Velazquez is a former employee of MWI.

14 3. Garcia is, and at all relevant times herein was, an individual residing within
15 Orange County, California. Garcia is a current employee of MWI.

16 4. MWI is, and at all relevant times herein was, a corporation organized under the
17 laws of California with a principal place of business in the city of Anaheim in Orange County,
18 California.

19 5. Plaintiffs are ignorant of the true names and capacities of defendants sued herein
20 as DOES 1 through 10 inclusive, and therefore sue these defendants by such fictitious names
21 and capacities until ascertained.

22 6. Plaintiffs are informed and believe and, on that basis, allege that each fictitiously
23 named defendant is responsible in some manner for the occurrences herein alleged and that
24 Plaintiffs’ injuries as herein alleged were proximately caused by the conduct of such defendants.

25 7. Plaintiffs are informed and believe and thereupon allege that at all times material
26 herein, each of the Defendants was the agent, employee and/or were working in concert with
27 their co-defendants and were acting within the course and scope of such agency, employment
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1 and/or concerted activity.

2 8. To the extent that certain acts and omissions were perpetrated by certain
3 defendants, the remaining defendant or defendants confirmed and ratified said acts and
4 omissions.

5 9. Plaintiffs are informed and believe and thereupon allege that at all times material
6 herein, each defendant was completely dominated and controlled by his co-defendant and each
7 was the alter ego of the other.

8 10. Whenever and wherever reference is made to individuals, who are not named as
9 Plaintiffs or defendant(s) in this complaint but were employees/agents of each defendant, such
10 individuals at all relevant times acted on behalf of each defendant within the scope of their
11 employment.

12 11. At all times relevant, each defendant was the employer, joint employer, alter ego
13 and/or agent of each of the Defendants.

14 **JURISDICTION AND VENUE**

15 12. This action is properly filed in Orange County because the acts and omissions
16 that give rise to the claims against the Defendant took place in Orange County, California,
17 because Velazquez was and Garcia is employed by Defendant in Orange County, California,
18 because the injuries to the Plaintiffs occurred in Orange County, California, and because
19 Defendant transacts business in Orange County, California.

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 13. Plaintiffs have complied with the PAGA notice provision outlined in Cal. *Lab.*
22 *Code* Section 2699.3(a)(1) by giving written notice by certified mail on May 21, 2020, to the
23 Labor and Workforce Development Agency (LWDA) and the Defendants of the specific
24 provisions of this code alleged to have been violated. The LWDA provided an identification
25 number of LWDA-CM-787580-20, but has not provided Plaintiffs with notice that it intends to
26 investigate these violations. Therefore, since over 65 calendar days have elapsed since the
27 postmark date of Plaintiffs' notice, Plaintiffs are entitled to commence this action under Cal.

1 *Lab. Code* § 2699.3(a)(2)(A). A true and correct copy of the complaint filed by Plaintiffs with
2 the LWDA is attached hereto as Exhibit A.

3 14. Velazquez has complied with the requirement that he exhaust his administrative
4 remedies with respect to his California Fair Employment and Housing Act claims by filing a
5 complaint with the California Department of Fair Employment and Housing (DFEH) on October
6 21, 2020. The DFEH assigned his complaint the DFEH matter number 202010-11587121 and
7 issued him a right-to-sue notice. A true and correct copy of the complaint filed by Velazquez
8 with the DFEH and the right-to-sue notice received therefrom is attached hereto as Exhibit B.

9 **FACTUAL ALLEGATIONS**

10 15. MWI was founded in 2001 by brothers Jeyson Sanchez and John Sanchez. On
11 information and belief, Jeyson Sanchez is the sole shareholder/owner of MWI and acts as its
12 President and Chief Financial Officer of the company.

13 16. MWI sells cellular telephones, electronics and accessories and pre-paid phone
14 services from its corporate office located in Anaheim, California. MWI currently employs
15 approximately 30 employees in California, both in its corporate office and field employees
16 throughout the United States.

17 **Velazquez's Employment with MWI**

18 17. Velazquez worked for MWI from on or about September 28, 2015 until February
19 21, 2020, at which time his employment with MWI was terminated.

20 18. At the time of his hire by MWI, Velazquez was employed as an outside field
21 representative, reporting to Jerry Gallo ("Gallo"), MWI's National Business Development
22 Manager. Gallo in turn reports to Jeyson Sanchez.

23 19. In this role, Velazquez was required to open new dealer accounts and service
24 existing dealer accounts. A dealer is a business that provides MWI cell phone services to its
25 customers.

26 20. As an outside field representative, Velazquez was classified as a non-exempt
27 employee and received hourly wages and commission.

1 21. However, though he was classified as a non-exempt employee, Velazquez was
2 not provided California compliant meal and rest periods and, although he was eligible for
3 overtime compensation, Velazquez was not compensated for all hours he worked.

4 22. Moreover, while overtime must be paid on all nondiscretionary earnings,
5 including commissions, MWI did not factor in Velazquez's commissions when calculating and
6 paying overtime to Velazquez on those occasions when he received overtime compensation.

7 23. Velazquez was required to complete a company-provided paper timesheet on a
8 daily basis and told by Gallo to make sure that his time entries consistently listed his work hours
9 as 9 a.m. to 6 p.m., with an hour for lunch, even though (i) Velazquez was not provided an hour
10 unpaid meal period, and (ii) Velazquez frequently worked more than eight hours in a workday
11 and more than 40 hours in a workweek.

12 24. Indeed, Velazquez frequently worked past 6 p.m. and also received business calls
13 (on his personal cell phone) from dealers in the evenings and weekends on his days off that he
14 was required to handle. In addition, Velazquez frequently had to travel far distances from his
15 home office and was not paid wages for driving time that is compensable under California law.

16 25. Gallo was aware that Velazquez was handling such work in his off-hours.

17 26. On some occasions, Velazquez did list some (but not all) overtime that he
18 worked. On such occasions, Velazquez was told by Gallo that he better not list any overtime
19 hours again.

20 27. In addition, Velazquez was not properly reimbursed for business expenses that
21 he necessarily incurred in the performance of his job duties as an outside field representative.
22 Specifically, Velazquez was required to drive well over 100 miles a day to perform his outside
23 field representatives job duties, which were performed at the dealer sites, but was not adequately
24 reimbursed for the business use of his personal vehicle.

25 28. Moreover, Velazquez was required to use his personal laptop and his personal
26 cell phone for company business and was not adequately reimbursed by MWI for the business
27 use of his personal laptop and personal cell phone. By June 2016, Velazquez was transferred
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1 from an outside field representative position to an inside sales representative role, reporting to
2 Manny Sanchez (“Sanchez”). Sanchez reported to John Sanchez, his cousin.

3 29. As an inside sales representative, Velazquez’s job duties included opening new
4 dealer accounts, servicing existing dealer accounts and selling MWI products to dealers by
5 phone from the MWI corporate office.

6 30. On a regular basis even in this inside sales role and through the termination of
7 his employment, Velazquez was required to use his personal vehicle to travel to dealer locations
8 to perform his job duties or run errands for MWI, though Velazquez was not reimbursed for the
9 business use of his personal vehicle on these regular occasions.

10 31. On a regular basis in this inside sales role and through the termination of his
11 employment, Velazquez also used his personal cell phone to perform his job duties but was not
12 reimbursed for the business use of his personal cell phone.

13 32. In the inside sales representative role, Velazquez was also classified as a non-
14 exempt employee and received hourly wages and commission. However, again Velazquez was
15 not regularly provided California compliant meal and rest periods and, although he was eligible
16 for overtime compensation, Velazquez was not compensated for all hours he worked.

17 33. In that regard, Sanchez gave Velazquez the same inappropriate type of instruction
18 that Gallo had given him regarding work hours, which was to clock out at the end of his 8-hour
19 shift but continue working if needed to assist the dealers.

20 34. Sanchez remained Velazquez’s supervisor until approximately November 2017
21 at which time Eylin Cardani (“Cardani”) became Velazquez’s supervisor. Cardani is Jeyson
22 Sanchez’s niece. Cardani reiterated the MWI approach to overtime, as previously conveyed by
23 Gallo and Sanchez, that Velazquez was not to record overtime hours.

24 35. On a few occasions when Velazquez actually reported overtime hours in the
25 timekeeping system, Sanchez and Cardani criticized Velazquez for doing so and reminded him
26 that if it benefited the dealer, it would result in increased commission to Velazquez and,
27 therefore, Velazquez should not be reporting the overtime hours to increase his base wage.
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36. Moreover, on the regular occasions where Velazquez needed to travel to the dealer's locations as an inside sales representative for MWI business purposes, Velazquez was required to do so after clocking out from the time keeping system.

37. Furthermore, as noted, Moreover, MWI did not factor in Velazquez's commissions when calculating and paying overtime to Velazquez.

Garcia's Employment with MWI

38. Garcia has worked for MWI since on or about January 20, 2017 and remains an active employee of MWI.

39. Garcia was hired as an inside sales support specialist working from the MWI Anaheim office and reporting to Sanchez.

40. As an inside sales support specialist, Garcia's job duties included making a lot of cold calls to open new dealer accounts, servicing existing dealer accounts and selling MWI products to dealers by phone from the MWI corporate office.

41. In this inside sales support specialist role, Garcia was occasionally required to use her personal cell phone to perform her job duties but was not reimbursed for the business use of her personal cell phone.

42. Garcia transferred to an outside field representative position at MWI in August 2017, still reporting to Sanchez.

43. In this role, Garcia was required to open new dealer accounts and service existing dealer accounts and remained a non-exempt employee. Garcia continued to receive hourly wages and commission in this role.

44. However, though she was classified as a non-exempt employee, Garcia was eligible for overtime compensation, Garcia was not compensated for all overtime hours that she worked.

45. Garcia never received any overtime on the commissions that she earned even though she worked overtime hours in the period for which the commission wages were earned.

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1 46. In addition, Garcia frequently had to travel far distances from her home office
2 and was not paid wages for driving time that is compensable under California law.

3 47. Garcia was required to complete a company-provided paper timesheet on a daily
4 basis and was permitted to record overtime hours on the occasions when she had to work
5 weekends for grand openings of Modern Wireless exclusive stores. Otherwise, Garcia was not
6 permitted to report the overtime hours that she worked during her daily work schedule.

7 48. Garcia also occasionally worked past 6 p.m. and also received business calls from
8 dealers in the evenings and weekends on her days off that she was required to handle.

9 49. On information and belief, Sanchez was aware that Garcia was handling such
10 work in her off-hours.

11 50. In addition, in her role as an outside field representative, Garcia was not properly
12 reimbursed for business expenses that she necessarily incurred in the performance of her job
13 duties.

14 51. Specifically, Garcia was required to drive well over 1,000 miles a week to
15 perform her outside field representatives job duties, which were performed at the dealer sites,
16 but was not adequately reimbursed for the business use of her personal vehicle.

17 52. Garcia remained in the outside field representative position until June 2019, at
18 which time Garcia transferred back into an inside sales support specialist position. Garcia
19 requested the transfer in part based on MWI's failure to adequately reimburse her for the
20 business expenses that she was incurring in using her personal vehicle to drive 1,000+ miles per
21 week for work and in part based on their failure to properly pay commissions to her during her
22 time as an outside field representative.

23 53. In the inside sales support specialist position as of June 2019, Garcia began
24 reporting to Cardani.

25 54. In this role and under Cardani's supervision, Garcia was also required to work
26 overtime hours without overtime compensation and was not regularly provided California-
27 compliant meal and rest periods.

1 55. For example, Garcia would be required to attend rallies and conferences on behalf
2 of MWI and would not be compensated for all hours that she worked on such occasions, being
3 required to limit her reported hours to 8 on such days. In addition, on occasion meetings were
4 scheduled during lunch periods that Garcia (and Velazquez) were required to attend.

5 56. Moreover, while overtime must be paid on all nondiscretionary earnings,
6 including commissions, MWI did not factor in Garcia's commissions when calculating and
7 paying overtime to Garcia on those occasions when she received overtime compensation.

8 **Commissions and Itemized Wage Statements**

9 57. MWI failed to provide Garcia and Velazquez with compliant itemized wage
10 statements, making it impossible for Garcia and Velazquez to determine whether their wages
11 were accurate and, on many occasions, MWI paid wages inaccurately.

12 58. By way of example, the itemized wage statements that MWI issued to Garcia and
13 Velazquez failed to list (i) their hourly rates of pay, (ii) their overtime rates of pay, and (iii) the
14 date of the beginning of each pay period.

15 59. In addition, MWI failed to issue either Garcia or Velazquez the proper Notice to
16 Employee required by California Labor Code Section 2810.5 setting forth their rates of pay.

17 60. In addition, as it relates to their commission wages, neither Garcia nor Velazquez
18 was given any information in writing at the time of the payment of commission wages that
19 explained the basis for the calculation of their commissions.

20 61. Moreover, they were not given written commission plans or agreements or other
21 statements identifying the commission wage program in which they participated as employees,
22 other than as follows:

23 a. At the time of his hire, Velazquez was given a document called the
24 "Outside Sales Pay Structure 2015" which identified some information regarding commission
25 and piece rate earnings which he was eligible to receive for the sales of phones, accessories,
26 SIM cards and pre-paid phone activations. However, during his employment, this structure
27 changed regularly, and no changes were ever documented or communicated in advance or in
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1 writing to Velazquez regarding the commissions and piece rate earnings he was eligible to
2 receive.

3 b. At the time of her hire, Garcia was given an offer letter that included
4 information regarding commission and piece rate earnings which she was eligible to receive for
5 the sales of phones, accessories, SIM cards and pre-paid phone activations. However, during
6 her employment, this structure changed regularly, and no changes were ever documented or
7 communicated in advance or in writing to Garcia regarding the commissions and piece rate
8 earnings she was eligible to receive.

9 62. Velazquez and Garcia had no reasonable means to determine whether the
10 calculation of their commissions was correct.

11 63. On many occasions, both Garcia and Velazquez asked their supervisor, Cardani,
12 for a report to explain the calculation of their commissions, but no such report was ever provided
13 to them.

14 64. In addition, Sanchez told Garcia that MWI could not provide them a report and
15 that it was their responsibility to track this information themselves.

16 65. MWI failed to provide this information in order to deprive Garcia and Velazquez
17 of commission wages that were due to them throughout their employment.

18 ***Hostile Work Environment and Velazquez's Termination***

19 66. Throughout Velazquez's employment with MWI, Cardani subjected Velazquez
20 and other male employees to a hostile work environment on the basis of their sex, one in which
21 Velazquez and other male employees were also subjected to retaliation for not engaging in a
22 sexual relationship with her.

23 67. For a period of time in mid-2016 to early-2017, Cardani had a sexual relationship
24 with a subordinate employee, who also is the brother of Velazquez.

25 68. Cardani told this employee that he needed to keep their sexual relationship a
26 secret from other employees – as she was a supervisor and he was a non-supervisory employee
27 – or the employee could get in trouble and lose his job. The employee agreed to keep the
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1 relationship a secret at work.

2 69. Notwithstanding that Cardani and the employee both agreed to keep the
3 relationship a secret from others at MWI, other employees began to suspect that Cardani and the
4 employee were engaged in a sexual relationship. As a result, the employee decided to end the
5 relationship with Cardani.

6 70. After the employee ended the relationship with Cardani, Cardani's behavior
7 towards the employee began to change, and she became less friendly to him. She ultimately
8 confronted him again about whether he shared their relationship with Velazquez or any other
9 employees and again threatened that doing so would be harmful to his employment at MWI.

10 71. In addition, when Velazquez's brother started dating another person, Cardani was
11 very critical of the employee's new girlfriend, telling the employee that she was not the right
12 girl for him.

13 72. In addition to engaging in a sexual relationship with Velazquez's brother at work,
14 Cardani also engaged in sexually inappropriate conduct towards other male employees at MWI,
15 including Velazquez.

16 73. By way of example, Cardani frequently touched Velazquez and other male non-
17 supervisory employees, including touching their cheeks and faces and rubbing up against them
18 when passing them at work. Cardani regularly invaded the personal space of her male
19 subordinates, making Velazquez and other men at work uncomfortable.

20 74. In addition, Cardani regularly made sexual comments and jokes at work,
21 including talking about the size of men's penises, and flirted with men at work.

22 75. On a number of occasions, Cardani commented that when Velazquez was at
23 work, his "dick is mine" or that his "dick belongs to me". She made these comments openly.

24 76. Cardani also made this comment about Velazquez's penis belonging to her at the
25 Christmas party in 2018, specifically mentioning this to Velazquez's then-girlfriend and mother
26 of his three children in Velazquez's presence, who did not work at MWI but attended the
27 Christmas party as Velazquez's guest.

1 77. In addition, Cardani made inappropriate comments about and questioned other
2 employees about Velazquez's relationship with his then-girlfriend, who was also the mother of
3 his three children.

4 78. In August 2019, Velazquez's relationship with his then-girlfriend ended and he
5 started dating his co-worker, Garcia.

6 79. Sometime in August or September 2019, Cardani heard from another employee
7 that Velazquez had started dating Garcia and immediately became jealous and antagonistic
8 towards them both.

9 80. In October 2019, Cardani called Garcia to her desk and, in the presence of other
10 co-workers, loudly asked Garcia if Velazquez had left the mother of his children for her. Garcia
11 was embarrassed and in shock by Cardani's inappropriate question and immediately called
12 Velazquez over to the desk. Cardani then repeated the question to both Garcia and Velazquez.

13 81. Cardani also told Velazquez on many occasions that Garcia wanted to have a
14 baby and that he needed to get Garcia pregnant. Cardani also told Garcia that she needed to get
15 pregnant by Velazquez.

16 82. In November 2019, Cardani told Garcia, in an open area with other employees
17 present, that if she and Velazquez were dating, there would be issues. Cardani angrily told
18 Garcia that she was not allowed to date Velazquez because they were co-workers, despite the
19 fact that (i) there was no company policy prohibiting co-workers from dating and (ii) Cardani,
20 herself, had no issue with engaging in a sexual relationship herself with a nonsupervisory
21 employee at MWI, even though she was married.

22 83. Velazquez and Garcia refused to terminate their dating relationship, something
23 that did not impact the workplace or their performance. To retaliate against them for dating,
24 Cardani then changed the break schedules for Garcia and Velazquez so that they could not take
25 any breaks together at the same time, on the occasions when they were authorized and permitted
26 or take timely rest breaks.

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1 84. On November 5, 2019, Cardani falsely claimed that Velazquez and Garcia had
2 taken a rest break together, something they had not done, and told Velazquez that she was giving
3 him a verbal warning for doing so.

4 85. On November 14, 2019, Cardani issued Velazquez a written warning. In the
5 warning, she claimed that Velazquez had not been meeting the outgoing call expectations and
6 that the quality of the calls he was making had been poor and lacked follow-up. During the
7 November 14, 2019 meeting, Cardani again criticized Velazquez for dating Garcia.

8 86. The written warning, however, was inaccurate. In fact, Velazquez was meeting
9 the outgoing call expectations and the quality and follow-up was acceptable. Cardani also used
10 the records of only one of the two phones she knew Velazquez utilized for calls to make this
11 accusation. Cardani issued this warning knowing that the warning was inaccurate in an effort to
12 retaliate against Velazquez for dating Garcia.

13 87. Indeed, on the same day that she issued the November 14, 2019, and prior to
14 meeting with Velazquez, Cardani pulled Velazquez's brother, with whom she had previously
15 had a sexual relationship, into a conference room and drilled him to tell her anything he knew
16 about Velazquez's relationship with Garcia.

17 88. Cardani told Velazquez's brother that she found out that Velazquez was having
18 a relationship with Garcia and it was a problem for her and that she took it personally. Cardani
19 reminded the employee that she hoped that he had not shared with Velazquez or anyone else at
20 MWI that she (Cardani) and the employee had previously had a sexual relationship.

21 89. After the November 14, 2019 written warning was issued, Cardani ignored and
22 was rude to Velazquez. To further retaliate against him for dating Garcia, Cardani had
23 Velazquez transferred temporarily away from the corporate office to work at a different location.

24 90. Ultimately, on February 21, 2020, Cardani called Velazquez into the conference
25 room and told him that it was not working out for him at work and that they were going to
26 terminate his employment with MWI.

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1 **FIRST CAUSE OF ACTION**

2 ***Failure to Pay Wages against all Defendants***

3 91. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1 through 91
4 above, as though each such Paragraph were fully set forth herein.

5 92. California law provides that, unless the employer can establish an employee is
6 exempt from the minimum wage and overtime requirements of the law (i.e., outside sales
7 employee) or exempt solely from the overtime requirements of the law (i.e., executive,
8 administrative, professional employee or commissioned exempt employee), the employer must
9 compensate the employee for all hours worked, including at a premium rate for any hours
10 worked in excess of 8 in a workday or 40 in a workweek.

11 93. Plaintiffs were hourly, non-exempt employees who did not receive all wages due
12 for work performed, including a premium overtime rate for all hours worked in excess of 8 in a
13 workday and 40 in a workweek.

14 94. Plaintiffs were also not paid the entirety of commissions that they earned
15 throughout their employment.

16 95. Accordingly, Plaintiffs have been damaged in an amount that exceeds the
17 jurisdictional minimum of this Court and will be subject to proof at trial.

18 96. In addition, Plaintiffs were forced to retain attorneys to pursue their unpaid wages
19 from Defendant and are therefore entitled to attorney's fees under the California Labor Code in
20 addition to receiving back wages owed and interest thereon.

21 **SECOND CAUSE OF ACTION**

22 ***Failure to Pay All Wages at Termination against all Defendants***

23 97. Plaintiffs re-alleges and incorporates herein by reference Paragraphs 1 through
24 91 above, as though each such Paragraph were fully set forth herein.

25 98. Under California law, upon the involuntary termination of employment, all
26 wages owing and due to the employee must be paid to the employee on the employee's
27 termination date.

99. If an employer does not provide an involuntarily terminated employee with all wages then owing and due to the employee, the employee's wage shall continue as a "waiting time penalty" for no more than thirty calendar days.

100. Velazquez's employment with Defendant ended over thirty days prior to the filing of this Complaint. As of today, Defendant has not paid Velazquez all wages due to him, including but not limited to the overtime compensation that Velazquez earned during his employment with Defendant.

101. Accordingly, Velazquez is entitled to 30 days of additional compensation at his final rate of pay as a waiting time penalty.

102. In addition, Velazquez was forced to retain attorneys to pursue his claim for unpaid wages and waiting time penalties and is entitled to attorney's fees under the California Labor Code.

THIRD CAUSE OF ACTION

Failure to Provide Meal Breaks against all Defendants

103. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1 through 91 above, as though each such Paragraph were fully set forth herein.

104. California law generally requires that an employer provide employees with a thirty (30) minute uninterrupted meal period before working an employee for more than five hours in a workday.

105. California law requires employers who do not provide their non-exempt employees with the requisite meal periods to compensate the employees for each day a meal period is not provided in the additional amount of the equivalent of one hour of pay at the employee's regular rate of pay.

106. Defendant did not regularly provide Plaintiffs with thirty (30) minute uninterrupted meal periods for each workday and did not, on such occasions, provide Plaintiffs with one hour of additional compensation per workday at Plaintiffs' regular rate of pay to compensate them for meal periods not provided.

107. As such, Plaintiffs are entitled to receive compensation for each workday that Defendant failed to provide Plaintiffs with a thirty (30) minute uninterrupted meal period and have been damaged in an amount that exceeds the jurisdictional minimum of this Court and will be subject to proof at trial.

FOURTH CAUSE OF ACTION

Failure to Provide Rest Breaks against all Defendants

108. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1 through 91 above, as though each such Paragraph were fully set forth herein.

109. California law generally requires that an employer authorize and permit their employees to take a ten (10) minute rest period for each four-hour work shift, or major fraction thereof, except that no rest period is due to an employee who does not work more than 3.5 hours in a day.

110. California law requires employers who do not authorize and permit their non-exempt employees to take the requisite rest periods to compensate the employee for each day a rest period is not provided in the additional amount of the equivalent of one hour of pay at the employee's regular rate of pay.

111. Defendant did not regularly provide Plaintiffs with rest breaks for each workday they worked more than 3.5 hours and did not, on such occasions, provide Plaintiffs with one hour of additional compensation per workday at their regular rate of pay to compensate them for rest periods not provided.

112. As such, Plaintiffs are entitled to receive compensation for each workday that Defendant failed to provide them with a rest break and have been damaged in an amount that exceeds the jurisdictional minimum of this Court and will be subject to proof at trial.

FIFTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements

113. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1 through 91 above, as though each such Paragraph were fully set forth herein.

1 114. Under California law, Defendant was required to provide Plaintiffs with an
2 itemized wage statement to accompany each of their paychecks that complied with California
3 Labor Code section 226(a).

4 115. Specifically, at the time of each payment of wages, Defendant was required to
5 furnish Plaintiffs an accurate itemized statement in writing showing (1) gross wages earned, (2)
6 total hours worked by, (3) the number of piece-rate units earned and any applicable piece rate if
7 the employee is paid on a piece-rate basis and for employees paid by commission the
8 commission rate and amount of sales, (4) all deductions, provided that all deductions made on
9 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
10 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee
11 and only the last four digits of his or her social security number or an employee identification
12 number other than a social security number, (8) the name and address of the legal entity that is
13 the employer, and (9) all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate by the employee.

15 116. An employee suffering injury as a result of a knowing and intentional failure by
16 an employer to comply with Labor Code Section 226(a) is entitled to recover the greater of all
17 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
18 one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to
19 exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
20 costs and reasonable attorney's fees.

21 117. An employee is deemed to suffer injury for purposes of Labor Code Section 226
22 if (i) the employer fails to provide a wage statement, (ii) the employer fails to provide accurate
23 and complete information as required by any one or more of items (1) to (9), inclusive, of Labor
24 Code Section 226(a) and the employee cannot promptly and easily determine from the wage
25 statement alone the amount of the gross wages or net wages paid to the employee during the pay
26 period or any of the other information required to be provided on the itemized wage statement
27 pursuant to items (2) to (4), inclusive, (6), and (9) of Labor Code Section 226(a).

118. Defendant did not provide Plaintiffs with itemized wage statements that complied with California Labor Code section 226(a). Specifically, none of the paychecks by which Defendant paid Plaintiffs contained the detailed information required by the California Labor Code.

119. Plaintiffs have been injured as a result of Defendant having provided them with improper wage statements.

120. In addition, Plaintiffs were forced to retain attorneys to pursue their claim for damages stemming from Defendant having failed to provide them with proper itemized wage statements and are entitled to attorney's fees under the California Labor Code as a result.

SIXTH CAUSE OF ACTION

***Failure to Reimburse Business Expenses in Violation of California Labor Code Section 2802
against all Defendants***

121. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1 through 91 above, as though each such Paragraph were fully set forth herein.

122. California Labor Code Section 2802 provides that an employer must reimburse an employee for reasonable expenses necessarily incurred by the employee in the discharge of his/her duties to the employer.

123. Plaintiffs incurred business expenses which were necessary to the performance of their job duties with the Defendant.

124. Defendant failed to adequately reimburse Plaintiffs for business expenses that they necessarily incurred in the discharge of their duties to the Defendant.

125. As a direct and proximate result of DTWR's unlawful action, Plaintiffs suffered damage.

126. As such, Plaintiffs are entitled to receive reimbursement of the business expenses that they were required to necessarily incur in the discharge of their duties to the Defendant.

127. In addition, Plaintiffs were forced to retain attorneys to pursue their unpaid business expense claim from Defendant and are therefore entitled to attorney's fees under the

California Labor Code in addition to receiving reimbursement from Defendant.

SEVENTH CAUSE OF ACTION

Sexual Harassment in Violation of California Government Code Section 12940 against all Defendants

128. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1 through 91 above, as though each such Paragraph were fully set forth herein.

129. The California Fair Employment and Housing Act (“FEHA”) requires MWI and its officers, directors, managing agents and employees to refrain from sexually harassing its employees and imposes strict liability on MWI for any sexual harassment of Velazquez by a supervisory employee.

130. Throughout his employment with MWI, Velazquez was subjected to sexual harassment by Cardani, a supervisor at MWI.

131. At all relevant times, the harassing conduct to which Velazquez was subjected was pervasive.

132. At all relevant times, Cardani engaged in the conduct alleged above and was acting within the scope of her employment with MWI and within authority given to her by MWI as Velazquez’s within the meaning of the FEHA.

133. Velazquez considered the work environment to be hostile, intolerable and abusive.

134. A reasonable person in Velazquez’s circumstances also would have considered the work environment to be hostile, intolerable and abusive.

135. As a direct and proximate result of MWI’s unlawful actions in harassing Velazquez on the basis of his sex, Velazquez has suffered and continues to suffer economic damages, including but not limited to lost wages and lost employment opportunities.

136. As a further direct and proximate result of MWI’s unlawful actions in harassing Velazquez, Velazquez has suffered and continues to suffer non-economic damages, including but not limited to mental anguish and emotional distress.

137. The conduct of MWI, and of its officers, directors and/or managing agents, as described herein, was malicious, fraudulent and oppressive and was done with a willful and conscious disregard for Velazquez's rights.

138. Velazquez is, therefore, also entitled to an award of punitive damages against MWI.

139. Velazquez has been required to retain an attorney to pursue damages to which he is entitled under the FEHA and, therefore, is also entitled to recovery of his attorneys' fees and costs.

140. Velazquez has been damaged in an amount that exceeds the jurisdictional minimum of this Court and will be subject to proof at trial.

EIGHTH CAUSE OF ACTION

Sex Discrimination in Violation of California Government Code Section 12940 against all Defendants

141. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1 through 91 above, as though each such Paragraph were fully set forth herein.

142. The FEHA prohibits covered employers from discriminating against employees on the basis of, *inter alia*, an employee's sex in the terms and conditions of their employment.

143. MWI is a covered employer under the FEHA in that at all relevant times MWI employed 5 or more employees in California.

144. Velazquez was an employee protected from discrimination under the FEHA.

145. Velazquez was subjected to discriminatory terms and conditions of employment because of his sex (male).

146. Velazquez's employment with MWI was ultimately terminated because of his sex (male) by MWI in violation of the FEHA.

147. As a direct and proximate result of MWI'S unlawful actions in discriminating against Velazquez on the basis of his sex, Velazquez has suffered and continues to suffer economic damages, including but not limited to lost wages and lost employment opportunities.

148. As a further direct and proximate result of MWI's unlawful actions in discriminating against Velazquez on the basis of his sex, Velazquez has suffered and continues to suffer non-economic damages, including but not limited to mental anguish and emotional distress.

149. The conduct of MWI, and of its officers, directors and/or managing agents, as described herein, was malicious, fraudulent and oppressive and was done with a willful and conscious disregard for Velazquez's rights. Velazquez is, therefore, also entitled to an award of punitive damages against MWI.

150. Velazquez has been required to retain an attorney to pursue damages to which he is entitled under the FEHA and, therefore, is also entitled to recovery of his attorneys' fees and costs.

151. Velazquez has been damaged in an amount that exceeds the jurisdictional minimum of this Court and will be subject to proof at trial.

NINTH CAUSE OF ACTION

Retaliation in Violation of California Government Code Section 12940 against all Defendants

152. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1 through 91 above, as though each such Paragraph were fully set forth herein.

153. The FEHA prohibits covered employers from retaliating against employees who have engaged in a protected activity, which includes, *inter alia*, opposing any practice made unlawful by the FEHA.

154. Velazquez was an employee protected from retaliation under the FEHA in that he opposed discrimination and harassment in the workplace by Cardani.

155. Velazquez was subjected to retaliatory terms and conditions of employment because of his opposition to discrimination and harassment in the workplace.

156. Velazquez's employment with MWI was ultimately terminated because of his opposition to discrimination and harassment in the workplace.

///

157. As a direct and proximate result of MWI's unlawful actions in retaliating against Velazquez on the basis of his engaging in protected activity under the FEHA, Velazquez has suffered and continues to suffer economic damages, including but not limited to lost wages and lost employment opportunities.

158. As a further direct and proximate result of Defendants' unlawful actions in retaliating against Velazquez on the basis of his engaging in protected activity under the FEHA, Velazquez has suffered and continues to suffer non-economic damages, including but not limited to mental anguish and emotional distress.

159. The conduct of MWI, and of its officers, directors and/or managing agents, as described herein, was malicious, fraudulent and oppressive and was done with a willful and conscious disregard for Velazquez's rights. Velazquez is, therefore, also entitled to an award of punitive damages against MWI.

160. Velazquez has been required to retain an attorney to pursue damages to which he is entitled under the FEHA and, therefore, is also entitled to recovery of his attorneys' fees and costs.

161. Velazquez has been damaged in an amount that exceeds the jurisdictional minimum of this Court and will be subject to proof at trial.

TENTH CAUSE OF ACTION

*Failure to Prevent Discrimination in Violation of the Fair Employment and Housing Act
against all Defendants*

162. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1 through 91 above, as though each such Paragraph were fully set forth herein.

163. The California Fair Employment and Housing Act requires an employer to take reasonable measures to prevent discrimination in the workplace.

164. Velazquez was subjected to unlawful discrimination on the basis of his sex.

165. MWI failed to take reasonable measures to prevent the discrimination, to which Velazquez was subjected by MWI's employees, which failure was a substantial factor in causing

1 Velazquez harm.

2 166. As a direct and proximate result of MWI's unlawful action in failing to prevent
3 discrimination in the workplace, Velazquez has suffered and continues to suffer economic
4 damages, including but not limited to lost wages and lost employment opportunities.

5 167. As a further direct and proximate result of MWI's unlawful action in failing to
6 prevent discrimination in the workplace, Velazquez has suffered and continues to suffer non-
7 economic damages, including but not limited to mental anguish and emotional distress.

8 168. The conduct of MWI, and of its officers, directors and/or managing agents, as
9 described herein, was malicious, fraudulent and oppressive and was done with a willful and
10 conscious disregard for Velazquez's rights.

11 169. Velazquez is, therefore, also entitled to an award of punitive damages against
12 MWI.

13 170. Velazquez has been required to retain an attorney to pursue damages to which he
14 is entitled under the Fair Employment and Housing Act and, therefore, is also entitled to
15 recovery of his attorneys' fees and costs.

16 171. Velazquez has been damaged in an amount that exceeds the jurisdictional
17 minimum of this Court and will be subject to proof at trial.

18 **ELEVENTH CAUSE OF ACTION**

19 ***Wrongful Termination in Violation of Public Policy against all Defendants***

20 172. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1 through 91
21 above, as though each such Paragraph were fully set forth herein.

22 173. Under California law, wrongful termination of employment is tortious when the
23 termination occurs in violation of a fundamental public policy, which is a policy that is carefully
24 tethered to a policy delineated in constitutional or statutory provisions, involves a duty affecting
25 the public at large, rather than one owed to or imposed solely upon the parties to a dispute, and
26 is well established and sufficiently clear to the employer at the time of the discharge.

27 ///

174. The anti-discrimination and anti-retaliation/interference provisions set forth in the Fair Employment and Housing Act (FEHA) states fundamental public policies in California.

175. Velazquez was wrongfully terminated by MWI in violation of the above-referenced California public policies.

176. Specifically, MWI terminated Velazquez's employment as result of his gender and/or his refusal to submit to Cardani's sexual demands.

177. As a direct and proximate result of MWI's unlawful action, Velazquez has suffered and continues to suffer economic damages, including but not limited to lost wages and lost employment opportunities.

178. As a further direct and proximate result of MWI's unlawful actions, Velazquez has suffered and continues to suffer non-economic damages, including but not limited to mental anguish and emotional distress.

179. The conduct of MWI, and of its officers, directors and/or managing agents, as described herein, was malicious, fraudulent and oppressive and was done with a willful and conscious disregard for Velazquez's rights.

180. Velazquez is, therefore, also entitled to an award of punitive damages against MWI.

181. Velazquez has been damaged in an amount that exceeds the jurisdictional minimum of this Court and will be subject to proof at trial.

TWELFTH CAUSE OF ACTION

Violation of California Labor Code Section 2699 et seq. against all Defendants

182. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1 through 91 above, as though each such Paragraph were fully set forth herein.

183. Plaintiffs bring this cause of action as a representative action on behalf of themselves and similarly situated aggrieved employees in the capacity as a private attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, et sq. ("PAGA").

1 184. PAGA specifically provides for a private right of action to recover civil penalties
2 for violations of the Labor Code pursuant to California Labor Code Section 2699(a).

3 185. Defendants violated various provisions of the California Labor Code as to the
4 Plaintiffs and other non-exempt employees. Plaintiffs and the other non-exempt employees are
5 therefore “aggrieved employees” as defined by California Labor Code section 2699(c) in that
6 they are all current or former employees of Defendants and one or more of the alleged violations
7 were committed against them.

8 186. During all times relevant to this cause of action, Defendants have routinely
9 subjected Plaintiffs and the other aggrieved employees to violations of various sections of the
10 California Labor Code by:

11 a. Failing to pay Plaintiffs and the aggrieved employees all earned
12 compensation. Specifically, Defendants required Plaintiffs and the aggrieved employees to
13 perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock
14 meal periods and/or during their rest periods and failed to compensate the aggrieved employees
15 for this work time. Such work included, but was not limited to, completing assigned tasks,
16 providing customer service, and responding to work-related inquiries.

17 b. Failing to pay Plaintiffs and the aggrieved employees overtime
18 compensation owed. California Labor Code sections 510 and 1198 require employers to pay
19 overtime at time-and-a-half or double time when an employee works more than 8 hours in a
20 day (or 12 in a day for double time hours) or more than 40 hours in a week and to include all
21 non-discretionary earnings in the regular rate of pay calculation when determining the overtime
22 rate. Defendants failed to properly compensate Plaintiffs and the aggrieved employees for all
23 overtime hours worked by (i) having employees work off-the-clock as noted above and (ii) not
24 paying overtime compensation at the appropriate overtime rate required by California law,
25 including by failing to include commissions, bonus, piece rate wages and other non-
26 discretionary incentive earnings in the regular rate of pay used to calculate overtime.

27 ///

1 c. Failing to provide meal and rest periods to which Plaintiffs and the
2 aggrieved employees are entitled and failing to pay meal and rest period premiums. California
3 Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour
4 of pay at the employee's regular rate of pay for each meal or rest period that is not provided.
5 Defendants failed to compensate Plaintiffs and the aggrieved employees properly for non-
6 compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal
7 and rest periods.

8 d. Failing to timely pay all wages due to Velazquez and other aggrieved
9 employees whose employment with MWI ended. California Labor Code sections 201 and 202
10 provide that if an employer discharges an employee, the wages earned and unpaid at the time
11 of discharge are due and payable immediately, and if an employee quits his or her employment,
12 his or her wages shall become due and payable not later than seventy-two (72) hours thereafter,
13 unless the employee has given seventy-two (72) or more hours' notice of his or her intention to
14 quit, in which case the employee is entitled to his or her wages at the time of quitting. MWI
15 failed to pay Velazquez and the aggrieved employees all wages due to them within the time
16 period specified by California Labor Code sections 201 and 202 upon the termination of their
17 employment and paid wages late to aggrieved employees. MWI also failed to pay aggrieved
18 employees the waiting time penalty upon the late payment of wages.

19 e. Failing to pay all wages due to Plaintiffs and the aggrieved employees
20 during regular pay periods. California Labor Code section 204 requires that all wages earned
21 by any person in any employment between the 1st and 15th days, inclusive, of any calendar
22 month, other than those wages due upon termination of an employee, are due and payable
23 between the 16th and the 26th of the month during which the labor was performed, and that all
24 wages earned by any person in any employment between the 17th and the last day, inclusive, of
25 any calendar month, other than those wages due upon termination of an employee, are due and
26 payable between the 1st and the 10th day of the following month. California Labor Code section
27 204 also requires that all wages earned for labor in excess of the normal work period shall be
28

1 paid no later than the pay day for the next regular payroll period. During the employment of
2 Plaintiffs and the aggrieved employees, MWI failed to pay them all wages due to them within
3 the time periods required by California Labor Code Section 204, including earned and unpaid
4 regular wages, overtime wages, incentive compensation and meal and rest period premium
5 wages as discussed above.

6 f. Failing to provide a proper itemized wage statement to the Plaintiffs and
7 the aggrieved employees. California Labor Code section 226 requires employers to make, keep
8 and provide complete and accurate itemized wage statements to their employees. During the
9 relevant time period, MWI failed to provide the Plaintiffs and other aggrieved employees with
10 complete and accurate itemized wage statements, as the wage statements that MWI provided
11 did not contain all of the information required to be listed therein per California Labor Code
12 section 226(a). By way of example, on the wage statements provided by Defendants to
13 aggrieved employees, all hours worked by the Aggrieved Employees were not listed, the rates
14 of pay of the aggrieved employees were not listed, and the wage statements failed to list the
15 date of the beginning of each pay period. In addition, the wage statements provided to those
16 aggrieved employees who received commissions and piece rate earnings failed to identify the
17 number of piece rate units earned and the applicable piece rate failed to identify the commission
18 rate and amount of sales.

19 g. Failing to keep accurate record of hours worked by the Plaintiffs and the
20 aggrieved employees. California Labor Code section 1174(d) requires an employer to keep,
21 at a central location in the state or at the plants or establishments at which employees are
22 employed, payroll records showing the hours worked daily by and the wages paid to, and the
23 number of piece-rate units earned by and any applicable piece rate paid to, employees employed
24 at the respective plants or establishments. These records shall be kept with rules established
25 for this purpose by the commission, but, in any case, shall be kept on file for not less than two
26 years. During the relevant time period, Defendants failed to keep accurate and complete payroll
27 records concerning the compensation paid to the Plaintiffs and the aggrieved employees
28

1 showing the actual hours worked daily and the wages earned thereby, including earned and
2 unpaid regular wages, overtime compensation, incentive compensation and premium wages as
3 discussed above.

4 h. Failing to reimburse Plaintiffs and the aggrieved employees for necessary
5 business expenses. California Labor Code sections 2800 and 2802 require an employer to
6 reimburse its employees for all necessary expenditures incurred by the employee in direct
7 consequence of the discharge of his or her job duties or in direct consequence of his or her
8 obedience to the directions of the employer. During the relevant time period, the Plaintiffs and
9 other aggrieved employees incurred necessary business expenses and costs that were not fully
10 reimbursed by the Defendants.

11 i. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiffs
12 individually and on behalf of the aggrieved employees and the State of California, request and
13 are entitled to recover civil penalties under California Code of Regulations Title section 11010,
14 penalties under California Labor Code sections 2699, 558, 210, 11971., 226, 226.3 and 1174.5,
15 and any and all additional penalties and sums as provided by the California Labor Code and/or
16 other statutes. The exact amount of the applicable penalties, in all, is in an amount to be shown
17 according to proof at trial.

18 187. Plaintiffs have exhausted their administrative remedies pursuant to the California
19 Labor Code section 2699.3. On May 21, 2020, Plaintiffs, through their counsel of record, by
20 online filing with the Labor and Workforce Development Agency (“LWDA”) and by certified
21 mail to the Defendant, notified Defendant and the LWDA of the specific provisions of the Labor
22 Code and IWC Wage Order that Defendant has violated, including the facts and theories to
23 support the violations, and of Plaintiffs’ intent to bring a claim for civil penalties under PAGA.
24 Plaintiffs also paid the filing fee required under California Labor Code section 2699.3. As of
25 the filing of this Complaint, more than 65 days have elapsed since the Plaintiff’s PAGA notice
26 and the Labor and Workforce Development Agency has not indicated that it intends to
27 investigate the violations discussed in the PAGA notice that the Plaintiffs filed. Accordingly,
28

1 Plaintiffs may commence a civil action to recover penalties for themselves and other aggrieved
2 employees pursuant to California Labor Code section 2699.3.

3 188. Plaintiffs were compelled to retain the services of counsel to file this court action
4 to protect their interests and the interests of the aggrieved employees and to assess and collect
5 the civil penalties owed by MWI. Plaintiffs therefore seek an award of reasonable attorney's
6 fees and costs pursuant to California Labor Code section 2699(g)(1) and any other applicable
7 statute.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

- 10 1. For payment of unpaid wages and compensatory damages according to proof;
11 2. For reimbursement of reasonable and necessary business expenses incurred by
12 Plaintiffs in the discharge of their duties to Defendants;
13 3. For statutory and civil penalties under the California Labor Code;
14 4. For punitive damages;
15 5. For prejudgment interest on all due and unpaid wages;
16 6. For attorneys' fees on all causes of action that allow for the recovery of such;
17 7. For costs of suit herein incurred; and
18 8. For such other and further relief as the Court may deem just and proper.

19
20 Dated: October 23, 2020

ALEXIS LAW FIRM

21
22 By: 

Drew L. Alexis

23
24 Attorneys for Plaintiffs
25 JESUS VELAZQUEZ AND
26 KRYSTLE GARCIA
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Dated: October 23, 2020



Attorneys for Plaintiffs
JESUS VELAZQUEZ AND
KRYSTLE GARCIA

EXHIBIT A

ALEXIS | LAW FIRM

100 WEST BROADWAY, SUITE 250
LONG BEACH, CALIFORNIA 90802
TELEPHONE (562) 544-2495
EMAIL: DALEXIS@ALEXISLAWFIRM.COM

May 21, 2020

By Online Submission To:

California Labor and Workforce Development Agency
PAGAfilings@dir.ca.gov

By US Class Certified Mail/Return Receipt Requested To:

Ana Thomas
Klatte, Budensiek & Young-Agriesti, LLP
1111A Quail Street
Newport Beach, CA 92660

David Sparks
7700 Irvine Center Drive, Suite 800
Irvine, CA 92618

As Counsel to Modern Wireless Inc.

*As Registered Agent for Service of Process
to Modern Wireless Inc.*

By US Mail – With Filing Fee Enclosed To:

California Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave., 10th Floor
San Francisco, CA 94102

Re: Notice to Modern Wireless, Inc. of violations of California Labor Code pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq.

Dear Sir/Madam:

Our firm represents Jesus Velazquez and Krystle Garcia (together, “Velazquez and Garcia”), a former and current employee, respectively, of Modern Wireless, Inc., a California corporation with an office located at 1163 North Patt Street, Anaheim, California 92801. Velazquez and Garcia seek penalties against Modern Wireless, Inc., including any and all of its affiliates, subsidiaries, parents, directors and officers (collectively, “MW”) as a result of MW’s multiple violations of California’s wage-and-hour laws. Specifically, Velazquez and Garcia will seek the recovery of civil penalties for violations of the California Labor Code which are recoverable under California Labor Code § 2698 *et seq.*, the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) and all other remedies available under PAGA.

Velazquez and Garcia seek these remedies on behalf of the State of California and all “aggrieved employees” as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code § 2699.3.

Velazquez worked for MW from on or about September 28, 2015 until on or about February 21, 2020 at which time his employment was terminated. Garcia has worked for MW since on or about January 20, 2017. Both have been subjected by MW to violations of MW’s obligations under various provisions of the California Labor Code and, therefore, are aggrieved employees under the PAGA. The aggrieved employees whom Velazquez and Garcia will seek to recover PAGA penalties on behalf of are (i) as to certain violations, all California-based employees, (ii) as to certain violations, all California-based employees who receive commissions, bonuses, piece rate earnings or other incentive compensation in addition to their base compensation, and (iii) as to certain violations, all California-based non-exempt employees.

Specifically, MW subjected Velazquez, Garcia and other aggrieved employees (collectively here the “Aggrieved Employees”) to the following violations during the applicable time period:

- MW required Aggrieved Employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal periods and/or during their rest periods and failed to compensate the aggrieved employees for this work time. Such work included, but was not limited to, completing assigned tasks, providing customer service, and responding to work-related inquiries.
- California Labor Code sections 510 and 1198 require employers to pay overtime at time-and-a-half or double time when an employee works more than 8 hours in a day (or 12 in a day for double time hours) or more than 40 hours in a week and to include all non-discretionary earnings in the regular rate of pay calculation when determining the overtime rate. MW failed to properly compensate Aggrieved Employees for all overtime hours worked by (i) having employees work off-the-clock as noted above and (ii) not paying overtime compensation at the appropriate overtime rate required by California law, including by failing to include commissions, bonus, piece rate wages and other non-discretionary incentive earnings in the regular rate of pay used to calculate overtime.
- California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee’s regular rate of pay for each meal or rest period that is not provided. MW failed to compensate Aggrieved Employees properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods.
- California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) or more hours’ notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. MW failed to pay Aggrieved Employees all wages due to them within the time period

specified by California Labor Code sections 201 and 202 upon the termination of their employment and paid wages late to Aggrieved Employees. MW also failed to pay Aggrieved Employees the waiting time penalty upon the late payment of wages.

- California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th of the month during which the labor was performed, and that all wages earned by any person in any employment between the 17th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the pay day for the next regular payroll period. During the employment of Aggrieved Employees, MW failed to pay them all wages due to them within the time periods required by California Labor Code Section 204, including earned and unpaid regular wages, overtime wages, incentive compensation and meal and rest period premium wages as discussed above.
- California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, MW failed to provide Aggrieved Employees with complete and accurate itemized wage statements, as the wage statements that MW provided to Aggrieved Employees did not contain all of the information required to be listed therein per California Labor Code section 226(a). By way of example, on the wage statements provided by MW to Aggrieved Employees, all hours worked by the Aggrieved Employees were not listed, the rates of pay of the Aggrieved Employees were not listed, and the wage statements failed to list the date of the beginning of each pay period. In addition, the wage statements provided to those Aggrieved Employees who received commissions and piece rate earnings failed to identify the number of piece rate units earned and the applicable piece rate failed to identify the commission rate and amount of sales.
- California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but, in any case, shall be kept on file for not less than two years. During the relevant time period, MW failed to keep accurate and complete payroll records concerning the compensation paid to Aggrieved Employees showing the actual hours worked daily and the wages earned by Aggrieved Employees, including earned and unpaid regular wages, overtime compensation, incentive compensation and premium wages as discussed above.
- California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence

of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, the Aggrieved Employees incurred necessary business expenses and costs that were not fully reimbursed by MW.

- California Labor Code section 2751 provides that whenever an employer enters into a contract of employment with an employee for services to be rendered within California and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid. Labor Code section 2751 further provides that the employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. MW failed to comply with this provision by not providing the Aggrieved Employees with a written contract setting forth the method by which the commissions shall be paid or computed.
- California Labor Code section 2810.5 requires that employers provide notice to employees of their rates of pay, designated pay day, the employer's intent to claim allowances (meal or lodging allowances) as part of the minimum wage, and the basis of wage payment (whether paying by hour, shift, day, week, piece, etc.), including any applicable rates for overtime. The law requires that the notice contain the employer's "doing business as" names, and that it be provided at the time of hiring and within 7 days of a change if the change is not listed on the employee's pay stub for the following pay period. MW failed to comply with this provision by not providing employees with the information required by Labor Code section 2810.5.

Therefore, pursuant to the PAGA, on behalf of all Aggrieved Employees, Velazquez and Garcia intend to file a civil complaint with the Orange County Superior Court on behalf of the Aggrieved Employees in which they will seek all applicable penalties arising out of the above-referenced wage-and-hour laws that could be assessed and collected by the Labor and Workforce Development Agency for violations of the California Labor Code and Wage Orders.

Please do not hesitate to contact me if you have any questions or require any additional information. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Alexis', with a stylized, flowing script.

Drew Alexis, Esq.

EXHIBIT B



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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

October 21, 2020

Kimberly Lind
100 W Broadway, Suite 250
Long Beach, California 90802

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202010-11587121
Right to Sue: Velazquez / Modern Wireless, Inc.

Dear Kimberly Lind:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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

October 21, 2020

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202010-11587121
Right to Sue: Velazquez / Modern Wireless, Inc.

To All Respondent(s):

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

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

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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October 21, 2020

Jesus Velazquez

,

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 202010-11587121
Right to Sue: Velazquez / Modern Wireless, Inc.

Dear Jesus Velazquez:

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective October 21, 2020 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

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

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

Sincerely,

Department of Fair Employment and Housing

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

In the Matter of the Complaint of

Jesus Velazquez

DFEH No. 202010-11587121

Complainant,

vs.

Modern Wireless, Inc.
1163 North Patt Street
Anaheim, California 92801

Respondents

1. Respondent **Modern Wireless, Inc.** is an **employer Modern Wireless, Inc.** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2.

3. Complainant **Jesus Velazquez**, resides in the City of , State of .

4. Complainant alleges that on or about **February 21, 2020**, respondent took the following adverse actions:

Complainant was harassed because of complainant's sex/gender, sexual harassment-hostile environment, sexual harassment- quid pro quo.

Complainant was discriminated against because of complainant's sex/gender, sexual harassment- hostile environment, sexual harassment- quid pro quo and as a result of the discrimination was terminated, denied or forced to transfer.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment and as a result was terminated, denied or forced to transfer.

Additional Complaint Details: Throughout Jesus Velazquez's (Velazquez) employment with Modern Wireless, Inc. (MWI), his supervisor, Eylin Cardani (Cardani) subjected Velazquez and other male employees to a hostile work environment on the basis of their sex, one in which Velazquez and other male employees were also subjected to retaliation for not engaging in a sexual relationship with her. For a period of time in mid-2016 to early-2017, Cardani had a sexual relationship with a subordinate employee, who also is the brother of Velazquez. Cardani told this employee that

1 he needed to keep their sexual relationship a secret from other employees – as she was a
2 supervisor and he was a non-supervisory employee – or the employee could get in trouble
3 and lose his job. The employee agreed to keep the relationship a secret at work.
4 Notwithstanding that Cardani and the employee both agreed to keep the relationship a
5 secret from others at MWI, other employees began to suspect that Cardani and the
6 employee were engaged in a sexual relationship. As a result, the employee decided to end
7 the relationship with Cardani. After the employee ended the relationship with Cardani,
8 Cardani's behavior towards the employee began to change, and she became less friendly to
9 him. She ultimately confronted him again about whether he shared their relationship with
10 Velazquez or any other employees and again threatened that doing so would be harmful to
11 his employment at MWI. In addition, when Velazquez's brother started dating another
12 person, Cardani was very critical of the employee's new girlfriend, telling the employee that
13 she was not the right girl for him.

14 In addition to engaging in a sexual relationship with Velazquez's brother at work, Cardani
15 also engaged in sexually inappropriate conduct towards other male employees at MWI,
16 including Velazquez. By way of example, Cardani frequently touched Velazquez and other
17 male non-supervisory employees, including touching their cheeks and faces and rubbing up
18 against them when passing them at work. Cardani regularly invaded the personal space of
19 her male subordinates, making Velazquez and other men at work uncomfortable. In
20 addition, Cardani regularly made sexual comments and jokes at work, including talking
21 about the size of men's penises, and flirted with men at work. On a number of occasions,
22 Cardani commented that when Velazquez was at work, his "dick is mine" or that his "dick
23 belongs to me". She made these comments openly.

24 Cardani also made this comment about Velazquez's penis belonging to her at the Christmas
25 party in 2018, specifically mentioning this to Velazquez's then-girlfriend and mother of his
26 three children in Velazquez's presence, who did not work at MWI but attended the
27 Christmas party as Velazquez's guest. In addition, Cardani made inappropriate comments
28 about and questioned other employees about Velazquez's relationship with his then-
girlfriend, who was also the mother of his three children.

In August 2019, Velazquez's relationship with his then-girlfriend ended and he started dating
his co-worker, Garcia. Sometime in August or September 2019, Cardani heard from another
employee that Velazquez had started dating Garcia and immediately became jealous and
antagonistic towards them both.

In October 2019, Cardani called Garcia to her desk and, in the presence of other co-
workers, loudly asked Garcia if Velazquez had left the mother of his children for her. Garcia
was embarrassed and in shock by Cardani's inappropriate question and immediately called
Velazquez over to the desk. Cardani then repeated the question to both Garcia and
Velazquez. Cardani also told Velazquez on many occasions that Garcia wanted to have a
baby and that he needed to get Garcia pregnant. Cardani also told Garcia that she needed
to get pregnant by Velazquez.

In November 2019, Cardani told Garcia, in an open area with other employees present, that
if she and Velazquez were dating, there would be issues. Cardani angrily told Garcia that
she was not allowed to date Velazquez because they were co-workers, despite the fact that
(i) there was no company policy prohibiting co-workers from dating and (ii) Cardani, herself,
had no issue with engaging in a sexual relationship herself with a nonsupervisory employee
at MWI, even though she was married. Velazquez and Garcia refused to terminate their
dating relationship, something that did not impact the workplace or their performance. To

1 retaliate against them for dating, Cardani then changed the break schedules for Garcia and
2 Velazquez so that they could not take any breaks together at the same time, on the
3 occasions when they were authorized and permitted or take timely rest breaks.
4 On November 5, 2019, Cardani falsely claimed that Velazquez and Garcia had taken a rest
5 break together, something they had not done, and told Velazquez that she was giving him a
6 verbal warning for doing so. On November 14, 2019, Cardani issued Velazquez a written
7 warning. In the warning, she claimed that Velazquez had not been meeting the outgoing
8 call expectations and that the quality of the calls he was making had been poor and lacked
9 follow-up. During the November 14, 2019 meeting, Cardani again criticized Velazquez for
10 dating Garcia.
11 The written warning, however, was inaccurate. In fact, Velazquez was meeting the outgoing
12 call expectations and the quality and follow-up was acceptable. Cardani also used the
13 records of only one of the two phones she knew Velazquez utilized for calls to make this
14 accusation. Cardani issued this warning knowing that the warning was inaccurate in an
15 effort to retaliate against Velazquez for dating Garcia. Indeed, on the same day that she
16 issued the November 14, 2019, and prior to meeting with Velazquez, Cardani pulled
17 Velazquez's brother, with whom she had previously had a sexual relationship, into a
18 conference room and drilled him to tell her anything he knew about Velazquez's relationship
19 with Garcia. Cardani told Velazquez's brother that she found out that Velazquez was having
20 a relationship with Garcia and it was a problem for her and that she took it personally.
21 Cardani reminded the employee that she hoped that he had not shared with Velazquez or
22 anyone else at MWI that she (Cardani) and the employee had previously had a sexual
23 relationship.
24 After the November 14, 2019 written warning was issued, Cardani ignored and was rude to
25 Velazquez. To further retaliate against him for dating Garcia, Cardani had Velazquez
26 transferred temporarily away from the corporate office to work at a different location.
27 Ultimately, on February 21, 2020, Cardani called Velazquez into the conference room and
28 told him that it was not working out for him at work and that they were going to terminate his
employment with MWI.

1 VERIFICATION

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

5 On October 21, 2020, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Long Beach, California**
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