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Laura Mexicano

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

LAURA MEXICANO, an individual,
Plaintiff,

v.

MACY'S, a California entity of unknown form;
MACY'S WEST STORES, INC. DBA
MACY'S, an Ohio corporation; FAWN
BISTLIN, an individual; and DOES 1 through
20, inclusive,

Defendants.

Case No. **20STCV43445**

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. FOR DECLARATORY JUDGMENT**
- 6. RETALIATION (LAB. CODE §98.6);**
- 7. RETALIATION (LAB. CODE §§1102.5,
1102.6);**
- 8. RETALIATION (LAB. CODE §6310);**
- 9. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**
- 10. FAILURE TO PAY WAGES (CAL. LABOR
CODE §§201, 1194);**
- 11. FAILURE TO PAY MINIMUM WAGES
(CAL. LABOR CODE §§1182.12, 1194,
1194.2, 1197);**

12. FAILURE TO PAY OVERTIME
COMPENSATION (CAL. LABOR CODE
§§510, 1194);

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

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

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

16. PRIVATE ATTORNEY GENERAL ACT
(CAL. LABOR CODE §2699, ET SEQ);

17. UNFAIR COMPETITION (BUS. & PROF.
CODE §17200 ET SEQ.); AND

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, **Laura Mexicano**, 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.

THE PARTIES

2. Plaintiff, **Laura Mexicano**, is and at all times relevant hereto was a resident of the County
of Los Angeles, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
hereto, Defendant **Macy's** (hereinafter referred to as "MACY'S") was and is a California entity of

1 unknown form doing business at 1123 W. Rancho Vista Blvd., in the County of Los Angeles, State of
2 California.

3 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
4 hereto, Defendant Macy's West Stores, Inc. DBA Macy's (hereinafter referred to as "MWS") was and is
5 a Ohio corporation doing business at 1123 W. Rancho Vista Blvd., in the County of Los Angeles, State
6 of California.

7 5. MACY'S and MWS are hereinafter collectively referred to as "Employers" or "Employer
8 Defendants."

9 6. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
10 hereto, Employers owned and operated a private department store.

11 7. At all times relevant herein, Employers and DOES 1-20 (hereinafter also referred to as
12 "Employer Defendants") were Plaintiff's employers, joint employers and/or special employers within the
13 meaning of Government Code §§12926, subdivision (d), 12940, subdivisions (a),(h),(1), (h)(3)(A), and
14 (i), and 12950, and regularly employ five (5) or more persons and are therefore subject to the jurisdiction
15 of this Court.

16 8. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint
17 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
18 Commission Order No. 7-2001, and are each any "employer or other person acting on behalf of an
19 employer" as such term is used in Labor Code section 558, and liable to Plaintiff on that basis.

20 9. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
21 hereto, Defendant FAWN BISTLIN, was and is an individual resident of the County of Los Angeles,
22 State of California, and is hereinafter individually referred to by last name and as the "INDIVIDUAL
23 DEFENDANT." The INDIVIDUAL DEFENDANT was Employers' manager, corporate agent,
24 supervisor, and/or employee.

25 10. The true names and capacities, whether individual, corporate, associate, or otherwise, of
26 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
27 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
28 insert the true names and capacities of said Defendants when the same become known to Plaintiff.

1 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
2 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as
3 alleged hereinafter.

4 11. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
5 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
6 conspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
7 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
8 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
9 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

10 12. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
11 of them, including those defendants named as DOES 1-20 and the INDIVIDUAL DEFENDANT, acted
12 in concert with one another to commit the wrongful acts alleged herein, and aided, abetted, incited,
13 compelled and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so,
14 including pursuant to Government Code §12940(i). Plaintiff is further informed and believes, and based
15 thereupon alleges, that Defendants, and each of them, including those defendants named as DOES 1-20
16 and the INDIVIDUAL DEFENDANT, and each of them, formed and executed a conspiracy or common
17 plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged
18 herein done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff
19 harm.

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

23 14. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to prevent
24 discrimination or retaliation, failure to accommodate, failure to engage in the interactive process, and
25 wrongful termination under Government Code §§12940, et seq., the California Fair Employment and
26 Housing Act ("FEHA") with the California Department of Fair Employment and Housing ("DFEH"),
27 and has satisfied Plaintiff's administrative prerequisites with respect to these and all related filings.

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1 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

2 15. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
3 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
4 defendants have ceased to exist.

5 16. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
6 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same as Defendants,
7 including, but not limited to because:

8 a. Employers are completely dominated and controlled by one another and DOES 1-
9 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
10 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
11 accomplish some other wrongful or inequitable purpose.

12 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
13 through one another's unlawful conduct, and by using one another as the funding source for their own
14 personal expenditures.

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

18 d. Employers do not comply with all requisite corporate formalities to maintain a
19 legal and separate corporate existence.

20 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
21 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
22 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and
23 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and
24 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
25 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from
26 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
27 existence of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice
28 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

17. Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the fiction of their separate corporate existence must be disregarded.

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

19. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

FACTUAL ALLEGATIONS

20. In or around August 2010, Employers hired Plaintiff to work as an associate. Thereafter, Plaintiff was promoted to work as the Cosmetics Manager. Plaintiff was a full-time, non-exempt employee, and performed all of Plaintiff's job duties satisfactorily before Plaintiff was wrongfully terminated on or about March 3, 2020.

21. Throughout Plaintiff's employment, Plaintiff's schedule was five days per week, Monday through Sunday, for approximately 8 to 10 hours per day.

22. Between August 21, 2016 and April 29, 2017, Plaintiff's hourly wage rate was \$15.05.

23. Between April 30, 2017 and August 5, 2017, Plaintiff's hourly wage rate was \$15.35.

24. Between August 6, 2017 and March 31, 2018, Plaintiff's hourly wage rate was \$20.11.

25. Between April 1, 2018 and May 4, 2019, Plaintiff's hourly wage rate was \$20.59.

1 26. Between May 5, 2019 and February 28, 2020, Plaintiff's hourly wage rate was \$21.17.

2 27. Between on or about August 6, 2017 and February 28, 2020, Plaintiff worked
3 approximately 0.75 hours each week, for which Plaintiff received no wages at all, not Plaintiff's hourly
4 wage rate, or even the requisite minimum wage.

5 28. Between on or about August 6, 2017 and February 28, 2020, Plaintiff worked
6 approximately 0.75 hours each week, but was not paid for these hours at all.

7 29. Throughout Plaintiff's employment, Plaintiff was not permitted to, and not advised of
8 Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial portion
9 thereof.

10 30. Throughout Plaintiff's employment, Plaintiff did not receive uninterrupted statutory 30-
11 minute meal periods for days on which Plaintiff worked at least 5 hours, which was each day Plaintiff
12 worked. One or more of Plaintiff's 30-minute meal periods were not timely provided and/or were
13 interrupted approximately 5 times per week.

14 31. While employed, Plaintiff was subjected to discrimination, harassment, sexual
15 harassment, and retaliation based on her color, race, sex/gender, and engagement in protected activity by
16 Employers.

17 32. Plaintiff is a woman and Latina.

18 33. Beginning in or around May 2019 and thereafter, Plaintiff's co-worker, Vivian Sanchez
19 ("Sanchez") and Loss Prevention Manager, Fawn Bistlin ("Bistlin") discriminated against Plaintiff based
20 on her race and sexually harassed her on numerous occasions. Because Sanchez and Bistlin were aware
21 of Plaintiff's past romantic relationships with African-American men, they communicated their
22 disagreement with Plaintiff's romantic choices and berated her.

23 34. On or about May 2, 2019, during a manager meeting, Bistlin berated Plaintiff about
24 whether Plaintiff wanted to date the new African-American security guard at the store. Plaintiff felt
25 uncomfortable by Bistlin's comments and felt discriminated against because of her race. Plaintiff
26 complained to Macy's management, about the discrimination and harassment. In response to Plaintiff's
27 complaint, Employers failed to address her complaints and retaliated against her. As a result, a hostile
28 work environment persisted in the workplace.

1 35. Thereafter, in or around Fall 2019, Manager Bistlin instructed Plaintiff to pick up a used
2 syringe from a store bathroom without additional instruction or direction on ensuring Plaintiff's health
3 and safety. Plaintiff refused because she was concerned for her health and safety.

4 36. Then, in or around November 2019, Employers asked Plaintiff to clean up urine, vomit
5 and feces from a store bathroom. Plaintiff refused to clean up the store bathroom because she was
6 concerned for her health and safety. On more than one occasion after this, Plaintiff also complained to
7 the Store Manager that the store, including the store bathrooms, were not being cleaned properly and
8 was unhealthy as a result of cleaning staffing reductions. In response to Plaintiff's complaint and refusal
9 to clean up urine, vomit, and feces from the store bathroom, the Store Manager told Plaintiff that these
10 were "Laura's princess problems" and failed to address Plaintiff's concerns.

11 37. In or around December 2019, Plaintiff was verbally and physically assaulted by a store
12 customer suspected of shoplifting. Plaintiff contacted Loss Prevention, specifically Sanchez, about the
13 suspected theft and her safety. Sanchez refused to assist Plaintiff. During a manager meeting the
14 following day, Plaintiff complained to Loss Prevention Manager Bistlin and expressed concern for her
15 personal safety. Instead of addressing Plaintiff's safety concern, Bistlin told Plaintiff that there was
16 nothing that could be done about it and not to contact Loss Prevention or mall security in cases where she
17 was concerned for her personal safety.

18 38. Then, in or around December 2019, and several occasions thereafter up to her
19 termination, Plaintiff complained to Employers about her pay discrepancies for hours when she was
20 not paid. Specifically, Plaintiff was required to work after clocking out to assist with fire alarms,
21 burglar alarms, or the shipping docks. Employers, via the Store Manager, instructed Plaintiff to "just
22 make clock-in corrections" on the timekeeping system. Plaintiff complied with Employers' instruction.

23 39. Then, on or about February 28, 2020, Employers suspended Plaintiff for an alleged
24 violation of company policy regarding clocking in and out. During the investigatory interview, Plaintiff
25 was berated about her responses and asked questions about her family, specifically as it related to Plaintiff
26 being a mother and her time and attendance. Plaintiff felt discriminated against on the basis of her marital
27 and familial status.

28 ///

1 40. On or about March 3, 2020, Employers terminated Plaintiff's employment, days before
2 she was due to begin a new, promotional position with Employers. Employers' pretext for terminating
3 Plaintiff was for allegedly violating Employers' timekeeping policy.

4 41. Plaintiff's termination was substantially motivated by Plaintiff's race, gender, sex, marital
5 status, and/or engagement in protected activities, without any good faith attempt to engage in the
6 interactive process with Plaintiff. Defendants' discriminatory animus is evidenced by the previously
7 mentioned facts.

8 42. Defendants' conduct described herein was undertaken, authorized, and/or ratified
9 Defendants' officers, directors and/or managing agents, including, but not limited to Bistlin and those
10 identified herein as DOES 1 through 20, who were authorized and empowered to make decisions that
11 reflect and/or create policy for Defendants. The aforementioned conduct of said managing agents and
12 individuals was therefore undertaken on behalf of Defendants who further had advanced knowledge of
13 the actions and conduct of said individuals whose actions and conduct were ratified, authorized, and
14 approved by managing agents whose precise identities are unknown to Plaintiff at this time and are
15 therefore identified and designated herein as DOES 1 through 20, inclusive.

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

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

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

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

FIRST CAUSE OF ACTION
FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST EMPLOYER DEFENDANTS

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

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

49. As such term is used under FEHA, "on the bases enumerated in this part" means or refers to discrimination on the bases of one or more of the protected characteristics under FEHA.

50. FEHA requires Defendants to refrain from discriminating against an employee on the basis of race, gender, sex, and to prevent discrimination and harassment on the basis of race, gender, sex, and engagement in protected activities from occurring.

51. Plaintiff was a member of multiple protected classes as a result of Plaintiff's race, gender, and sex.

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

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

54. Plaintiff is informed and believes that Plaintiff's race, gender, sex, and/or some combination of these protected characteristics under Government Code §12926(j) were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

55. Said conduct violates the FEHA, and such violations were a proximate cause in Plaintiff's damage as stated below.

56. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated by reference.

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

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

9
10 **SECOND CAUSE OF ACTION**
11 **FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
12 **AGAINST ALL DEFENDANTS**

13 59. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
14 though set forth in full herein.

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

17 61. As such term is used under FEHA, "on the bases enumerated in this part" means or
18 refers to harassment on the bases of one or more of the protected characteristics under FEHA.

19 62. These laws set forth in the preceding paragraph require Defendants to refrain from
20 harassing, or creating, or maintaining a hostile work environment against an employee based upon the
21 employee's race, gender, sex, and engagement in protected activities, as set forth hereinabove.

22 63. Defendants' harassing conduct was severe or pervasive, was unwelcome by Plaintiff,
23 and a reasonable person in Plaintiff's circumstances would have considered the work environment to
24 be hostile or abusive.

25 64. Defendants violated the FEHA and the public policy of the State of California which is
26 embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of
27 Plaintiff's race, gender, sex, engagement in protected activities, and/or some combination of these
28 protected characteristics, as set forth hereinabove.

1 65. The above said acts were perpetrated upon Plaintiff by a supervisor, and/or Defendants
2 knew or should have known of the conduct but failed to take immediate and appropriate corrective
3 action.

4 66. The above said acts of Defendants constitute violations of the FEHA and violations of
5 the public policy of the State of California. Such violations were a proximate cause in Plaintiff's
6 damage as stated below.

7 67. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated
8 by reference.

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

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

17
18 **THIRD CAUSE OF ACTION**
19 **FOR RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
20 **AGAINST EMPLOYER DEFENDANTS**

21 70. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
22 though set forth in full herein.

23 71. At all times hereto, the FEHA was in full force and effect and was binding upon
24 Defendants and each of them.

25 72. These laws set forth in the preceding paragraph require Defendants to refrain from
26 retaliating against an employee for engaging in protected activity.

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1 73. Plaintiff engaged in the protected activities of complaining about and protesting
2 Defendants' discriminatory and harassing conduct towards Plaintiff based upon Plaintiff's race, gender,
3 and sex.

4 74. Plaintiff suffered the adverse employment actions of unlawful harassment,
5 discrimination, failure to accommodate, failure to investigate, remedy, and/or prevent discrimination,
6 failure to reinstate and/or return to work, and termination, and was harmed thereby.

7 75. Plaintiff is informed and believes that Plaintiff's conduct of complaining about and
8 protesting about Defendants' discriminatory and harassing conduct, and/or some combination of these
9 factors, were motivating reasons and/or factors in the decisions to subject Plaintiff to the
10 aforementioned adverse employment actions.

11 76. Defendants violated the FEHA by retaliating against Plaintiff and terminating Plaintiff
12 for attempting to exercise Plaintiff's protected rights, as set forth hereinabove. Plaintiff's engagement
13 in such protected activities were a substantial factor in Defendants' decision to subject Plaintiff to the
14 aforementioned adverse employment actions.

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

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

20 79. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated
21 by reference.

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

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

3
4 **FOURTH CAUSE OF ACTION**
5 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION**
6 **IN VIOLATION OF GOV'T CODE §12940(k)**
7 **AGAINST EMPLOYER DEFENDANTS**

8 82. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
9 though set forth in full herein.

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

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

18 85. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated
19 by reference.

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

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

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FIFTH CAUSE OF ACTION
FOR DECLARATORY JUDGMENT
AGAINST EMPLOYER DEFENDANTS

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

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

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

It is recognized that the practice of denying employment 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 accommodations is declared to be against public policy.

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

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

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

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

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

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

7 92. An actual controversy has arisen and now exists between Plaintiff and Defendants
8 concerning their respective rights and duties as it is believed that Defendants may allege that they did
9 not discriminate and retaliate against Plaintiff; that Plaintiff was not terminated as a result of Plaintiff's
10 race, gender, sex, engagement in protected activities, and/or some combination of these protected
11 characteristics. Plaintiff contends that Defendants did discriminate and retaliate against Plaintiff on
12 the basis of Plaintiff's race, gender, sex, engagement in protected activities, and/or some combination
13 of these protected characteristics; and that Plaintiff was retaliated against and, ultimately wrongfully
14 terminated as a result of Plaintiff's race, gender, sex, engagement in protected activities, and/or some
15 combination of these protected characteristics. Plaintiff is informed and believes, and on that basis
16 alleges, that Defendants shall dispute Plaintiff's contentions.

17 93. Pursuant to Code of Civil Procedure §1060, Plaintiff desires a judicial determination of
18 Plaintiff's rights and duties, and a declaration that Defendants harassed Plaintiff on the basis of
19 Plaintiff's race, gender, sex, engagement in protected activities, and/or some combination of these
20 protected characteristics.

21 94. Pursuant to Code of Civil Procedure §1060, Plaintiff seeks a judicial determination of
22 Plaintiff's rights and duties, and a declaration that Plaintiff's race, gender, sex, engagement in protected
23 activities, and/or some combination of these protected characteristics was a substantial motivating
24 factor in the decision to subject Plaintiff to the aforementioned adverse employment actions.

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

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

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

10
11 **SIXTH CAUSE OF ACTION**

12 **RETALIATION**

13 **LABOR CODE §98.6**

14 **AGAINST EMPLOYER DEFENDANTS**

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

17 99. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against
18 an employee for political activities; for complaining that he or she is owed unpaid wages, for
19 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
20 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's
21 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
22 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private
23 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code.
24 Thus, Section 98.6 prohibits an employer from discharging or in any manner discriminating or
25 retaliating against an employee who, among other things, has exercised her or her rights under that
26 Chapter, including the right to take meal breaks, and/or made a written or oral complaint that he or she
27 is owed unpaid wages. An employee who has been discharged or retaliated against in violation of
28 Labor Code §98.6 is entitled to recovery of a civil penalty against the employer in an amount not

1 exceeding ten thousand dollars (\$10,000.00) for each violation of that section.

2 100. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was
3 terminated from Plaintiff's employment with Defendants as a result of Plaintiff's complaints about not
4 being paid all wages due, not receiving meal and/or rest breaks, exercising Plaintiff's right to take meal
5 and/or rest breaks. Defendants' retaliatory animus is evidenced by, among other things, the
6 aforementioned facts.

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

15 102. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated
16 by reference.

17 103. As a result of Defendants' actions, Plaintiffs are each entitled to a civil penalty not to
18 exceed \$10,000.00 for Defendants' violations of Labor Code § 98.6.

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

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SEVENTH CAUSE OF ACTION
FOR RETALIATION
IN VIOLATION OF LABOR CODE §§ 1102.5 AND 1102.6
AGAINST EMPLOYER DEFENDANTS

105. Plaintiff re-alleges and incorporates by reference all Paragraphs, inclusive, as though set forth in full herein.

106. At all relevant times, Labor Code §1102.5(a) was in full force and effect, and was binding on Defendants. This law prohibits an employer, or any person acting on behalf of the employer, from discharging an employee or in any manner discriminating or retaliating against, or taking any adverse action against, an employee because, among other things, the employee disclosed information to a government or law enforcement agency, or to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

107. Plaintiff reported violations of the California Labor Code to her supervisors.

108. Defendants subjected Plaintiff to the adverse employment action, including without limitation, termination because Plaintiff reported the violations of employment practices to her supervisors.

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

110. Said conduct violates Labor Code Labor Code §1102.5 and Labor Code §1102.6, and such violations were a proximate cause in Plaintiffs' damages as hereinabove stated.

111. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated by reference.

112. The foregoing conduct of Defendants individually, or by and through their managing agents, was intended by Defendants to cause injury to Plaintiff, or was despicable conduct carried on by Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to

1 cruel and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice,
2 oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive damages in an
3 amount appropriate to punish or make an example of Defendants.

4
5 **EIGHTH CAUSE OF ACTION**

6 **RETALIATION**

7 **LABOR CODE §6310**

8 **AGAINST EMPLOYER DEFENDANTS**

9 1. Plaintiff re-alleges and incorporates by reference all Paragraphs, inclusive, as though set forth in full
10 herein.

11 2. At all relevant times, Labor Code §6310 was in full force and effect, and was binding on
12 Defendants. This law prohibits an employer, from among other things, threatening to discharge, or in
13 any manner discriminate or retaliate against an employee who has exercised his or her rights by making
14 an oral or written complaint, in good faith, to his or her employer regarding working conditions, or work
15 practices in his or her place of employment that the employee reasonably believes are unsafe.

16 3. The public policy underlying Labor Code §6310 is not merely to aid the reporting of actual
17 safety violations; it is to prevent retaliation against those who in good faith report working conditions
18 they believe to be unsafe.

19 4. Any employee who has been subject to any of the aforementioned adverse employment
20 actions shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by
21 the acts of the employer.

22 5. Any employer who willfully refused to rehire, promote, or otherwise restore an employee
23 or former employee who has been determined to be eligible for rehiring or promotion is guilty of a
24 misdemeanor.

25 6. Plaintiff made a good faith oral complaint about unsafe working conditions at her
26 workplace. Plaintiff made the complaints based upon reasonable belief that it was unsafe for her to pick
27 up used syringes, urine, vomit, and feces from store restrooms.

28 ///

1 7. Defendants violated Labor Code §6310 by retaliating against and ultimately wrongfully
2 terminating Plaintiff for reporting unsafe working conditions in the workplace.

3 8. Plaintiff is informed and believes, and based thereupon alleges, that she was discharged
4 from her employment and/or otherwise discriminated and retaliated against by Defendants, including
5 being suspended from work and terminated from her employment with Defendants. Defendants'
6 retaliatory animus is evidenced by the aforementioned facts.

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

15 10. In committing the acts alleged herein, Defendants acted knowingly and willfully, with the
16 wrongful and illegal deliberate intention of causing injury to Plaintiff. Defendants committed such acts
17 with improper motives amounting to malice, and such acts were carried out in conscious disregard of
18 Plaintiff's rights. Plaintiff is thus entitled to received nominal, actual, compensatory, punitive, and
19 exemplary damages in amounts according to proof at trial.

20 11. As a result of Defendants' actions, Plaintiff has suffered and continued to suffer substantial
21 losses related to loss of wages. Plaintiff is entitled to recover costs and expenses in seeking to compel
22 Defendants to fully perform their obligation under state law and Plaintiff's respective damage amounts
23 according to proof at trial.

24 12. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
25 and special damages, including emotional distress, anxiety, and depression, as well as medical expenses,
26 expenses for psychological counseling and treatment. Plaintiff claims general damages for emotional and
27 mental distress and aggravation in a sum in excess of the jurisdictional minimum of this Court.

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1 13. Pursuant to this Court's authority, Plaintiff requests costs in prosecuting this action,
2 including expert fees and any other relief the court deems proper.

3
4 **NINTH CAUSE OF ACTION**
5 **FOR WRONGFUL TERMINATION**
6 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
7 **AGAINST EMPLOYER DEFENDANTS**

8 14. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
9 though set forth in full herein.

10 15. At all relevant times mentioned in this complaint, the FEHA was in full force and effect
11 and was binding on Defendants. This law requires Defendants to refrain, among other things, from
12 discriminating against any employee on the basis of race, gender, sex, and from retaliating against any
13 employee who engages in protected activity.

14 16. At all times mentioned in this complaint, Article I, Section 8 of the California
15 Constitution was in full force and effect and binding on Defendants. This law requires Defendants to
16 refrain from disqualifying a person from pursuing employment on the basis of race, gender, or sex.

17 17. At all times mentioned in this complaint, it was a fundamental policy of the State of
18 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of
19 race, gender, sex, and/or engagement in protected activity.

20 18. Plaintiff believes and thereon alleges that Plaintiff's race, gender, sex, engagement in
21 protected activity with respect to these protected classes, and/or some combination thereof, were factors
22 in Defendants' conduct as alleged hereinabove.

23 19. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
24 employment on the basis of race, gender, sex, Plaintiff's complaining of harassment and discrimination
25 due to these protected classes, Plaintiff's engagement in protected activity, and/or some combination
26 of these factors, were a proximate cause in Plaintiff's damages as stated below.

27 20. The above said acts of Defendants constitute violations of the Government Code and
28 the public policy of the State of California embodied therein as set forth above. Defendants violated

1 these laws by discriminating and retaliating against Plaintiff and terminating Plaintiff's employment in
2 retaliation for exercise of protected rights.

3 21. At all relevant times mentioned in this complaint, Labor Code §98.6 was in full force
4 and effect and was binding upon Defendants and each of them. This law prohibits retaliation against
5 employees who complain about unpaid wages and/or attempt to exercise the rights under the Labor
6 Code. Labor Code §98.6 reflects the State's broad public policy interest in protecting the rights of
7 individual employees and job applicants who could not otherwise afford to protect themselves from
8 violations of the Labor Code.

9 22. At all relevant times mentioned in this complaint, Labor Code §1102.5 was in full force
10 and effect and was binding upon Defendants and each of them. This law prohibits retaliation against
11 employees who disclose reasonable suspicions of illegal activity or conduct by their employer to a
12 government or law enforcement agency, or to employer itself. Labor Code §1102.5 reflects the State's
13 broad public policy interest in encouraging workplace "whistleblowers," who may without fear of
14 retaliation report concerns regarding an employer's suspected illegal conduct, irrespective of whether
15 the reporting is made to governmental agencies or to the employer itself, and irrespective of whether
16 the employee's suspicions are correct that the challenged conduct actually violates some law. Indeed,
17 the law in California is that an employee's good faith but mistaken belief in the illegality of his or her
18 co-workers', supervisor's, and employer's conduct is protected from employer retaliation in the
19 whistle-blowing context.

20 23. At all relevant times mentioned in this complaint, Labor Code §6310 was in full force
21 and effect and was binding upon Defendants and each of them. This law prohibits an employer, from
22 among other things, threatening to discharge, or in any manner discriminate or retaliate against an
23 employee who has exercised his or her rights by making an oral or written complaint, in good faith, to
24 his or her employer regarding working conditions, or work practices in his or her place of employment
25 that the employee reasonably believes are unsafe.

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28 ///

1 24. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's
2 engagement in protected activities under Labor Code §§ 98.6, 1102.5, and/or 6310 was a proximate
3 cause in Plaintiff's damages as stated below.

4 25. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated
5 by reference.

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

12
13 **TENTH CAUSE OF ACTION**
14 **FOR FAILURE TO PAY WAGES DUE**
15 **LABOR CODE §§201, 1182.12, 1194, 1194.2**
16 **AGAINST EMPLOYER DEFENDANTS**

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

19 28. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and
20 required by 8 Code of Regulations §11070, as set forth hereinabove. As alleged herein, Defendants
21 routinely failed to pay Plaintiff for hours worked beyond eight in a day or 40 per week.

22 29. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8
23 Code of Regulations §11070, and Industrial Welfare Commission Order No. 7-2001.

24 30. Plaintiff has been deprived of Plaintiff's/her rightfully earned compensation as a direct
25 and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to
26 recover such amounts, plus interest thereon, attorneys' fees and costs.

27 31. Labor Code §558(a) provides that any person acting on behalf of an employer who
28 violates, or causes to be violated, overtime rules pay a civil penalty in the amount of \$50 for each

underpaid employee for each pay period in which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the person acting on behalf of an employer is liable in the amount of \$100 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

32. In addition to the unpaid wages, Plaintiff is entitled to civil penalties in this amount stated above based upon Defendants' underpayment of minimum and overtime wages. Within the one year immediately preceding the filing of this Complaint, Defendants, and each of them, violated Labor Code §558 on 15 pay periods, the first of which Defendants are penalized \$50.00, and the remainder of which Defendants are penalized \$100.00 each, for a total due in Labor Code §558 penalties of \$1,550.00.

ELEVENTH CAUSE OF ACTION
FOR FAILURE TO PAY MINIMUM WAGES
LABOR CODE §§1182.12, 1194, 1194.2, 1197
AGAINST EMPLOYER DEFENDANTS

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

34. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law is unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid hours exceeded the minimum wage. Under California law, Plaintiff is entitled to at least the minimum wage for every hour worked.

35. The historical minimum wage requirements in California are as follows:

Effective	26+ employees	1-25 employees
1/1/18	\$11.00	\$10.50
1/1/17	\$10.50	\$10.00
Effective	New wage	Old Wage
1/1/16	\$10.00	\$9.00
7/1/14	\$9.00	\$8.00
1/1/08	\$8.00	\$7.50
1/1/07	\$7.50	\$6.75

1 36. At all relevant times, Employers failed and refused to pay Plaintiff the legal minimum
2 wage in the State of California, as set forth in Labor Code §1182.12.

3 37. Despite this, Defendants failed to pay Plaintiff the requisite minimum wage in each of the
4 following ways in the four years immediately preceding the filing of this complaint:

5 a. From August 6, 2017 to December 31, 2017, Plaintiff worked approximately 0.75
6 hours per week without getting paid anything. Therefore, Plaintiff is owed \$165.38 calculated at 0.75
7 hours per week for 21 weeks at \$10.50 per hour.

8 b. From January 1, 2018 to February 28, 2020, Plaintiff worked approximately 0.75
9 hours per week without getting paid anything. Therefore, Plaintiff is owed \$932.25 calculated at 0.75
10 hours per week for 113 weeks at \$11.00 per hour.

11 38. Thus, for the entirety of the time periods set forth above, Plaintiff is owed unpaid minimum
12 wages in the amount of \$1,097.63.

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

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

19 41. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated
20 damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an
21 additional \$1,097.63, plus interest thereon.

22
23 **TWELFTH CAUSE OF ACTION**
24 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
25 **LABOR CODE §§510, 1194**
26 **AGAINST EMPLOYER DEFENDANTS**

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

1 43. Labor Code §510 requires employers to pay their non-exempt employees one and one-half
2 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40
3 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12
4 hours in a single day. It also requires employers to pay their non-exempt employees overtime
5 compensation for the first eight hours of work done on the seventh consecutive day of work done in any
6 work week, and double-time compensation for any work done beyond the first eight hours on the seventh
7 consecutive day of work.

8 44. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
9 compensation required by Labor Code §510, 8 Code of Regulations §11070, and Industrial Welfare
10 Commission Order No. 7-2001.

11 45. At all relevant times, Defendants required Plaintiff to work more than eight hours per day
12 and/or more than 40 hours per workweek. Despite this, Defendants failed to pay Plaintiff the requisite
13 overtime wages in each of the following ways in the four years immediately preceding the filing of this
14 complaint:

15 a. From approximately August 6, 2017 through December 31, 2017, Plaintiff
16 worked, but was not paid Plaintiff's overtime premium, an average of 0.75 overtime hours per week for
17 21 weeks (15.75 hours), at an hourly rate of \$30.17 less the minimum wage portion which Plaintiff has
18 already claimed in the previous cause of action, and is therefore owed \$19.67 per hour. Therefore,
19 Plaintiff is owed \$19.67 for each of those 15.75 hours, totaling \$309.80.

20 b. From approximately January 1, 2018 through March 31, 2018, Plaintiff worked,
21 but was not paid Plaintiff's overtime premium, an average of 0.75 overtime hours per week for 13 weeks
22 (9.75 hours), at an hourly rate of \$30.17 less the minimum wage portion which Plaintiff has already
23 claimed in the previous cause of action, and is therefore owed \$19.67 per hour. Therefore, Plaintiff is
24 owed \$19.67 for each of those 9.75 hours, totaling \$191.78.

25 c. From approximately April 1, 2018 through May 4, 2019, Plaintiff worked, but was
26 not paid Plaintiff's overtime premium, an average of 0.75 overtime hours per week for 57 weeks (42.75
27 hours), at an hourly rate of \$30.89 less the minimum wage portion which Plaintiff has already claimed in
28

1 the previous cause of action, and is therefore owed \$19.89 per hour. Therefore, Plaintiff is owed \$19.89
2 for each of those 42.75 hours, totaling \$850.30.

3 d. a. From approximately May 5, 2019 through February 28, 2020, Plaintiff
4 worked, but was not paid Plaintiff's overtime premium, an average of 0.75 overtime hours per week for
5 43 weeks (32.25 hours), at an hourly rate of \$31.76 less the minimum wage portion which Plaintiff has
6 already claimed in the previous cause of action, and is therefore owed \$20.76 per hour. Therefore,
7 Plaintiff is owed \$20.76 for each of those 32.25 hours, totaling \$669.51.

8 46. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
9 Code §510, 8 Code Regulations §11070, and Industrial Welfare Commission Order No. 7-2001.

10 47. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages
11 of \$2,021.39.

12 48. Plaintiff has been deprived of Plaintiff's rightfully earned overtime compensation as a
13 direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is
14 entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

15
16 **THIRTEENTH CAUSE OF ACTION**
17 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
18 **LABOR CODE §§226.7, 512**
19 **AGAINST EMPLOYER DEFENDANTS**

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

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

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

26 52. In the four years last past, Plaintiff regularly worked in excess of five hours per day, and
27 was thereby entitled to take uninterrupted 30-minute meal periods and 10-minute rest periods on each
28 day of work.

1 53. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
2 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the
3 applicable sections of 8 Code of Regulations §11070 and Industrial Welfare Commission Order No. 7-
4 2001.

5 54. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
6 Code of Regulations §11070 and Industrial Welfare Commission Order No. 7-2001. Consequently,
7 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
8 whichever is greater, for each day that Plaintiff was denied such meal periods, and is owed one hour of
9 pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each day
10 that Plaintiff was denied such rest periods, calculated as follows:

11 a. From approximately November 10, 2016 through April 29, 2017, Defendants
12 failed to provide Plaintiff with an uninterrupted statutory meal period for those days on which Plaintiff
13 worked at least five hours on approximately 120 separate days. Consequently, Plaintiff is owed one hour
14 of pay at \$15.05 for each day, or \$1,806.00, plus interest thereon, for unpaid interrupted meal periods.
15 During this same time period, Defendants failed to provide Plaintiff with the statutory rest period for
16 those days on which Plaintiff worked at least four hours on approximately 120 separate days.
17 Consequently, Plaintiff is owed one hour of pay at \$15.05 for each day, or \$1,806.00, plus interest
18 thereon, for unpaid rest periods. Thus, Plaintiff is owed a total of \$3,612.00, plus interest thereon, for
19 unpaid meal and rest periods for this time period.

20 b. From approximately April 30, 2017 through August 5, 2017, Defendants failed to
21 provide Plaintiff with an uninterrupted statutory meal period for those days on which Plaintiff worked at
22 least five hours on approximately 70 separate days. Consequently, Plaintiff is owed one hour of pay at
23 \$15.35 for each day, or \$1,074.50, plus interest thereon, for unpaid interrupted meal periods. During this
24 same time period, Defendants failed to provide Plaintiff with the statutory rest period for those days on
25 which Plaintiff worked at least four hours on approximately 70 separate days. Consequently, Plaintiff is
26 owed one hour of pay at \$15.35 for each day, or \$1,074.50, plus interest thereon, for unpaid rest periods.
27 Thus, Plaintiff is owed a total of \$2,149.00, plus interest thereon, for unpaid meal and rest periods for
28 this time period.

1 c. From approximately August 6, 2017 through March 31, 2018, Defendants failed
2 to provide Plaintiff with an uninterrupted statutory meal period for those days on which Plaintiff worked
3 at least five hours on approximately 170 separate days. Consequently, Plaintiff is owed one hour of pay
4 at \$20.11 for each day, or \$3,418.70, plus interest thereon, for unpaid interrupted meal periods. During
5 this same time period, Defendants failed to provide Plaintiff with the statutory rest period for those days
6 on which Plaintiff worked at least four hours on approximately 170 separate days. Consequently, Plaintiff
7 is owed one hour of pay at \$20.11 for each day, or \$3,418.70, plus interest thereon, for unpaid rest periods.
8 Thus, Plaintiff is owed a total of \$6,837.40, plus interest thereon, for unpaid meal and rest periods for
9 this time period.

10 d. From approximately April 1, 2018 through May 4, 2019, Defendants failed to
11 provide Plaintiff with an uninterrupted statutory meal period for those days on which Plaintiff worked at
12 least five hours on approximately 285 separate days. Consequently, Plaintiff is owed one hour of pay at
13 \$20.59 for each day, or \$5,868.15, plus interest thereon, for unpaid interrupted meal periods. During this
14 same time period, Defendants failed to provide Plaintiff with the statutory rest period for those days on
15 which Plaintiff worked at least four hours on approximately 285 separate days. Consequently, Plaintiff is
16 owed one hour of pay at \$20.59 for each day, or \$5,868.15, plus interest thereon, for unpaid rest periods.
17 Thus, Plaintiff is owed a total of \$11,736.30, plus interest thereon, for unpaid meal and rest periods for
18 this time period.

19 e. From approximately May 5, 2019 through February 28, 2020, Defendants failed
20 to provide Plaintiff with an uninterrupted statutory meal period for those days on which Plaintiff worked
21 at least five hours on approximately 215 separate days. Consequently, Plaintiff is owed one hour of pay
22 at \$21.17 for each day, or \$4,551.55, plus interest thereon, for unpaid interrupted meal periods. During
23 this same time period, Defendants failed to provide Plaintiff with the statutory rest period for those days
24 on which Plaintiff worked at least four hours on approximately 215 separate days. Consequently, Plaintiff
25 is owed one hour of pay at \$21.17 for each day, or \$4,551.55, plus interest thereon, for unpaid rest periods.
26 Thus, Plaintiff is owed a total of \$9,103.10, plus interest thereon, for unpaid meal and rest periods for
27 this time period.

28 ///

1 55. Thus, the total missed meal and rest period compensation owing Plaintiff for this time
2 period is \$33,437.80.

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

5 57. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
6 such amounts in the combined amount of \$33,437.80, pursuant to Labor Code §226.7(b), plus interest
7 thereon and costs of suit.

8
9 **FOURTEENTH CAUSE OF ACTION**
10 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
11 **LABOR CODE §§226 ET SEQ.**
12 **AGAINST EMPLOYER DEFENDANTS**

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

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

23 60. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates
24 Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation
25 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

26 61. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
27 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
28 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and

1 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
2 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
3 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying
4 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not
5 one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none
6 of the required information, including hours actually worked.

7 62. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

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

16 64. Plaintiff was paid on a bi-weekly basis, and therefore Defendants violated Labor Code
17 §226 approximately 26 times during the last year that Plaintiff worked for Defendants. Consequently,
18 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
19 amount of \$4,000.00, whichever is greater.

20 65. In addition thereto, Plaintiff is entitled civil penalties pursuant to Labor Code §226.3 in
21 the amount of \$15,250.00 ($\$250.00 + \$1,000.00 \times 15$ subsequent pay periods).

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

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1 **FIFTEENTH CAUSE OF ACTION**

2 **FOR WAITING TIME PENALTIES**

3 **LABOR CODE §§201-203**

4 **AGAINST EMPLOYER DEFENDANTS**

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

7 68. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
8 other compensation due immediately upon termination or within 72 hours of resignation, as required.
9 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest
10 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
11 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-
12 203.

13 69. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
14 203.

15 70. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
16 is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and
17 more than \$5,318.96 in wait time penalties, calculated based on 30 days of regular weekly wages
18 including overtime (i.e., \$177.30 per day times 30 days).

19 71. Based on Defendants' conduct as alleged herein, Defendants are liable for \$5,318.96 in
20 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
21 fees and costs.

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23 **SIXTEENTH CAUSE OF ACTION**

24 **FOR PRIVATE ATTORNEY GENERAL ACT**

25 **LABOR CODE §2699**

26 **AGAINST EMPLOYER DEFENDANTS**

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

1 73. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against
2 Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties
3 for Defendants' violations of the California Labor Code.

4 74. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and
5 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as
6 previously pleaded in this Complaint.

7 75. On August 21, 2020, more than 63 calendar days before filing this Complaint, Plaintiff
8 provided written notice by certified mail to the Labor and Workforce Development Agency and to
9 Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
10 satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ 201,
11 202, 203, 226, 226.7, 226.8, 510, 512, 1182.12, 1194, 1194.2, and 1197, each of which is enumerated
12 among the serious violations set forth in Labor Code §2699.5.

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

16 77. As a direct and proximate result of Defendants' California Labor Code violations as set
17 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per
18 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
19 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
20 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
21 provide for a penalty, §§226.3, 226.7, 510, 512, and 558.

22 78. These penalties recoverable for Plaintiff alone totals approximately \$9,300.00. Plaintiff
23 may also seek these same penalties on behalf of all other aggrieved employees, exceeding approximately
24 \$1,395,000.00.

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

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SEVENTEENTH CAUSE OF ACTION
FOR UNFAIR COMPETITION
BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.
AGAINST EMPLOYER DEFENDANTS

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

81. Defendants' violations of 8 Code of Regulations §11070, Industrial Welfare Commission Order No. 7-2001, Labor Code §§201-203, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 2699, and other applicable provisions, as alleged herein, including Defendants' failure and refusal to pay minimum wages, overtime wages, Defendants' failure to provide meal and rest breaks, Defendants' failure to provide timely and accurate wage and hour statements, Defendants' failure to pay compensation due in a timely manner upon termination or resignation, and Defendants' failure to maintain complete and accurate payroll records for the Plaintiff, constitute unfair business practices in violation of Business & Professions Code §§17200, et seq.

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

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

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants and each of them, in an amount according to proof:

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

2. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than \$10,000.00;

3. For civil penalties pursuant to Labor Code § 1102.5 in the amount of no less than \$10,000.00;

4. For civil penalties pursuant to Labor Code § 6310 in the amount of no less than \$10,000.00;

5. For payment of unpaid minimum wage compensation pursuant to Labor Code §§1182.12, 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 7-2001, in the amount of no less than \$1,097.63;

6. For liquidated damages pursuant to Labor Code §1194.2 in the amount of \$1,097.63, plus interest;

7. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194, Industrial Welfare Commission Order No. 7-2001, and 8 Code of Regulations §11070, in the amount of no less than \$2,021.39;

8. For statutory penalties or damages pursuant to Labor Code §558 in the amount of no less than \$1,550.00;

9. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512, in the amount of no less than \$33,437.80;

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

11. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no less than \$15,250.00;

1 12. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
2 than \$5,318.96;

3 13. For statutory penalties pursuant to Labor Code §2699(f), in the amount of no less than
4 \$9,300.00 on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants' aggrieved
5 employees, estimated to exceed \$1,395,000.00;

6 14. For prejudgment interest on each of the foregoing at the legal rate from the date the
7 obligation became due through the date of judgment in this matter;

8 15. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
9 condemning Defendants' discriminatory practices;

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

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

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

18 19. For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful
19 conduct, misclassification of Plaintiff as an independent contractor, and failure to pay wages and other
20 compensation in accordance with the law;

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1 20. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, Labor
2 Code and/or any other basis;

3 21. For post-judgment interest; and

4 22. For any other relief that is just and proper.

5
6 DATED: November 12, 2020

MOSLEY AND ASSOCIATES

7
8 By: 
9 Walter Mosley, Esq.
10 Nathalie Meza Contreras, Esq.
11 Attorneys for Plaintiff
12 Laura Mexicano

13
JURY TRIAL DEMANDED

14 Plaintiff Laura Mexicano demands trial of all issues by jury.

15 DATED: November 12, 2020

MOSLEY AND ASSOCIATES

16
17 By: 
18 Walter Mosley, Esq.
19 Nathalie Meza Contreras, Esq.
20 Attorneys for Plaintiff
21 Laura Mexicano
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