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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

LAPASIA COLBERT, JANAIE WALKER,
MACKENZIE BANKS, and ASHLEY LEON

Plaintiffs,

vs.

BIJOU CENTURY, LLC, a limited liability
company dba NEW CENTURY THEATER,
KEN "DOE", an individual,
and DOES 1 to 20, inclusive,
Defendants.

CASE NO.: CGC20587067

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

(AMOUNT DEMANDED EXCEEDS \$25,000)

JURY TRIAL DEMANDED

- 1. RACIAL AND/OR NATIONAL ORIGIN
HARASSMENT IN VIOLATION OF
THE FAIR EMPLOYMENT AND
HOUSING ACT ("FEHA") (Gov. Code §
12940(j));**
- 2. SEXUAL HARASSMENT (HOSTILE
WORK ENVIRONMENT) IN
VIOLATION OF FEHA**
- 3. FAILURE TO TAKE REASONABLE
STEPS IN VIOLATION OF FEHA**
- 4. RETALIATION IN VIOLATION OF
FEHA**
- 5. RACE/NATIONAL ORIGIN
DISCRIMINATION IN VIOLATION OF
FEHA**
- 6. SEX/GENDER DISCRIMINATION IN**

- VIOLATION OF FEHA**
- 7. RETALIATION IN VIOLATION OF GOVERNMENT CODE § 1102.5(B);**
 - 8. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
 - 9. UNFAIR BUSINESS PRACTICES (CAL. BUS. & PRO. CODE § 17200, ET SEQ.);**
 - 10. FAILURE TO ACCOMMODATE IN VIOLATION OF FEHA (Gov. Code, § 12940(m));**
 - 11. TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**
 - 12. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**
 - 13. CONSTRUCTIVE WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY**
 - 14. FAILURE TO PAY OVERTIME AND DOUBLETIME WAGES IN VIOLATION OF LABOR CODE §§ 204, 510, 1194, AND WAGE ORDER 16-2001**
 - 15. FAILURE TO PAY MINIMUM GAWAGES IN VIOLATION OF §§ 558.1, 1194, 1197, AND 1197.1 AND WAGE ORDER 16-2001**
 - 16. LIQUIDATED DAMAGES FOR FAILURE TO PAY MINIMUM WAGES § 1194.2**
 - 17. FAILURE TO PROVIDE MEAL BREAKS IN VIOLATION OF WAGE ORDER 16-2001, § 11 AND LABOR CODE §§ 226.7, 512, AND 558.1**
 - 18. FAILURE TO PROVIDE REST BREAKS IN VIOLATION OF WAGE ORDER 16-2001, § 12 AND LABOR CODE §§ 226.7 AND 558.1**
 - 19. FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS LABOR CODE §§ 226 AND 558.1 AND WAGE ORDER 16-2001**
 - 20. CIVIL PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ.**

1 Plaintiffs Lapasia Colbert, Janaie Walker, Mackenzie Banks, and Ashley Leon sue Bijou Century,
2 LLC dba New Century Theater, and Ken “Doe”, and Does 1 to 20, inclusive, (“Defendants”), and each
3 of them, demands a trial by jury of all issues, and for causes of action alleges:

4 **GENERAL ALLEGATIONS**

5 1. Plaintiffs are ignorant of the true names and capacities of the Defendants sued herein under the
6 fictitious names DOE ONE through DOE TWENTY, inclusive. Plaintiffs are informed and believe that
7 Ken “Doe” was the owner of New Century Theater. Plaintiffs are ignorant to his surname. Plaintiffs will
8 amend this complaint to allege the true names and capacities when ascertained. Plaintiffs are informed
9 and believe that each of the DOE defendants is responsible in some manner for the occurrences and
10 injuries alleged in this complaint.

11 2. At all times mentioned in the causes of action to which this paragraph is incorporated by
12 reference, each and every Defendant was the agent or employee of each and every other Defendant. In
13 doing the things alleged in the causes of action into which this paragraph is incorporated by reference,
14 each and every Defendant was acting within the course and scope of this agency or employment and was
15 acting with the consent, permission, and authorization of each of the remaining Defendants. All actions
16 of each of the Defendants alleged in the causes of action into which this paragraph is incorporated by
17 reference were ratified and approved by the officers or managing agents of every other Defendant.

18 3. Plaintiffs are adults over the age of 18 and at all times mentioned herein are residents of the State
19 of California.

20 4. Defendant Bijou Century, LLC is a limited liability company existing under the laws of the State
21 of California and doing business as New Century Theater located at 816 Larkin, San Francisco,
22 California.

23 5. Defendant Ken Doe is an adult over the age of 18 and at all times mentioned herein was a resident
24 of the State of California. His last name is presently unknown.

25 **PARTIES, JURISDICTION, AND VENUE**

26 6. Plaintiffs are individuals who, at all times relevant to this action, worked in the County of San
27 Francisco, State of California.

7. Plaintiffs are informed, believe and thereupon allege that Defendant BIJOU CENTURY, LLC. dba NEW CENTURY THEATER (hereinafter “NEW CENTURY.” or “Employer Defendants” is now, and was at all times mentioned in this Complaint, a Nevada LLC doing business in the State of California, and was Plaintiff’s employer at all times relevant herein.

8. Plaintiffs are informed, believe and thereupon allege, that at all relevant times, Defendant Ken Doe was an owner ,executive, manager, managing agent, and/or supervisor at BIJOU CENTURY, LLC. dba NEW CENTURY THEATER, at all relevant times herein and based upon information and belief, was a resident of the County of San Francisco, State of California. At all times herein mentioned Defendant Ken Doe had authority over Plaintiffs’ wages, other compensation, working conditions, and other terms and conditions of Plaintiffs’ employment with Defendants.

9. Plaintiffs are informed, believes, and thereupon alleges that each Defendants are, and at all times relevant herein was, the agent of his, her, or its co-defendants, and in committing the acts alleged herein, was acting within the scope of his, her, or its authority as such agent, and with the knowledge, permission, and consent of his, her, or its co-defendants.

10. Venue is proper in the Superior Court of California, County of San Francisco, as this Court has personal jurisdiction over Defendants pursuant to Code of Civil Procedure § 395. Plaintiffs worked in and the violations occurred in San Francisco County, and the contract of employment was formed in San Francisco County.

11. Plaintiffs are informed, believe and thereupon allege that Defendant Ken Doe was and at all times mentioned herein did completely control, dominate, manage and/or operate Defendant BIJOU CENTURY, LLC. as their alter ego, such that any separateness between them has ceased to exist and recognition of the form of Defendant BIJOU CENTURY, LLC. would operate as a sham because it is the alter ego of Defendant Ken Doe to wit.

12. At all relevant times, there existed a unity of interest and ownership between the two such that any individuality and separateness between the two has ceased. Because either the company was inadequately capitalized or it was a mere shell, instrumentality and conduit through which Defendant KEN DOE carried on their business, exercising complete control and dominance over such business that any individuality and separateness did not exist, assets were commingled or Defendant KEN DOE used

1 such corporate assets for his personal use, or caused the corporate assets to be transferred to him without
2 adequate consideration, withdrew funds from the bank accounts for his personal use and/or intermingled
3 assets, liabilities, and obligations between the three.

4 13. It would sanction a fraud or promote injustice to uphold the corporate entity of Defendant BIJOU
5 CENTURY, LLC and allow Defendant KEN DOE to escape personal liability for its debts.

6 14. Labor Code § 558.1 provides that “Any employer or other person acting on behalf of an
7 employer, who violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may
8 be held liable as the employer for such violation.” Defendant KEN DOE was Plaintiffs’ employer or
9 was “other person(s) acting on behalf of” BIJOU CENTURY, LLC. dba NEW CENTURY THEATER,
10 as defined by Labor Code § 558.1(b), for the purposes of Labor Code § 558.1. As such, Defendant KEN
11 DOE may be held personally liable for Labor Code violations alleged herein.

12 **ALLEGATIONS**

13 15. Plaintiffs have obtained right to sue letters and confirmation from the DFEH that their complaints
14 will not be pursued by the DFEH. Plaintiffs are therefore entitled to proceed with a civil action to pursue
15 all remedies available to them by law.

16 16. In approximately October 2017, Ms. Colbert was hired by Defendants as a dancer. She was
17 terminated “for not bringing in enough revenue for the club.” The stated reason was a mere pretext. Ms.
18 Colbert was terminated in retaliation for being a whistleblower and for other reasons as detailed herein
19 on or around June 5, 2019.

20 17. Ms. Colbert was asked by a manager of Defendants to make false statements about a former
21 employee who had filed a lawsuit against Defendants.

22 18. Thereafter, Ms. Colbert was told she needed to speak with Defendants’ lawyer. Ms. Colbert was
23 concerned as she did not want to misrepresent information to Defendants’ lawyer.

24 19. When Ms. Colbert met with the lawyer, she was honest and forthright about her interactions, or
25 lack of interactions with this former employee.

26 20. In approximately July 2016, Ms. Banks was hired by Defendants as a dancer. She was terminated
27 around September 2016 for “not bringing in enough revenue for the club.” The stated reason was a mere
28 pretext. Ms. Banks was terminated in retaliation for being a whistleblower and for other reasons as

1 detailed herein.

2 21. Then in approximately February 2017, Ken Doe reached out to Ms. Banks and stated that Ms.
3 Banks could return to working at New Century if she paid him \$5,000.

4 22. Ms. Banks reluctantly paid Ken Doe \$5,000 to return to work at New Century Theater.

5 23. Ms. Banks is informed and believed that Ken Doe made several dancers, all females, pay money
6 to either continue working at the New Century or return working to the club after they had been
7 wrongfully terminated.

8 24. In approximately February 2017, Ms. Walker was hired as a dancer for the club.

9 25. Ms. Walker gave birth to a child in May 2019 and took leave as provided by law.

10 26. When Ms. Walker tried to return to work after having had her child, Ken Doe demanded that she
11 pay \$1,000 if she wanted her job back.

12 27. Ms. Walker reluctantly agreed and paid Ken Doe \$1000 to return to work at New Century as she
13 just had a baby and needed the income.

14 28. Ms. Walker was later constructively discharged due to the intolerable and harassing work
15 environment around February 2020.

16 29. In approximately February 2019, Ms. Leon was hired by Defendants as a dancer. She was
17 wrongfully terminated on January 26, 2020.

18 30. While working at the club, Defendants forced Plaintiffs to claim income that she did not actually
19 make. Instead, the club received those proceeds.

20 31. Ms. Leon was forced to claim she made more than she actually did so that Defendants could avoid
21 tax liabilities.

22 32. As a result, Ms. Leon paid more in taxes than she should have, and suffered financial harm as a
23 result, while Defendants were able to avoid paying taxes on its actual income.

24 33. After Ms. Leon's termination, Ken Doe spread untrue and likely defamatory rumors about her to
25 Jason, a manager at the Gold Club in San Francisco.

26 34. As a result of these untrue and likely defamatory rumors, Ms. Leon was denied a position at Gold
27 Club, even though she had worked there in the past.

28 35. Following her termination, Ms. Leon met with Jason, the manager of Gold Club about being

1 rehired.

2 36. During the interview, Jason stepped outside to make a phone call.

3 37. When Jason returned, Jason asked Ms. Leon if she went by the name “Daisy” when she worked
4 at New Century.

5 38. Ms. Leon responded that she had in fact gone by the name Daisy while working at New Century.

6 39. Jason responded, “I just talked to the manager there, and I cannot re-hire you.”

7 40. Jason made it clear that Ken Doe said something about her that was so extremely negative (and
8 likely untrue) that he retracted an offer to return working there.

9 41. Any of the women that Ken Doe decided to terminate from New Century Theater, were essentially
10 black balled from the industry in San Francisco.

11 42. Ken Doe constantly threatened all Plaintiffs that complaints would result in them not only being
12 fired, but that they “would never work in the City again.”

13 43. Defendants routinely and deliberately violated California’s wage and hour laws by its failure to
14 pay its female employees overtime.

15 44. Often, the women would work over eight hours and not be paid overtime.

16 45. New Century would regularly stay open until 8 or 9 AM on busier nights with many employees
17 working overtime.

18 46. Defendants failed to pay Plaintiffs all overtime wages as required by law.

19 47. Defendants failed to pay all Plaintiffs wages upon discharge as required by law.

20 48. Defendants failed to pay all Plaintiffs wages upon resignation and/or termination as required by
21 law.

22 49. Defendants failed to pay Plaintiffs all wages due to the female employees, falsified timecards,
23 and paid them less than they were owed.

24 50. Defendants failed to provide meal and rest breaks to female employees and almost all meal breaks
25 provided were interrupted.

26 51. On a few occasions, while Plaintiffs were on break in their locker room eating their meals on a
27 meal break, Defendants turned off the lights to force Plaintiffs to return to work without being able to
28 finish their meals.

52. Defendants collected and expected gratuities from all female employees. Ken Doe expected a minimum of \$500 per night tip out per female dancer.

53. Defendants failed to pay or timely pay female employees full gratuities left on credit cards.

54. Defendants kept inaccurate records of gratuities and would not let female employees see receipts indicating earnings at the conclusion of their shifts.

55. Defendants failed to give female employees copies of earning receipts and would not allow employees to take photos of earning receipts for their records.

56. Plaintiffs were kept in the dark as to their earnings and Defendants, upon information and belief, siphoned tips and other earnings that the Plaintiffs were supposed to receive.

57. Defendants failed to maintain accurate timecards and failed to provide accurate itemized pay statements.

58. Defendants provided inaccurate and misleading pay statements.

59. Defendants provided pay statements that do not reflect an accurate business address for employer as listed on the Nevada Secretary of State website.

60. Defendants illegally maintained a video camera in the locker room which recorded employees.

61. Defendants maintained an extremely dirty and uninhabitable locker room for employees, did not maintain the sink in the employees' restroom and employees were therefore unable to wash their hands immediately after using the restroom.

62. Defendants required bribes and kickbacks from only female employees in order to return to working at New Century and/or continue working at New Century but never required the same from male employees (i.e. the Disc Jockeys, Security Guards, managers Harrison Doe, Mikey Doe, Randy Doe, Hunter Doe, Johnson Doe, Ken Doe, etc.)

63. New Century Defendants did not allow Plaintiffs to clock in for work.

64. When Plaintiffs tried to clock out, they discovered they had already been clocked out, that they had been clocked out for meal breaks they never actually took, or New Century Defendants erased their clock in entries altogether.

65. Defendants made harassing comments nightly to the non-white employees, which included all named Plaintiffs.

66. Defendants would not allow more than one black female on the stage at New Century at a time.

67. Defendants did not allow the black dancers to go on stage as often as dancers of other races.

68. Ms. Colbert, Ms. Banks, and Ms. Walker were treated as the “token” black dancers.

69. Many black dancers applied to work at New Century but were not given the role due to ownership and management believing there should be a limited number, or “token amount” of black dancers.

70. It was well known at the club that Ken Doe and other managers treated the Black and Hispanic dancers differently.

71. Ms. Walker and Ms. Banks tried to dance together on stage and were told that there was, “Too much Black on stage,” and that they were not allowed to dance together on stage.

72. Ms. Walker and Ms. Banks were told that they needed to smile because the managers (Harrison Doe, Mikey Doe, Randy Doe, Hunter Doe, Johnson Doe, Ken Doe, etc.) could not see them because it was dark in the club.

73. Ms. Colbert, Ms. Walker, and Ms. Banks (all black females) found these comments to be harassing in nature, extremely offensive, and caused them stress, worry, anxiety, and general emotional distress.

74. Harassing comments were made to Black and Hispanic dancers often.

75. Management, including Ken Doe, favored non-white dancers over the other dancers.

76. Non-white dancers were given strict schedules while white dancers were favored and allowed to come and go as they pleased.

77. Non-white dancers were given less favorable schedules and stage schedules.

78. White dancers were consistently given prime stage time slots and more profitable shifts while non-white dancers were consistently given less desirable and less profitable schedules, stage time slots, and hours.

79. Occasionally, when Plaintiffs requested to leave so as not to hit overtime hours as Defendants requested, Plaintiffs were not allowed to clock out and/or leave.

80. Plaintiffs were required to work one swing shift per week while white dancers were not required to do the same.

81. During staff meetings, Defendants collected cell phones of all employee dancers so as to avoid

meetings being recorded.

82. Defendants encouraged illegal activity and this was one way to avoid this activity being exposed to outside parties.

83. Any female employee that complained was threatened, fired, or given less hours.

84. Plaintiffs complained about the referenced acts and omissions and suffered adverse employment consequences as a result.

85. Defendants would make lewd and harassing comments to all female employees, grabbed their buttocks nightly, requested that they have cosmetic surgery, or change their hair.

86. Ms. Colbert was told that she should dye her hair blonde, in violation of the Crown Act.

87. Management and ownership made repeated comments about traditionally black hairdos, including but not limited to braids, weaves, and wigs in violation of the Crown Act.

88. Ms. Banks was told that she could not wear her hair in braids, because it looked “Too Ghetto,” in violation of the Crown Act.

89. Ultimately, Plaintiffs Colbert, Leon, and Banks were terminated for their complaints.

90. Ultimately Ms. Walker could not handle the harassment and hostile work environment and was constructively terminated.

91. Defendants failed to conduct a proper investigation and take steps to stop the harassment and discrimination.

92. As a result of Defendants’ acts and/or omissions, Plaintiffs suffered stress, worry, anxiety, and general emotional distress.

93. Prior to filing the instant action, Plaintiffs timely filed a complaint with the California Department of Fair Employment and Housing and obtained a Right-to-Sue Notice.

FIRST CAUSE OF ACTION

RACIAL AND/OR NATIONAL ORIGIN HARASSMENT IN VIOLATION OF FEHA (AGAINST ALL DEFENDANTS)

94. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

95. At all times mentioned herein, Defendants regularly employed five or more persons, subjecting

1 them to the provisions in California Government Code §§ 12900, *et seq.*

2 96. At all relevant times, Defendants were employees and supervisors of Defendant Bijou LLC,
3 subjecting them to personal liability for harassment in violation of California Government Code §
4 12940(j).

5 97. Ms. Colbert, Ms. Banks, and Ms. Walker, as employees of Defendant Bijou LLC, are members
6 of a protected class because they are African-American, and were therefore entitled to protection from
7 harassment on account of their race and national origin pursuant to California Government Code §
8 12940(j).

9 98. Ms. Leon, as an employee of Defendant Bijou LLC, is a member of a protected class because she
10 is Hispanic, and was therefore entitled to protection from harassment on account of her race and national
11 origin pursuant to California Government Code § 12940(j).

12 99. Throughout Plaintiffs' employment, Defendants created an abusive and hostile atmosphere for
13 Plaintiffs on account of their race, ethnicity, and/or national origin.

14 100. Defendants harassed Plaintiffs and created a hostile work environment in ways including, but not
15 limited to, targeting Plaintiffs for discipline and suspension, harassment, retaliation, and/or termination
16 because they are African-American, Hispanic, and/or complained of the conduct referenced above.

17 101. Defendants were actually and/or constructively aware that Plaintiffs suffered harassment in the
18 workplace on account of race/national origin, but did not investigate, limit, or prevent such harassment
19 from occurring.

20 102. Defendants authorized and/or ratified the unlawful conduct of Defendants by encouraging said
21 conduct and/or retaining Defendants even after learning of unlawful harassment.

22 103. Defendants' conduct, as described herein, constitutes unlawful harassment in employment on
23 account of race/national origin in violation of California Government Code § 12940(j).

24 104. The unlawful harassment described herein was carried out by a supervisor of Defendant Bijou
25 LLC. Therefore, Defendant is strictly liable for said unlawful conduct.

26 105. As a further direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered
27 severe emotional distress, including humiliation, embarrassment, anxiety, stress, and worry.

28 106. Plaintiffs are informed and believe and thereon allege that the actions of Defendants as described

1 herein were done with oppression, fraud and malice as defined in California Civil Code § 3294. As such,
2 Plaintiffs should recover, in addition to actual damages, damages to make an example of and to punish
3 Defendants.

4 107. Plaintiffs have incurred and will continue to incur attorney's fees as a result of prosecuting this
5 cause of action.

6 **SECOND CAUSE OF ACTION**

7 **SEXUAL HARASSMENT (HOSTILE ENVIRONMENT) IN VIOLATION OF FEHA**
8 **(AGAINST ALL DEFENDANTS)**

9 108. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth
10 herein.

11 109. At all times mentioned herein, Defendants regularly employed five or more persons, subjecting
12 them to the provisions in California Government Code §§ 12900, *et seq.*

13 110. At all relevant times, Ken Doe was at all material times, an owner and/or supervising manager of
14 Employer Defendants who are subject to personal liability for any harassment prohibited by Government
15 Code § 12940(j) that was perpetrated by Ken Doe, regardless of whether Employer Defendants knew or
16 should have known of the conduct and failed to take immediate and appropriate corrective action.

17 111. Plaintiffs, as employees of Defendant Bijou, LLC , and were therefore entitled to protection from
18 sexual harassment pursuant to California Government Code § 12940(j).

19 112. During Plaintiffs employment, Plaintiffs were subjected to harassment by Defendants as detailed
20 above.

21 113. The harassment suffered by Plaintiffs was severe and pervasive, such that a reasonable individual
22 in Plaintiffs' circumstance would have considered the work environment to be hostile or abusive, and
23 Plaintiffs did, in fact, consider the work environment to be hostile or abusive.

24 114. Defendant and/or its supervisors, agents, and/or officers were actually and/or constructively
25 aware that Plaintiffs suffered sexual harassment in the workplace, but did not limit or prevent such
26 harassment from occurring.

27 115. Defendants authorized and/or ratified the unlawful conduct of Defendants by condoning said
28 conduct and retaining Defendants even after learning of his ongoing pattern and history of unlawful

1 harassment.

2 116. Defendants' conduct, as described herein, constitutes unlawful sexual harassment in
3 employment in violation of California Government Code § 12940(j). Plaintiffs reasonably and
4 subjectively perceived their employment environment to be hostile and abusive.

5 117. The unlawful sexual harassment described herein was carried out by a supervisor of Defendant
6 Bijou Century, LLC. Therefore, Defendants are strictly liable for said unlawful conduct, and Defendants
7 are personally liable.

8 118. As a result of Defendants' unlawful harassment of Plaintiffs, Plaintiffs have suffered and
9 continue to suffer (a) substantial humiliation, serious mental anguish, and emotional and physical
10 distress; and (b) loss of past and future earnings, status and future status, and employment benefits and
11 opportunities, on account of which Plaintiffs are entitled to compensatory damages in an amount to be
12 established according to proof at trial. Plaintiffs claim such amount together with prejudgment interest
13 pursuant to Civil Code § 3287 or 3288 and any other applicable provision of law.

14 119. Plaintiffs are informed and believe and thereon alleges that the actions of Defendants as described
15 herein were done with oppression, fraud and malice as defined in California Civil Code § 3294. As such,
16 Plaintiffs should recover, in addition to actual damages, damages to make an example of and to punish
17 Defendants.

18 120. Plaintiffs have incurred and will continue to incur attorneys' fees as a result of prosecuting this
19 cause of action. Plaintiffs request an award of such attorneys' fees and costs pursuant to Government
20 Code § 12965(b).

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO TAKE REASONABLE STEPS IN VIOLATION OF FEHA**
23 **(AGAINST DEFENDANTS)**

24 121. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth
25 herein.

26 122. At all times mentioned herein, Defendants regularly employed five or more persons, subjecting
27 them to the provisions in California Government Code §§ 12900, *et seq.*

28 123. Defendants and its supervisors, agents, and/or officers had a duty to take affirmative steps to

1 prevent harassment from occurring in the workplace pursuant to California Government Code §
2 12940(k).

3 124. Defendant failed to take reasonable steps necessary to prevent harassment, both gender and
4 sexual, from occurring in the workplace in violation of California Government Code § 12940(k), 12900,
5 *et seq.*

6 125. As alleged herein, Defendant had knowledge of the harassment Plaintiffs were being subjected to
7 on the basis of gender, race and/or national origin, but failed to take prompt and remedial measures to
8 prevent further harassment.

9 126. As a further direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered
10 damages including but not limited to emotional distress, including humiliation, embarrassment, anxiety,
11 and worry.

12 127. As a direct and proximate cause of Defendant's retaliation, Plaintiffs have suffered lost income.

13 128. Plaintiffs have incurred and will continue to incur attorneys' fees as a result of prosecuting this
14 cause of action.

15 **FOURTH CAUSE OF ACTION**
16 **RETALIATION IN VIOLATION OF FEHA**
17 **(AGAINST DEFENDANTS)**

18 129. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth
19 herein.

20 130. At all times mentioned herein, Defendants regularly employed five or more persons, subjecting
21 them to the provisions in California Government Code §§ 12900, *et seq.*

22 131. Plaintiffs, as employees of Defendant Bijou Century, LLC, was entitled to protection from
23 retaliation because of their opposition to practices forbidden under FEHA pursuant to California
24 Government Code § 12940(h).

25 132. Defendant retaliated against Plaintiffs for their complaints about harassment on account of sex
26 and gender, and race, and unlawful business practices as described above.

27 133. As a direct and proximate cause of Defendants' retaliation, Plaintiffs have suffered lost income.

28 134. As a further direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered

1 severe emotional distress, including humiliation, embarrassment, anxiety, and worry.

2 135. Plaintiffs have incurred and will continue to incur attorney's fees as a result of prosecuting this
3 cause of action

4 **FIFTH CAUSE OF ACTION**

5 **RACE/NATIONAL ORIGIN DISCRIMINATION IN VIOLATION OF FEHA**
6 **(AGAINST DEFENDANTS)**

7 136. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth
8 herein.

9 137. At all times mentioned herein, Defendants regularly employed five or more persons, subjecting
10 them to the provisions in California Government Code §§ 12900, *et seq.*

11 138. California Government Code § 12940(a) prohibits discrimination against members of a protected
12 class, including prohibiting an employer from making adverse employment decisions based on that
13 person's race and/or national origin. Pursuant to California Government Code § 12920, the practice of
14 suspending employees based on race and/or national origin is against public policy.

15 139. Plaintiffs, as employees of Defendant Bijou Century, LLC, were entitled to protection from
16 retaliation because of Plaintiffs' opposition to practices forbidden under FEHA pursuant to California
17 Government Code § 12940(h).

18 140. Plaintiffs race and/or national origin was a substantial factor in Defendants' decision to terminate,
19 harass, fail to investigate and/or prevent harassment, and constructively discharge them. Plaintiffs race
20 and/or national origin was a substantial factor in Defendants' decision to treat Plaintiffs differently and
21 adversely in comparison to other employees.

22 141. The reasons proffered for Plaintiffs adverse employment actions are nothing more than pretexts
23 for discrimination, harassment, and retaliation based on their race and/or national origin.

24 142. Defendants' discriminatory actions including, but are not limited to, harassing and terminating
25 Plaintiffs as above-described constitute unlawful discrimination in employment on account of race and/or
26 national origin in violation of California Government Code § 12940(a).

27 143. As a further direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered
28 lost wages, emotional distress, including humiliation, embarrassment, anxiety, stress, and worry.

1 144. Plaintiffs have incurred and will continue to incur attorney's fees as a result of prosecuting this
2 cause of action.

3 **SIXTH CAUSE OF ACTION**

4 **SEX/GENDER DISCRIMINATION IN VIOLATION OF FEHA**

5 **(AGAINST DEFENDANTS)**

6 145. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth
7 herein.

8 146. At all times mentioned herein, Defendants regularly employed five or more persons, subjecting
9 them to the provisions in California Government Code §§ 12900, *et seq.*

10 147. California Government Code § 12900, *et seq.* prohibits discrimination against members of a
11 protected class, including prohibiting an employer from making adverse employment decisions based on
12 that person's sex or gender. Pursuant to California Government Code § 12920, the practice of suspending
13 employees based on sex or gender is against public policy.

14 148. Plaintiffs, as employees of Defendant Bijou Century, LLC, were entitled to protection from
15 retaliation because of her opposition to practices forbidden under FEHA pursuant to California
16 Government Code § 12940(h).

17 149. Plaintiffs' sex or gender was a substantial factor in Defendants' decision to harass and terminate
18 Plaintiffs. Plaintiffs' sex or gender was a substantial factor in Defendants' decision to treat Plaintiffs
19 differently from other male employees.

20 150. The reasons proffered for Plaintiffs' adverse employment actions are nothing more than pretexts
21 for discrimination, harassment, and retaliation based on Plaintiffs' sex or gender origin.

22 151. Defendants' discriminatory actions including, but are not limited to, terminating Plaintiffs as
23 above-described constitute unlawful discrimination in employment on account of sex or gender in
24 violation of California Government Code § 12900 *et seq.*

25 152. As a further direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered
26 lost wages, emotional distress, including humiliation, embarrassment, anxiety, stress, and worry.

27 153. Plaintiffs have incurred and will continue to incur attorney's fees as a result of prosecuting this
28 cause of action.

SEVENTH CAUSE OF ACTION
WHISTLEBLOWER RETALIATION
(AGAINST DEFENDANTS)

154. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

155. At all times herein relevant, Labor Code § 1102.5 was in full force and effect.

156. California Labor Code section 1102.5(b) provides that “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information...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 a violation of or noncompliance with a local, state, or federal rule or regulation...”

157. Plaintiffs, disclosed to their employers’ information that they had reasonable cause to believe constituted a violation of state or federal law. Plaintiffs had reasonable cause to believe that the information they disclosed constituted violations of state and federal statutes, and the information Plaintiffs reported did in fact disclose violations of state and federal statutes, including the California Labor Code.

158. Employer Defendants failed to address, remedy or give Plaintiffs the authority to remedy any of these reported violations.

159. Employer Defendants retaliated against Plaintiffs for making the disclosures described herein by engaging in the harassing and retaliatory actions described herein, which ultimately resulted in Plaintiffs being subjected to the actions detailed herein.

160. There was a causal connection between Plaintiffs’ protected activity and the harassing and retaliatory actions described herein.

161. Employer Defendants’ conduct was a substantial factor in causing Plaintiffs’ harm.

162. As a direct and proximate result of the acts of Employer Defendants, as alleged above, Plaintiffs have incurred and will continue to incur compensatory damages, including lost earnings and other economic damages, in an amount according to proof at trial.

163. As a further direct and proximate result of the acts of Employer Defendants, as alleged above, Plaintiffs have suffered and will continue to suffer emotional distress and has been generally damaged in an amount to be ascertained at trial.

164. The above-described acts of Employer Defendants, and each of them, were willful, intentional and malicious and done with the intent to vex, injure and annoy Plaintiffs and warrant the imposition of exemplary and punitive damages in an amount sufficient to punish said Employer Defendants and to deter others from engaging in similar conduct.

165. Employer Defendants authorized and ratified the wrongful acts of their agents and employees, knew in advance that their agents and employees were likely to commit such acts and employed them with conscious disregard of the rights or safety of others, and/or their officers, directors, or managing agents were themselves guilty of oppression, fraud, and malice. Those who retaliated against Plaintiffs were managing agents who were vested with discretionary authority to make decisions affecting company policy regarding significant aspects of the Employer Defendants' business. These managing agents acted with malice in engaging in the actions detailed herein in that they retaliated against Plaintiffs because of the complained about California and federal statutory violations, despite knowing it was illegal to do so under California law, in conscious disregard of Plaintiffs' rights. In engaging in the aforementioned conduct, Employer Defendants aided, abetted, incited, compelled, and/or coerced unlawful employment practices in violation of Labor Code § 1102.5 (b).

166. As a further direct and proximate result of the above-described acts of Employer Defendants, Plaintiffs have necessarily incurred attorneys' fees and costs.

EIGHTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(AGAINST EMPLOYER DEFENDANTS)

167. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

168. Irrespective of any employment contract, Employer Defendants' right to discharge Plaintiffs were subject to limits imposed by public policy of the State of California.

169. It is settled that an employer's discharge of an employee in violation of a fundamental public policy embodied in a constitutional or statutory provision gives rise to a tort action for wrongful termination in violation of public policy.

170. Employer Defendants' discharge of Plaintiffs violated the public policy of the State of California, as expressed in provisions of the Constitution of the State of California, including California Labor Code which prohibits employers from disciplining or otherwise taking negative action against an employee for reporting Labor Code violations and violations of State and Federal law. Additionally, Employer Defendants' discharge of Plaintiffs violated the public policy of the State of California, as expressed in Labor Code §§ 98.6, and 1102.5 which prohibits retaliation for engaging in protected activity.

171. Plaintiffs are informed and believes, and thereon alleges that Defendants terminated their employment in violation of the public policies set forth in California Labor Codes § 233, 234, and 246.5

172. Employer Defendants authorized and ratified the wrongful acts of their agents and employees, knew in advance that their agents and employees were likely to commit such acts and employed them with conscious disregard of the rights or safety of others, and/or their officers, directors, or managing agents were themselves guilty of oppression and malice.

173. As a result of Employer Defendants' unlawful termination of Plaintiffs' employment, Plaintiffs have suffered and will continue to suffer (a) substantial humiliation, serious mental anguish, and emotional and physical distress; and (b) loss of past and future earnings, status and future status, and employment benefits and opportunities, on account of which Plaintiffs are entitled to compensatory damages in an amount to be established according to proof at trial. Plaintiffs claim such amount together with prejudgment interest pursuant to Civil Code § 3287 or 3288 and any other applicable provision of law.

174. As a further direct and proximate result of Employer Defendant's termination of Plaintiffs' employment in violation of California Labor Code §§ 233, 234 and 246.5, Plaintiffs have been compelled to retain the services of counsel and will continue to incur legal fees and costs. Plaintiffs request an award of such attorneys' fees and costs pursuant to Government Code § 12965(b).

175. Employer Defendants' unlawful and wrongful termination of Plaintiffs was intentional, malicious, wanton, and oppressive, with a conscious disregard for Plaintiffs' rights and with the intent to

1 vex, injure, punish, and annoy Plaintiffs so as to cause Plaintiffs the injuries alleged herein. Such acts
2 amount to oppression and malice, as described in Civil Code § 3294. Plaintiffs are therefore entitled to
3 punitive or exemplary damages in an amount sufficient to punish and make an example out of Employer
4 Defendants.

5 **NINTH CAUSE OF ACTION**
6 **UNFAIR BUSINESS PRACTICES**
7 **(AGAINST DEFENDANTS)**

8 176. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth
9 herein.

10 177. By reason of Defendants' failure to comply with various provisions of the California
11 Government Code, including, but not limited to, sections 12940(j) and 12940(k), Labor Code section
12 1102.5, Defendants' conduct constituted an unfair business practice under Business and Professions
13 Code § 17200, *et seq.*

14 178. At all relevant times mentioned herein, Defendants were conducting business under the laws of
15 the State of California. In conducting said businesses, Defendants were obligated to comply with the
16 laws of the State of California.

17 179. As a direct and proximate result of Defendants' conduct, Plaintiffs have been generally and
18 specially damaged in an amount according to proof.

19 **TENTH CAUSE OF ACTION**
20 **FAILURE TO PROVIDE A REASONABLE ACCOMMODATION**
21 **IN VIOLATION OF GOV. CODE § 12940 (M)**
22 **(Against Employer Defendants)**

23 180. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth
24 herein.

25 181. Government Code section 12940(m) provides that it is an unlawful employment practice "[f]or
26 an employer or other entity covered by this part to fail to make reasonable accommodation for the known
27 physical or mental disability of an applicant or employee."
28

182. Employer Defendants are employers within the meaning of and subject to Government Code § 12940, et seq.

183. Plaintiff Banks was a qualified individual with a disability, able to perform her position with or without reasonable accommodation.

184. Upon the recommendation of her treating physician, Plaintiff Banks required surgery.

185. Upon recommendation of her treating physician, Plaintiff Banks attended work on November 20, 2019 and requested restricted duties as a result of the surgery she had underwent.

186. Plaintiff was not accommodated and instead forced to perform work that put her health and wellbeing in danger on November 20, 2019 and the days following.

187. The accommodations requested would not have caused an undue hardship on Employer Defendants.

188. Plaintiff was harmed as a result of Employer Defendants' adverse actions, and Employer Defendants' conduct was a substantial factor in causing Plaintiff's harm.

189. Such actions are unlawful and discriminatory in violation of Government Code § 12940 et. seq., and have resulted in damages and injury to Plaintiff, including both general and special damages in an amount to be proven at trial.

190. Several other employees required accommodations due to their health and were given these accommodations while Plaintiff Banks was not.

191. As a direct and proximate result of said wrongful acts by Employer Defendants, Plaintiff has suffered and will continue to suffer substantial losses in earnings and other employment benefits, along with other incidental and consequential damages and losses, all in an amount to be proven at the time of trial. Plaintiff claims such amount as damages together with prejudgment interest pursuant to Civil Code § 3287 and any other provision of law providing for prejudgment interest.

192. As direct and proximate result of Employer Defendants' wrongful acts against Plaintiff, Plaintiff has suffered and will continue to suffer emotional and physical distress, humiliation, shame, despair, embarrassment, depression, physical and mental pain and suffering and anguish, loss of earnings, future loss of earnings, loss of status and future status, loss of other employment benefits and job opportunities all to his damage in a sum to be established according to proof.

1 193. Plaintiff is entitled to general and compensatory damages in amounts in excess of the
2 jurisdictional limits of this court, according to proof at trial.

3 194. As a direct and proximate result of Employer Defendants' violation of Government Code §
4 12940(a), Plaintiff has been compelled to retain the services of counsel and will continue to incur legal
5 fees and costs. Plaintiff requests that attorneys' fees be awarded pursuant to Government Code § 12965.

6 **ELEVENTH CAUSE OF ACTION**

7 **TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

8 **(PLAINTIFF LEON AGAINST ALL DEFENDANTS)**

9 195. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth
10 herein.

11 196. Plaintiff Leon is informed and believes that before Defendants' statements to Jason at the Gold
12 Club in San Francisco, Defendants knew that Plaintiff Leon had a probability of continued and/or future
13 employment with the Gold Club in San Francisco.

14 197. Plaintiff Leon had a probability of future economic benefit from becoming employed at the Gold
15 Club in San Francisco.

16 198. Defendants extremely negative and likely defamatory statements preventing Plaintiffs from being
17 hired at another club in San Francisco violated Plaintiffs constitutional liberty and property rights under
18 the First, Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and under
19 Title 42, United States Code, Section 1983 et seq. By engaging in such conduct against Plaintiff,
20 Defendants caused Plaintiff injurious interference with the above prospective business relationships
21 and/or employment.

22 199. When Defendants made extremely negative and likely defamatory statements about Plaintiff to
23 Jason at Gold Club in San Francisco, Defendants knew that such action(s) would interfere with
24 Plaintiff's prospective business advantage by disrupting Plaintiff's potential employability and therefore
25 employment contract with other clubs in San Francisco. Defendants further knew that in making
26 negative and likely defamatory statements about Plaintiff to Jason at Gold Club in San Francisco, it was
27 substantially certain that such action(s) would interfere with Plaintiff's prospective business
28 relationships with Gold Club.

200. If Defendants had not wrongfully made extremely negative and likely defamatory statements to club owners in San Francisco, Plaintiff's business and/or employment relationship with Gold Club in San Francisco would not have been harmed. Therefore, Defendants reassignment of Plaintiff with pay to home proximately caused the interference with Plaintiff's prospective economic advantage.

201. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs have lost and will continue to lose income and benefits in an amount to be proven at the time of trial. Plaintiffs claim such amount as damages together with pre-judgment interest pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment interest.

202. As a result of the aforesaid acts of Defendants, Plaintiffs claims general damages for mental and emotional distress and aggravation in an amount to be proven at the time of trial.

203. Any of the women that Ken Doe decided to terminate from New Century Theater, were essentially black balled from the industry in San Francisco.

204. Ken Doe constantly threatened all Plaintiffs that complaints would result in them not only being fired, but that they "would never work in the City again."

205. The above described acts of Defendants were engaged in with a deliberate, cold, callous, fraudulent and intentional manner in order to injure and damage Plaintiff and/or with a conscious disregard of Plaintiff and her rights. Such acts were despicable, and constitute malice, fraud and/or oppression within the meaning of Civil Code section 3294. Plaintiff requests an assessment of punitive damages against the individual Defendants, in an amount to be proven at time of trial.

TWELFTH CAUSE OF ACTION

NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

(Against All Defendants)

206. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

207. Plaintiff Leon and Gold Club were in an economic relationship that probably would have resulted in a future economic benefit to Plaintiff.

208. Defendants knew or should have known of this relationship.

209. Defendants knew or should have known that this relationship would be disrupted if each of them, individually and/or collectively, failed to act with reasonable care.

210. Defendants engaged in wrongful conduct through misrepresentation and retaliation.

211. As a result of Defendants' conduct, Plaintiff's relationship with Gold Club was disrupted;

212. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff has suffered and continues to suffer emotional distress, humiliation, mental anguish and embarrassment all in an amount subject to proof at the time of trial.

213. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs have lost and will continue to lose income and benefits in an amount to be proven at the time of trial. Plaintiffs claim such amount as damages together with pre-judgment interest pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment interest.

214. The acts taken toward Plaintiff were carried out by Defendants and/or their managing agents in a despicable, oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner and in conscious disregard for Plaintiff's constitutional liberty and property rights under the First, Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and under Title 42, United States Code, Section 1983 et seq. and also in direct violation of California law.

215. The above described acts of Defendants were engaged in with a deliberate, cold, callous, fraudulent and negligent manner in order to injure and damage Plaintiff and/or with a conscious disregard of Plaintiff and her rights. Such acts were despicable, and constitute malice, fraud and/or oppression within the meaning of Civil Code section 3294. Plaintiff requests an assessment of punitive damages against the individual Defendants, in an amount to be proven at time of trial.

THIRTEENTH CAUSE OF ACTION

CONSTRUCTIVE WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY (AGAINST ALL DEFENDANTS)

216. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

217. Plaintiff Walker was at all times an employee of Defendants.

1 218. At all times, Government Code Section 12940 was in effect and prohibited discrimination based
2 on race and gender. Further, at all times Government Code Section 12920, 12920.5, 12921, and 12923
3 were in effect and provided the right to seek and hold employment, without discrimination based on race
4 and gender, and is the public policy of the State of California and is also a civil right.

5 219. By discriminating against and harassing Plaintiff Walker because of her race and gender, which
6 violated Government Code Section 12940, Defendants violated Plaintiff Walker's civil rights under
7 Government Code Section 12920 and 12923, Defendants subjected Plaintiff Walker to working
8 conditions that violated public policy.

9 220. Defendants knowingly and intentionally created and permitted the intolerable working conditions
10 for Plaintiffs.

11 221. Plaintiff Walker's working conditions were so intolerable that a reasonable person working in the
12 same conditions would have resigned. Plaintiff did, in fact, resign due to the intolerable working
13 conditions.

14 222. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff has suffered
15 and continues to suffer emotional distress, humiliation, anxiety, stress, and embarrassment all in an
16 amount subject to proof at the time of trial.

17 223. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs have lost and
18 will continue to lose income and benefits in an amount to be proven at the time of trial. Plaintiffs claim
19 such amount as damages together with pre-judgment interest pursuant to Civil Code section 3287 and/or
20 any other provision of law providing for pre-judgment interest.

21 224. Plaintiffs' working conditions were a substantial factor in causing their harms.

22 225. The above described acts of Defendants were engaged in with a deliberate, cold, callous,
23 fraudulent and negligent manner in order to injure and damage Plaintiff and/or with a conscious
24 disregard of Plaintiff and her rights. Such acts were despicable, and constitute malice, fraud and/or
25 oppression within the meaning of Civil Code section 3294. Plaintiff requests an assessment of punitive
26 damages against the individual Defendants, in an amount to be proven at time of trial.

FOURTEENTH CAUSE OF ACTION

FAILURE TO PAY OVERTIME AND DOUBLETIME WAGES IN VIOLATION OF LABOR

CODE §§ 204, 510, 1194, AND WAGE ORDER 16-2001

(Against all Defendants)

226. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

227. California Labor Code § 510 et seq. and Wage Order 16-2001 § 3 state that an employee must be paid overtime, equal to one and one-half (1 ½) times the employee's regular rate of pay, for all hours worked in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek and the first eight (8) hours worked on the seventh day of work in any one workweek.

228. California Labor Code § 510 et seq. and Wage Order 16-2001 § 3 also states that any work in excess of twelve (12) hours in one day or in excess of eight (8) hours on the seventh day of work in any one workweek shall be compensated at the rate of no less than twice the regular rate of pay for an employee.

229. Plaintiffs are entitled to bring a civil action to recover on claims involving failure to pay overtime pursuant to Labor Code § 1194.

230. Plaintiffs regularly work/worked more than eight (8) hours per shift, but were not paid all due overtime wages for such work.

231. When Plaintiffs worked for the Company, they regularly work/worked more than eight (8) hours in one day and/or in excess of eight (8) hours on the seventh day of work in a workweek, but was not paid twice the regular rate for such work.

232. Defendants have failed and refused to pay correct overtime compensation to Plaintiffs.

233. Pursuant to California Labor Code § 1194, Plaintiffs are entitled to recover their unpaid overtime compensation and interest thereon, plus attorneys' fees and costs, in an amount to be proved at trial.

FIFTEENTH CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

LABOR CODE §§ 558.1, 1194, 1197, AND 1197.1 AND WAGE ORDER 16-2001

(Against all Defendants)

234. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though fully set forth herein.

235. As a pattern and practice, Defendants failed and refused to pay Plaintiffs wages owed to them pursuant to Wage Order 16-2001 § 4 by, *inter alia*, failing to compensate Plaintiffs for time spent performing off-the-clock work, and for all other hours worked, including meal and rest periods that were not provided in an uninterrupted manner.

236. Labor Code § 558.1 provides that “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated . . . [Labor Code §] 1194 . . . may be held liable as the employer for such violation.”

237. As a result of Defendants violations of Labor Code §§ 204, 1194, 1197, and Wage Order 16-2001 for failure to pay minimum wage, Plaintiffs are entitled to recover unpaid minimum wage compensation and interest thereon and civil penalties pursuant to Labor Code § 1197.1, plus attorneys’ fees and costs, in an amount to be established according to proof at trial.

SIXTEENTH CAUSE OF ACTION

LIQUIDATED DAMAGES FOR FAILURE TO PAY MINIMUM WAGES

LABOR CODE § 1194.2

(Against all Defendants)

238. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though fully set forth herein.

239. Pursuant to Labor Code § 1194.2, in any action under § 1194 to recover wages as a result of payment less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

240. Plaintiffs were not paid at least the minimum wage for all hours worked, as required by Labor Code § 1194.2.

241. Plaintiffs are entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon, plus attorneys' fees and costs, in an amount to be established according to proof at trial.

SEVENTEENTH CAUSE OF ACTION

**FAILURE TO PROVIDE MEAL BREAKS IN VIOLATION OF WAGE ORDER 16-2001, § 11
AND LABOR CODE §§ 226.7, 512, AND 558.1**

(Against all Defendants)

242. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

243. Pursuant to California Labor Code § 512, and Wage Order 16-2001, § 11, no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes.

244. California Labor Code § 226.7 provides that an employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute or order of the Industrial Welfare Commission.

245. Wage Order 16-2001, § 11 and Labor Code § 226.7 both mandate that an employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

246. Defendants did not provide Plaintiffs with required meal period on a number of workdays. Furthermore, Defendants failed to compensate Plaintiffs one hour of pay for each workday that a meal period was not provided.

247. Labor Code § 558.1 provides that "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated . . . [Labor Code §] 226.7 . . . may be held liable as the employer for such violation."

248. As a result of Defendants' conduct, Plaintiffs have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and Plaintiffs are

1 entitled to recover economic and statutory damages and penalties and other appropriate relief from
2 Defendants' violations of the California Labor Code and IWC Wage Order 16-2001.

3 **EIGHTEENTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE REST BREAKS IN VIOLATION OF WAGE ORDER 16-2001, § 12**
5 **AND LABOR CODE §§ 226.7 AND 558.1**

6 **(Against all Defendants)**

7 249. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth
8 herein.

9 250. California Labor Code § 226.7 prohibits an employer from requiring an employee to work during
10 any rest period mandated by an applicable Industrial Wage Order.

11 251. Pursuant to Wage Order 16-2001, § 12, every employer shall authorize and permit all employees
12 to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
13 thereof.

14 252. If an employer fails to provide an employee with a rest period as required, the employer must pay
15 the employee one hour of pay at the employee's regular rate of compensation for each workday that a
16 rest period is not provided as required.

17 253. Defendants failed to authorize or permit Plaintiffs to take a rest period on a number of workdays.
18 Furthermore, Defendants failed to compensate Plaintiffs one hour of pay for each workday that a rest
19 period was not provided.

20 254. Labor Code § 558.1 provides that "Any employer or other person acting on behalf of an
21 employer, who violates, or causes to be violated . . . [Labor Code §] 226.7 . . . may be held liable as the
22 employer for such violation."

23 255. As a result of Defendants' conduct, Plaintiffs have sustained economic damages, including but
24 not limited to unpaid wages and lost interest, in an amount to be established at trial, and Plaintiffs are
25 entitled to recovery economic and statutory damage and penalties and other appropriate relief from
26 Defendants' violations of the California Labor Code and IWC Wage Order 16-2001.

27

28

NINETEENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS

LABOR CODE §§ 226 AND 558.1 AND WAGE ORDER 16-2001

(Against all Defendants)

256. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though fully set forth herein.

257. Labor Code § 226 requires an employer to furnish its employees with an accurate itemized statement in writing showing, among other things, (1) gross wages earned, (2) total hours worked by each respective individual, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual.

258. Therefore, pursuant to Labor Code § 226, Defendants were required to maintain accurate records pertaining to the total hours worked by Plaintiffs, including, but not limited to, the total hours worked per pay period and applicable rates of pay.

259. As a pattern and practice, in violation of Labor Code § 226(a), Defendants did not furnish Plaintiffs with accurate itemized statements in writing showing (1) the total hours worked by each respective individual, and/or (2) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual.

260. As a pattern and practice, in violation of Labor Code § 226(a), Defendants did not maintain accurate records pertaining to the total hours worked by Plaintiffs, including the total daily hours worked, the total hours worked per pay period, and applicable rates of pay.

261. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

262. Labor Code § 558.1 provides that “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated . . . [Labor Code §] 226 . . . may be held liable as the employer for such violation.”

263. Pursuant to Labor Code § 226(e), Plaintiffs are entitled to penalties as follows:

a. Fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurs; and

b. One hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not to

1 exceed \$4,000 per employee.

2 264. Pursuant to Labor Code § 226(h), Plaintiffs are entitled to an award of costs and reasonable
3 attorneys' fees.

4 **TWENTIETH CAUSE OF ACTION**

5 **WAITING TIME PENALTIES IN VIOLATION OF LABOR CODE §§201-203**

6 **(Against all Defendants)**

7 265. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though fully set forth
8 herein.

9 266. The actionable period for this cause of action is three years prior to the filing of this Complaint
10 through the present.

11 267. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing to former
12 employees during the actionable period promptly after the time their employment was terminated. Labor
13 Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or
14 resignation, as required by §§ 201 and 202, then the employer is liable for penalties in the form of
15 continued compensation up to 30 work days.

16 268. As alleged herein, Defendants willfully failed to pay Plaintiffs for all hours worked upon the
17 termination of their employment with Defendants as required by Labor Code §§201 and 202.

18 269. As a result, Defendants are liable to Plaintiffs for waiting time penalties amounting to thirty (30)
19 days wages pursuant to Labor Code § 203.

20 **TWENTY-FIRST CAUSE OF ACTION**

21 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2698, et seq.**

22 **(Against Employer Defendants)**

23 270. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though fully set forth
24 herein.

25 271. Plaintiffs are aggrieved employees as defined under Labor Code § 2699(c) in that they suffered
26 the violations alleged in this Complaint and was employed by the alleged violators, Defendants.
27 Plaintiffs bring this cause of action in a representative capacity on behalf of themselves and other
28 aggrieved employees under Labor Code § 2698 et seq.

272. Plaintiffs seek wages and penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the penalty provisions, without limitation, based on the following California Labor Code sections: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 226.8, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, 403, subdivision (b) of Section 404, Section 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, subdivisions (c) and (d) of Section 1174, 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, and Labor Code Sections 1199, 1199.5, 1290, 1929, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696.6, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, 6399.7 et seq.

273. Plaintiff also seeks any and all penalties and remedies set forth in Labor Code § 558, which states:

- (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

274. The penalties shall be allocated as follows: 75% to the Labor and Workforce Development Agency (LWDA) and 25% to the aggrieved employees.

275. Plaintiffs sent a certified letter to the LWDA and Defendants postmarked on or around September 25, 2020. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letter.

276. Plaintiff is informed and believes that Defendants, and each of them, have violated and will continue to violate provisions of the California Labor Code Sections 201, 202, 203, 204, 206, 221, 225.5, 226.7, 226.8, 351, 353, 435, 510, 512, 558.1, 1102.5, 1194, 1194.2, 1197, 1197.1, 2698, 6300, et seq.

277. Plaintiffs, as representative of the general public, seeks to recover said penalties, damages, back wages and all relief that, could only be obtained by the Department of Labor Standards Enforcement, the California Department of Industrial Relations, the Industrial Wage Commission and/or the Labor Commissioner of the State of California.

278. In addition to restitution, the recovery of unpaid back wages and the recovery of premium pay for unpaid overtime, and violations of the applicable Wage Orders relating thereto, Plaintiffs, as personal representatives of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the proposed class period, in an amount according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

- A. For general and special damages in an amount according to proof including but not limited to lost wages;
- B. For statutory damages;
- C. For an order permanently enjoining Defendants from engaging in the practices alleged herein;
- D. Penalties pursuant to Labor Code § 203;
- E. For an award of one (1) hour of additional pay at the regular rate of compensation for each workday that meal periods were not provided, pursuant to California Labor Code § 226.7 and Wage Order 5-2001, § 11 and interest thereon;
- F. That the Court declare that Defendants' policy and/or practice of failing to pay wages to Plaintiff for all hours worked violates Labor Code §§ 204, 510, 558, 1194, and 1197;
- G. That the Court declare that Defendant has violated Labor Code §§ 201-203 by willfully failing to pay compensation due at the time of termination of employment or within 72 hours thereafter;
- H. For an award to Plaintiffs of waiting-time penalties, pursuant to Labor Code § 203;
- I. For an award of one (1) hour of additional pay at the regular rate of compensation for each workday that rest periods were not provided, pursuant to California Labor Code § 226.7 and Wage Order 5-2001, § 12 and interest thereon;
- J. For an award of damages to Plaintiff for Defendants' failure to provide accurate itemized wage statements, pursuant to Labor Code § 226(a);
- K. That the Court declare that Defendants' above-mentioned policies and/or practices violate Business & Prof. Code §§ 17200, et seq. and Labor Code § 2698 et seq.;
- L. For an order that Defendants make restitution to Plaintiff for Defendants' unlawful business practices, as described herein, pursuant to Business and Professions Code §§ 17200, et seq.;
- M. For wages and penalties pursuant to Labor Code §§ 2698, 2699 and § 558 and any other applicable section of the Labor Code;
- N. For a civil penalty of \$10,000.00 pursuant to Labor Code § 1102.5;
- O. For a civil penalty of \$10,000.00 pursuant to Labor Code § 98.6;

- 1 P. For punitive damages against Defendants ;
2 Q. For prejudgment interest against Defendants ;
3 R. For costs of suit, including attorney fees under any applicable statutory or contractual basis,
4 including California Civil Procedure Code §§ 98.6, and 1102.5, California Labor Code §§ 233,
5 234 and 246.5, California Government Code §§ 12900, et seq.; and for prejudgment interest under
6 Civil Code §§ 3288, 3291 and Code of Civil Procedure § 998, and any other applicable statutory,
7 or contractual basis;
8 S. For an injunction against Defendants, their officers, agents, successors, employees, representatives,
9 and any and all persons acting in concert with them from engaging in each of the practices
10 complained of in this Complaint; and
11 T. For such other and further relief as the court deems just and proper.

12
13 Date: November 30, 2020


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