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 ERIKA MARTINEZ

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

20STCV38372

ERIKA MARTINEZ, an individual;

Plaintiff,

v.

STH TENANT, LLC, a California limited
 liability company; SUNSET TOWER
 MANAGEMENT, LLC, a California limited
 liability company; JK HOTEL GROUP, LLC, a
 California limited liability company; SVIH
 MANAGEMENT, LLC, a California limited
 liability company; and DOES 1 through 20,
 inclusive; and DOES 1 through 20, inclusive,

Defendants.

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. **WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**
7. **NEGLIGENT SUPERVISION AND
RETENTION**
8. **FAILURE TO PAY WAGES (CAL. LABOR
CODE §§201, 1194);**
9. **FAILURE TO PROVIDE MEAL AND
REST PERIODS (CAL. LABOR CODE
§§226.7, 512);**
10. **FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE AND HOUR
STATEMENTS (CAL. LABOR CODE
§§226, ET SEQ.;**

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11. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);
12. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ.; AND
13. UNFAIR COMPETITION (CAL. BUS. & PROF. CODE §17200 ET SEQ.)

DEMAND OVER \$25,000
[DEMAND FOR JURY TRIAL]

COMES NOW Plaintiff ERIKA MARTINEZ, and for causes of action against Defendants STH TENANT, LLC, SUNSET TOWER MANAGEMENT, LLC, JK HOTEL GROUP, LLC, and SVIH MANAGEMENT, LLC (collectively, "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 the Los Angeles County.

THE PARTIES

2. Plaintiff, ERIKA MARTINEZ (hereinafter referred to as "Ms. Martinez" or "Plaintiff"), 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 allege, that at all times relevant hereto Defendant STH TENANT, LLC (hereinafter referred to as "STH") was and is a California limited liability company doing business in the County of Los Angeles, State of California.

4. Plaintiff is informed and believes, and based thereupon allege, that at all times relevant hereto Defendant SUNSET TOWER MANAGEMENT, LLC (hereinafter referred to as "STM") was and is a California limited liability company doing business in the County of Los Angeles, State of California.

5. Plaintiff is informed and believes, and based thereupon allege, that at all times relevant

1 hereto Defendant JK HOTEL GROUP, LLC (hereinafter referred to as "JK") was and is a California
2 limited liability company doing business in the County of Los Angeles, State of California.

3 6. Plaintiff is informed and believes, and based thereupon allege, that at all times relevant
4 hereto Defendant SVIH MANAGEMENT, LLC (hereinafter referred to as "SVIH") was and is a
5 California limited liability company doing business in the Country of Los Angeles, State of California.

6 7. STH, STM, JK, and STIH are hereinafter collectively referred to as "EMPLOYER
7 DEFENDANTS."

8 8. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
9 hereto, Employers owned and operated a private hotel.

10 9. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint
11 employers and/or special employers within the meaning of Government Code §§12926, subdivision (d),
12 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employs five (5) or more
13 persons and is therefore subject to the jurisdiction of this Court.

14 10. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint
15 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
16 Commission Order No. 5-2001, and are each any "employer or other person acting on behalf of an
17 employer" as such term is used in Labor Code section 558, and liable to Plaintiff on that basis.

18 11. At all times relevant herein, Defendants and DOES 1-20 were Plaintiff's employers, joint
19 employers and/or special employers within the meaning of the Labor Code, and are each any "employer"
20 or "a person acting on behalf of the employer" as such term is used in Labor Code § 2810.3, and liable
21 to Plaintiff on that basis.

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

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

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

16 15. Whenever and wherever reference is made in this complaint to any act or failure to act
17 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
18 and/or failures to act by EMPLOYER DEFENDANTS and DOES 1-20 acting individually, jointly and
19 severally.

20 16. Plaintiff has filed complaints of discrimination, retaliation, failure to prevent
21 discrimination, and/or retaliation, and wrongful termination under Government Code §§12940, et seq.,
22 the California Fair Employment and Housing Act ("FEHA") with the California Department of Fair
23 Employment and Housing ("DFEH"), and has satisfied Plaintiff's administrative prerequisites with
24 respect to these and all related filings.

25
26 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

27 17. Plaintiff is informed and believes, and based thereupon alleges, that there exists such a
28 unity of interest and ownership between EMPLOYER DEFENDANTS and DOES 1-20 that the

individuality and separateness of defendants have ceased to exist.

18. Plaintiff is informed and believes, and based thereupon alleges, that despite the formation of purported corporate existence, EMPLOYER DEFENDANTS and DOES 1-20 are, in reality, one and the same.

19. Accordingly, EMPLOYER DEFENDANTS and DOES 1-20 constitute the alter egos of one another, and the fiction of their separate corporate existence must be disregarded.

20. As a result of the aforementioned facts, Plaintiff is informed and believes, and based thereupon alleges that EMPLOYER DEFENDANTS and DOES 1-20 are Plaintiff's joint employers by virtue of one or more joint corporations, businesses, or enterprises, and that Plaintiff was an employee of EMPLOYER DEFENDANTS 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 EMPLOYER DEFENDANTS's and DOES 1-20's businesses were and are conducted.

21. Alternatively, Plaintiff is informed and believes, and based thereupon alleges, that as and between EMPLOYER DEFENDANTS and DOES 1-20, (1) there is an express or implied agreement of assumption pursuant to which EMPLOYER DEFENDANTS and DOES 1-20 agreed to be liable for the debts of each other, (2) the transaction between EMPLOYER DEFENDANTS and DOES 1-20 amounts to a consolidation or merger of the two or more businesses or corporations, (3) EMPLOYER DEFENDANTS and DOES 1-20 are mere continuations of each other, or (4) the transfer of assets to EMPLOYER DEFENDANTS and DOES 1-20 are for the fraudulent purposes of escaping liability for each other's debts. Accordingly, EMPLOYER DEFENDANTS and DOES 1-20 are the successors of each other, and are liable on that basis.

FACTUAL ALLEGATIONS

22. On or about January 8, 2019, Ms. Martinez began working for the EMPLOYER DEFENDANTS as a Part-Time Front Desk Agent. Ms. Martinez was hired to work six-hour shifts, three days per week.

23. Ms. Martinez was an exemplary employee throughout her employment for EMPLOYER

1 DEFENDANTS. She was often publicly commended by the EMPLOYER DEFENDANTS General
2 Manager for her work product and cited as an example for other Front Desk Agents to follow.

3 24. In or around May 2019, Ms. Benhajali began working for the EMPLOYER
4 DEFENDANTS as the Front Office Director. Soon after Ms. Benhajali began working with Ms.
5 Martinez, Ms. Benhajali made drastic changes to the Front Desk staff work hours. Ms. Martinez was
6 impacted by these changes because Ms. Benhajali required Ms. Martinez to work eight-hour shifts,
7 instead of her prior agreed upon six-hour shifts. Specifically, Ms. Martinez was hired with the
8 understanding that she could only work six-hour shifts since she had another job, which she reported to
9 immediately after her shifts at the hotel.

10 25. Ms. Martinez first attempted to resolve the change in work hours by immediately raising
11 her concerns with Human Resources Manager Maria Marroquin (hereinafter referred to as "Ms.
12 Marroquin"). Instead of addressing Ms. Martinez's concerns, Human Resources essentially told Ms.
13 Martinez that she was on her own and instructed Ms. Martinez to resolve the issue directly with Ms.
14 Benhajali. Aware of Ms. Benhajali and Ms. Marroquin's friendship outside of work, Ms. Martinez
15 realized that as long as Ms. Marroquin was the Human Resources manager, Human Resources would
16 not address Ms. Martinez's concerns with Ms. Benhajali.

17 26. Ms. Martinez was just one of several co-workers who complained to Human Resources
18 about Ms. Benhajali's lack of professionalism and poor management skills. Soon, it became known
19 among co-workers that any complaints to Human Resources about Ms. Benhajali would be ignored.
20 Ms. Martinez could not trust that her rights were protected at work. She soon realized that in order to
21 resolve issues with Ms. Benhajali, Ms. Martinez should avoid upsetting Ms. Benhajali and take the path
22 of least resistance. This was the only way that Ms. Martinez was able to make and keep the peace with
23 Ms. Benhajali as her manager, show up to work, and do her job. In a last-ditch effort to address these
24 scheduling concerns, Ms. Martinez discussed this issue with the Operations Manager, Mr. Luis Saldana
25 (hereinafter referred to as "Mr. Saldana"). He too instructed Ms. Martinez to figure the matter out on
26 her own.

27 27. In or around the beginning of September 2019, Ms. Martinez took time off from work to
28 obtain a breast augmentation. Upon her return from medical leave, Ms. Martinez's physical appearance

1 had changed noticeably. Ms. Martinez expected her co-workers to react to her changed physical
2 appearance upon her return and had mentally prepared for those reactions. Ms. Benhajali was among
3 those co-workers who openly remarked about Ms. Martinez's breast augmentation, the size of her
4 breasts, and how they looked. Ms. Benhajali's comments about Ms. Martinez's breasts continued almost
5 daily, creating a hostile work environment. Ms. Martinez, failed by Human Resources to address her
6 concerns and dismissing her complaints previously, would give a dismissive smile or fain laughter in
7 hopes that Ms. Benhajali would stop.

8 28. Instead, Ms. Benhajali's sexual harassment directed towards Ms. Martinez escalated.
9 During the months of October and November, Ms. Benhajali's verbal remarks persisted and sent Ms.
10 Martinez various text messages subtly commenting about Ms. Martinez's breasts and breast
11 augmentation surgery. Among the disrespectful and sexualized comments that Ms. Benhajali made to
12 Ms. Martinez via text, Ms. Benhajali started calling Ms. Martinez "Susu" and referred to her as a
13 "stripper." Ms. Martinez was offended by being called a "stripper" but knowing that Human Resources
14 would dismiss any complaints about Ms. Benhajali, kept hoping that Ms. Benhajali would stop if Ms.
15 Martinez continued to maintain an amicable relationship with her. Well-aware that reporting to Human
16 Resources would be futile, Ms. Martinez decided to maintain her approach of taking the path of least
17 resistance and kept hoping that the comments would cease.

18 29. One day in early December 2019, Ms. Martinez overheard Ms. Benhajali speaking with
19 a Bellman, "teaching" him how to speak Tagalog, Ms. Benhajali's native language. Among the words
20 Ms. Martinez heard was "susu" and others that Ms. Martinez understood to refer to genitals. When Ms.
21 Martinez received the texts from Ms. Benhajali containing the word "Susu" she initially believed that
22 "Susu" was a typographical error intended as "Sis" or "Sister" and was trying to call her "sister."
23 Initially, Ms. Martinez did not take offense because she believed it was a typo. However, when Ms.
24 Martinez heard Ms. Benhajali using the word "susu" together with other words that referred to genitalia,
25 Ms. Martinez realized that "susu" referred to her body parts. Ms. Martinez learned that "susu" was the
26 Tagalog informal word for "boobs." She realized that Ms. Benhajali had been calling her "boobs" via
27 text and verbally to her face.

28 30. Upon realizing this, Ms. Martinez was offended and felt ashamed that she was being

1 called this in front of her fellow co-workers, some who spoke Tagalog and clearly understood Ms.
2 Benhajali to be calling her "boobs" openly among her co-workers. Despite Ms. Martinez's
3 embarrassment, shame, and humiliation, Ms. Martinez did not believe that turning to Human Resources
4 with her concern would make Ms. Benhajali stop the sexual harassment. Ms. Martinez continued to
5 work and tried her best to avoid Ms. Benhajali in order to avoid upsetting her and kept hoping that the
6 sexual harassment would stop.

7 31. The persistent sexual harassment continued until in or around mid-December 2019 when
8 Ms. Martinez wore a vest with her uniform that day, Ms. Benhajali's immediate reaction, in front of a
9 fellow co-worker, was to point out how her breasts looked and remarked, "OMG! They look even bigger
10 in that vest" and emphasized how the vest accentuated her breasts even more. Ms. Martinez was
11 humiliated and had had enough of Ms. Benhajali's sexual harassment.

12 32. Finally, after months of sexual harassment, Ms. Martinez mustered up the courage to
13 confront Ms. Benhajali about her inappropriate conduct and told Ms. Benhajali that the "joke was over"
14 about her breast surgery because many months had passed since she got her surgery. Ms. Martinez was
15 firm in her tone, and respectfully asked Ms. Benhajali to stop. Ms. Martinez made it very clear that she
16 was offended and asked for Ms. Benhajali's harassment to cease. Ms. Benhajali did not respond. Ms.
17 Martinez hoped that the harassment and hostile work environment had ceased. However, Ms. Benhajali
18 continued to call Ms. Martinez "Susu" to her face and via text messages.

19 33. Later that month, the Company held a training on sexual harassment, discrimination, and
20 retaliation. Based on what she heard during that training, Ms. Martinez held out some hope that things
21 would change for her at work, and that she would not be retaliated against for speaking up against Ms.
22 Benhajali's sexual harassment.

23 34. Despite Ms. Martinez's hopes, Ms. Benhajali began her retaliation campaign against Ms.
24 Martinez. Ms. Benhajali began to tinker with Ms. Martinez's earned commissions and work schedule.
25 Soon after complaining, Ms. Martinez noticed that commissions earned were not being paid. She also
26 noticed that Ms. Benhajali was scheduling her to work the shifts that gave her less opportunities to earn
27 commissions.

28 35. Then, in early January 2020, Ms. Benhajali spoke with Ms. Martinez about her work

1 availability and schedule. Ms. Benhajali stated that she needed to implement changes to the staffing
2 schedule and asked Ms. Martinez about her availability and possible changes. After agreeing to the
3 changes, Ms. Martinez waited for the changes to take effect. She relied on Ms. Benhajali's statements
4 and continued to show up for work as scheduled. One day, Ms. Martinez received a text message from
5 Ms. Benhajali calling her "Susu" and asking her whether she would be going into work as scheduled.
6 Ms. Martinez reminded Ms. Benhajali about her availability and that she was under the impression that
7 the schedule changes had not yet taken effect. Due to being scheduled against her availability, Ms.
8 Martinez was unable to report to work. Additionally, Ms. Benhajali once again scheduled Ms. Martinez
9 against her availability to work, even though there were open shifts consistent with Ms. Martinez's work
10 availability.

11 36. When Ms. Martinez reported to her next scheduled shift, Ms. Benhajali disciplined Ms.
12 Martinez for time and attendance and for allegedly losing gift bags. This disciplinary notice made it
13 appear as if she had accrued a total of 8 disciplinary points resulting from her conduct. Once an
14 employee accrues 10 points, they can be terminated. Before this discipline, she had 1.5 disciplinary
15 points accrued. She had accrued the 1.5 points for time and attendance in the year prior.

16 37. Knowing that she could not trust that Human Resources would address her concerns
17 about Ms. Benhajali, Ms. Martinez turned to Ms. Benhajali's immediate manager Saldana, to complain
18 about Ms. Benhajali's sexual harassment, discrimination, and retaliation. He reassured Ms. Martinez
19 that her complaints would be investigated and reported it to Ms. Marroquin in Human Resources.

20 38. During her meeting with Mr. Saldana and Ms. Marroquin, the written discipline she had
21 initially been given had been changed. Instead of being disciplined for alleged lost gift bags, the
22 disciplinary notice was changed to indicate a problem with her time and attendance due to "sick days."
23 In addition, she learned that her personnel record contained additional discipline for missing work.
24 However, when checked against her actual time and attendance record, she was being written up even
25 though she had timely reported to her shift as scheduled.

26 39. Ms. Benhajali was clearly retaliating against her by denying her available work
27 opportunities, disciplining her, and fabricating issues to discipline her; or worst, force her to quit. Alas,
28 she informed Human Resources that she did not feel comfortable working with Ms. Benhajali, given

1 the harassment and retaliation.

2 40. Although Mr. Saldana and Ms. Marroquin purported to take Ms. Martinez's complaint
3 seriously and assured Ms. Martinez that her complaint would remain confidential, Ms. Martinez soon
4 realized that the opposite was true. Despite Ms. Martinez keeping quiet about her complaints, others in
5 the Company were not as discreet. The week following her report, Ms. Martinez received text messages
6 from fellow co-workers that one manager walked into an office and loudly remarked about Ms.
7 Martinez's complaint to Human Resources. On another occasion while at work, a manager on duty
8 commented to Ms. Martinez, "Hi, oh wait, I have to be careful what I say around you. I don't want to
9 get in trouble." During another scheduled shift, Ms. Martinez found an employee handbook in her
10 cubby... clearly a veiled threat. Finally, a former manager, who was no longer a hotel employee, texted
11 Ms. Martinez saying that he knew about her complaint about sexual harassment. These incidents made
12 Ms. Martinez feel very uncomfortable and created a hostile work environment.

13 41. Immediately following Ms. Martinez's complaint, hotel managers magnified the
14 retaliation every time Ms. Martinez showed up to work, and only made her work environment even
15 more uncomfortable, hostile, and unbearable. Uncomfortable working in a hostile work environment,
16 Ms. Martinez was forced to terminate her employment on February 17, 2020.

17 42. Additionally, throughout the time that Ms. Benhajali was Director of the Front Desk,
18 Ms. Martinez was caused to take untimely meal breaks or miss meal breaks altogether at least once per
19 week. Ms. Benhajali informed Ms. Martinez that she would be modifying her recorded time and
20 attendance so as to avoid paying the meal period premium for missed and/or untimely meal breaks. Ms.
21 Benhajali informed Ms. Martinez that this was done because the EMPLOYER DEFENDANT would
22 discipline her if she was paid too many missed and/or untimely meal premiums.

23 43. At all relevant times, the EMPLOYER DEFENDANT was required to provide Ms.
24 Martinez with regular itemized written statements showing, among other things, total hours worked, all
25 applicable hourly rates during the pay period, and the corresponding number of hours worked at each
26 rate by the employee. The EMPLOYER DEFENDANT, by its agent, Ms. Benhajali, knowingly and
27 intentionally failed to provide timely, accurate itemized wage statements, including this required
28 information, because it failed to pay the premium pay for and show payment for untimely and/or missed

1 meal periods.

2 44. By failing to keep adequate records, the EMPLOYER DEFENDANT has injured Ms.
3 Martinez, and made it confusing and difficult to calculate the unpaid wages earned due to Ms. Martinez.
4 As a direct and proximate result of the EMPLOYER DEFENDANT'S conduct, Ms. Martinez has been
5 injured by, among other things, not being paid all wages due, not knowing how many meal premium
6 hours she was owed and at what rate, and being required to file this action to recover her wages and
7 determine the number of hours worked and wages due.

8 45. Plaintiff's termination was substantially motivated by Plaintiff's gender, sex, and/or
9 engagement in protected activities. Defendants' discriminatory animus is evidenced by the previously
10 mentioned facts.

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

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

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

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

27 50. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
28 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious

1 disregard of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive
2 damages be levied against Defendants and each of them, in sums in excess of the jurisdictional minimum
3 of this Court.

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

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

10 52. At all times hereto, the FEHA was in full force and effect and was binding upon
11 EMPLOYER DEFENDANTS.

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

14 54. FEHA requires Defendants to refrain from discriminating against an employee on the
15 basis of age, race, gender, sex, marital status, religion, disability and/or medical condition, real or
16 perceived, and to prevent discrimination and harassment on the basis of disability and/or medical
17 condition, real or perceived, use of medical leave, and engagement in protected activities from
18 occurring.

19 55. Plaintiff was a member of multiple protected classes as a result of her sex, gender and
20 engagement in protected activities from occurring.

21 56. At all times relevant hereto, Plaintiff was performing competently in the position the
22 Plaintiff held with EMPLOYER DEFENDANTS.

23 57. Plaintiff suffered the adverse employment actions of unlawful discrimination, failure to
24 investigate, remedy, prevent discrimination, harassment, and retaliation, hostile work environment,
25 retaliatory schedule changes, and termination, and were harmed thereby.

26 58. Plaintiff is informed and believes that their sex, gender, and engagement in protected
27 activities, and some combination of these protected characteristics under Government Code §12926(j)
28 were motivating reasons and factors in the decisions to subject Plaintiff to the aforementioned adverse

1 employment actions.

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

4 60. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
5 by reference.

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

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

15
16 **SECOND CAUSE OF ACTION**

17 **FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**

18 **AGAINST ALL DEFENDANTS**

19 63. Plaintiff hereby incorporates by reference the allegations in the above paragraphs as
20 though fully set forth herein.

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

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

25 66. These laws set forth in the preceding paragraph require employers to refrain from
26 harassing, or creating, or maintaining a hostile work environment against an employee based upon the
27 employee's sex, gender, and/or engagement in protected activities, as set forth hereinabove.

28 67. Defendants' harassing conduct, including Ms. Benhajali's sexually harassing conduct and

1 obscene behavior, was severe and pervasive, was unwelcome by Plaintiff, and a reasonable person in
2 Ms. Martinez's circumstance would have considered the work environment to be hostile or abusive.

3 68. Defendants violated the FEHA and the public policy of the State of California, which is
4 embodied in the FEHA, by creating a hostile work environment and harassing the Plaintiff because of
5 her sex, gender, engagement in protected activities, and/or some combination of these protected
6 characteristics, as set forth hereinabove.

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

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

13 71. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
14 by reference.

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

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

23
24 **THIRD CAUSE OF ACTION**
25 **FOR RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
26 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20 INCLUSIVE**

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

1 75. At all times hereto, the FEHA was in full force and effect and was binding upon
2 EMPLOYER DEFENDANTS.

3 76. These laws set forth in the preceding paragraph require employers to refrain from
4 retaliating against an employee for resisting discrimination and engaging in protected activity.

5 77. Plaintiff engaged in the protected activities of reporting discrimination, hostile work
6 environment, harassment, retaliation, resisting discrimination, resisting harassment, resisting
7 retaliation, asserting rights as enshrined in the FEHA, and complaining about and protesting
8 EMPLOYER DEFENDANTS's discriminatory and retaliatory conduct towards Plaintiff.

9 78. Plaintiff suffered the adverse employment actions of unlawful discrimination, failure to
10 investigate, remedy, prevent discrimination, harassment, and retaliation, hostile work environment, and
11 termination, and was harmed thereby.

12 79. EMPLOYER DEFENDANTS violated the FEHA by retaliating against Plaintiff and
13 terminating Plaintiff's employment for attempting to exercise their protected rights as set forth
14 hereinabove. Plaintiff's engagement in such protected activities was a substantial factor in EMPLOYER
15 DEFENDANTS' decision to subject Plaintiff to the aforementioned adverse employment actions.

16 80. Plaintiff is informed and believes, and based thereupon allege, that the above acts of
17 retaliation committed by EMPLOYER DEFENDANTS were done with the knowledge, consent, and/or
18 ratification of, or at the direction of EMPLOYER DEFENDANTS and EMPLOYER DEFENDANTS'
19 Managers.

20 81. The above said acts of EMPLOYER DEFENDANTS constitute violations of the FEHA,
21 and were a proximate cause in EMPLOYERS' damages as stated below.

22 82. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
23 by reference.

24 83. The foregoing conduct of EMPLOYER DEFENDANTS individually, and/or by and
25 through its officers, directors, and/or managing agents, was intended by EMPLOYER DEFENDANTS
26 to cause injury to Plaintiff or was despicable conduct carried out by EMPLOYER DEFENDANTS with
27 a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust
28 hardship in conscious disregard of Plaintiff's rights such as to constitute malice, oppression, or fraud

1 under Civil Code §3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to
2 punish or make an example of EMPLOYER DEFENDANTS.

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

5
6 **FOURTH CAUSE OF ACTION**
7 **FOR FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION**
8 **IN VIOLATION OF GOV'T CODE §12940(k)**
9 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20 INCLUSIVE**

10 85. Plaintiff hereby incorporates by reference the allegations in the above paragraphs as
11 though fully set forth herein.

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

18 87. The above said acts of EMPLOYER DEFENDANTS constitute violations of the FEHA,
19 and were a proximate cause in Plaintiff damages as stated below.

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

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

FIFTH CAUSE OF ACTION
FOR DECLARATORY JUDGMENT
AGAINST EMPLOYER DEFENDANTS AND DOES 1-20 INCLUSIVE

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

91. 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.

92. 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.

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

The opportunity to seek, obtain, and hold employment without discrimination because 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 is hereby recognized as and declared to be a civil right.

94. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties as it is believed that Defendants may allege that they did not discriminate and retaliate against Plaintiff; that Plaintiff was not terminated as a result of Plaintiff's gender, sex, engagement in protected activities, and/or some combination of these protected characteristics. Plaintiff contends that Defendants did discriminate and retaliate against Plaintiff on the basis of Plaintiff's gender, sex, 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 gender, sex, 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.

95. 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 gender, sex, engagement in protected activities, and/or some combination of these protected characteristics.

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

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

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

99. Government Code §12965(b) provides that an aggrieved party, such as the Plaintiff

1 herein, may be awarded reasonable attorney's fees and costs: "In civil actions brought under this section,
2 the court, in its discretion, may award to the prevailing party, including the department, reasonable
3 attorney's fees and costs, including expert witness fees." Such fees and costs expended by an aggrieved
4 party may be awarded for the purpose of redressing, preventing, or deterring discrimination and
5 harassment.

6
7 **SIXTH CAUSE OF ACTION**
8 **FOR WRONGFUL TERMINATION**
9 **IN VIOLATION OF PUBLIC POLICY**
10 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20 INCLUSIVE**

11 100. Plaintiff hereby incorporates by reference the allegations in the above paragraphs as
12 though fully set forth herein.

13 101. At all relevant times mentioned in this complaint, the FEHA was in full force and effect
14 and was binding on EMPLOYER DEFENDANTS. This law requires EMPLOYER DEFENDANTS to
15 refrain, among other things, from discriminating against any employee on the basis of disability or
16 perceived disability, medical condition or perceived medical condition, and from retaliating against any
17 employee who engages in protected activity.

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

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

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

27 105. The above said acts of EMPLOYER DEFENDANTS constitute violations of the
28 Government Code and the public policy of the State of California embodied therein as set forth above.

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

3 106. At all times mentioned in this complaint, it was a fundamental policy of the State of
4 California that employers cannot discriminate and/or retaliate against any employee in violation of
5 FEHA.

6 107. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's status as
7 a protected member of the class under FEHA was a proximate cause in Plaintiff damages as stated
8 below.

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

16
17 **SEVENTH CAUSE OF ACTION**

18 **FOR COMMON LAW NEGLIGENT SUPERVISION AND RETENTION**

19 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

20 109. Plaintiff hereby incorporates by reference the allegations in the above paragraphs as
21 though fully set forth herein.

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

26 111. EMPLOYER DEFENDANTS owed Plaintiff a duty of reasonable care to supervise their
27 employees and to take reasonable steps to prevent them from negligent supervision and retention.

28 112. EMPLOYER DEFENDANTS further owed Plaintiff a duty of reasonable care to

1 discharge from employment employees who had threatened or injured or were reasonably likely to
2 threaten or injure others with whom they came into contact at work, including Plaintiff.

3 113. EMPLOYER DEFENDANTS, by and through at a minimum Plaintiff, had reason to
4 know that Ms. Benhajali created a risk or threat of injury to Plaintiff, as alleged herein, due to Plaintiff's
5 complaints about Ms. Benhajali.

6 114. EMPLOYER DEFENDANTS breached its duties by failing to properly supervise or
7 control Ms. Benhajali so that Plaintiff could work in a reasonably safe environment.

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

15
16 **EIGHTH CAUSE OF ACTION**
17 **FOR FAILURE TO PAY WAGES DUE**
18 **LABOR CODE §201**

19 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

20 116. Plaintiff hereby incorporates by references the allegations in the above paragraphs as
21 though fully set forth herein.

22 117. At all relevant times, EMPLOYER DEFENDANTS failed and refused to pay Plaintiff's
23 earned and due wages required by 8 Code of Regulations §11050(2)(K), as set forth hereinabove.

24 118. As alleged herein, EMPLOYER DEFENDANTS routinely failed to pay Plaintiff one
25 hour pay for every day that Plaintiff was not provided a timely meal break or no meal break at all, which
26 was approximately 1 time per week.

27 119. Plaintiff has been deprived of their rightfully earned compensation as a direct and
28 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to

1 recover such amounts, plus interest thereon, attorneys' fees and costs.

2
3 **NINTH CAUSE OF ACTION**
4 **FOR FAILURE TO PROVIDE MEAL BREAKS**
5 **LABOR CODE §§226.7, 512**
6 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

7 120. Plaintiff hereby incorporates by references the allegations in the above paragraphs as
8 though fully set forth herein.

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

11 122. The EMPLOYER DEFENDANTS systematically failed and/or refused to provide
12 Plaintiff with a timely, uninterrupted, off-duty meal break of at least thirty (30) consecutive minutes in
13 duration at least once per week, when she worked shifts in excess of five (5) hours. Therefore, Ms.
14 Martinez is entitled to an additional hour of compensation for every shift that mandated a meal period
15 and one was not provided.

16 123. EMPLOYER DEFENDANTS failed and refused to provide Plaintiff with meal and rest
17 periods, and failed to compensate Plaintiff for missed and/or untimely meal and rest periods, as required
18 by Labor Code §§226.7 and the applicable sections of 8 Code of Regulations §11050 and Industrial
19 Welfare Commission Order No. 5-2001. Consequently, Plaintiff is owed one hour of pay at Plaintiff's
20 then regular hourly rate, or the requisite minimum wage, whichever is greater, for each day that Plaintiff
21 was denied such meal periods or given untimely meal periods, and is owed one hour of pay at Plaintiff's
22 regular hourly rate, or the requisite minimum wage, whichever is greater, for each day that Plaintiff was
23 denied such rest periods, calculated as follows:

24 a. From approximately May 1, 2019 through February 17, 2020, EMPLOYER
25 DEFENDANTS failed to provide Plaintiff with timely statutory meal period or a meal period at all for
26 those days on which Plaintiff worked at least five hours approximately three times per week for 42
27 weeks, or on approximately 42 days. Consequently, Plaintiff is owed one hour of pay at \$17.00 for each
28 day, or \$714.00, plus interest thereon, for unpaid interrupted meal periods.

1 b. During this same time period, Defendants failed to provide Plaintiff with the
2 statutory rest period for those days on which Plaintiff worked at least four hours approximately three times
3 per week for 42 weeks, or on approximately 42 days. Consequently, Plaintiff is owed one hour of pay at
4 \$17.00 for each day, or \$714.00, plus interest thereon, for unpaid rest periods.

5 124. Thus, the total missed meal and rest period compensation owing Plaintiff for this time
6 period is \$1,428.00.

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

9 126. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
10 such amounts in the combined amount of \$1,428.00, pursuant to Labor Code §226.7(b), plus interest
11 thereon and costs of suit.

12
13 **TENTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE AND HOUR STATEMENTS**

15 **LABOR CODE §§226, ET SEQ.**

16 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

17 127. Plaintiff hereby incorporates by reference the allegations in the above paragraphs as
18 though fully set forth herein.

19 128. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
20 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
21 total deductions and net wages earned. An employer who violates these code sections is liable to its
22 employees for the greater of actual damages suffered by the employee, or \$50 in civil penalties for the
23 initial pay period in which a violation occurred, and \$100 per employee for each subsequent pay period,
24 up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is deemed
25 to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement at all.

26 129. At all relevant times, EMPLOYER DEFENDANTS failed to provide Plaintiff with
27 itemized written statements showing total hours worked, all applicable hourly rates during the pay
28 period, and the corresponding number of hours worked at each rate by the employee. The EMPLOYER

1 DEFENDANT, by its agent, Ms. Benhajali, knowingly and intentionally failed to provide timely,
2 accurate itemized wage statements, including this required information, because it failed to pay the
3 premium pay for and show payment for untimely and/or missed meal periods.

4 130. By failing to keep adequate records, as required by Labor Code § 226, the EMPLOYER
5 DEFENDANT has injured Ms. Martinez, and made it confusing and difficult to calculate the unpaid
6 wages earned due to Ms. Martinez. As a direct and proximate result of the EMPLOYER
7 DEFENDANT'S conduct, Ms. Martinez has been injured by, among other things, not being paid all
8 wages due, not knowing how many meal premium hours she was owed and at what rate, and being
9 required to file this action to recover her wages and determine the number of hours worked and wages
10 due.

11 131. Consequently, Defendants are liable to Plaintiff for damages, up to the statutory
12 maximum of \$4,000.00.

13 132. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
14 statutory penalties pursuant to Labor Code §§226, 558, and other applicable provisions, as well as
15 attorneys' fees and costs.

16
17 **ELEVENTH CAUSE OF ACTION**

18 **FOR WAITING TIME PENALTIES**

19 **LABOR CODE §§201-203**

20 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

21 133. Plaintiff hereby incorporates by reference the allegations in the above paragraphs as
22 though fully set forth herein.

23 134. Labor Code §§ 201 and 202 require employers to pay their employees all wages due
24 immediately upon discharge, or within seventy-two (72) hours of quitting without notice. Labor Code
25 § 203 provides that where an employer willfully fails to make such timely payment, the employer must,
26 as a penalty, continue to pay the subject employees' wages until the back wages are paid in full, or an
27 action is commenced, up to a maximum of thirty (30) days' wages.

28 135. At all relevant times, EMPLOYER DEFENDANTS failed to pay all of Plaintiff's

1 accrued wages and other compensation due immediately upon separation of employment. These wages
2 refer to, at a minimum meal period premium wages that Defendants should have paid, but did not pay,
3 to the Plaintiff that were due within the time required by Labor Code §§ 201 and 202. The EMPLOYER
4 DEFENDANTS' failure to pay these wages has been and continues to be willful.

5 136. As alleged herein, the Plaintiff is not exempt from the requirements of Labor Code
6 §§201-203.

7 137. As a direct and proximate result of Defendants' willful failure to pay these wages,
8 Plaintiff is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded
9 herein, and more than \$3,060.00 in wait time penalties, calculated based on 30 days of regular weekly
10 wages including overtime (i.e., \$102.00 per day for 30 days).

11 138. Based on Defendants' conduct as alleged herein, Defendants are liable for \$3,020.00 in
12 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
13 fees and costs.

14
15 **TWELVETH CAUSE OF ACTION**
16 **FOR PRIVATE ATTORNEY GENERAL ACT**
17 **LABOR CODE §2699, ET SEQ.**

18 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

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

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

24 141. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and
25 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff,
26 as previously pleaded in this Complaint.

27 142. On August 4, 2020, more than 63 calendar days before filing this Complaint, Plaintiff
28 provided written notice by certified mail to the Labor and Workforce Development Agency and to

1 Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
2 satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ 201,
3 202, 203, 226, and 512, each of which is enumerated among the serious violations set forth in Labor
4 Code §2699.5.

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

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

14 145. These penalties recoverable for Plaintiff alone totals approximately \$*paga*. Plaintiff
15 may also seek these same penalties on behalf of all other aggrieved employees.

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

18
19 **THIRTEENTH CAUSE OF ACTION**

20 **FOR UNFAIR COMPETITION**

21 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

22 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

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

25 148. Defendants' violations of 8 Code of Regulations §11050, Industrial Welfare Commission
26 Order No. 5-2001, Labor Code §§201-203, 226, 512, 2699, and other applicable provisions, as alleged
27 herein, including Defendants' failure to provide timely meal breaks, Defendants' failure to provide
28 accurate wage and hour statements, and Defendants' failure to pay compensation due in a timely manner

1 upon termination or resignation, constitute unfair business practices in violation of Business &
2 Professions Code §§17200, et seq.

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

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

10
11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff seeks judgment against EMPLOYER DEFENDANTS, in an amount
13 according to proof:

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 money,
16 together with interest on these amounts; for other special damages; and for general damages for mental
17 pain and anguish and emotional distress and loss of earning capacity;

18 2. For payment of meal period compensation pursuant to Labor Code §226.7, 512, in the
19 amount of no less than \$1,428.00;

20 3. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
21 than \$3,060.00;

22 4. For prejudgment interest on each of the foregoing at the legal rate from the date the
23 obligation became due through the date of judgment in this matter;

24 5. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
25 condemning EMPLOYER DEFENDANTS discriminatory practices;

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

28 7. For punitive damages, pursuant to Civil Code §§3294 in amounts sufficient to punish

1 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

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

6 9. For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful
7 conduct and failure to pay wages and other compensation in accordance with the law;

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

10 11. For post-judgment interest; and

11 12. For any other relief that is just and proper.

12 DATED: October 6, 2020

MOSLEY AND ASSOCIATES

13
14 By: 
15 Walter Mosley, Esq.
16 Nathalie Meza Contreras, Esq.
17 Attorneys for Plaintiff
ERIKA MARTINEZ

18 **JURY TRIAL DEMANDED**

19 Plaintiff ERIKA MARTINEZ demands trial of all issues by jury.
20

21
22 DATED: October 6, 2020

MOSLEY AND ASSOCIATES

23
24 By: 
25 Walter Mosley, Esq.
26 Nathalie Meza Contreras, Esq.
27 Attorneys for Plaintiff
28 ERIKA MARTINEZ