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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

LAUREL HOLMES, an Individual,

Plaintiff,

vs.

RICHARD E. QUINTILONE II, doing
business as QUINTILONE AND
ASSOCIATES, an Individual;
and DOES 1-50, Inclusive.

Defendants.

Case No.: MCC2001860

FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF

Judge: Hon. Raquel A. Marquez
Dept: S303

DEMAND FOR JURY TRIAL

Complaint Filed: September 22, 2020
Trial Date: None Set.

Plaintiff Laurel Holmes (“Ms. Holmes” or “Plaintiff”), by her attorneys, brings this action on behalf of herself against Richard E. Quintilone II doing business as Quintilone & Associates (“Quintilone”), and DOES 1 through 50, inclusive (collectively, “Defendants”). Plaintiff makes the following allegations upon information and belief (except those allegations as to the Plaintiff or her attorneys, which are based on personal knowledge), based upon an investigation that is reasonable under the circumstances, which allegations are likely to have evidentiary support after a reasonable opportunity for further investigation and/or discovery.

NATURE OF ACTION

1. In late 2019, a new coronavirus emerged, named severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).¹ This virus causes coronavirus disease 2019 (“COVID”), a respiratory illness that can cause serious health problems, including death. *Id.* Despite knowing the risks of COVID, in callous disregard of the safety and health of his employees, Quintilone, the owner of a law practice, knowingly, by acts of deliberate and reckless commission and omission, put the lives of his employees and their families at risk. Quintilone refused to close in-office operations in direct violation of federal, state, and local orders, regulations, and guidance; he failed to institute appropriate measures to prevent, mitigate, or respond to the spread of COVID; and he knowingly brought COVID into the workplace infecting others, including Ms. Holmes. Despite Ms. Holmes’ repeated complaints to Quintilone to come into compliance with the laws, orders and guidance to make the workplace safe and healthy, Quintilone refused, and in fact, mocked Ms. Holmes. Worse, when Ms. Holmes told Quintilone that she refused to unsafely work in the office in direct violation of California’s executive order and other laws prohibiting such, and asked to work remotely, Quintilone told her she needed to come into the office or find another job. Accordingly, Quintilone wrongfully terminated Ms. Holmes’ employment.

¹ See *Frequently Asked Questions*, Centers for Disease Control and Prevention (July 15, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics> (last visited December 23, 2020).

2. If Quintilone's stripping Ms. Holmes of her income to provide for her family was not bad enough, Quintilone sent her packing with a deadly virus that he passed onto Ms. Holmes, her diabetic husband, and their at-risk seven-month old baby. While Ms. Holmes was very sick with COVID, through exhaustion, fever, and illness she had to rush her baby to the emergency room in the middle of the night to be seen by a Rady Children's Hospital Pediatrician to undergo invasive testing, treatment, and observation. Ms. Holmes' family continued to suffer from the physical, mental, and emotional effects of COVID and Quintilone's misconduct. Unfortunately, Quintilone's unlawful conduct is not an aberration, and must be stopped. Rather, he has a pattern and practice of violating ethical, moral, and safety rules to the detriment of his clients and employees.

3. To add insult to injury, Quintilone, an employment law lawyer who knows better, failed to reimburse Ms. Holmes for necessary cell phone and mileage business expenses incurred by Ms. Holmes in direct consequence of the discharge of her duties.

4. To redress the harms suffered, Ms. Holmes brings claims for: (1) wrongful termination in violation of Labor Code §6311; (2) discrimination and wrongful discharge in violation of Labor Code §6310(a)(1) and (b); (3) wrongful termination in violation of Labor Code §1102.5(c); (4) wrongful termination in violation of public policy; (5) failure to reimburse necessary business expenses in violation of Labor Code §2802; and (6) violation of the Unfair Competition Law ("UCL"), Business & Professions Code §§17200, *et seq.*.

JURISDICTION

5. The Superior Court of the State of California has jurisdiction over this action pursuant to Article VI, §10 of the California Constitution because this case is a cause not given by statute to other trial courts. Federal jurisdiction does not exist in this case because there is no federal question implicated and because there is no diversity of citizenship.

6. This Court has personal jurisdiction over Quintilone because Quintilone does business, and conducts a substantial amount of business, in the State of California. During the relevant period, Quintilone did sufficient business in, had sufficient contacts with, and intentionally availed itself of the laws and markets of California through the promotion, sale, marketing, and operation of services, as to render exercise of jurisdiction by California courts permissible. The

1 violations of law hereinafter described have been and are now being carried out within the State of
2 California.

3 7. Venue is proper in this county in accordance with Code of Civil Procedure §395(a)
4 because Ms. Holmes resides in this County and part of Ms. Holmes' employment with Quintilone
5 occurred in this County. Based on information and belief, Quintilone also does business in this
6 County.

7 THE PARTIES

8 Laurel Holmes

9 8. Ms. Holmes resides in Temecula, California, in Riverside County. She is an attorney
10 who was admitted to the California State Bar in January 2016 after graduating from the University
11 of San Diego School of Law. Ms. Holmes was employed by Defendant Quintilone as an Associate
12 Attorney from about April 28, 2020 until she was wrongfully terminated on or about June 22, 2020.
13 Prior thereto, Ms. Holmes worked for several plaintiff-side employment and consumer litigation
14 law firms, such as Semnar & Hartman LLP and Abramson Law Group. Ms. Holmes has never
15 faced any disciplinary action by The State Bar of California and her license to practice law has been
16 active at all relevant times.

17 9. At the start of her employment with Quintilone, Ms. Holmes resided with her
18 husband and their seven-month old daughter. Earlier in the year, Ms. Holmes' daughter contracted
19 Respiratory Syncytial Virus ("RSV"), a viral illness that causes symptoms such as trouble breathing
20 and lead to a 5-day hospitalization to provide high flow oxygen treatment and diagnosis with
21 bronchiolitis. RSV is one of the most common causes of bronchiolitis and pneumonia in babies.
22 Likewise, Ms. Holmes' husband was high risk with pre-existing diabetes. Accordingly, throughout
23 the COVID pandemic, Ms. Holmes and her family have been very cautious by self-isolating in their
24 home except for venturing out for essential needs. To provide for the family since her husband was
25 indefinitely furloughed due to the pandemic, Ms. Holmes sought employment with Quintilone.
26 Unfortunately, despite her best efforts to stay safe and healthy, because of Quintilone's unlawful
27 conduct Ms. Holmes contracted COVID from Quintilone at work, which spread to her family.
28

Defendants

10. Defendant Richard Quintilone operates a law practice doing business as Quintilone & Associates out of its main office located at 22974 El Toro Road, Suite 100, Lake Forest, California 92630. The focus of Quintilone's law practice is in civil litigation, primarily representing plaintiffs in employment law and personal injury matters. Quintilone's business is not part of the critical infrastructure sectors that are exempt from California's Stay Home Order, set forth below.

11. Ms. Holmes does not know the true names and capacities of Defendants DOES 1 through 50, inclusive, and therefore sues them by these fictitious names. Ms. Holmes will amend this Complaint to include their names and capacities once they are known. Ms. Holmes is informed and believes, and on that basis, alleges, that each of the Defendants designated as a DOE is legally responsible in some manner for the occurrences alleged in this Complaint, and unlawfully caused the injuries and damages to Ms. Holmes as alleged in this Complaint.

12. Ms. Holmes is informed and believes, and thereon alleges, that each defendant is, and always mentioned was, the agent, employee, or representative of each of the other Defendants. Each defendant, in doing the acts, or in omitting to act as alleged in this Complaint, was acting within the scope of his or her actual or apparent authority, or the alleged acts and omissions of each defendant as agent subsequently were ratified and adopted by each other defendant as principal.

FACTS COMMON TO ALL CAUSES OF ACTION**Defendant Quintilone and His Law Firm**

13. Quintilone has a pattern and practice of operating his law practice out of compliance with State laws, rules, and regulations, including ethical and health and safety rules. The following events demonstrate a pattern and practice by Quintilone subjecting himself to punitive damages in this case.

14. Quintilone has been a party to numerous lawsuits, involving both former employees and clients relating to issues relevant in this case, including Quintilone's and his firm's ethics, safety, and deceit. The following conduct is also relevant to Quintilone's alleged defenses in this case, including alleged unclean hands, after-acquired evidence, and Quintilone's assertion that Ms. Holmes would have been terminated notwithstanding Quintilone's alleged misconduct.

15. Quintilone has been subject to discipline from the State Bar of California. For example, in 2007, Quintilone accepted a guilty plea with the State Bar of California relating to two different cases wherein the State Bar agreed to stay Quintilone’s suspension from the practice of law pending a two-year probation with numerous conditions. The first case involved a felony conviction on May 16, 2006 for violating Penal Code §273.5(a), felony spousal abuse, and Penal Code §240, misdemeanor assault, in the matter of *People of the State of California vs. Richard Edward Quintilone*, Case No. 05SF0795. The State Bar found Quintilone’s conduct violated Business and Professions Code §6068(a) for failing to support the Constitution and laws of the United States and of California. Similarly, here, Quintilone engaged in a type of assault and battery by knowingly exposing Ms. Holmes (and others) to a virus known to cause a potentially life-threatening disease, namely, COVID-19. *See* Cal. Pen. Code §240 (defining assault); Cal. Pen. Code §242 (defining battery); Cal. Health & Safety Code §120290 (it is unlawful to intentionally transmit an “infectious or communicable disease”); *United States v. Castleman*, 572 U.S. 157, 170 (2014) (a person can commit a battery by “infecting with a disease”); *People v. Dealba*, 242 Cal. App. 4th 1142, 1151 n.7 (2015); *see also Leichtman v. WLW Jacor Comm’c’ns*, 92 Ohio App. 3d 232, 235 (1994) (noting cigar smoke is a “particulate matter” which is capable of making contact with a plaintiff and constituting a battery).² Quintilone has a pattern and practice of engaging in intentional and reckless misconduct resulting in the assault of others. The evidence of Quintilone’s prior State Bar discipline for assault and abuse is also relevant to demonstrate that any allegations by Quintilone that Ms. Holmes engaged in alleged misconduct did not, and would not have, motivated Quintilone to terminate Ms. Holmes’ employment.

16. The second case with the State Bar involved Quintilone improperly communicating with a party that Quintilone knew was represented without the consent of that lawyer in violation of then rule 2-100(A) of the Rules of Professional Conduct, in the matter of *Debra and Jack Dangelo*

² In addition, the Department of Justice (“DOJ”) formally announced that SARS-CoV-2 appears to meet the statutory definition of a “biological agent” under 18 U.S.C. §178(1) and people who intentionally spread the virus could be prosecuted for terrorism. DOJ Memo to All Heads of Law Enforcement (March 24, 2020) ([justice.gov/file/1262771/download](https://www.justice.gov/file/1262771/download))

1 vs. *Irvine Apartment Communities, L.P. et al.*, Case No. 03CC04170. Quintilone’s violation of the
 2 Rules of Professional Conduct again demonstrates that any allegations by Quintilone that Ms.
 3 Holmes engaged in any alleged misconduct did not, and would not have, motivated Quintilone to
 4 terminate Ms. Holmes’ employment. It also evidences Quintilone’s pattern and practice of running
 5 his law practice out of compliance with State rules, regulations, and guidelines – all of which are
 6 issues relevant to this case.

7 17. Subsequently, Quintilone was sued for tort-based elder abuse by a group of former
 8 clients (elderly residents), who, after five years of litigation, “reluctantly settled their cases after
 9 [Quintilone] attempted to have them declared legally incompetent so that a guardian ad litem could
 10 be appointed to cooperate with the attorneys’ efforts.” *Roldan v. Quintilone & Assoc.*, 2018 Cal.
 11 App. Unpub. LEXIS 4399, *1 (2018). Quintilone settled with the clients for \$395,000, but part of
 12 the case was considered by an arbitrator who found in favor of the clients and awarded each of them
 13 additional noneconomic damages without offset. *Id.* at *3. Quintilone failingly attempted to vacate
 14 the award, first with a trial court and then with the Fourth District Court of Appeal. The clients
 15 sought sanctions against Quintilone in the amount of \$37,280 on the grounds the appeal was
 16 “frivolous and brought solely for the purpose of delay, and the briefing violated various court rules.”
 17 *Id.* at *32. The court of appeal agreed, finding that by “any objective measure, Quintilone’s appeal
 18 is undisputedly without merit.” *Id.* at *32-33. Moreover, the court found Quintilone’s briefing “was
 19 far from exemplary” and in the process he “omitted many material facts and inaccurately described
 20 others.” *Id.* at *33. On June 26, 2018, the court awarded the clients their requested \$37,280 as a
 21 “sanction” to “discourage Quintilone and his firm from further frivolous litigation ...” and referred
 22 the matter to the State Bar. *Id.* at *35-36. This evidence again demonstrates that any allegations by
 23 Quintilone that Ms. Holmes engaged in alleged misconduct did not, and would not have, motivated
 24 Quintilone to terminate Ms. Holmes’ employment. It also evidences Quintilone’s pattern and
 25 practice of running his law practice out of compliance with State rules, regulations, and guidelines
 26 – all of which are issues relevant to this case.

27 18. Quintilone has also been the subject of several other lawsuits, including a lawsuit by
 28 a former employee for sexual harassment, constructive discharge, assault, and battery, among other

claims. *See, e.g., Antonia Pucko v. Richard Edward Quintilone III, et al.*, Case No. 30-2018-01015651-CU-OE-CJC (Orange County Superior Court). Like the evidence above, this evidence demonstrates Quintilone's pattern and practice of assaulting others and engaging in similar conduct causing harm to his employees.

19. Quintilone nevertheless continued his pattern and practice of engaging in an unethical and violative law practice to the detriment of the safety and health of his employees. In this case, Quintilone employed Ms. Holmes, who worked for Quintilone at his office located in Lake Forest, Orange County. Ms. Holmes also conducted work for Mr. Quintilone from her home in Temecula, Riverside County. Accordingly, Quintilone's business operations, including Ms. Holmes' work, were subject to not only federal and California state executive and public health orders, but also subject to the local orders and directives of Orange and Riverside Counties. As set forth below, Quintilone operated in direct defiance of these orders that were implemented to safeguard the health and safety of California citizens. Quintilone's conduct involves a pattern and practice of violating ethical, moral, and safety rules. It must come to an end.

The COVID-19 Pandemic

20. As of December 21, 2020, the number of COVID cases surpassed 77 million globally, with nearly 1.7 million reported associated deaths. As of that date, the number of reported deaths in the United States alone related to COVID exceeded more than a quarter million deaths - far more than any other country in the world.³ The seriousness of COVID cannot be understated.

21. COVID is a highly contagious disease. COVID most commonly spreads through close interaction with an infected person that allows the virus to spread through airborne particles or aerosolized droplets, which are secretions from talking, yelling, coughing, and sneezing; or through contact with a contaminated surface. The risk of infection increases dramatically when individuals are in proximity, *e.g.*, within six feet of each other, particularly indoors and for extended periods of time. The risk of infection increases exponentially for those in contact with infected

³ *See John Hopkins University & Medicine, Coronavirus Resource Center*, <https://coronavirus.jhu.edu/map.html> (last visited December 23, 2020).

persons who sneeze or cough or otherwise project secretions into the air. Research published by the Centers for Disease Control and Prevention (“CDC”) suggests that a single person with COVID is likely to infect five or six other individuals absent aggressive physical distancing practices.⁴

22. The following facts and timeline illustrate Quintilone’s notice of the consequences associated with COVID and demonstrate his gross recklessness and indifference to the health and safety of his employees and community:

(a) On January 8, 2020, the CDC issued its first public alert about COVID.

(b) A few weeks later, on January 20, 2020, the first known case of COVID was reported in the United States.

(c) A few days later, the first known case in California was reported in Orange County. Within weeks, the first known death from COVID in the United States was reported – a woman in San Jose, California.

(d) A global pandemic ensued, and on March 4, 2020, California’s Governor declared a state of emergency concerning COVID.⁵

(e) A little over a week later, on March 13, 2020, the President of the United States declared a national emergency concerning COVID.⁶

23. Because of the rapid spread of COVID and related threats, on March 19, 2020, California Governor Gavin Newsom issued a Stay Home Order (Executive Order N-33-20) (“Stay

⁴ Seven Sanche, *High Contagiousness and Rapid Spread of Severe Acute Respiratory Syndrome Coronavirus 2*, Centers for Disease Control and Prevention, https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article?deliverName=USCDC_333-DM25287 (last visited December 23, 2020).

⁵ *See Governor Newsom Declares State of Emergency to Help State Prepare for Broader Spread of COVID-19*, Office of Governor Gavin Newsom (March 04, 2020), <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/> (last visited December 23, 2020).

⁶ *See Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, The White House (March 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last visited December 23, 2020).

Home Order”).⁷ The same day the State Public Health Officer and Director of the California Department of Public Health (“State Health Officer”) entered a similar order.⁸ The Stay Home Order directed “all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal infrastructure sectors [“Essential Workers”], as outlined at *Identifying Critical Infrastructure During COVID-19*, Cybersecurity & Infrastructure Security Agency (May 28, 2020), available at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. (“CISA”).

24. In addition to Governor Newsom’s Stay Home Order, “a local jurisdiction may implement or continue more restrictive public health measures if the jurisdictions Local Health Officer believes conditions in that jurisdiction warrant it.”⁹ On March 8, 2020, the Riverside County Public Health Officer (“Riverside Health Officer”) declared a local health emergency.¹⁰ On May 1, 2020, the Riverside Health Officer issued an order mandating all persons to stay at home or at their place of residence and precluded all in-person services except for Essential Workers continuing through at least June 19, 2020.¹¹ This order applied to Ms. Holmes.

⁷ See *Executive Order N-33-20*, Executive Department State of California, (March 04, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf> (last visited December 23, 2020).

⁸ Sonia Y. Angell, M.D., M.P.H., *Order of the State Public Health Officer*, (March 19, 2020) <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Health%20Order%203.19.2020.pdf> (last visited December 23, 2020).

⁹ Sonia Y. Angell, M.D., M.P.H., *Order of the State Public Health Officer*, (May 7, 2020), <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%205-7-2020.pdf> (last visited December 23, 2020).

¹⁰ Cameron Kaiser, M.D., M.P.H., F.A.A.F.P., *Riverside County Public Health Officer declares local health emergency*, (March 8, 2020), https://www.rivcoph.org/Portals/0/3-8-2020_Public_Health_Emergency.pdf (last visited December 23, 2020).

¹¹ Cameron Kaiser, M.D., M.P.H., F.A.A.F.P., *Amended Order of the Health Officer for the County of Riverside and of the County Executive Officer as Director of Emergency Services*, (May 1, 2020), https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/PHO_Order_Stay_at_Home_Order_5.1.20.pdf?ver=2020-04-29-140642-993×tamp=1588194829599, (last visited December 23, 2020).

25. Quintilone's business, a civil litigation law practice, is not part of the federal critical infrastructure exempted from California's or Riverside County's Stay Home Orders. As such, as of March 19, 2020, Quintilone and his business were subject to the Stay Home Order and continue to be subject to the Stay Home Order, subject to the State Health Officer's directives. Notwithstanding, as set forth below, Quintilone operated in defiance of the Stay Home Order and health professionals' advice. Quintilone's conduct not only created an unsafe and unhealthy work environment, but he gained an unfair advantage over all businesses who complied with the laws.

General Duty to Make the Workplace Safe and Healthy in Response to COVID

26. Under the General Duty Clause of the Occupational Safety and Health Act of 1970, employers are required to provide their employees with a place of employment that is "free from recognized hazards that are causing or are likely to cause death or serious physical harm." 29 U.S.C. §654(a)(1). California similarly mandates that every "employer shall furnish a place of employment that is safe and healthful for the employee therein." Cal. Labor Code §6400(a).¹² These laws "establish a general *public policy* requiring employers to provide a safe and secure workplace." *Boone v. Carlsbad Cmty Church*, 2008 U.S. Dist. LEXIS 44675 *9-10 (S.D. Cal. June 6, 2008).

Quintilone Knowingly Placed His Employees and the Community in Danger by Failing to Implement Measures to Prevent, Mitigate, or Respond to COVID

27. Quintilone violated the general duty clauses mandating he furnish a place of employment that is safe and healthful in violation of California's Stay Home Order, orders issued by the State Public Health Officer, local orders, and guidance issued by, *inter alia*, the U.S. Department of Safety and Health Administration ("OSHA") and the CDC.

¹² See also Cal. Labor Code §6402 ("No employer shall require, *or permit* any employee to go or be in any employment or place of employment which is not safe and healthful."); Cal. Labor Code §6403(b) and (c) (no "employer shall fail or neglect ... [t]o do every other thing reasonably necessary to protect the life, safety, and health of employees."); Cal. Labor Code §6404 ("No employer shall occupy or maintain any place of employment that is not safe and healthful."); Cal. Labor Code §6407 ("Every employer ... shall comply with occupational safety and health standards").

1 28. Preliminarily, at all times relevant to this Complaint, since California's March 19,
2 2020 Stay Home Order, Quintilone's office was ordered to remain closed except for remote work.
3 Remote work was and is possible for Quintilone's law practice. However, throughout the relevant
4 period, Quintilone required in-office operations in defiance of the Stay Home Order, the State Health
5 Officer's orders, and governmental guidance. Despite the COVID pandemic and Stay Home Orders,
6 Quintilone mandated that Ms. Holmes and others report to the office to work. That was just the
7 beginning of Quintilone's violative conduct.

8 29. On Ms. Holmes' first day of work, Quintilone had the employees attend a work-
9 lunch meeting at a nearby restaurant. At this time, because of COVID, restaurants were ordered
10 closed for in-dining services pursuant to California's Stay Home Order. However, because of
11 Quintilone's connection with the restaurant's owner, the restaurant made an exception and
12 unlawfully opened for Quintilone to host the mandatory work-lunch meeting indoors at the
13 restaurant where Ms. Holmes Ordered her food to-go and proceeded to take notes while Quintilone
14 sat without a face covering, spoke in a boisterous voice, and drank his beer with lunch. Quintilone
15 was not only in violation of California's Stay Home Order, but in direct violation of guidance issued
16 by OSHA and the CDC, which were issued to ensure employers are meeting the minimum
17 requirements to provide a safe and healthful workplace.

18 30. Indeed, on March 9, 2020, OSHA issued "Guidance on Preparing Workplaces for
19 COVID-19," detailing how, *inter alia*, COVID affects workplaces. The guidance instructed
20 employers with the development of an infectious disease preparedness and response plan, preparing
21 to implement basic infection prevention measures, developing policies for prompt identification and
22 isolation of sick people, developing, implementing, and communicating about workplace
23 flexibilities and protections, and implementing workplace controls.¹³ Quintilone did none of this
24 and threatened to fire staff if they did not come to work while sick.

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26
27 ¹³ See U.S. Department of Labor Offers Guidance for Preparing Workplaces for Coronavirus,
28 U.S. Department of Labor, <https://www.dol.gov/newsroom/releases/osha/osha20200309>, (last
 visited December 23, 2020).

31. Similarly, on April 9, 2020, the CDC published “Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19).”¹⁴ The CDC, in accordance with OSHA, advised that minimum workplace controls should be implemented to protect against the spread of SARS-CoV-2, including, *inter alia*:

- (a) daily prescreening for COVID symptoms;
- (b) regular monitoring for COVID symptoms;
- (c) face coverings;
- (d) implementing measures to maintain social distancing of six feet, staggering work shifts, and allowing telework where possible;
- (e) routine disinfecting and cleaning of workspaces;
- (f) increased ventilation;
- (g) providing accurate information to employees about COVID, including how it spreads and risks of exposure;
- (h) training employees on proper hand washing practices and other preventative measures;
- (i) providing access to soap and water and alcohol-based hand sanitizers throughout the work area, and allowing breaks to allow employees to wash their hands and clean workstations;
- (j) immediately sending sick employees home;
- (k) not requiring employees to produce a positive COVID test or healthcare note for employees to take sick leave;
- (l) flexible leave policies to allow employees to stay home, particularly by creating non-punitive sick leave policies;

¹⁴ See *Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19)*, Centers for Disease Control and Prevention (May 06, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> (last visited December 23, 2020).

(m) identifying exposure through contact tracing by reviewing contacts over the 48 hours before symptoms of the disease emerged;

(n) requiring employees with COVID symptoms and/or diagnosed with COVID to self-quarantine for designated periods; and

(o) immediately notifying other co-workers of possible COVID exposures while maintaining confidentiality of the name and personal health-related information of the worker who tested positive.¹⁵

32. During the relevant period, Quintilone failed to comply with this guidance.¹⁶ Around May 27, 2020, Ms. Holmes asked Quintilone if he would at a minimum wear a face covering while near her and to socially distance at least six feet. Ms. Holmes made clear to Quintilone that her husband was high risk with diabetes and that their daughter had previously been hospitalized for a respiratory infection and that she needed to keep both herself and family safe and healthy. In response, Quintilone dismissed Holmes' concerns and went into a tirade about how he does not "give a fuck about the Chinese flu." Accordingly, on about June 3, 2020, Ms. Holmes put a sign

¹⁵ See *When You Can be Around Others After You Had or Likely Had COVID-19*, Centers for Disease Control and Prevention (September 10, 2020), https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/end-home-isolation.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprevent-getting-sick%2Fwhen-its-safe.html (last visited December 23, 2020); see also *What to Do If You Are Sick*, Centers for Disease Control and Prevention (May 08, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html> (last visited December 23, 2020); *Guidance for Preparing Workplaces for COVID-19*, U.S. Department of Labor Occupational Safety and Health Administration, <https://www.osha.gov/Publications/OSHA3990.pdf> (last visited December 23, 2020); *Discontinuation of Isolation for Persons with COVID-19 Not in Healthcare Settings*, Centers for Disease Control Prevention (July 17, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html> (last visited December 23, 2020).

¹⁶ Notably, on June 18, 2020, the State Health Officer ordered that all people in California "must wear face coverings" when engaged in work when, *inter alia*, in "any room or enclosed area where other people ... are present when unable to physically distance", working or walking "through common areas", interacting with "any member of the public", and/or working in "any space visited by members of the public, regardless of whether anyone from the public is present at the time." See California Department of Public Health, *Guidance for the Use of Face Coverings*, (June 18, 2020), https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings_06-18-2020.pdf (last visited December 23, 2020).

1 outside her internal office space stating “Mask Required Beyond this Point.” In response,
2 Quintilone mocked Ms. Holmes to co-workers by putting on a mask and stating “look, I have panties
3 on my face.” For the most part, Quintilone proceeded to refuse to wear a face covering while in the
4 office.

5 33. Ms. Holmes continued to express to Quintilone how uncomfortable she was with his
6 non-compliance with the health and safety rules and guidelines. Notwithstanding, Quintilone
7 continued to hold work events, such as a team building exercise in spaces where it was not possible
8 to socially distance and alcohol was involved. He mocked Ms. Holmes for wearing her face
9 covering at this event.

10 34. Quintilone continued to place Ms. Holmes and other workers in danger of
11 contracting COVID in defiance of the State and local guidelines, orders, and regulations. On June
12 12, 2020, Quintilone made the employees attend another mandatory work-lunch meeting at another
13 restaurant. He surprised the workers by arranging transportation to the restaurant by boat, wherein
14 the employees were cramped into a small space making it impossible to socially distance. Of course,
15 Quintilone refused to wear a face covering.

16 35. Quintilone continued to flout the health and safety guidelines in the office and around
17 Ms. Holmes. Worse yet, on Friday, June 19, 2020, without wearing a face covering, Quintilone
18 proceeded to enter the office wherein Ms. Holmes was working and approached her to face level
19 and within arms-length to tell her that his girlfriend’s daughter tested positive for COVID, a person
20 with whom Quintilone was in repeated contact. Based on information and belief, Quintilone had
21 already known of the positive contact prior to this day. Quintilone dismissed the issue, simply
22 stating, “don’t worry, I’m not sick.”

23 36. Two days later (Sunday, June 21, 2020), Quintilone became very ill with COVID
24 symptoms, including a “splitting ass headache and a high fever,” and he tested positive for COVID
25 the following day. Yet, the same day he tested positive (Monday, June 22, 2020), Quintilone came
26 to the office in person. Unbelievably, when staff members left the office to go get tested for COVID,
27 Quintilone angrily blew up in disbelief that two employees would leave the office without his
28

1 express permission. He proceeded to rant to Ms. Holmes about how he should not have told her
2 about his COVID symptoms because he knew she would “blow this way out of proportion.”

3 37. Ms. Holmes told Quintilone that neither she, nor anybody else, should be working in
4 the office in person because it was unsafe to do so. She advised him that she wanted to work
5 remotely to comply with the Stay Home Order. In response, Quintilone told her that if she was not
6 willing to work in the office, then she needed to find another job. Accordingly, the following day,
7 because Quintilone wholly refused to abide by State and local orders or governmental guidance
8 pertaining to COVID, Ms. Holmes had no choice but to accept Quintilone’s unlawful termination
9 of her employment. Quintilone purposely created intolerable conditions and he had knowledge of
10 his actions and their impact on Holmes. He could have remedied the situation, but he did not.

11 38. Unfortunately, on Tuesday, June 23, 2020, Ms. Holmes started suffering COVID
12 symptoms, including fever, chest pains, and a cough unlike any she had ever experienced. Ms.
13 Holmes self-isolated and got tested on Wednesday, June 24, 2020. She tested positive for COVID,
14 and even while isolated spread the virus to her husband who developed severe symptoms and tested
15 positive on Friday June 28, 2020. Ms. Holmes and her husband both sanitized and wore N95 masks
16 to continue caring for their daughter. Sadly, Ms. Holmes seventh month-old high-risk baby girl was
17 unable to escape contracting COVID, all caused by Quintilone’s inexcusable misconduct. As Ms.
18 Holmes’ baby girl’s temperature spiked on Sunday, June 28, 2020, she was rushed to the emergency
19 room to be seen by a Rady Children’s Hospital Pediatrician where she endured tests, including an
20 invasive and painful multiple insertion of a catheter. Meanwhile, while Ms. Holmes and her
21 husband were trying to care for their baby with the help of medical professionals, they too remained
22 extremely sick with fevers, difficulty breathing, bleeding, and extreme exhaustion. While none of
23 the family gravely succumbed to COVID, they continued to suffer symptoms, including fatigue,
24 breathlessness, and bleeding.

25 39. Ms. Holmes’ high-risk diabetic husband had severe symptoms that left him
26 incapacitated much of the time and reliant on his CPAP machine to breathe. He developed
27 significant internal bleeding and pain, believed to have been triggered by the infection and had to
28 undergo surgery delayed over a month for his body to clear the virus. This left Ms. Holmes as the

1 sole potential source of income for the family as well as the sole care provider for their infant
2 daughter

3 40. At least one, if not more, other employees also became ill with COVID symptoms
4 around the same time. Based on information and belief, like Ms. Holmes, they too contracted
5 COVID from Quintilone's misconduct and spread it to their families.

6 41. Because of Quintilone's misconduct, Ms. Holmes has suffered and continues to
7 suffer lost wages, emotional distress, and other damages. Ms. Holmes is a victim of Defendant's
8 unlawful practices and therefore brings this action to recover damages, costs, expenses, attorneys'
9 fees, restitution, injunctive, and declaratory relief.

10 PRIVATE ATTORNEY GENERAL ACT

11 42. California's Private Attorney General Act ("PAGA") (Labor Code §2698, *et seq.*)
12 was in effect during all relevant times during Ms. Holmes' employment with Quintilone. PAGA
13 provides that any civil penalty which may be assessed and collected by the Labor and Workforce
14 Development Agency ("LWDA") for violations of the California Labor Code may, as an alternative,
15 be recovered through a civil action brought by an aggrieved employee on behalf of herself or himself
16 and other current or former employees pursuant to procedures outlined in California Labor Code
17 §2699.3.

18 43. Under PAGA, an "aggrieved employee," is "any person employed by the alleged
19 violator and against whom one or more of the alleged violations was committed." Ms. Holmes was
20 employed by Quintilone and the alleged violations were committed against her during her
21 employment and she is, therefore, an aggrieved employee as defined by California Labor Code
22 §2699(c).

23 44. Pursuant to Labor Code §§2699.3 and 2699.5, an aggrieved employee, including Ms.
24 Holmes, may pursue a civil action to recover PAGA civil penalties in addition to any other available
25 penalties after: (1) giving written notice by certified mail ("Employee's Notice") to the LWDA and
26 the employer of the specific provisions of the California Labor Code alleged to have been violated,
27 including the facts and theories to support the alleged violations; and (2) the LWDA advises the
28

1 employee and employer it declines to investigate the alleged violations within 60 calendar days of
2 the postmark date of the Employee's Notice. Labor Code §2699.3(a)(1)-(2).

3 45. On September 21, 2020, Ms. Holmes provided written notice by online submission
4 and by certified mail to the LWDA and by certified mail to Quintilone of the specific provisions of
5 the California Labor Code alleged to have been violated, including the facts and theories to support
6 the alleged violations, pursuant to California Labor Code §2699.3.

7 46. The employer may cure the alleged violation within 33 calendar days of the
8 Employee's Notice. Labor Code §2699.3(c)(2)(A). Quintilone did not cure all the alleged violations
9 within 33 calendar days of the Employee's Notice. Notwithstanding, on September 23, 2020,
10 pursuant to Labor Code §2699.3(a)(2)(B), the LWDA provided written notice to the parties of its
11 intent to investigate the alleged labor code violations. Within 120 calendar days of that decision,
12 the LWDA may investigate the alleged violations and issue any appropriate citation. *Id.* The LWDA
13 may extend the time to investigate by not more than 60 additional calendar days. *Id.* If the LWDA
14 determines that no citation will be issued, it shall notify the parties of that decision within five
15 business days. *Id.* Upon receipt of that notice or if no citation is issued within the time limits, the
16 aggrieved employee may commence a civil action pursuant to Section 2699.

17 47. If the LWDA does not issue a citation within the applicable time limits, Ms. Holmes
18 intends on amending her complaint to add a cause of action arising under Labor Code §2699. *See*
19 Labor Code §2699.3(a)(2)(C) ("Notwithstanding any other provision at law, a plaintiff may as a
20 matter of right amend an existing complaint to add a cause of action arising under this part at any
21 time within 60 days of the time periods specified in this part.").

22 FIRST CAUSE OF ACTION

23 Wrongful Termination In Violation of Labor Code §6311

24 48. Ms. Holmes re-alleges and incorporates herein by reference each allegation in the
25 preceding and subsequent paragraphs.
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49. Labor Code §6311 provides:

No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including Section 6400, any occupational safety or health standard or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or his or her fellow employees.

50. Labor Code §6311 further provides:

Any employee who is laid off or discharged in violation of this section or is otherwise not paid because he or she refused to perform work in the performance of which this code, any occupational safety or health standard or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or his or her fellow employees ***shall have a right of action*** for wages for the time the employee is without work as a result of the layoff or discharge.

51. As a matter of legal doctrine, “constructive discharge is equivalent to a dismissal,” and “legally regarded as a firing rather than a resignation.” *Mullins v. Rockwell Internat’l Corp.*, 15 Cal. 4th 731, 737 (1997) (quoting *Turner v. Anheuser-Busch, Inc.* 7 Cal. 4th 1238, 1245 (1997) (“Although the employee may say ‘I quit,’ the employment relationship is actually severed involuntarily by the employer’s acts, against the employee’s will.”)).

52. Here, Quintilone terminated Ms. Holmes’ employment because she refused to perform duties under conditions which violate several occupational safety and health standards, including, without limitation, Labor Code §§6400(a), 6402, 6403(a)-(c), 6404, and 6407. *Cf. Fusco v. Sonoma County Junior College Dist.*, 2010 U.S. Dist. LEXIS 7363, *6 (N.D. Cal. Jan. 29, 2010) (finding proper a claim under Labor Code §6311 based on, *inter alia*, an alleged violation of Labor Code §6400 alone, without a violation of any other health standards or safety orders). Quintilone also terminated Ms. Holmes’ employment because she refused to perform duties under conditions which violate 29 U.S.C. §654(a)(1) and the orders of Governor Newsom, the State Health Officer, and local orders relating to COVID, in addition to the OSHA and CDC guidelines. Alternatively, Ms. Holmes’ employment was constructively discharged based on her refusal to perform duties under conditions which violate the aforementioned laws, rules, standards, guidelines, and orders. Ms. Holmes was subjected to working conditions that violated public policy which were knowingly

1 created by Quintilone. The conditions were intolerable to Ms. Holmes and were so intolerable that
2 no reasonable alternatives existed but for any reasonable person to resign.

3 53. As a proximate result of Defendant's wrongful conduct, Ms. Holmes has suffered,
4 and continues to suffer, substantial losses in earnings and job benefits in an amount to be determined
5 according to proof at the time of trial.

6 54. As a further proximate result of Defendant's wrongful conduct, Ms. Holmes has
7 suffered, and continues to suffer, humiliation, embarrassment, emotional distress, and mental
8 anguish, all in an amount to be determined according to proof at the time of trial.

9 55. In doing the acts herein alleged, Quintilone engaged in conduct with malice,
10 oppression, and/or fraud. Quintilone acted with intent to cause injury and/or his conduct was done
11 with a willful and knowing disregard of the rights and safety of others. He was aware of the probable
12 dangerous consequences of his conduct and deliberately failed to avoid those consequences.
13 Quintilone's conduct was also despicable and subjected Ms. Holmes to cruel and unjust hardship in
14 knowing disregard of her rights. Based on information and belief, Quintilone also concealed
15 material facts relating to his exposure to someone positive with COVID. Quintilone's conduct was
16 reprehensible in that it caused Ms. Holmes and her family physical and emotional harm, he
17 disregarded the health and safety of others, he used his status as the owner of the firm to take
18 advantage of his employees, and his conduct involved a pattern and practice of violating ethical,
19 moral, and safety rules. Ms. Holmes is therefore entitled to punitive damages against Quintilone in
20 an amount appropriate to punish and make an example of Quintilone.

21 56. Ms. Holmes is also entitled to costs and reasonable attorneys' fees pursuant to Code
22 of Civil Procedure §1021.5, Labor Code §2699.3, and any other applicable provision for attorneys'
23 fees and costs.

24 SECOND CAUSE OF ACTION

25 Discrimination and Wrongful Termination In Violation 26 of Labor Code §6310(a)(1) and (b)

27 57. Ms. Holmes re-alleges and incorporates herein by reference each allegation in the
28 preceding and subsequent paragraphs.

58. “No person shall discharge or in ***any manner discriminate*** against any employee because the employee” made “any oral or written complaint [relating to employee safety or health] to ... his or her employer, or his or her representative.” Labor Code §6310(a)(1). “Any employee who is discharged, ***threatened with discharge*** ... or in any other manner discriminated against in the terms or conditions of employment” by her employer because she made a bona fide “oral or written complaint to ... his or her employer ... of unsafe working conditions, or work practices, in his or her employment or place of employment ... shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.” Labor Code §6310(b).¹⁷ The private rights of action expressed in this statute has been repeatedly upheld by numerous courts. *See Daly v. Exxon Corp.*, 55 Cal. App. 4th 39, 44 (1997) (“Section 6310, subdivision (b), ***permits an action for damages*** if the employee is discharged, threatened with discharge, or discriminated against by his or her employer because of the employee’s complaints about unsafe working conditions.”); *Cabesuela v. Browning-Ferris Indus.*, 68 Cal. App. 4th 101, 109 (1998) (“We also ***reject*** defendants’ claim that plaintiff holds no direct right of action under 6310.”); *Sheridan v. Touchstone Productions, LLC*, 241 Cal. App. 4th 508, 510 (2015) (holding a plaintiff has a private right of action to sue under Labor Code §§6310 and 6311 without exhausting any administrative remedies); *Luhan v. Minagar*, 124 Cal. App. 4th 1040, 1046 (2004) (same); *Bustos v. City of Fresno*, 2020 U.S. Dist. LEXIS 148144, *33 (E.D. Cal. Aug. 15, 2020) (finding a claim under Labor Code §6310 is cognizable).

59. Here, Quintilone discriminated against Ms. Holmes by threatening to terminate Ms. Holmes’ employment and discharging her because she made a complaint to Quintilone, her employer, of unsafe working conditions and work practices in her place of employment. Ms. Holmes refused to perform duties under conditions which violate several occupational safety and health standards, including, without limitation, Labor Code §§6400(a), 6402, 6403(a)-(c), 6404, and 6407. In response, Quintilone discriminated against and terminated Ms. Holmes’ employment. Quintilone also terminated Ms. Holmes’ employment because she refused to perform duties under

¹⁷ Emphasis added, unless otherwise specified.

1 conditions which violate 29 U.S.C. §654(a)(1) and the orders of Governor Newsom, the State Health
2 Officer, and local orders relating to COVID, in addition to the OSHA and CDC guidelines.

3 60. As a proximate result of Quintilone's wrongful conduct, Ms. Holmes has suffered,
4 and continues to suffer, substantial losses in earnings and job benefits in an amount to be determined
5 according to proof at the time of trial.

6 61. As a further proximate result of Quintilone's wrongful conduct, Ms. Holmes has
7 suffered, and continues to suffer, humiliation, embarrassment, emotional distress, and mental
8 anguish, all in an amount to be determined according to proof at the time of trial.

9 62. In doing the acts herein alleged, Quintilone engaged in conduct with malice,
10 oppression, and/or fraud. Quintilone acted with intent to cause injury and/or his conduct was done
11 with a willful and knowing disregard of the rights and safety of others. He was aware of the probable
12 dangerous consequences of his conduct and deliberately failed to avoid those consequences.
13 Quintilone's conduct was also despicable and subjected Ms. Holmes to cruel and unjust hardship in
14 knowing disregard of her rights. Based on information and belief, Quintilone also concealed
15 material facts relating to his exposure to someone positive with COVID. Quintilone's conduct was
16 reprehensible and inexcusable in that it caused Ms. Holmes and her family physical and emotional
17 harm, he disregarded the health and safety of others, he used his status as the owner of the firm to
18 take advantage of his employees, and his conduct involved a pattern and practice of violating ethical,
19 moral, and safety rules. Ms. Holmes is therefore entitled to punitive damages against Quintilone in
20 an amount appropriate to punish and make an example of Quintilone.

21 63. Ms. Holmes is also entitled to costs and reasonable attorneys' fees pursuant to Code
22 of Civil Procedure §1021.5, Labor Code §2699.3, and any other applicable provision for attorneys'
23 fees and costs.

24 **THIRD CAUSE OF ACTION**

25 **Wrongful Termination In Violation of Labor Code** 26 **§1102.5(c)**

27 64. Ms. Holmes re-alleges and incorporates herein by reference each allegation in the
28 preceding and subsequent paragraphs.

65. Pursuant to Labor Code §1102.5(c), it is unlawful for any employer, or any person acting on behalf of the employer, to “retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.”

66. Here, Quintilone terminated Ms. Holmes’ employment because she refused to perform duties under conditions which violate statutes, including, without limitation, Labor Code §§6400(a), 6402, 6403(a)-(c), 6404, and 6407. Quintilone also terminated Ms. Holmes’ employment because she refused to work under conditions which violate 29 U.S.C. §654(a)(1) and the orders of Governor Newsom, the State Health Officer, and local orders relating to COVID, in addition to the OSHA and CDC guidelines. Alternatively, Ms. Holmes’ employment was constructively discharged based on her refusal to perform duties under conditions which violate the aforementioned laws, rules, standards, guidelines, and orders. Ms. Holmes was subjected to working conditions that violated public policy which were knowingly created by Quintilone. The conditions were so intolerable that no reasonable alternatives existed but for any reasonable person to resign.

67. As a proximate result of Quintilone’s wrongful conduct, Ms. Holmes has suffered, and continues to suffer, substantial losses in earnings and job benefits in an amount to be determined according to proof at the time of trial.

68. As a further proximate result of Quintilone’s wrongful conduct, Ms. Holmes has suffered, and continues to suffer, humiliation, embarrassment, emotional distress, and mental anguish, all in an amount to be determined according to proof at the time of trial.

69. In doing the acts herein alleged, Quintilone engaged in conduct with malice, oppression, and/or fraud. Quintilone acted with intent to cause injury and/or his conduct was done with a willful and knowing disregard of the rights and safety of others. He was aware of the probable dangerous consequences of his conduct and deliberately failed to avoid those consequences. Quintilone’s conduct was also despicable and subjected Ms. Holmes to cruel and unjust hardship in knowing disregard of her rights. Based on information and belief, Quintilone also concealed material facts relating to his exposure to someone positive with COVID. Quintilone’s conduct was

1 reprehensible in that it caused Ms. Holmes and her family physical and emotional harm, he
 2 disregarded the health and safety of others, he used his status as the owner of the firm to take
 3 advantage of his employees, and his conduct involved a pattern and practice of violating ethical,
 4 moral, and safety rules. Ms. Holmes is therefore entitled to punitive damages against Quintilone in
 5 an amount appropriate to punish and make an example of Quintilone

6 70. Ms. Holmes is also entitled to costs and reasonable attorneys' fees pursuant to Code
 7 of Civil Procedure §1021.5, Labor Code §§1102.5(j) and 2699.3, and any other applicable provision
 8 for attorneys' fees and costs.

9 FOUTH CAUSE OF ACTION

10 Wrongful Termination In Violation of Public Policy

11 71. Ms. Holmes re-alleges and incorporates herein by reference each allegation in the
 12 preceding and subsequent paragraphs.

13 72. Jurisdiction is invoked in this Court pursuant to the public policy and common law
 14 of the State of California. *See Tameny v. Atlantic Richfield Co.*, 27 Cal. 3d 167 (1980); *City of*
 15 *Moorpark v. Super. Ct.*, 18 Cal. 4th 1143, 1155, (1998); *Ferrick v. Santa Clara Univ.*, 231 Cal. App.
 16 4th 1337, 1345 (2014) (reiterating that Labor Code §1102.5 “reflects the broad public policy
 17 interest in encouraging workplace whistle-blowers to report unlawful acts without fearing
 18 retaliation”). The general duty clauses to make employment safe and healthy “establish a general
 19 **public policy** requiring employers to provide a safe and secure workplace.” *Boone v. Carlsbad Cmty*
 20 *Church*, 2008 U.S. Dist. LEXIS 44675 at *9-10 (S.D. Cal. June 6, 2008); *Franklin v. The*
 21 *Monadnock Co.*, 151 Cal. App. 4th 252 (2007); *Frazier v. UPS*, 2005 U.S. Dist. LEXIS 13894, *
 22 (E.D. Cal. May 3, 2005) (“The right to refuse work under unsafe conditions is arguably a right
 23 protected by California public policy.”); *Hentzel v. Singer Co.*, 138 Cal. App. 3d 290, 296 (1982)
 24 (overruled on other grounds) (“California has long maintained a policy of protecting the right of
 25 employees to voice their dissatisfaction with working conditions.”); *Cf. Labor Code §6310(a)(1)*
 26 (“No person shall discharge or in any manner discriminate against any employee because the
 27 employee has...made any oral or written complaint [relating to employee safety or health] to ... his
 28 or her employer”)

73. Here, Ms. Holmes refused to participate in and reported Quintilone's unlawful conduct which was in violation of laws enacted to protect employees who refuse to perform duties under conditions which violate California's public policies, including, without limitation, Labor Code §§1102.5, 6310, 6311, 6400(a), 6402, 6403(a)-(c), 6404, and 6407. Quintilone also terminated Ms. Holmes' employment because she refused to work under conditions which violate 29 U.S.C. §654(a)(1) and the orders of Governor Newsom, the State Health Officer, and local orders relating to COVID, in addition to the OSHA and CDC guidelines. Alternatively, Ms. Holmes' employment was constructively discharged based on her refusal to perform duties under conditions which violate the public policies of the aforementioned laws, rules, standards, guidelines, and orders. Ms. Holmes was subjected to working conditions that violated public policy which were knowingly created by Quintilone. The conditions were so intolerable that no reasonable alternatives existed but for any reasonable person to resign.

74. As a proximate result of Quintilone's wrongful conduct, Ms. Holmes has suffered, and continues to suffer, substantial losses in earnings and job benefits in an amount to be determined according to proof at the time of trial.

75. As a further proximate result of Quintilone's wrongful conduct, Ms. Holmes has suffered, and continues to suffer, humiliation, embarrassment, emotional distress, and mental anguish, all in an amount to be determined according to proof at the time of trial.

76. In doing the acts herein alleged, Quintilone engaged in conduct with malice, oppression, and/or fraud. Quintilone acted with intent to cause injury and/or his conduct was done with a willful and knowing disregard of the rights and safety of others. He was aware of the probable dangerous consequences of his conduct and deliberately failed to avoid those consequences. Quintilone's conduct was also despicable and subjected Ms. Holmes to cruel and unjust hardship in knowing disregard of her rights. Based on information and belief, Quintilone also concealed material facts relating to his exposure to someone positive with COVID. Quintilone's conduct was reprehensible in that it caused Ms. Holmes and her family physical and emotional harm, he disregarded the health and safety of others, he used his status as the owner of the firm to take advantage of his employees, and his conduct involved a pattern and practice of violating ethical,

1 moral, and safety rules. Ms. Holmes is therefore entitled to punitive damages against Quintilone in
 2 an amount appropriate to punish and make an example of Quintilone.

3 77. Ms. Holmes is also entitled to costs and reasonable attorneys' fees pursuant to Code
 4 of Civil Procedure §1021.5, Labor Code §2699.3, and any other applicable provision for attorneys'
 5 fees and costs.

6 **FIFTH CAUSE OF ACTION**

7 **Failure to Reimburse Necessary Business Expenses** 8 **In Violation of Labor Code §2802**

9 78. Ms. Holmes re-alleges and incorporates herein by reference each allegation in the
 10 preceding and subsequent paragraphs.

11 79. Labor Code §2802(a) provides: "An employer shall indemnify his or her employee
 12 for all necessary expenditures or losses incurred by the employee in direct consequence of the
 13 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
 14 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
 15 unlawful."

16 80. Ms. Holmes incurred necessary expenditures in direct consequence of the discharge
 17 of her employment duties and her obedience to Quintilone's directions, namely, phone and mileage
 18 expenses. While Quintilone reimbursed Ms. Holmes five dollars on a single paycheck for phone
 19 charges, he failed to timely reimburse her for any additional phone charges incurred by Ms. Holmes
 20 in the discharge of her duties in an amount to be determined at trial.

21 81. As a result of Quintilone's unlawful acts, Ms. Holmes is entitled to recover her
 22 unreimbursed expenditures, interest, and attorneys' fees and costs, in amounts to be proven at the
 23 time of trial. Labor Code §§2802(b)-(c) and 2699(g).

24 **SIXTH CAUSE OF ACTION**

25 **Violation of the Unfair Competition Law ("UCL"),** 26 **Business & Professions Code §§17200 et seq.**

27 82. Ms. Holmes re-alleges and incorporates herein by reference each allegation in the
 28 preceding and subsequent paragraphs.

83. Quintilone is a “person” as defined by the Business & Professions Code §17021. The actions of Quintilone as alleged in this complaint constitute unlawful and unfair business practices within the meaning of Business & Professions Code §§17200, *et seq.*

84. Quintilone engaged in the following unlawful activities:

- (a) Violations of Labor Code §1102.5(c);
- (b) Violation of Labor Code §2802;
- (c) Violations of Labor Code §6310(a)(1) and (b);
- (d) Violations of Labor Code §6311;
- (e) Violations of Labor Code §6400(a);
- (f) Violations of Labor Code §6402;
- (g) Violations of Labor Code 6403(a)-(c);
- (h) Violations of Labor Code §6404;
- (i) Violations of Labor Code §6407;
- (j) Violations of 29 U.S.C. §654(a)(1);
- (k) Violations of Governor Newsom’s March 4, 2020 Executive Order No. N-33-20 (Stay Home Order);
- (l) Violations of the March 19, 2020 State Health Officer Order;
- (m) Violations of the State Health Officer guidelines found at <https://covid19.ca.gov/stay-home-except-for-essential-needs/>;
- (n) Violations of the May 1, 2020 Order of the Riverside Health Officer;
- (o) Violations of OSHA and CDC COVID-related guidelines for businesses;
- (p) Violations of the California Department of Public Health’s June 18, 2020 mandatory guidance for use of face coverings; and
- (q) Violations of California’s public policies.

85. Quintilone’s activities also constitute unfair practices, because his practices violate the above-noted laws, and/or violate an established public policy, and/or the practices are immoral, unethical, oppressive, unscrupulous, and substantially injurious to Ms. Holmes, Mr. Quintilone’s

clients, prospective clients, other employees, and the public. The identified violations of the noted laws constitute unfair business practices because they were done repeatedly over a period, and in a systematic manner to the detriment of Ms. Holmes, other employees, and the public to gain a business advantage over his competitors who observed the legal requirements.

86. Because of Quintilone's violations of the Labor Code and other identified laws, Ms. Holmes has suffered injury-in-fact and has lost money or property because of Quintilone's practices. This injury-in-fact and loss of money or property consists of the lost wages, benefits, and other restitutionary remedies provided by the laws as detailed in this complaint and other resulting harms.

87. Ms. Holmes is entitled to restitution, declaratory, and/or other equitable relief against such unlawful and unfair practices to prevent future damage for which there is no adequate remedy at law. As a direct and proximate result of the unlawful and unfair business practices of Quintilone, Ms. Holmes is entitled to equitable and injunctive relief, including full restitution of all wages which have been unlawfully lost because of the business acts and practices described herein and enjoining Quintilone to cease and desist from engaging in the practices described herein, specifically including closing his physical office and permitting remote work when required by law, for the maximum time permitted by Business & Professions Code §17208, including any tolling.

88. The unlawful and unfair conduct alleged herein is continuing. Ms. Holmes believes and alleges that if Quintilone is not enjoined from the conduct set forth in this complaint, Quintilone will continue to violate the above-noted laws.

89. Ms. Holmes seeks to enforce important rights affecting the public interest, including those of Quintilone's clients, prospective clients, staff, and the community within the meaning of C.C.P. §1021.5. She seeks recovery of reasonable attorneys' fees and costs pursuant thereto and all other applicable provisions..

PRAYER

WHEREFORE, Ms. Holmes seeks judgment as follows:

- A. For compensatory damages, including loss of wages and benefits, according to proof;
- B. For punitive and exemplary damages, according to proof;

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- C. For an injunction restraining Defendant from continuing to engage in unlawful and unfair business practices;
- D. For costs of suit;
- E. For attorneys' fees;
- F. For pre-judgment interest; and
- G. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Ms. Holmes demands a trial by jury on all claims.

Dated: December 23, 2020

HAEGGQUIST & ECK, LLP
ALREEN HAEGGQUIST (221858)
AARON M. OLSEN (259923)
IAN PIKE (329183)

By:



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Attorneys for Plaintiff

PROOF OF SERVICE

Holmes v. Richard E. Quintilone II, et al.
Case No. MCC2001860

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

1. I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 225 Broadway, Suite 2050, San Diego, CA 92101.

2. On December 23, 2020, I caused to be served the foregoing document described as FIRST AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF on the parties in this action as follows:

Richard E. Quintilone, II
Alejandro Quinones
Jeffrey T. Green
QUINTILONE & ASSOCIATES
22974 El Toro Road, Suite 100
Lake Forest, CA 92630
Telephone: (949) 458-9675
Facsimile: (949) 458-9679
Req@quintlawn.com
Axq@quintlawn.com
Jtg@quintlawn.com

Attorneys for Defendant Richard E.
Quintilone II, d/b/a Quintilone & Associates

X BY E-MAIL OR ELECTRONIC TRANSMISSION pursuant to C.C.P. §1010.6(B) and C.R.C. Rule 2.250(b)(3). Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I attached the document(s) to the email address(es) listed. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 23rd day of December, at San Diego, California.


RACHEL BRAY