

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Holly Fujie

1 Ruben Guerra, Esq. (SBN 291446)
2 Tizoc Perez-Casillas, Esq. (SBN 309981)
3 **GUERRA & CASILLAS LLP**
4 617 South Olive Street, Suite 422
5 Los Angeles, California 90014
6 Telephone: (213) 437-9495
7 Facsimile: (213) 291-9015
8
9 Attorneys for Plaintiff,
10 OSCAR FONSECA GUZMAN
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

OSCAR FONSECA GUZMAN, an
individual,

Plaintiff,

v.

LYON MANAGEMENT GROUP, INC., a
California corporation, MIGUEL DOE, an
individual and RICHIE HUEZO, an
individual and DOES 1 through 20, inclusive,

Defendants.

Case No. **20STCV44384**

COMPLAINT FOR DAMAGES FOR:

- 1. DISCRIMINATION IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 2. HARASSMENT IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 3. RETALIATION IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 4. FAILURE TO PREVENT
DISCRIMINATION, HARASSMENT AND
RETALIATION IN VIOLATION OF
GOV'T CODE §12940(k);**
- 5. RETALIATION (LAB. CODE §98.6);**
- 6. RETALIATION (LAB. CODE §§1102.5,
1102.6, 6310);**
- 7. ASSAULT;**
- 8. INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;**
- 9. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**
- 8. NEGLIGENT SUPERVISION AND
RETENTION;**
- 10. FOR DECLARATORY JUDGMENT**
- 11. FAILURE TO COMPENSATE ALL**

**HOURS WORKED IN VIOLATION OF
CAL. LABOR CODE §§ 200, 226, 500,
510, 1194, 1197, AND 1198**

**12. FAILURE TO PROVIDE MEAL AND
REST PERIODS (CAL. LABOR CODE
§§226.7, 512);**

**13. FAILURE TO REIMBURSE REQUIRED
BUSINESS EXPENSES (CAL. LABOR
CODE § 2802);**

**14. FAILURE TO PROVIDE ITEMIZED
WAGE AND HOUR STATEMENTS (CAL.
LABOR CODE §§226, ET SEQ.);**

**15. FAILURE TO PERMIT INSPECTION OF
PERSONNEL AND PAYROLL RECORDS
(CAL. LABOR CODE §§226, 1198.5);**

**16. WAITING TIME PENALTIES (CAL.
LABOR CODE §§201-203);**

**17. PENALTIES PURSUANT TO THE
PRIVATE ATTORNEY GENERAL ACT
(CAL. LABOR CODE §§2699 ET SEQ.);
AND**

**18. UNFAIR BUSINESS PRACTICES (BUS. &
PROF. CODE §§17200 ET SEQ.);**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, OSCAR FONSECA GUZMAN, and for causes of action against
the Defendants and each of them, alleges as follows:

JURISDICTION

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

1
2 **THE PARTIES**

3 2. Plaintiff, OSCAR FONSECA GUZMAN, is and at all times relevant hereto was a
4 resident of the County of Los Angeles, State of California.

5 3. Plaintiff is informed and believes, and based thereupon alleges, that at all times
6 relevant hereto, Defendant LYON MANAGEMENT GROUP, INC., (hereinafter referred to as
7 “LYON”) was and is California corporation doing business at 1900 E. Ocean Boulevard, Long
8 Beach, CA 90802 in the County of Los Angeles, State of California.

9 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times
10 relevant hereto, LYON owned and operated a property management company.

11 5. Plaintiff is informed and believes, and based thereupon alleges, that at all times
12 relevant hereto, Defendant Miguel Doe (“MIGUEL”) was and is a resident of California and was
13 employed by LYON and DOES 1-20, at its work locations in the County of Los Angeles,
14 California. MIGUEL was Plaintiff’s manager, corporate agent, supervisor, and/or coworker at
15 LYON.

16 6. Plaintiff is informed and believes, and based thereupon alleges, that at all times
17 relevant hereto, Defendant Richie Huevo (“RICHIE”) was and is a resident of California and was
18 employed by LYON, at its work locations in the County of Los Angeles, California. DUVALL
19 was Plaintiff’s manager, corporate agent, supervisor, and/or coworker at LYON.

20 7. MIGUEL and RICHIE are hereinafter collectively referred to as “INDIVIDUAL
21 HARASSERS.”

22 8. LYON, MIGUEL, and RICHIE are collectively referred to as “Defendants”.

23 9. At all times relevant herein, LYON and DOES 1-20 were Plaintiff’s employers,
24 joint employers and/or special employers within the meaning of Government Code §§12926,
25 subdivision (d), 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly
26 employ five (5) or more persons and are therefore subject to the jurisdiction of this Court.

27 10. At all times relevant herein, LYON and DOES 1-20 were Plaintiff’s employers,
28 joint employers and/or special employers within the meaning of the Labor Code and Industrial

1 Welfare Commission Order No. 5-2001, and are each an “employer or other person acting on
2 behalf of an employer” as such term is used in Labor Code sections 1197.1, 558 and/or 558.1,
3 and liable to Plaintiff on that basis.

4 11. Plaintiff is informed and believes, and thereon alleges that at all time relevant to
5 this action, INDIVIDUAL HARASSERS were managers and/or supervisors of LYON, acting as
6 managing agents for LYON; INDIVIDUAL HARASSERS were acting within the course and
7 scope of their employment and on behalf of LYON such that their acts or omissions are imputed
8 to LYON under the doctrine of *respondeat superior*; or, alternatively, at all times relevant to this
9 action, LYON cloaked INDIVIDUAL HARASSERS with the appearance of actual authority,
10 such that Plaintiff was justified in relying thereon, and therefore his acts or omissions are
11 imputed to LYON under the doctrine of *respondeat superior*.

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

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

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

1 coerced one another in the wrongful acts alleged herein, and/or attempted to do so, including
2 pursuant to Government Code §12940(i). Plaintiff is further informed and believes, and based
3 thereupon alleges, that Defendants, and each of them, including those defendants named as
4 DOES 1-20, and each of them, formed and executed a conspiracy or common plan pursuant to
5 which they would commit the unlawful acts alleged herein, with all such acts alleged herein done
6 as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff harm.

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

10 16. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to
11 prevent discrimination or retaliation, and wrongful termination under Government Code
12 §§12940, et seq., the California Fair Employment and Housing Act (“FEHA”) with the
13 California Department of Fair Employment and Housing (“DFEH”), and has satisfied Plaintiff’s
14 administrative prerequisites with respect to these and all related filings.

15
16 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

17 17. Plaintiff is informed and believes, and based thereon alleges, that there exists such
18 a unity of interest and ownership between LYON and DOES 1-20 that the individuality and
19 separateness of defendants have ceased to exist.

20 18. Plaintiff is informed and believes, and based thereon alleges, that despite the
21 formation of purported corporate existence, LYON and DOES 1-20 are, in reality, one and the
22 same, including, but not limited to because:

23 a. LYON is completely dominated and controlled by DOES 1-20, who
24 personally committed the frauds and violated the laws as set forth in this complaint, and who
25 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
26 accomplish some other wrongful or inequitable purpose.

27 b. LYON and DOES 1-20 derive actual and significant monetary benefits by
28 and through one another’s unlawful conduct, and by using one another as the funding source for

1 their own personal expenditures.

2 c. LYON and DOES 1-20, while really one and the same, were segregated to
3 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a
4 statute, or accomplishing some other wrongful or inequitable purpose.

5 d. LYON does not comply with all requisite corporate formalities to maintain
6 a legal and separate corporate existence.

7 e. The business affairs of LYON and DOES 1-20 are, and at all times
8 relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and the
9 same are in inextricable confusion. LYON is, and at all times relevant hereto, was used by
10 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are,
11 and were, the alter ego of DOES 1-20. The recognition of the separate existence of Defendants
12 would not promote justice, in that it would permit Defendants to insulate themselves from
13 liability to Plaintiff for violations of the Government Code and other statutory violations. The
14 corporate existence of LYON and DOES 1-20 should be disregarded in equity and for the ends
15 of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

16 19. Accordingly, LYON constitutes the alter ego of DOES 1-20, and the fiction of
17 their separate corporate existence must be disregarded.

18 20. As a result of the aforementioned facts, Plaintiff is informed and believes, and
19 based thereon alleges that LYON and DOES 1-20 are Plaintiff's joint employers by virtue of a
20 joint enterprise, and that Plaintiff was an employee of LYON and DOES 1-20. Plaintiff
21 performed services for each and every one of Defendants, and to the mutual benefit of all
22 Defendants, and all Defendants shared control of Plaintiff as an employee, either directly or
23 indirectly, and the manner in which Defendants' business was and is conducted.

24 21. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that
25 as and between DOES 1-20, LYON, or any of them, (1) there is an express or implied agreement
26 of assumption pursuant to which LYON and/or DOES 1-20 agreed to be liable for the debts of
27 the other Defendants, (2) the transaction between LYON and/or DOES 1-20 and the other
28 Defendants amounts to a consolidation or merger of the two corporations, (3) LYON and/or

DOES 1-20 are a mere continuation of the other Defendants, or (4) the transfer of assets to LYON and/or DOES 1-20 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, LYON and/or DOES 1-20 are the successors of one or more of the other Defendants and are liable on that basis.

FACTUAL ALLEGATIONS

22. On or around October 30, 2017, LYON hired Plaintiff, a Mexican male, to work as a maintenance worker and/or groundskeeper. Plaintiff was a full-time, non-exempt employee, and performed all of Plaintiff's job duties satisfactorily before Plaintiff was wrongfully retaliated against and then ultimately terminated on or about May 7, 2020.

FEHA VIOLATIONS AND RETALIATION UNDER THE LABOR CODE

23. At all relevant times, Defendants LYON, MIGUEL AND RICHIE harassed and discriminated against Plaintiff due to his race, color, ethnic background, national origin, engagement in protected activities, or a combination thereof.

24. Throughout Plaintiff's employment, RICHIE consistently harassed Plaintiff for personal gratification, due to bigotry, intentional meanness, and/or other personal motive. RICHIE, who is Puerto Rican, regularly made hateful comments towards Plaintiff and about Mexicans, calling them "*mierda*," which translates to "shit."

25. On several occasions, when Plaintiff talked about eating food, RICHIE called Mexican food "*mierda*".

26. In an effort to harass Plaintiff, RICHIE farted next to Plaintiff's food while he ate.

27. Around February 2019, Plaintiff complained to his supervisor, Jaime Gonzalez ("Mr. Gonzalez"), about RICHIE's intentional farts next to his food.

28. Mr. Gonzalez only laughed at Plaintiff and dismissed his complaint, stating RICHIE is just joking around.

29. After Plaintiff complained about RICHIE to Mr. Gonzalez, RICHIE graduated his efforts in leading and promoting a hostile work environment. For instance, when Plaintiff was working with RICHIE, RICHIE said in Spanish, "you are a trash Mexican, you are useless."

1 Plaintiff felt intimidated and offended, so he asked RICHIE not to say comments like that and
2 that he felt offended by the name calling.

3 30. Plaintiff again complained to Mr. Gonzalez about the racial mistreatment, but Mr.
4 Gonzalez failed to investigate and failed to take any remedial measures, effectively validating
5 RICHIE's discriminatory animus.

6 31. On or around January 1, 2020, after Plaintiff asked for the status of work
7 completion, MIGUEL grew angry and stated that Plaintiff was not his boss. MIGUEL pointed a
8 broom that he had in his hands towards Plaintiff, and stated he will put Plaintiff in his place.

9 32. Out of fear for his safety, Plaintiff reported the assault to Mr. Gonzalez.

10 33. Plaintiff was so emotionally distraught after the assault that he cried on the phone
11 to Mr. Gonzalez.

12 34. Although Plaintiff was the victim of the assault, Plaintiff was issued a warning
13 and MIGUEL received no punishment.

14 35. On or around March 5, 2020, RICHIE menacingly approached Plaintiff in a
15 fighting stance and threatened to hit him.

16 36. Out of fear of being injured, Plaintiff reported the incident to Mr. Gonzalez. Mr.
17 Gonzalez abruptly and rhetorically retorted, "Another complaint Oscar? So, this is going to
18 happen every week?" Plaintiff asked Mr. Gonzalez what could be done to stop RICHIE's
19 harassment.

20 37. After Plaintiff explained why he believed that RICHIE was going to injure him,
21 Mr. Gonzalez laughed and said, "you are no longer kids, handle it." The following time Plaintiff
22 worked with RICHIE, RICHIE refused to help Plaintiff complete the work assignments. Plaintiff
23 reported the incident to LYON but did not receive any instruction.

24 38. On or around March 11, 2020, out of retaliation for Plaintiff's complaints, LYON
25 disciplined Plaintiff for the interaction with RICHIE. Although Plaintiff explained the racial
26 mistreatment he was being subjected to, LYON refused to acknowledge and discarded Plaintiff's
27 complaints.

28 39. On or about March 13, 2020, Plaintiff went to LYON's headquarters to discuss

1 his issues with Human Resources. Before Plaintiff had the chance to meet with Human
2 Resources, one of LYON's managing agents stopped Plaintiff from complaining to Human
3 Resources. Plaintiff reiterated his complaints to LYON's managing agent about the
4 mistreatment he was subjected to at work. In response, LYON ordered Plaintiff to not work the
5 following day.

6 40. On or around March 19, 2020, Plaintiff met with LYON's upper management,
7 RICHIE and Mr. Gonzalez about Plaintiff's complaints. LYON and its management stated they
8 were on RICHIE's side.

9 41. At the same meeting, Plaintiff also discussed that he was still working on-call and
10 was promised a different work schedule and/or position from one of LYON's management.
11 LYON promised to update Plaintiff's position, which never occurred.

12 42. In retaliation for complaining about the harassment and discrimination in the
13 workplace, Plaintiff was then moved to a new work site.

14 43. A few weeks later, LYON held a meeting with Plaintiff and wrongfully
15 terminated him.

16 44. LYON also demanded that Plaintiff move from the apartment complex within
17 three (3) days.

18 45. Plaintiff's termination was substantially motivated by Plaintiff's race, color,
19 ethnic background, national origin, reporting harassment and assault and/or engagement in
20 protected activity.

21 46. On information and belief, Defendants refused to promote Plaintiff due to his
22 protected characteristics, engagement in protected activity, or a combination thereof.

23 47. Based on the events set forth above, Plaintiff believes Defendants discriminated,
24 harassed, and retaliated against Plaintiff based upon his race, color, ancestry, ethnic background,
25 national origin, and/or engagement in protected activities, including complaints about safety and
26 pay. Defendants also failed and refused to stop and prevent discrimination, harassment, and
27 retaliation against Plaintiff. Defendants also unlawfully terminated Plaintiff.

28 48. Plaintiff's failure to promote, improper transfer, pretextual discipline, and

1 wrongful termination was substantially motivated by Plaintiff's race, color, ancestry, ethnic
2 background, and/or engagement in protected activity, including complaints of safety, and/or
3 some combination thereof without any discussion of a good faith attempt to engage in the
4 interactive process with Plaintiff. Defendants' discriminatory animus is evidenced by the
5 previously mentioned facts.

6 7 **WAGE & HOUR VIOLATIONS**

8 49. From on or around October 30, 2017 to January 20, 2019, Defendants promised to
9 pay Plaintiff \$13.50 per hour; from January 21, 2019 through January 5, 2020, Defendants
10 promised to pay Plaintiff \$17.00 per hour; and, from January 6, 2020 through May 7, 2020,
11 Defendants promised to pay Plaintiff \$17.51 per hour.

12 50. Throughout Plaintiff's employment, Plaintiff was not permitted to, and not
13 advised of Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or
14 substantial portion thereof.

15 51. Throughout Plaintiff's employment, Plaintiff did not receive uninterrupted
16 statutory 30-minute meal periods for days on which Plaintiff worked at least 5 hours, which was
17 each day Plaintiff worked.

18 52. LYON never reimbursed Plaintiff for work-related business expenses, including
19 for his mileage or gas when he had to drive in between jobs or for being required to use her
20 personal cell phone.

21 53. Throughout Plaintiff's employment, Defendants violated Labor Code §221 by
22 collecting and/or receiving part of the wages from Plaintiff and the aggrieved employees paid by
23 Defendants. *Espejo v. The Copley Press, Inc.*, 13 Cal. App. 5th 329, 372 (2017).

24 54. Defendants violated Labor Code §§ 204 and 223 because Defendants failed to pay
25 wages for all hours worked paid at least twice during each calendar month to employees as
26 required "by contract" under Labor Code section 223, as well as an improper collection of wages
27 paid to an employee under Labor Code section 221. *Gonzales v. Downtown LA Motors*, 215 Cal.
28 App. 4th 36 (2d App. Dist. Mar. 6, 2013).

55. Plaintiff is informed and believes, and thereon alleges, that himself and other employees were subject to the same violations and, therefore, are aggrieved employees within the meaning of California Labor Code §2699. Thus, Plaintiff, as an aggrieved employee, reserves her right to bring an action against Defendants, on behalf of himself and other current and former employees.

56. *Additionally, pursuant to Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, as an aggrieved employee, Plaintiff may investigate and pursue claims and penalties on behalf of other aggrieved employees for other violations that he was not personally “aggrieved” by.

57. Throughout Plaintiff's employment, Plaintiff's pay stubs did not reflect all hours worked nor wages lawfully owed in violation of Labor Code §226.

GENERAL ALLEGATIONS

58. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general and special damages, including severe and profound pain and emotional distress, anxiety, depression, headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological counseling and treatment, and past and future lost wages and benefits.

59. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses, commissions, benefits and loss or diminution of earning capacity.

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

61. Because the acts taken toward Plaintiff were carried out by officers, directors and/or managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages be levied against Defendants and each of them, in sums in excess of the jurisdictional minimum of this Court.

62. Defendants' conduct described herein was undertaken, authorized, and/or ratified

1 Defendants' officers, directors and/or managing agents, including, but not limited to
2 INDIVIDUAL HARASSERS and those identified herein as DOES 1 through 20, who were
3 authorized and empowered to make decisions that reflect and/or create policy for Defendants.
4 The aforementioned conduct of said managing agents and individuals was therefore undertaken
5 on behalf of Defendants who further had advanced knowledge of the actions and conduct of said
6 individuals whose actions and conduct were ratified, authorized, and approved by managing
7 agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
8 and designated herein as DOES 1 through 20, inclusive.

9 63. As a result of Defendants' actions, Plaintiff has suffered and will continue to
10 suffer general and special damages, including severe and profound pain and emotional distress,
11 anxiety, depression, headaches, tension, and other physical ailments, as well as medical
12 expenses, expenses for psychological counseling and treatment, and past and future lost wages
13 and benefits.

14 64. As a result of the above, Plaintiff is entitled to past and future lost wages,
15 bonuses, commissions, benefits and loss or diminution of earning capacity.

16 65. Plaintiff claims general damages for emotional and mental distress and
17 aggravation in a sum in excess of the jurisdictional minimum of this Court.

18 66. Because the acts taken toward Plaintiff were carried out by officers, directors
19 and/or managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in
20 conscious disregard of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff
21 requests that punitive damages be levied against Defendants and each of them, in sums in excess
22 of the jurisdictional minimum of this Court.

23
24 **FIRST CAUSE OF ACTION**
25 **FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
26 **AGAINST LYON AND DOES 1-20, INCLUSIVE**

27 67. Plaintiff re-alleges and incorporates by reference all preceding paragraphs,
28 inclusive, as though set forth in full herein.

1 68. At all times hereto, the FEHA was in full force and effect and was binding upon
2 Defendants and each of them. As such term is used under FEHA, “on the bases enumerated in
3 this part” means or refers to discrimination on the bases of one or more of the protected
4 characteristics under FEHA.

5 69. FEHA requires Defendants to refrain from discriminating against an employee on
6 the basis of race, color, ancestry, ethnic background, national origin, and engagement in
7 protected activities, and to prevent from occurring discrimination, harassment, and retaliation on
8 the same bases.

9 70. Plaintiff was a member of multiple protected classes as a result of Plaintiff’s race,
10 color, ancestry, national origin, ethnic background, and/or engagement in protected activities, or
11 a combination thereof.

12 71. At all times relevant hereto, Plaintiff was performing competently in the position
13 Plaintiff held with Defendants.

14 72. Plaintiff suffered the adverse employment actions of unlawful harassment,
15 discrimination, failure to promote, failure to investigate, remedy, and/or prevent discrimination,
16 failure to reinstate and/or return to work, and termination, and was harmed thereby.

17 73. Plaintiff is informed and believes that Plaintiff’s race, color, ancestry, ethnic
18 background, and engagement in protected activities, and/or some combination of these protected
19 characteristics under Government Code §12926(j) were motivating reasons and/or factors in the
20 decisions to subject Plaintiff to the aforementioned adverse employment actions.

21 74. Said conduct violates the FEHA, and such violations were a proximate cause in
22 Plaintiff’s damage as stated below.

23 75. The foregoing conduct of Defendants individually, or by and through their
24 officers, directors and/or managing agents, was intended by the Defendants to cause injury to the
25 Plaintiff or was despicable conduct carried on by the Defendants with a willful and conscious
26 disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious
27 disregard of Plaintiff’s rights such as to constitute malice, oppression, or fraud under Civil Code
28 §3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or

1 make an example of Defendants.

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

4
5 **SECOND CAUSE OF ACTION**
6 **FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
7 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

8 77. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs
9 as though set forth in full herein.

10 78. At all times hereto, the FEHA was in full force and effect and was binding upon
11 Defendants and each of them.

12 79. Section 12940(j) of the California Government Code makes it an unlawful
13 employment practice "[f]or an employer ...to harass an employee" in the workplace," because
14 the employee exercised his Department of Fair Employment and Housing Act rights. Further,
15 section 12940(h) of the California Government Code makes it unlawful employment practice
16 "[f]or any employer ... to discharge, expel, or otherwise discriminate against any person because
17 the person has opposed any practices forbidden under this part [FEHA] or because the person has
18 filed a complaint, testified, or assisted in any proceeding under this part." Plaintiff was harassed
19 by Defendants because of Plaintiff's race, color, ancestry, ethnic background, national origin,
20 and because Plaintiff exercised and attempted to exercise FEHA rights.

21 80. These laws set forth in the preceding paragraph require Defendants to refrain from
22 harassing, or creating, or maintaining a hostile work environment against an employee based
23 upon the employee's race, color, ancestry, ethnic background, national origin, and/or
24 engagement in protected activity, as set forth hereinabove.

25 81. Defendants' harassing conduct was severe or pervasive, was unwelcome by
26 Plaintiff, and a reasonable person in Plaintiff's circumstances would have considered the work
27 environment to be hostile or abusive.

28 82. Defendants violated the FEHA and the public policy of the State of California

1 which is embodied in the FEHA by creating a hostile work environment and harassing Plaintiff
2 because of Plaintiff's race, color, ancestry, ethnic background, national origin, and/or
3 engagement in protected activity, including complaints of safety, and/or some combination of
4 these protected characteristics, as set forth hereinabove.

5 83. The above said acts were perpetrated upon Plaintiff by supervisors Jaime
6 Gonzalez, DOES 1-20, and/or the INDIVIDUAL HARASSERS, and/or Defendants knew or
7 should have known of the conduct but failed to take immediate and appropriate corrective action.

8 84. The above said acts of Defendants constitute violations of the FEHA and
9 violations of the public policy of the State of California. Such violations were a proximate cause
10 in Plaintiff's damage as stated below.

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

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

20 87. The above-described acts of Defendants were willful, intentional, and malicious
21 and done with the intent to vex, injure and annoy Plaintiff, and were done in conscious disregard
22 of Plaintiff's rights, and, thus, warrant the imposition of exemplary and punitive damages in an
23 amount sufficient to punish said Defendants and to deter others from engaging in similar
24 despicable conduct.

25
26 **THIRD CAUSE OF ACTION**
27 **FOR RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
28 **AGAINST LYON AND DOES 1-20, INCLUSIVE**

1 88. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs
2 as though set forth in full herein.

3 89. At all times hereto, the FEHA was in full force and effect and was binding upon
4 Defendants and each of them.

5 90. These laws set forth in the preceding paragraph require Defendants to refrain from
6 retaliating against an employee for engaging in protected activity.

7 91. Defendants set in motion, beginning with the harassment of Plaintiff himself, as
8 set forth hereinabove, a campaign which directly led to Plaintiff's actual or constructive
9 termination after complaining about the discriminatory conduct as alleged hereinabove at the
10 hands of the INDIVIDUAL HARASSERS and/or DOES 1-20, inclusive, and other persons from
11 Defendants employees. Defendants supervisors therefore did or attempted to aid, abet, incite,
12 compel, or coerce the retaliation which Plaintiff suffered. *See* Gov't. Code §12940(i).

13 92. Plaintiff engaged in the protected activities of requesting accommodation and
14 complaining about and protesting Defendants' discriminatory and harassing conduct towards
15 Plaintiff based upon Plaintiff's race, national origin, color, ancestry, ethnic background, and/or
16 engagement in protected activity.

17 93. Plaintiff is informed and believes that Plaintiff's conduct of complaining about
18 and protesting about Defendants' discriminatory and harassing conduct, engaging in protected
19 activity, were motivating reasons and/or factors in the decisions to subject Plaintiff to the
20 aforementioned adverse employment actions.

21 94. Plaintiff suffered the adverse employment actions of unlawful harassment;
22 discrimination; retaliation; wrongful demotion; failure to promote; failure to investigate, remedy,
23 and/or prevent discrimination, failure to reinstate and/or return to work, and termination, and was
24 harmed thereby.

25 95. Defendants violated the FEHA by retaliating against Plaintiff and terminating
26 Plaintiff for attempting to exercise Plaintiff's protected rights, as set forth hereinabove.

27 96. Plaintiff is informed and believes, and based thereon alleges, that the above acts
28 of retaliation committed by Defendants were done with the knowledge, consent, and/or

1 ratification of, or at the direction of managers at LYON, Defendants, and/or DOES 1-20,
2 inclusive.

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

5 98. The foregoing conduct of Defendants individually, or by and through their
6 officers, directors and/or managing agents, was intended by the Defendants to cause injury to the
7 Plaintiff or was despicable conduct carried on by the Defendants with a willful and conscious
8 disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious
9 disregard of Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code
10 §3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or
11 make an example of Defendants.

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

14
15 **FOURTH CAUSE OF ACTION**
16 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION**
17 **IN VIOLATION OF GOV'T CODE §12940(k)**
18 **AGAINST LYON AND DOES 1-20, INCLUSIVE**

19 100. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs
20 as though set forth in full herein.

21 101. At all times hereto, the FEHA, including in particular Government Code
22 §12940(k), was in full force and effect and was binding upon Defendants. This subsection
23 imposes a duty on Defendants to take all reasonable steps necessary to prevent discrimination,
24 harassment, and retaliation from occurring. As alleged above, Defendants violated this
25 subsection and breached their duty by failing to take all reasonable steps necessary to prevent
26 discrimination, harassment and retaliation from occurring.

27 102. The above said acts of Defendants constitute violations of the FEHA and were a
28 proximate cause in Plaintiff's damage as stated below.

1 103. The foregoing conduct of Defendants individually, or by and through their
2 officers, directors and/or managing agents, was intended by the Defendants to cause injury to the
3 Plaintiff or was despicable conduct carried on by the Defendants with a willful and conscious
4 disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious
5 disregard of Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code
6 §3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or
7 make an example of Defendants.

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

10
11 **FIFTH CAUSE OF ACTION**

12 **RETALIATION**

13 **LABOR CODE §98.6**

14 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

15 105. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs
16 as though set forth in full herein.

17 106. Labor Code §98.6(a) prohibits an employer from discharging or discriminating
18 against an employee for political activities; for complaining that he or she is owed unpaid wages,
19 for whistleblowing; for assigning wage claims to the Labor Commissioner resulting from
20 demotion, suspension, or discharge for lawful conduct occurring during nonworking hours away
21 from employer's premises; for filing a complaint with the Labor Commissioner or testifying in
22 such proceedings; for initiating proceedings against the employer to collect civil penalties under
23 the "Labor Code Private Attorneys General Act;" and for exercising "any rights afforded him or
24 her" under the Labor Code. Thus, Section 98.6 prohibits an employer from discharging or in any
25 manner discriminating or retaliating against an employee who, among other things, has exercised
26 his or her rights under that Chapter (Chapter 5 of the Labor Code, which encompasses §1102.5),
27 including the right to take meal breaks, and/or made a written or oral complaint that he or she is
28 owed unpaid wages. An employee who has been discharged or retaliated against in violation of

1 Labor Code §98.6 is entitled to recovery of a civil penalty against the employer in an amount not
2 exceeding ten thousand dollars (\$10,000.00) for each violation of that section.

3 107. Plaintiff is informed and believe, and based thereupon alleges, that Plaintiff was
4 terminated from Plaintiff's employment with Defendants as a result of Plaintiff's complaints
5 about race discrimination and assault from his coworkers, INDIVIDUAL HARASSERS.
6 Defendants' retaliatory animus is evidenced by, among other things, the following facts: (1)
7 INDIVIDUAL HARASSERS assaulted Plaintiff and called him racial slurs; (2) Plaintiff
8 complained about the assault and harassment and each time he was reprimanded and not the
9 perpetrators; (3) Plaintiff's termination occurred following Plaintiff's complaints regarding the
10 aforementioned complaints; (4) There were no performance issues or any other legitimate reason
11 for Plaintiff's termination; and (5) Plaintiff was wrongfully terminated

12 108. Defendants' conduct described herein was undertaken, authorized, and/or ratified
13 by Defendants, and Defendants' officers and/or managing agents, and those identified herein as
14 DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create
15 policy for Defendants. The aforementioned conduct of said managing agents and individuals
16 was therefore undertaken on behalf of Defendants. Defendants further had advanced knowledge
17 of the actions and conduct of said individuals whose actions and conduct were ratified,
18 authorized, and approved by managing agents whose precise identities are unknown to Plaintiff
19 at this time and are therefore identified and designated herein as DOES 1-20, inclusive.

20 109. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to
21 exceed \$10,000.00 for Defendants' violations of Labor Code § 98.6.

22 110. Because the acts taken toward Plaintiff were carried out by managerial employees
23 acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of
24 Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive
25 damages be levied against Defendants and each of them, in sums in excess of the jurisdictional
26 minimum of this court.

1 //

2 **SIXTH CAUSE OF ACTION**

3 **FOR RETALIATION**

4 **IN VIOLATION OF LABOR CODE §§ 1102.5, 1102.6, 6310**

5 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

6 111. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 58,
7 inclusive, as though set forth in full herein.

8 112. At all relevant times, Labor Code §1102.5(a) was in full force and effect, and was
9 binding on Defendants. This law prohibits an employer, or any person acting on behalf of the
10 employer, from discharging an employee or in any manner discriminating or retaliating against,
11 or taking any adverse action against, an employee because, among other things, the employee
12 disclosed information to a government or law enforcement agency, or to a person with authority
13 over the employee or another employee who has the authority to investigate, discover, or correct
14 the violation or noncompliance, if the employee has reasonable cause to believe that the
15 information discloses a violation of state or federal statute, or violation of or noncompliance with
16 a local, state, or federal rule or regulation, regardless of whether disclosing the information is
17 part of the employee's job duties. Pursuant to Labor Code §1102.5(f), in addition to other
18 penalties, an employer that is a corporation or limited liability company is liable for a civil
19 penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.

20 113. Labor Code §6310 declares, in pertinent part, that no person shall discharge, or in
21 any manner discriminate against an employee, because the employee has made any oral or
22 written complaint to his employer with reference to employee safety or health. The public policy
23 underlying Labor Code §6310 is not merely to aid the reporting of actual safety violations; it is
24 to prevent retaliation against those who in good faith report working conditions they believe to
25 be unsafe.

26 114. Plaintiff reported suspected violations of California Law to Plaintiff's supervisors
27 at Employers.

28 115. Defendants subjected Plaintiff to the adverse employment action, including

1 without limitation, wrongfully reprimanded and terminated Plaintiff because he reported the
2 suspected violations of California law to Plaintiff's supervisors, including complaints about his
3 assaults and concerns for his safety, and racial discrimination.

4 116. Plaintiff's reports of these violations were a motivating and contributing factor for
5 the adverse employment actions by Defendants against Plaintiff.

6 117. Said conduct violates Labor Code Labor Code §§1102.5, 1102.6, 6310, and such
7 violations were a proximate cause in Plaintiff's damages as hereinabove stated.

8 118. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to
9 exceed \$10,000.00 for each of Defendants' violations of Labor Code §§ 1102.5, 1102.6, and
10 6310.

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

17
18 **SEVENTH CAUSE OF ACTION**

19 **ASSAULT**

20 **AGAINST INDIVIDUAL HARASSERS AND DOES 1-20, INCLUSIVE**

21 120. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs
22 as though set forth in full herein.

23 121. Plaintiff alleges that LYON's employees MIGUEL and RICHIE assaulted
24 Plaintiff.

25 122. MIGUEL came at Plaintiff with a broom saying he would put him in his place.
26 MIGUEL approached Plaintiff with a weapon and without Plaintiff's consent, by taking a stance
27 as if he were going to hit Plaintiff, intending to cause harmful or offensive contact. Plaintiff
28 reasonably believed that he was about to be touched in a harmful or offensive manner, and

1 MIGUEL threatened to touch Plaintiff in a harmful and offensive manner.

2 123. RICHIE asked Plaintiff why he was standing still and threatened to hit Plaintiff.
3 RICHIE threatened to punch Plaintiff without Plaintiff's consent, by taking a stance as if he were
4 going to hit Plaintiff, intending to cause harmful or offensive contact. Plaintiff reasonably
5 believed that he was about to be touched in a harmful or offensive manner, and MIGUEL
6 threatened to touch Plaintiff in a harmful and offensive manner.

7 124. Plaintiff is informed and believes and thereon alleges, that it would have appeared
8 to a reasonable person in Plaintiff's situation, as alleged herein, MIGUEL and RICHIE were
9 about to carry out their threats to hit Plaintiff.

10 125. Plaintiff did not consent to MIGUEL or RICHIE's acts and was harmed by such
11 acts.

12 126. As a direct and proximate result of MIGUEL and Mr. RICHIE's unlawful
13 conduct, Plaintiff has suffered special damages including but not limited to past and future loss
14 of income, benefits, and other damages to be proven at the time of trial.

15 127. As a direct and proximate result of MIGUEL and RICHIE'S unlawful conduct,
16 Plaintiff has suffered general damages including but not limited to shock, embarrassment,
17 humiliation, emotional distress, stress, and other damages to be proven at the time of trial.

18 128. Plaintiff alleges that MIGUEL and RICHIE were LYON's agents who was acting
19 within the scope of their agency when they armed Plaintiff.

20 129. MIGUEL and RICHIE committed the acts alleged herein maliciously,
21 fraudulently and oppressively in conscious disregard for Plaintiff's rights. Plaintiff is, therefore,
22 entitled to recover punitive damages from MIGUEL, RICHIE AND DOES 1-20 in an amount
23 according to proof at trial.

24
25 **EIGHTH CAUSE OF ACTION**
26 **FOR COMMON LAW INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
27 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

28 130. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs

1 as though set forth in full herein.

2 131. A person is liable for intentional infliction of emotional distress if his or her
3 conduct is outrageous; the person either intended to cause another emotional distress or acted
4 with reckless disregard of the probability that the other person would suffer emotional distress;
5 the other person suffered severe emotional distress; and the conduct was a substantial factor in
6 causing the emotional distress.

7 132. As alleged herein, Defendants engaged in extreme and outrageous conduct against
8 Plaintiff.

9 133. Defendants intended to cause or acted in reckless disregard of the probability of
10 causing, emotional distress to Plaintiff.

11 134. The conduct of Defendants proximately caused Plaintiff severe emotional
12 suffering and distress.

13 135. Pursuant to this Court's statutory authority, Plaintiff requests an award of punitive
14 damages, in addition to general and special damages, and other relief the court deems proper.

15 136. Pursuant to this Court's statutory authority, Plaintiff requests an award of
16 attorneys' fees, and costs in prosecuting this action, including expert fees and any other relief the
17 court deems proper.

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

25
26
27 //

28 //

NINTH CAUSE OF ACTION
FOR WRONGFUL TERMINATION
IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA
AGAINST LYON AND DOES 1-20, INCLUSIVE

138. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

139. At all times mentioned in this complaint, Labor Code §§ 98.6, 232.5, 923, 1102.5, 6310, and 6400, et seq., were in full force and effect and binding on Defendants.

140. Labor Code §98.6 reflects the State's broad public policy interest in protecting the rights of individual employees and job applicants who could not otherwise afford to protect themselves from violations of the Labor Code. Labor Code §1102.5 reflects the State's broad public policy interest in encouraging workplace "whistleblowers," who may without fear of retaliation report concerns regarding an employer's suspected illegal conduct, irrespective of whether the reporting is made to governmental agencies or to the employer itself, and irrespective of whether the employee's suspicions are correct that the challenged conduct actually violates some law. Indeed, the law in California is that an employee's good faith but mistaken belief in the illegality of his co-workers', supervisor's, and employer's conduct is protected from employer retaliation in the whistle-blowing context.

141. Labor Code §6310 declares, in pertinent part, that no person shall discharge, or in any manner discriminate against an employee, because the employee has made any oral or written complaint to his employer with reference to employee safety or health. These laws require Defendants to refrain, among other things, from discharging, suspending, or in any other manner discriminating against an employee because the employee has made a bona fide oral or written complaint to his or her employer and disclosed the employer's working conditions, or the employer believes that the employee disclosed or may disclose information to a government or law enforcement agency, and the employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. The Labor code furthers that any employer who willfully refuses to rehire, promote, or otherwise restore an employee is

1 guilty of a misdemeanor. Labor Code §§6400, et seq., require that every employer shall furnish
2 employment and a place of employment that is safe and healthful for employees.

3 142. When read together, the foregoing statutes establish a fundamental public policy
4 of the State of California requiring employers to provide a safe and secure workplace, including
5 a requirement that an employer take reasonable steps to address credible threats of violence in
6 the workplace.

7 143. Plaintiff believes and thereon alleges that his complaints regarding the safety and
8 health of the place of employment furnished by Defendants were factors in Defendants' decision
9 to retaliate against Plaintiff by refusing to investigate Plaintiff's complaints of harassment and
10 discrimination, by failing to prevent harassment and discrimination, defaming Plaintiff, cutting
11 Plaintiff's hours and pay, and by terminating Plaintiff, as alleged hereinabove.

12 144. Such discrimination and retaliation against Plaintiff who, in good faith, reported
13 working conditions he believed to be unsafe were a proximate cause in Plaintiff's damages as
14 stated below.

15 145. At all relevant times mentioned in this complaint, the FEHA was in full force and
16 effect and was binding on Defendants. This law requires Defendants to refrain, among other
17 things, from discriminating against any employee on the basis of race, color, ancestry, ethnic
18 background, national origin, and engagement in protected activities. At all times mentioned in
19 this complaint, Article I, Section 8 of the California Constitution was in full force and effect and
20 binding on Defendants. This law requires Defendants to refrain from disqualifying a person
21 from pursuing employment on the basis of race, color, national origin, or sex.

22 146. At all times mentioned in this complaint, it was a fundamental policy of the State
23 of California that Defendants cannot retaliate against any employee on the basis of engagement
24 in protected activity.

25 147. At all times mentioned in this complaint, it was a fundamental policy of the State
26 of California that Defendants cannot discriminate and/or retaliate against any employee on the
27 basis of race, color, ancestry, national origin, ethnic background, and engagement in protected
28 activities.

1 148. Plaintiff believes and thereon alleges that Plaintiff's race, color, ancestry, ethnic
2 background, and engagement in protected activities, and/or some combination thereof, were
3 factors in Defendants' conduct as alleged hereinabove.

4 149. Such discrimination and retaliation, resulting in the wrongful termination of
5 Plaintiff's employment on the basis of race, color, ancestry, national origin, ethnic background,
6 and engagement in protected activities, including complaints about safety, and/or some
7 combination of these factors, were a proximate cause in Plaintiff's damages as stated below.

8 150. The above said acts of Defendants constitute violations of the Government Code,
9 Labor Code, and the public policy of the State of California embodied therein as set forth above.
10 Defendants violated these laws by discriminating and retaliating against Plaintiff and terminating
11 Plaintiff's employment in retaliation for exercise of protected rights.

12 151. At all times mentioned in this complaint, it was a fundamental policy of the State
13 of California that Defendants cannot discriminate and/or retaliate against any employee in
14 violation of the FEHA and Labor Code.

15 152. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's
16 status as a protected member of a protected class or classes under FEHA, Plaintiff's engagement
17 in protected activities under Labor Code §§ 98.6, 1102.5, and/or 6310 was a proximate cause in
18 Plaintiff's damages as stated below.

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

TENTH CAUSE OF ACTION
FOR COMMON LAW NEGLIGENT SUPERVISION AND RETENTION
AGAINST LYON AND DOES 1-20, INCLUSIVE

154. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

155. An employer is liable for negligent supervision or retention of an employee if the employer knew or should have known that the employee created a particular risk to others; that the employee harmed the plaintiff, and that the employer's negligence in supervising or retaining the employee was a substantial factor in causing the plaintiff's harm.

156. Employers owed Plaintiff a duty of reasonable care to supervise their employees and to take reasonable steps to prevent them from harassing, threatening or injuring Plaintiff.

157. Employers further owed Plaintiff a duty of reasonable care to discharge from employment employees who had harassed, threatened or injured or were reasonably likely to harass, threaten or injure others with whom they came into contact at work, including Plaintiff.

158. Employers had reason to know that the INDIVIDUAL HARASSERS created a risk or threat of injury to Plaintiff, as alleged herein, due to Plaintiff's complaints of INDIVIDUAL HARASSERS's behavior, including but not limited to INDIVIDUAL HARASSERS' sexual harassment, assault and battery of Plaintiff, and ratification by Employers.

159. Employers breached its duties by failing to properly supervise or control INDIVIDUAL HARASSERS; and by failing to terminate the employment of the INDIVIDUAL HARASSERS so that Plaintiff could work in a reasonably safe environment free from discrimination, hostility, intimidation, and harassment.

160. Pursuant to this Court's statutory authority, Plaintiff requests an award of punitive damages, in addition to general and special damages, and other relief the court deems proper.

1 161. Pursuant to this Court's statutory authority, Plaintiff requests an award of
2 attorneys' fees, and costs in prosecuting this action, including expert fees and any other relief
3 the court deems proper.

4 162. The foregoing conduct of Defendants, by and through its officers, directors
5 and/or managing agents, was intended by Defendants to cause injury to Plaintiff or was
6 despicable conduct carried out by Defendants with a willful and conscious disregard of the
7 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of
8 Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code §3294,
9 thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or make an
10 example of Defendants.

11
12 **ELEVENTH CAUSE OF ACTION**
13 **FOR DECLARATORY JUDGMENT**

14 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

15 163. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs
16 as though set forth in full herein.

17 164. Government Code §12920 sets forth the public policy of the State of California as
18 follows:

19 It is hereby declared as the public policy of this state that it is
20 necessary to protect and safeguard the right and opportunity of all
21 persons to seek, obtain, and hold employment without
22 discrimination or abridgment on account of race, religious creed,
23 color, national origin, ancestry, physical disability, mental
24 disability, medical condition, genetic information, marital status,
25 sex, gender, gender identity, gender expression, age, or sexual
26 orientation.

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

Further, the practice of discrimination because of race, color,
religion, sex, gender, gender identity, gender expression, sexual
orientation, marital status, national origin, ancestry, familial status,
source of income, disability, or genetic information in housing

1 accommodations is declared to be against public policy.

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

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

7 165. Government Code §12920.5 embodies the intent of the California legislature and
8 states:

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

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

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

22 167. An actual controversy has arisen and now exists between Plaintiff and Defendants
23 concerning their respective rights and duties as it is believed that Defendants may allege that
24 they did not discriminate and retaliate against Plaintiff; that Plaintiff was not terminated as a
25 result of Plaintiff's race, color, ancestry, national origin, ethnic background, and engagement in
26 protected activities, and/or some combination of these protected characteristics. Plaintiff
27 contends that Defendants did discriminate, harass, and retaliate against Plaintiff on the basis of
28 Plaintiff's race, color, ancestry, national origin, ancestry, ethnic background, and engagement in
protected activities, and/or some combination of these protected characteristics; and that Plaintiff
was retaliated against and, ultimately wrongfully terminated as a result of Plaintiff's race, color,
national origin, ancestry, ethnic background, and engagement in protected activities, and/or some
combination of these protected characteristics. Plaintiff is informed and believes, and on that
basis alleges, that Defendants shall dispute Plaintiff's contentions.

168. Pursuant to Code of Civil Procedure §1060, Plaintiff desires a judicial
determination of Plaintiff's rights and duties, and a declaration that Defendants harassed Plaintiff
on the basis of Plaintiff's race, color, ancestry, national origin, ancestry, ethnic background, and

1 engagement in protected activities, and/or some combination of these protected characteristics.

2 169. Pursuant to Code of Civil Procedure §1060, Plaintiff seeks a judicial
3 determination of Plaintiff's rights and duties, and a declaration that Plaintiff's race, color,
4 national origin, ancestry, ethnic background, and engagement in protected activities, and/or some
5 combination of these protected characteristics was a substantial motivating factor in the decision
6 to subject Plaintiff to the aforementioned adverse employment actions.

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

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

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

21
22 **TWELFTH CAUSE OF ACTION**

23 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

24 **AND IMPROPER DEDUCTIONS**

25 **IN VIOLATION OF LABOR CODE §§200, 204, 226, 500, 510, 1194, 1197, AND 1198**

26 **AGAINST LYON AND DOES 1-20, INCLUSIVE**

27 173. Plaintiff hereby reallege and incorporate by reference as though set forth fully
28 herein.

1 174. At all times relevant herein, Defendants were required to compensate their non-
2 exempt employees for all hours worked, pursuant to Labor Code §§ 200, 226, 500, 510, 1197,
3 1194 and 1198 and 8 Code of Regulations §11050, as set forth hereinabove. As alleged herein,
4 Defendants routinely failed to pay Plaintiff her minimum and premium overtime wages and failed
5 to Plaintiff for her missed meal and rest breaks

6 175. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code
7 §510, 8 Code of Regulations §11050, and Industrial Welfare Commission Order No. 5-2001.

8 176. Throughout Plaintiff's employment, Defendants violated Labor Code §221 by
9 collecting and/or receiving part of the wages from Plaintiff and the aggrieved employees paid by
10 Defendants. *Espejo v. The Copley Press, Inc.*, 13 Cal. App. 5th 329, 372 (2017).

11 177. For the four (4) years preceding the filing of this action, Defendants failed to
12 compensate Plaintiff all hours worked, including but not limited to off-the-clock hours, on-call
13 time, overtime wages, double-time wages, and time designated as meal and rest breaks but for
14 which he was not relieved of all duties.

15 178. Under the aforementioned wage orders and regulations, Plaintiff is entitled to
16 recover compensation for all hours worked, but not paid, for the four (4) years preceding the
17 filing of this Complaint, plus reasonable attorneys' fees and costs of suit pursuant to Labor Code
18 §§ 218.5, 1194, and penalties pursuant to Labor Code §§ 203 and 226, and 558.

19 179. Defendants violated Labor Code §§ 204 and 223 because Defendants failed to pay
20 wages for all hours worked paid at least twice during each calendar month to employees as
21 required "by contract" under Labor Code section 223, as well as an improper collection of wages
22 paid to an employee under Labor Code section 221. *Gonzales v. Downtown LA Motors*, 215 Cal.
23 App. 4th 36 (2d App. Dist. Mar. 6, 2013).

24 180. In violation of state law, Defendants have knowingly and willfully refused to
25 perform its obligations to compensate Plaintiff for all wages earned and all hours worked. As a
26 direct result, Plaintiff has suffered, and continue to suffer, substantial losses related to the use and
27 enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking
28

1 to compel Defendants to fully perform their obligation under state law, all to their respective
2 damage in amounts according to proof at time of trial.

3 181. Plaintiff is thus entitled to recover nominal, actual and compensatory damages in
4 amount according to proof at time of trial, but in amounts in excess of the jurisdiction of this
5 Court.

6 182. As a proximate result of the aforementioned violations, Plaintiff has been damaged
7 in an amount according to proof at time of trial.

8 183. Defendants' conduct described herein violates Labor Code §§ 200, 203, 218.5,
9 226, 558, 1194, and 1198. Therefore, pursuant to 12 CCR § 11040 and Labor Code §§ 203,
10 218.5, 226, 558, 1194 and 1198, Plaintiff is entitled to recover damages for the nonpayment of
11 wages of all hours worked that were improperly deducted and/or not counted as a result of
12 Defendants' policies, liquidated damages for underpayment of minimum wages, penalties,
13 reasonable attorneys' fees, expenses, and costs of suit.

14 184. Plaintiff requests relief as hereinafter provided.

15
16 **THIRTEENTH CAUSE OF ACTION**

17 **FOR FAILURE TO PAY MINIMUM WAGES**

18 **LABOR CODE §§ 204.11, 226.2, 1182.12, 1194, 1194.2, 1197,**

19 **AGAINST LYON AND DOES 1-20, INCLUSIVE**

20 185. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs
21 as though set forth in full herein.

22 186. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by
23 law is unlawful. An employer violates the minimum wage statute even if the average rate for
24 paid and unpaid hours exceeded the minimum wage.

25 187. Under California law, Plaintiff is entitled to at least the minimum wage for every
26 hour worked.

27 188. Since Defendants paid commission wages, Plaintiffs were entitled to two times a
28 regular base hourly rate of the California minimum wage as follows:

Effective	26+ employees	1-25 employees
1/1/20	\$13.00	\$12.00
1/1/19	\$12.00	\$11.00
1/1/18	\$11.00	\$10.50
1/1/17	\$10.50	\$10.00
1/1/16	\$10.00	\$10.00
1/1/15	\$9.00	\$9.00

189. Despite this, Defendant failed to pay Plaintiff the requisite minimum wage.

190. Thus, for the entirety of the time periods set forth above, Plaintiff is owed unpaid minimum wages in the amount according to proof.

191. Defendant's failure to pay the legal minimum wage to Plaintiff as alleged herein is unlawful and creates entitlement, pursuant to Labor Code §1197, to recovery by Plaintiffs in a civil action for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference between the straight time compensation paid and applicable minimum wage, including interest thereon.

192. Pursuant to Labor Code §1194, Plaintiff requests that the court award reasonable attorneys' fees and costs incurred by Plaintiff in this action.

193. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, plus interest thereon.

TWELVETH CAUSE OF ACTION

FOR FAILURE TO PROVIDE MEAL AND REST BREAKS

LABOR CODE §§226.7, 512

AGAINST LYON AND DOES 1-20, INCLUSIVE

194. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

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

1 196. Labor Code §226.7 requires an employer to provide every employee with an
2 uninterrupted rest period of not less than 10 minutes, for every period worked of four hours, or
3 substantial portion thereof.

4 197. In the four years last past, Plaintiff regularly worked in excess of five hours per
5 day, and was thereby entitled to take uninterrupted 30-minute meal periods and two 10-minute
6 rest periods on each day of work.

7 198. Defendants failed and refused to provide Plaintiff with meal and rest periods, and
8 failed to compensate Plaintiff for missed meal and rest periods, as required by Labor Code
9 §§226.7 and the applicable sections of 8 Code of Regulations §11050 and Industrial Welfare
10 Commission Order No. 5-2001.

11 199. As alleged herein, Plaintiff is not exempt from the meal and rest break
12 requirements of 8 Code of Regulations §11050 and Industrial Welfare Commission Order No. 5-
13 2001. Consequently, Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or
14 the requisite minimum wage, whichever is greater, for each day that Plaintiff was denied such
15 meal periods, and is owed one hour of pay at Plaintiff's regular hourly rate, or the requisite
16 minimum wage, whichever is greater, for each day that Plaintiff was denied such rest periods,
17 calculated as follows:

18 a. From approximately October 30, 2017 through May 7, 2020, Plaintiff's statutory
19 30-minute meal periods were missed, interrupted or cut short approximately 5 days per week for
20 136 weeks, or on approximately 680 days. Consequently, Plaintiff is owed one hour of pay at
21 \$17.51 for each day, or \$11,906.80 plus interest thereon, for unpaid missed or interrupted meal
22 periods. During this same time period, Plaintiff was deprived of one or more of Plaintiff's
23 statutory 10-minute rest periods on approximately 680 days (5 days per week for 30 weeks).
24 Consequently, Plaintiff is owed one hour of pay at \$17.51 for each day, or \$11,906.80, plus
25 interest thereon, for unpaid rest periods. Thus, Plaintiff is owed a total of \$23,813.60, plus
26 interest thereon, for unpaid meal and rest periods for this time period.

27 200. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal
28 and rest breaks as a direct and proximate result of Defendants' failure and refusal to pay said

1 compensation.

2 201. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to
3 recover such amounts in the combined amount of \$23,813.60, pursuant to Labor Code §226.7(b),
4 plus interest thereon and costs of suit.

5
6 **FOURTEENTH CAUSE OF ACTION**
7 **FAILURE TO PAY BUSINESS EXPENSES**
8 **IN VIOLATION OF CAL. LABOR CODE § 2802**
9 **AGAINST LYON AND DOES 1-20, INCLUSIVE**

10 202. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as
11 though fully set forth herein.

12 203. Defendants have failed to reimburse Plaintiff for business expenses, including but
13 not limited to Plaintiff's mileage and cell phone expenses for Defendant's business purposes.

14 204. Defendants did not provide Plaintiff a business cellphone in the field to use,
15 making Plaintiff have to use his own personal cell phone and mileage driving in between jobsite
16 while on call which he was never reimbursed for in violation of Labor Code §§ 2802 and 2804
17 ("An employer shall indemnify his or her employees for all necessary expenditures or losses
18 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
19 her obedience to the directions of the employer.").

20 205. Plaintiff is therefore entitled to reimbursement for usage of his cell phone and
21 mileage in between jobsites.

22 206. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her
23 employee for all necessary expenditures or losses incurred by the employee in direct
24 consequences of the discharge of his or her duties."

25 207. Plaintiff has incurred reasonable and necessary expenses in the course of
26 completing his job duties, which were not reimbursed by Defendants. An employer that knows or
27 has reason to know that an employee has incurred work-related expenses must reimburse the
28 employee, even if the employee does not request reimbursement.

1 208. As a result of Defendants' above-referenced wrongful conduct, Plaintiff has
2 suffered, and continue to suffer, significant economic loss and damages.

3 209. Plaintiff is entitled to reimbursement for these necessary expenditures, plus
4 interest and attorneys' fees and costs, under Labor Code § 2802

5
6 **FIFTEENTH CAUSE OF ACTION**
7 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
8 **LABOR CODE §§226 ET SEQ.**
9 **AGAINST LYON AND DOES 1-20, INCLUSIVE**

10 210. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as
11 though fully set forth herein.

12 211. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their
13 non-exempt employees with itemized statements showing total hours worked, hourly wages,
14 gross wages, total deductions and net wages earned. An employer who violates these code
15 sections is liable to its employees for the greater of actual damages suffered by the employee, or
16 \$50.00 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per
17 employee for each subsequent pay period, up to a statutory maximum of \$4,000.00. Pursuant to
18 Labor Code §226(e)(2), an employee is deemed to suffer injury for purposes of this subdivision
19 if the employer fails to provide a wage statement at all.

20 212. At all relevant times, Defendants failed to provide the Plaintiff with timely and
21 accurate wage and hour statements showing gross wages earned, total hours worked, all
22 deductions made, net wages earned, the name and address of the legal entity employing Plaintiff,
23 and all applicable hours and rates in effect during each pay period and the corresponding number
24 of hours worked at each hourly rate by Plaintiff. For the majority of the time and as to nearly all
25 of Plaintiff's wages, Defendants knowingly and intentionally, not inadvertently, failed to provide
26 Plaintiff with accurate paystubs, and for a certain period of time failed to provide any paystubs at
27 all, and instead paid Plaintiff entirely in cash without any calculations of how Plaintiff's gross
28 wages were calculated. Not one of the paystubs that Plaintiff received complied with Labor

1 Code §226, and failed to contain the required information.

2 213. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code
3 §226.

4 214. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of
5 hour, wage, and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty
6 and expense in attempting to reconstruct time and pay records, causing Plaintiff not to be paid
7 wages Plaintiff is entitled to, causing Plaintiff to be unable to rely on earnings statements in
8 dealings with third parties, eviscerating Plaintiff's right under Labor Code §226(b) to review
9 itemized wage statement information by inspecting the employer's underlying records, and
10 deceiving Plaintiff regarding Plaintiff's entitlement to meal period, and rest period wages. For
11 the time periods that Plaintiff was not provided with paystubs at all, Plaintiff's aforementioned
12 injuries are presumed as a matter of law.

13 215. Plaintiff was paid on a bi-weekly basis, and therefore Defendants violated Labor
14 Code §226 approximately 26 times during the one year preceding the filing of this complaint.
15 Consequently, Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the
16 statutory maximum amount of \$4,000.00, whichever is greater.

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

20
21 **SIXTEENTH CAUSE OF ACTION**

22 **FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS**

23 **LABOR CODE §§226, 1198.5**

24 **AGAINST LYON AND DOES 1-20, INCLUSIVE**

25 217. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as
26 though fully set forth herein.

27 218. Labor Code §1198.5 requires an employer, within thirty (30) days of a written
28 request thereof, to inspect or receive a copy of an employee's personnel and payroll records. An

1 employer's failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

2 219. Labor Code §226 requires an employer, within twenty-one (21) days of a written
3 request thereof, to allow inspection or to provide a copy of an employee's personnel and payroll
4 records. An employer's failure to do so subjects the employer to a \$750.00 penalty, payable to
5 the employee.

6 220. On May 11, 2020, Plaintiff made a written request to inspect or receive a copy of
7 Plaintiff's personnel and payroll records from Defendants, which Defendants received.

8 221. Defendants failed and refused to permit Plaintiff's inspection of Plaintiff's
9 personnel and payroll records and failed to provide a copy of Plaintiff's personnel and payroll
10 records to Plaintiff within the time required by Labor Code §1198.5.

11 222. As a result of Defendants' failure and refusal to comply with Labor Code
12 §1198.5, Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00.

13 223. As a result of Defendants' failure and refusal to comply with Labor Code §226(f),
14 Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00.

15 224. Pursuant to Labor Code §§1198.5(l) and 226(h), Plaintiff requests a reasonable
16 award of attorneys' fees and costs.

17
18 **SEVENTEENTH CAUSE OF ACTION**

19 **FOR WAITING TIME PENALTIES**

20 **LABOR CODE §§201-203**

21 **AGAINST LYON AND DOES 1-20, INCLUSIVE**

22 225. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as
23 though fully set forth herein.

24 226. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages
25 and other compensation due immediately upon termination or within 72 hours of resignation, as
26 required. These wages refer to, at a minimum, unpaid meal and rest period compensation that
27 Defendants should have paid, but did not pay to Plaintiff during the term of Plaintiff's
28 employment and which were, at the latest, due within the time restraints of Labor Code §§201-

1 203.

2 227. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code
3 §§201-203.

4 228. As a direct and proximate result of Defendants' willful failure to pay these wages,
5 Plaintiff is entitled to payment of Plaintiff's meal and rest periods as previously pleaded herein,
6 and approximately \$4,500 in wait time penalties, calculated based on a daily average wage of
7 \$150.00, times 30 days (i.e., \$17.51/hr x 80 hrs [incl. OT] x 30 days).

8 229. Based on Defendants' conduct as alleged herein, Defendants are liable for
9 \$4,500.00 in statutory penalties pursuant to Labor Code §203 and other applicable provisions, as
10 well as attorneys' fees and costs.

11 **EIGHTEENTH CAUSE OF ACTION**
12 **FOR PENALTIES PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT**
13 **LABOR CODE §2699**
14 **ON BEHALF OF ALL AGGRIEVED EMPLOYEES**
15 **AGAINST LYON AND DOES 1-20, INCLUSIVE**

16 230. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs
17 as though set forth in full herein.

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

21 232. Plaintiff and the Classes are aggrieved employees within the meaning of Labor
22 Code §§2699(c) and 2699.3(a), as Defendants have committed multiple California Labor Code
23 violations against the Classes, as previously pleaded in this Complaint.

24 233. On June 5, 2020, and more than 63 calendar days before filing this First Amended
25 Complaint, Plaintiff provided electronic notice to the Labor and Workforce Development
26 Agency and notice by certified mail to Defendants of the specific provisions of the California
27 Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code
28 §2699.3(a) by citing the specific provision of the Labor Code alleged to have been violated,

including the facts and theories sufficient to support the alleged violations.

234. Here, Plaintiffs' civil action alleges violations of provisions listed in Labor Code §2699.5 and violations of provisions other than those listed in Labor Code §2699.5. As such, Labor Code §2699.3(a) and §2699.3(c) apply to this action.

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

236. Further, as of the filing of this Complaint, Plaintiffs have not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of the actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor Code §2699.

PENALTIES

237. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) (or any of its departments, divisions, commissions, board agency or employees), such civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees) and Labor Code §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil penalties, as follows:

a. As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of one hundred dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation; and

b. As applicable, civil penalties under Labor Code §558 (in addition to and entirely independent and apart from any other penalty provided for in the Labor Code), for

1 violations of Labor Code §§1-556, in the amount of \$50 for each underpaid
2 aggrieved employee for each pay period the aggrieved employee was underpaid in
3 addition to an amount sufficient to recover underpaid wages, and \$100 for each
4 subsequent violation for each underpaid employee for each pay period for which
5 the employee was underpaid; and also an additional amount sufficient to recover
6 under paid wages as penalties, with all wages recovered pursuant to Labor Code
7 §557 paid to the aggrieved employees;

8 c. As applicable, civil penalties under Labor Code §1197.1 (in addition to and
9 entirely independent and apart from any other penalty provided in the Labor
10 Code) for violations of Labor Code §§1194 and 1197, in the amount of \$100 for
11 each underpaid aggrieved employee for each pay period the aggrieved employee
12 was intentionally underpaid in addition to an amount sufficient to recover
13 underpaid wages, and \$250 for each subsequent violation for each underpaid
14 aggrieved employees regardless of whether the initial violation was intentionally
15 committed in addition to an amount sufficient to recover underpaid wages, with
16 all wages recovered pursuant to Labor Code §1197.1;

17 d. As applicable, civil penalties under Labor Code §210 (in addition to and entirely
18 independent and apart from any other penalty provided in the Labor Code), for
19 each employee who is/was not paid wages in accordance with Labor Code
20 §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5, in the amount of a civil
21 penalty of \$100 for each aggrieved employee per pay period for each initial
22 violation, and \$200 for each aggrieved employee per pay period for each
23 subsequent violation;

24 e. As applicable, civil penalties under Labor Code §225.5 (in addition to and entirely
25 independent and apart from any other penalty provided in the Labor Code), for
26 each violation of Labor Code §221, in the amount of \$100 for each aggrieved
27 employee per pay period for each violation; and \$200 for each aggrieved
28 employee per pay period for each subsequent violation plus 25 percent of the

amount unlawfully withheld;

- f. As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely independent and apart from any other civil penalty provided in the Labor Code), for each violation of Labor Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation;
- g. As applicable, civil penalties under Labor Code §2802 (in addition to and entirely independent and apart from any other civil penalty provided in the Labor Code), for each violation of Labor Code §2805 in the amount according to proof for each aggrieved employee per pay period for each subsequent violation;
- h. As applicable, civil penalties under Labor Code §§203 and/or 256 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days; and
- i. As applicable, any and all additional applicable civil penalties and sums as provided by the Labor Code and/or other relevant statutes.

238. In addition, Plaintiffs seek and are entitled to seventy-five percent (75%) of all penalties obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%) to the aggrieved employees.

239. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek recovery of pre-judgment interest on all amounts recovered herein.

240. Further, Plaintiffs are entitled; to recover reasonable attorneys' fees and costs pursuant to Labor Code §§2699(g)(1) and any other applicable statute.

NINETEENTH CAUSE OF ACTION
FOR UNFAIR COMPETITION
BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.
AGAINST LYON AND DOES 1-20, INCLUSIVE

241. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as though set forth in full herein.

242. B&PC §17200 provides in pertinent part "...[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act..."

243. B&PC §17205 provides that unless otherwise expressly provided, the remedies or penalties provided for unfair competition "are cumulative to each other and to the remedies or penalties available under all other laws of this state."

244. B&PC §17204 provides that an action for relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

245. Defendants' have engaged in unlawful, unfair and fraudulent business acts or practices prohibited by B&PC §17200, including those set forth in the preceding and foregoing paragraphs of the complaint, thereby depriving the members of the 17200 Class of the minimum working standards and conditions due to them under the Labor Code and/or the IWC Wage Orders, as specifically described herein.

246. Defendants have engaged in unfair business practices in California by practicing, employing, and utilizing the employment practices outlined in the preceding paragraphs, specifically, by requiring employees to perform the labor services complained of herein without the requisite compensation.

247. Defendants' use of such practices constitutes an unfair business practice, unfair competition and provides an unfair advantage over Defendants' competitors.

248. Plaintiffs have suffered injury in fact and have lost money or property as a result of such unfair competition.

249. Plaintiffs seek full restitution from Defendants, as necessary and according to

1 proof, to restore any and all monies withheld, acquired and/or converted by Defendants by means
2 of the unfair practices complained of herein.

3 250. Further, if Defendants are not enjoined from the conduct set forth above,
4 Defendants will continue to practice, employ and utilize the employment practices outlined in the
5 preceding paragraphs.

6 251. Therefore, Plaintiffs request that the Court issue a preliminary and permanent
7 injunction prohibiting Defendants from engaging in the foregoing conduct.

8 252. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total
9 monetary relief sought from Defendants.

10
11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff seeks judgment against Defendants and each of them, in an
13 amount according to proof as follows:

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

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

20 3. For punitive damages, pursuant to Civil Code §§3294 in amounts sufficient to
21 punish Defendants for the wrongful conduct alleged herein and to deter such conduct in the
22 future;

23 4. For damages according to proof pursuant to Labor Code §§ 200, 204, 226, 500,
24 510, 1194, 1197, and 1198;

25 5. For payment of unpaid minimum wage compensation pursuant to Labor Code
26 §§1182.12, 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 5-2001, in the
27 amount according to proof;

1 6. For liquidated damages pursuant to Labor Code §1194.2 in the amount according
2 to proof, plus interest;

3 7. For payment of meal and rest period compensation pursuant to Labor Code
4 §226.7, 512, in the amount of no less than \$23,813.60;

5 8. For damages according to proof pursuant to Labor Code §§ 2802 and 2804;

6 9. For damages pursuant to Labor Code §226 in the amount of no less than
7 \$4,000.00;

8 10. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no
9 less than \$4,500.00;

10 11. As a result of Defendants' failure and refusal to comply with Labor Code
11 §1198.5, Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00;

12 12. As a result of Defendants' failure and refusal to comply with Labor Code §226(f),
13 Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00;

14 13. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely
15 independent and apart from other penalties in the Labor Code and for Labor Code violations
16 without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay
17 period for each violation, and \$200 for each aggrieved employee per pay period for each
18 subsequent violation;

19 14. For civil penalties pursuant to Labor Code §558, in addition to and entirely
20 independent and apart from other penalties in the Labor Code, as follows:

21 a. For any violation, fifty dollars (\$50) for each aggrieved underpaid
22 employee for each pay period for which the employee was underpaid, and
23 an additional penalty amount sufficient to recover the underpaid wages;

24 b. For each subsequent violation, one hundred dollars (\$100) for each
25 aggrieved underpaid employee for each pay period for which the
26 employees was underpaid, and an additional penalty amount sufficient to
27 recover the underpaid wages; and

28 c. For these amounts to be paid to the aggrieved employees;

1 15. For civil penalties under Labor Code §1197.1, in addition to and entirely
2 independent and apart from any other penalty provided in the Labor Code, for each violation of
3 Labor Code §1197, in the amount of \$100 for each aggrieved employee per pay period for each
4 violation and \$250 for each aggrieved employee per pay period for each subsequent violation;

5 16. For civil penalties under Labor Code §210, in addition to and entirely independent
6 and apart from any other penalty provided in the Labor Code, in the amount of \$100 for each
7 aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per
8 pay period for each subsequent violation;

9 17. For civil penalties under Labor Code §225.5, in addition to and entirely
10 independent and apart from any other penalty provided in the Labor Code, for each violation of
11 Labor Code §221, in the amount of \$100 for each aggrieved employee per pay period for each
12 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

13 18. For civil penalties under Labor Code §226.3, in addition to and entirely
14 independent and apart from any other penalty provided in the Labor Code, in the amount of \$250
15 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved
16 employee per pay period for each subsequent violation;

17 19. For civil penalties under Labor Code §§203 and/or 256, in addition to and entirely
18 independent and apart from any other penalty provided in the Labor Code, in the amount of one
19 day of pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of
20 termination, until payment was/is made, up to a maximum of thirty (30) days;

21 20. For prejudgment interest on all amounts recovered herein pursuant to Labor Code
22 §218.6, Labor Code §1194(a), and/or Civil Code §3287;

23 21. For reasonable attorneys' fees and costs incurred pursuant to Labor Code
24 §2699(g)(1) and any other applicable statute; and

25 22. For such relief as this Court may deem just and proper, including reasonable
26 attorneys' fees and costs incurred;

27 **WHEREFORE**, Plaintiff further seeks judgment against Defendants, and each of them,
28 in an amount according to proof, as follows:

1 23. For a declaratory judgment reaffirming Plaintiff's equal standing under the law
2 and condemning Defendants' discriminatory practices;

3 24. For injunctive relief barring Defendants' discriminatory employment policies and
4 practices in the future, and restoring Plaintiff to Plaintiff's former position with Defendants;

5 25. For an accounting, under administration of Plaintiffs and/or the receiver and
6 subject to Court review, to determine the amount to be returned by Defendants, and the amounts
7 refunded to the "aggrieved employees" who are owed monies by Defendants;

8 26. For injunctive relief compelling Defendants to report to federal and state
9 authorities, wages earned by Plaintiff, and other employees, and pay all state and federal taxes
10 owing, employer matching funds, unemployment premiums, social security, Medicare, and
11 workers' compensation premiums, all this in an amount according to the proof;

12 27. For restitutionary disgorgement of profits garnered as a result of Defendants'
13 unlawful conduct, and failure to pay wages and other compensation in accordance with the law;

14 28. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA,
15 Labor Code, Civil Code §1021.5, and/or any other basis;

16 29. For post-judgment interest; and

17 30. For any other relief that is just and proper.

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1 DATED: October 28, 2020

GUERRA & CASILLAS LLP

2
3 By:


Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorneys for Plaintiff
OSCAR FONSECA GUZMAN

4
5
6 **JURY TRIAL DEMANDED**

7
8 Plaintiff demands trial of all issues by jury.

9 DATED: October 28, 2020

GUERRA & CASILLAS LLP

10
11 By:


Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Britanie A. Martinez, Esq.
Attorneys for Plaintiff
OSCAR FONSECA GUZMAN