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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

KIMBERLY TANNER, an individual on
behalf of herself, the state of California and
other aggrieved employees,

Plaintiffs,

v.

ROBERT K. SCHAFFER; ROBERT K.
SCHAFFER, D.D.S., INC.; and DOES 1-100,
inclusive,

Defendants.

Case No.: 37-2020-00037134-CU-OE-CTL

FIRST AMENDED COMPLAINT

1. Private Attorneys General Act Claim – LC § 2699
2. Failure to Pay Wages Including Minimum Wages – LC § 1194
3. Failure to Pay Overtime Wages – LC § 1194
4. Failure to Provide Meal Periods – LC § 226.7
5. Failure to Provide Rest Periods – LC § 226.7
6. Failure to Provide Compliant Wage Statements and Keep Records – LC § 226
7. Waiting Time Penalties – LC § 203
8. Failure to Indemnify Business Expenses – LC § 2802
9. Unfair Business Practices – BPC § 17200
10. Retaliation – LC § 1102.5
11. Retaliation – GC § 12940(m)(2)
12. Failure to Make Reasonable Accommodation for Disability – GC § 12940(m)(1)
13. Disability Discrimination – GC § 12940(a)
14. Failure to Make Reasonable Accommodation for Pregnancy – GC § 12945(a)(3)(A)
15. Sex/Pregnancy Discrimination – GC § 12940(a)
16. Wrongful Termination in Violation of Public Policy

Complaint Filed: 10/14/20
Dept.: C-65
Judge: Ronald F. Frazier

1 Plaintiff KIMBERLY TANNER (hereinafter “TANNER” or “Plaintiff”, or collectively
2 referred to with other aggrieved employees as “Plaintiffs” or “Plaintiff and other aggrieved
3 employees”), for causes of action against Defendants ROBERT K. SCHAFFER; ROBERT K.
4 SCHAFFER, D.D.S., INC.; and DOES 1-100, inclusive (hereinafter collectively referred to as
5 “Defendants”), alleges as follows:

6 JURISDICTION

7 1. This action arises out of acts, representations and events occurring within the
8 jurisdiction of the County of San Diego and the San Diego Judicial District.

9 2. TANNER is, and at all times mentioned herein was, an individual residing in the
10 state of California, County of San Diego. She brings this claim on behalf of herself for her individual
11 claims, and now on behalf of the state of California and other employees pursuant to the Private
12 Attorney General Act as codified in Labor Code section 2699, et. seq.

13 3. Defendants, at all times mentioned herein, were businesses existing under the laws
14 of the State of California, doing business in San Diego County. TANNER is informed and believe
15 that ROBERT K. SCHAFFER at all times mentioned herein was, an individual residing in the state
16 of California, County of San Diego.

17 4. Whenever in this Complaint reference is made to any act, deed, or conduct of
18 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
19 one or more of their officers, directors, agents, employees, or representatives, who were actively
20 engaged in the management, direction, control, or transaction of the ordinary business and affairs of
21 Defendants.

22 5. Plaintiffs are ignorant of the true names and capacities, whether individual,
23 corporate, associate or otherwise, of the Defendants sued herein as DOES 1-100, inclusive and
24 therefore sues said Defendants (the “Doe Defendants”) by such fictitious names. TANNER will
25 amend this Complaint to plead the true names and capacities of the Doe Defendants at such time as
26 the identities of the Doe Defendants have been ascertained.

27 6. TANNER is informed and believes that Defendants ROBERT K. SCHAFFER;
28 ROBERT K. SCHAFFER, D.D.S., INC.; and DOES 1-100, inclusive, are the partners, agents, or

1 principals and co-conspirators of Defendants, and of each other; that named Defendants and the Doe
2 Defendants performed the acts and conduct herein alleged directly, aided and abetted the
3 performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts
4 and conduct, and therefore each of the named Defendants and Doe Defendants are liable to Plaintiffs
5 to the extent of the liability of the Defendants as alleged herein.

6 7. TANNER is further informed and believes that at all times herein material, ROBERT
7 K. SCHAFFER, D.D.S., INC.; and DOES 1-100, inclusive and entity Doe Defendants were
8 completely dominated and controlled by ROBERT K. SCHAFFER and unknown Doe Defendants
9 and each was the alter ego of the other in a single enterprise. At those times, a unity of interest and
10 ownership between ROBERT K. SCHAFFER, D.D.S., INC., and entity Doe Defendants on the one
11 hand, and ROBERT K. SCHAFFER and unknown Doe Defendants on the other hand existed such
12 that the separate personalities of these entities did not in reality exist. Additionally, Plaintiffs would
13 suffer an inequitable harm if the actions of ROBERT K. SCHAFFER, D.D.S., INC. and entity Doe
14 Defendants were not treated as the acts of all Defendants. TANNER is further informed and believes
15 that at all times relevant to this action ROBERT K. SCHAFFER, D.D.S., INC. and entity Doe
16 Defendants, *inter alia*, failed to observe the requisite corporate formalities, was inadequately
17 capitalized, and its ownership and control were inappropriately concentrated in ROBERT K.
18 SCHAFFER, D.D.S., INC. and unknown Doe Defendants.

19 8. TANNER is further informed and believes that at all times herein material, each
20 defendant, was completely dominated and controlled by its co-defendants and each was the alter
21 ego of the other. Whenever and wherever reference is made in this operative Complaint to any
22 conduct by Defendants, such allegations and references shall also be deemed to mean the conduct
23 of each of the Defendants, acting individually, jointly and severally. Whenever and wherever
24 reference is made to individuals who are not named as defendants in this Complaint, but were
25 employees or agents of, such individuals at all relevant times acted on behalf of Defendants named
26 in this Complaint within the scope of their respective employments.

27 9. Whenever and wherever reference is made in this Complaint to any conduct by a
28 defendant or Defendants, such allegations and references shall also be deemed to mean the conduct

1 of each of the Defendants, acting individually, jointly and severally. Whenever and wherever
2 reference is made to individuals who are not named as defendants in this Complaint, but were
3 employees or agents of, such individuals at all relevant times acted on behalf of Defendants named
4 in this Complaint within the scope of their respective employments.

5 **GENERAL ALLEGATIONS**

6 10. Defendants operate a dental office called Schaffer Dental Excellence (“Dental
7 Office”) in the city of San Diego, California. Defendants hired Plaintiff TANNER, a woman, as
8 “Front Desk Staff” on or about February 14, 2017. Defendant ROBERT K. SCHAFFER is and at
9 all relevant times was a managing agent for ROBERT K. SCHAFFER, D.D.S., INC. because he is
10 an owner, officer, and director of the entity company; and he personally managed and directed all
11 of the Dental Office’s labor policies and practices for Plaintiffs. At all relevant times Defendants
12 employed approximately 7 or more other aggrieved employees or Plaintiffs. Some had the same
13 job titles and duties as TANNER. TANNER is informed and believes all of Defendants’ current
14 and former employees are non-exempt aggrieved employees.

15 11. TANNER is informed and believes that Plaintiffs were paid on an hourly basis and
16 Plaintiffs spent substantially more than 50 percent of their work hours every workweek performing
17 non-exempt duties. Defendants paid TANNER on an hourly basis and TANNER’s primary duties
18 were “working the front desk”; processing emails, answering phone calls, providing general
19 reception for patients, visitors, and; processing billing.

20 12. Defendants implemented unlawful minimum wage policies and practices. Beginning
21 in March 2020, Defendants closed their regular dental operations because of the state’s COVID-19
22 closure orders. Defendants continued to require TANNER to perform duties for Defendants
23 including, but not limited to: checking and replying to Defendants’ office emails from TANNER’s
24 home on her laptop; texting and emailing Defendants about certain patient issues; and going into
25 Defendants’ office to check mail, voicemails, funnel emergency calls, process insurance checks, etc.
26 Defendants did not pay TANNER at least minimum wage for all of this time worked, and other time
27 worked. TANNER is informed and believes that Defendants also failed to pay other Plaintiffs at
28 least minimum wage for all hours worked.

1 13. Defendants implemented unlawful overtime policies and practices. Defendants even
2 announced to Plaintiffs on multiple occasions that Defendants would not pay Plaintiffs overtime
3 rates. Defendants' regular work schedule for Plaintiffs was approximately 6:45pm to 4:00pm on
4 Mondays to Thursdays with Defendants sometimes allowing a 1-hour meal period, totaling at least
5 approximately 8 hours, 15 minutes of work every workday Mondays to Thursdays. Defendants
6 should have paid Plaintiffs at least 15 minutes of overtime rates virtually every workday. However,
7 Defendants generally only paid Plaintiffs straight time or regular rates and did not pay time and one-
8 half overtime rates unless Defendants decided to make rare pre-authorized exceptions.

9 14. Defendants implemented unlawful meal period policies and practices. Defendants'
10 regular work schedule for Plaintiffs on Fridays was approximately 6:45am to 1pm without any meal
11 period, totaling a work period of at least approximately 6 hours, 15 minutes of work every Friday
12 without a meal period. Additionally, TANNER is informed and believes that Defendants failed to
13 provide Plaintiffs a compliant timely meal period at least 50% of the time on Mondays through
14 Thursdays before exceeding a work period of 5 hours. Many occasions occurred when Defendants
15 did not provide Plaintiffs meal periods on Mondays through Thursdays because Defendants' Dental
16 Office was too busy.

17 15. Defendants implemented unlawful rest period policies and practices. Defendants
18 never informed Plaintiffs of their right to receive 10-minute rest periods within every 4-hour period,
19 or major fraction thereof. Consequently, Defendants never provided, and Plaintiffs never received
20 or took, 10-minute rest periods. Defendants' Dental Office was also often too busy to allow for rest
21 periods.

22 16. As described above, Defendants failed to pay at least minimum wage for all hours
23 worked, pay overtime rates when applicable, provide meal periods, and provide paid rest periods.
24 As a result, Defendants also failed to provide Plaintiffs complete and accurate wage statements
25 containing the total hours worked, gross wages earned, applicable pay rates, etc. Defendants also
26 failed to keep compliant records.

27 17. Defendants implemented unlawful business expense indemnification policies and
28 practices. Beginning in March 2020, Defendants required TANNER to work from home, and

1 required her to use her own personal laptop and cell phone instead of providing TANNER that type
2 of equipment or paying her for the use of her own equipment. TANNER is informed and believes
3 that all Plaintiffs similarly suffered from Defendants' failure to indemnify for various expenses.

4 18. As a result of Defendants' unlawful labor policies and practices including, but not
5 limited to, intentionally failing to timely pay Plaintiffs all earned wages, Defendants also willfully
6 failed to pay Plaintiffs, whom Defendants no longer employ, all earned wages at the time Defendants
7 terminated their employment or within 72 hours of quitting. Further, TANNER is informed and
8 believes that Defendants did not pay all accrued paid time off or paid vacation time when
9 TANNER's employment ended, and TANNER is informed and believes that Defendants
10 implemented this unlawful policy and practice with other Plaintiffs.

11 19. Defendants violations were all knowing and willful in disregard of the Labor Code
12 and Industrial Welfare Commission ("IWC") Wage Orders. Accordingly, Plaintiffs are entitled to
13 recovery of civil penalties pursuant to various regulations and statutes including, but not limited to,
14 IWC Wage Order 4-2001, sections 3, 4, 7, 11, 12, 20, and pursuant to Labor Code sections including,
15 but not limited to, sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 210, 212, 215, 216, 218.6,
16 221, 222, 223, 224, 225, 225.5, 226, 226.3, 226.7, 230.8, 232.5, 233, 246, 246.5, 247, 247.5, 248.5,
17 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194,
18 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, and 2699.5 et al.

19 20. TANNER met the Private Attorneys General Act ("PAGA") notice requirement with
20 the Labor and Workforce Development Agency ("LWDA") through the filing of a PAGA notice on
21 October 13, 2020 and sending copies to all named Defendants via certified mail more than 65 days
22 ago. See a true and correct copy of the PAGA notice attached hereto as Exhibit 1.

23 - - -

24 21. On several occasions in 2019, TANNER disclosed to Defendants in staff meetings
25 and to Defendants' office manager outside of staff meetings that the office manager kept making
26 billing errors with higher paying codes incorrectly billed to insurance companies. The errors also
27 caused several months in delays before Defendants received insurance payments and significantly
28 delayed patients' obligations to pay their co-pay portions of the billed services to Defendants.

1 22. Defendants' office manager began treating TANNER poorly after the disclosures.
2 TANNER had no prior write ups and competently performed all of her job duties.

3 23. In August 2019, Defendants terminated TANNER. TANNER is informed and
4 believes that Defendants claimed to the Employment Development Department that the reason was
5 because TANNER used her cell phone at work, which TANNER believes was pretext. Shortly after
6 that, Defendants' office manager went on medical leave and Defendants hired a temporary employee
7 to fill in for their office manager. TANNER is informed and believes that the temporary employee
8 discovered that Defendants had a significant number of old accounts that were open and past due in
9 Defendants' system. TANNER is further informed and believes that the temporary employee then
10 contacted the patients on the past due accounts and attempted to collect, but the patients told the
11 temporary employee that Defendants' office manager had previously contacted them and already
12 made deals with them to pay reduced amounts to satisfy the balances. Shortly thereafter, Defendants
13 also terminated and replaced their office manager.

14 24. TANNER is informed and believes that Defendants terminated TANNER in
15 retaliation because she raised concerns about illegal business practices including but not necessarily
16 limited to medical insurance fraud, and Defendants believed that TANNER might disclose the
17 violations to a government agency or a person with authority to correct the noncompliance with the
18 law.

19 25. In November 2019, Defendants apologized to TANNER for terminating her, told her
20 it was a mistake, and asked her to return to her employment without elaborating on any details about
21 how or why Defendants' made a mistake.

22 26. On or about December 2, 2019, after over 3 months of unemployment, lost wages,
23 and emotional distress from being terminated, TANNER returned to work for Defendants.

24 27. On or about May 15, 2020, TANNER informed Defendants that she was pregnant.
25 Defendants responded that they would hire a new employee, whom TANNER would train, for
26 additional help with TANNER's duties.

27 28. On or about June 1, 2020, Defendants' new employee began her first day working at
28 the Dental Office. TANNER began training the new employee.

1 29. On or about June 8, 2020, TANNER texted Defendants that she was very sick, and
2 would either be very late for work that day or could not make it to work at all that day. Later that
3 day, TANNER told Defendants that she had to take Thursday, June 11, 2020, off for a prenatal
4 doctor appointment.

5 30. On or about June 10, 2020, Defendants told TANNER not to come into work on June
6 11th or 12th (Thursday and Friday) because Defendants wanted to see how the new employee
7 worked on her own without TANNER.

8 31. On or about June 14, 2020, Defendants asked TANNER to stay home on a 2-week
9 paid leave from June 15, 2020, through June 26, 2020, while Defendants figure out the fit with new
10 employee.

11 32. On or about June 16, 2020, Defendants texted TANNER asking her to come in to
12 pick up her paycheck and sign some paperwork. TANNER informed Defendants that due to her
13 doctor appointment(s) and other commitments scheduled relying on Defendants giving her the 2-
14 week leave, she could not come in until June 22nd.

15 33. Also, TANNER had heard from co-workers that Defendants terminated her so
16 TANNER asked Defendants if that was true. Defendants responded that they were interviewing for
17 other front desk employees, and reiterated their request that TANNER pick up a paycheck and sign
18 paperwork.

19 34. On or about June 22, 2020, TANNER went to Defendants' Dental Office and
20 Defendants terminated her. TANNER asked why. Defendants refused to explain why they
21 terminated TANNER but handed her a written severance agreement and conditioned Defendants
22 providing TANNER a \$1,600.00 check if TANNER signed the severance agreement. TANNER
23 never signed the agreement nor received the check. TANNER is informed and believes that
24 Defendants' substantial motivating factors for terminating TANNER the second time were: 1) in
25 retaliation for TANNER's accommodation request on June 8, 2020 for a medical disability; 2) in
26 retaliation for her requested pregnancy accommodation for her June 11, 2020 prenatal doctor
27 appointment; 3) because she became pregnant; and 4) because of her sex as a woman who had a
28 baby on the way.

35. TANNER has exhausted administrative remedies with the Department of Fair Employment and Housing (“DFEH”) and has obtained a right-to-sue letter from the DFEH. A copy of the right-to-sue letter is attached hereto as Exhibit 2.

FIRST CAUSE OF ACTION
(Private Attorneys General Act Claim – LC § 2699)
(Against all Defendants)

36. TANNER re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

37. Labor Code section 2699 states that, “(a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

38. As a result of the acts alleged above, TANNER brings this action on her own behalf, and in her representative capacity on behalf of all aggrieved employees, Plaintiffs, who are current or former employees of Defendants, for civil penalties pursuant to IWC Wage Order 4-2001, sections 3, 4, 7, 11, 12, 20, and pursuant to Labor Code sections including, but not limited to, sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 210, 212, 215, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.3, 226.7, 230.8, 232.5, 233, 246, 246.5, 247, 247.5, 248.5, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, and 2699.5 et al.

39. Labor Code section 210 states that, “(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the

1 amount unlawfully withheld.”

2 40. Labor Code section 225.5 states that “...every person who unlawfully withholds
3 wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil
4 penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay
5 each employee. (b) For each subsequent violation, or any willful or intentional violation, two
6 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
7 unlawfully withheld.” Labor Code section 216 provides that, “In addition to any other penalty
8 imposed by this article, any person, or agent, manager, superintendent, or officer thereof is guilty of
9 a misdemeanor who: (a) Having the ability to pay, willfully refuses to pay wages due and payable
10 after demand has been made. (b) Falsely denies the amount or validity thereof, or that the same is
11 due, with the intent to secure for himself, his employer or other person, any discount upon such
12 indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom
13 such indebtedness is due.”

14 41. Labor Code section 226.3 states that, “[a]ny employer who violates subdivision (a)
15 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
16 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
17 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
18 deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil
19 penalties provided for in this section are in addition to any other penalty provided by law.”

20 42. Labor Code section 256 states that, “[t]he Labor Commissioner shall impose a civil
21 penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.”

22 43. Labor Code section 558 states that, “(a) Any employer or other person acting on
23 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
24 provision regulating hours and days of work in any order of the Industrial Welfare Commission
25 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
26 underpaid employee for each pay period for which the employee was underpaid in addition to an
27 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
28 dollars (\$100) for each underpaid employee for each pay period for which the employee was

1 underpaid in addition to an amount sufficient to recover underpaid wages... (d) The civil penalties
2 provided for in this section are in addition to any other civil or criminal penalty provided by law.”

3 44. Labor Code section 1174.5 states that, “Any person employing labor who willfully
4 fails to maintain the records required by subdivision (c) of section 1174 or accurate and complete
5 records required by subdivision (d) of Section 1174, or to allow any member of the commission or
6 employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be
7 subject to a civil penalty of five hundred dollars (\$500).”

8 45. Labor Code section 1197.1 states that, “(a) Any employer or other person acting
9 either individually or as an officer, agent, or employee of another person, who pays or causes to be
10 paid to any employee a wage less than the minimum fixed by an order of the commission shall be
11 subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any
12 applicable penalties imposed pursuant to Section 203 as follows: (1) For any initial violation that is
13 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
14 period for which the employee is underpaid. This amount shall be in addition to an amount sufficient
15 to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable
16 penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific
17 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which
18 the employee is underpaid regardless of whether the initial violation is intentionally committed.
19 This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated
20 damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section
21 203...”

22 46. Labor Code section 2802 states that, “(a) An employer shall indemnify his or her
23 employee for all necessary expenditures or losses incurred by the employee in direct consequence
24 of the discharge of his or her duties... (d) In addition to recovery of penalties under this section in
25 a court action or proceedings pursuant to Section 98, the commissioner may issue a citation against
26 an employer or other person acting on behalf of the employer who violates reimbursement
27 obligations for an amount determined to be due to an employee under this section. The procedures
28 for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the

1 commissioner shall be the same as those set forth in Section 1197.1.”

2 47. Labor Code section 2699 states that, “(f) For all provisions of this code except those
3 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
4 of these provisions, as follows: (1) If, at the time of the alleged violation, the person does not employ
5 one or more employees, the civil penalty is five hundred dollars (\$500). (2) If, at the time of the
6 alleged violation, the person employs one or more employees, the civil penalty is one hundred
7 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
8 dollars (\$200) for each aggrieved employee per pay period for each aggrieved employee per pay
9 period for each subsequent violation.”

10 48. TANNER is informed and believes that Defendants knowingly and willfully failed
11 to pay Plaintiffs, who were all non-exempt, all wages earned which were due at least twice each
12 calendar month pursuant to Labor Code section 204, by failing to timely pay employees at least
13 minimum wage for all hours worked, failing to pay employees applicable overtime and overtime
14 rates, failing to pay employees an additional one hour of wages for each workday with a missed
15 meal period which was required by Labor Code section 226.7, and failing to pay employees an
16 additional one hour of wages for each workday with a missed rest period which was required by
17 Labor Code section 226.7. TANNER is also informed and believes Defendants failed to indemnify
18 Plaintiffs for business expenses such as for required personal computer and personal cell phone use.

19 49. TANNER is informed and believes that as a result of Defendants’ unlawful pay
20 policies and practices, Defendants failed to provide accurate itemized wage statements to Plaintiffs
21 with all required information and failed to maintain accurate records of those wage statements and
22 hours worked daily by employees, including but not limited to, all meal periods taken, all hours
23 worked, and gross wages earned in violation of Labor Code sections 226, 1174, and IWC Wage
24 Order 4-2001, section 7.

25 50. TANNER is also informed and believes that Defendants failed to pay Plaintiffs all
26 earned wages within 72 hours after their employment relationships ended with Defendants, and
27 Defendants continue to willfully fail to pay those earned unpaid wages, or falsely deny the amount
28 or validity thereof, and continue to fail to pay the waiting time penalties of up to 30 days of additional

1 daily wages which are authorized by Labor Code section 203 despite having an ability to pay all
2 amounts due.

3 51. Code section 558.1 states that, “(a) Any employer or other person acting on behalf
4 of an employer, who violates, or causes to be violated, any provision regulating minimum wages or
5 hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to
6 be violated, sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for
7 such violations.

8 52. Defendants ROBERT K. SCHAFFER and DOES 1-100 as owners, directors,
9 officers, and managing agents of Defendants ROBERT K. SCHAFFER, D.D.S., INC., and DOES
10 1-100 were employers or other persons acting on behalf of Defendants ROBERT K. SCHAFFER,
11 D.D.S., INC. and DOES 1-100, who violated or caused to be violated the Labor Code statutes and
12 IWC Wage Order regulations as alleged above. Accordingly, all Defendants including, but not
13 limited to, ROBERT K. SCHAFFER and DOES 1-100 are individually and personally liable along
14 with Defendants ROBERT K. SCHAFFER, D.D.S., INC. and DOES 1-100 for all of the above
15 described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil penalties,
16 interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues through a Labor
17 Code section 2699 et al. PAGA claim.

18 **SECOND CAUSE OF ACTION**

19 **(Failure to Pay Wages Including Minimum Wages – LC § 1194)**

20 **(Against all Defendants)**

21 53. TANNER re-alleges and incorporates herein by reference all paragraphs outside this
22 section as though fully set forth herein.

23 54. Pursuant to Labor Code section 200, “wages” includes all amounts for labor
24 performed by employees of every description, whether the amount is fixed or ascertained by the
25 standard time, task, piece, commission basis, or other method of calculation. Under California law
26 through Minimum Wage Order MW-2016, Minimum Wage Order MW-2019, and Labor Code
27 section 1182.12, every employer with 25 employees or less shall pay each employee wages not less
28 than \$10.00 per hour beginning January 1, 2017; not less than \$10.50 per hour beginning January 1,

1 2018; not less than \$11.00 per hour beginning January 1, 2019; not less than \$12.00 per hour
2 beginning January 1, 2020; and not less than \$13.00 per hour beginning January 1, 2020. Pursuant
3 to San Diego Municipal Code Chapter 3, Article 9, Division 1, section 39.0101, every employer
4 must pay each employee who works in the geographic boundaries of the City of San Diego,
5 minimum wage rates not less than \$10.50 per hour beginning July 11, 2016; not less than \$11.50
6 per hour beginning January 1, 2017; not less than \$12.00 per hour beginning January 1, 2019; and
7 not less than \$13.00 per hour beginning January 1, 2020. Pursuant to Labor Code section 1197,
8 payment of a wage less than the minimum wage as delineated by the commission is unlawful.
9 Pursuant to Labor Code sections 98, 204, 218.5, 218.6, 1194, an employee has a right to recover all
10 unpaid wages from an employer.

11 55. Labor Code section 1194, provides that, "...any employee receiving less than the
12 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
13 recover in a civil action the unpaid balance of this minimum wage or overtime compensation,
14 including interest thereon, reasonable attorney's fees, and costs of suit." Pursuant to Labor Code
15 section 1194.2, "... an employee shall be entitled to recover liquidated damages in an amount equal
16 to the wages unlawfully unpaid and interest thereon." Labor Code section 1197.1 specifically states,
17 in part, as follows: "Any employer or other person acting either individually or as an officer, agent,
18 or employee of another person who pays or causes to be paid to any employee a wage less than the
19 minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages,
20 [and] liquidated damages payable to the employee..."

21 56. TANNER was a non-exempt employee and therefore, was entitled to receive at least
22 minimum wage for every hour worked for Defendants. However, Defendants failed to pay for all
23 hours worked. For example, beginning in March 2020, Defendants required TANNER to begin
24 checking and replying to Defendants' office emails from TANNER's home laptop; texting and
25 emailing Defendants about emergency patient inquiries; and going into Defendants' office to check
26 mail, voicemails, funnel emergency calls, process insurance checks, etc. without receiving pay for
27 all of those hours worked.

28 57. Accordingly, TANNER is entitled to recover the amount of their unpaid wages in

1 addition to the difference between the applicable minimum wage and what Defendants paid
2 TANNER below the applicable minimum wage for all hours worked pursuant to Labor Code section
3 1194.2 as liquidated damages, plus interest pursuant to Labor Code sections 1194, 1194.2, Civil
4 Code section 3289, and the IWC Wage Orders from the date payment was due, penalties pursuant
5 to Labor Code sections 204, 210, 215, 558, 1197.1, 2699, and attorneys' fees, expenses, and costs
6 of suit pursuant to Labor Code sections 1194, 1194.3 (to enforce a judgment), and 2699. Defendants
7 are further subject to criminal penalties pursuant to Labor Code sections 215 and 1199.

8 58. Defendants ROBERT K. SCHAFFER and DOES 1-100 as owners, directors,
9 officers, and managing agents of Defendants ROBERT K. SCHAFFER, D.D.S., INC., and DOES
10 1-100 were employers or other persons acting on behalf of Defendants ROBERT K. SCHAFFER,
11 D.D.S., INC. and DOES 1-100, who violated or caused to be violated the Labor Code statutes and
12 IWC Order regulations as alleged above. Accordingly, all Defendants including, but not limited to,
13 ROBERT K. SCHAFFER and DOES 1-100 are individually and personally liable along with
14 Defendants ROBERT K. SCHAFFER, D.D.S., INC. and DOES 1-100 for all of the above described
15 violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil penalties, interest,
16 attorney fees, costs, and other recoverable remedies which Plaintiff pursues through a Labor Code
17 section 2699 et al. PAGA claim.

18 **THIRD CAUSE OF ACTION**

19 **(Failure to Pay Overtime Wages – LC § 1194)**

20 **(Against all Defendants)**

21 59. TANNER re-alleges and incorporates herein by reference all paragraphs outside this
22 section as though fully set forth herein.

23 60. Pursuant to Labor Code section 200, "wages" includes all amounts for labor
24 performed by employees of every description, whether the amount is fixed or ascertained by the
25 standard time, task, piece, commission basis, or other method of calculation. Under California law
26 through Minimum Wage Order MW-2016, Minimum Wage Order MW-2019, and Labor Code
27 section 1182.12, every employer with 25 employees or less shall pay each employee wages not less
28 than \$10.00 per hour beginning January 1, 2017; not less than \$10.50 per hour beginning January 1,

1 2018; not less than \$11.00 per hour beginning January 1, 2019; not less than \$12.00 per hour
2 beginning January 1, 2020; and not less than \$13.00 per hour beginning January 1, 2020. Pursuant
3 to San Diego Municipal Code Chapter 3, Article 9, Division 1, section 39.0101, every employer
4 must pay each employee who works in the geographic boundaries of the City of San Diego,
5 minimum wage rates not less than \$10.50 per hour beginning July 11, 2016; not less than \$11.50
6 per hour beginning January 1, 2017; not less than \$12.00 per hour beginning January 1, 2019; and
7 not less than \$13.00 per hour beginning January 1, 2020. Pursuant to Labor Code section 1197,
8 payment of a wage less than the minimum wage as delineated by the commission is unlawful.
9 Pursuant to Labor Code sections 98, 204, 218.5, 218.6, 1194, an employee has a right to recover all
10 unpaid wages from an employer.

11 61. Pursuant to the applicable IWC Wage Order 4-2001, section 3(A) and Labor Code
12 sections 200, 500, 510, and 1198, Defendants were required to compensate TANNER for all
13 overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours worked
14 in excess of eight (8) hours in one workday and forty (40) hours in any one workweek, and for the
15 first eight (8) hours on the seventh consecutive workday in any one workweek; with double (2) time
16 after eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

17 62. Based on TANNER's daily duties being more than 50% non-exempt duties,
18 TANNER was a non-exempt employee entitled to the protections of the IWC Wage Order sections
19 and Labor Code sections identified above. For the relevant claim periods for TANNER, Defendants
20 failed to compensate TANNER with overtime pay and rates for overtime hours worked as required
21 by the aforementioned labor regulations. For example, Defendants announced on multiple
22 occasions that they would not pay Plaintiffs overtime rates as Defendants general policy. Also,
23 Defendants' regular work schedule for Plaintiffs was approximately 6:45pm to 4:00pm on Mondays
24 to Thursdays with Defendants sometimes allowing a 1-hour meal period, totaling at least
25 approximately 8 hours, 15 minutes of work every workday Mondays to Thursdays. Defendants
26 should have paid Plaintiffs at least 15 minutes of overtime rates virtually every workday. However,
27 Defendants generally only paid Plaintiffs straight time or regular rates and did not pay time and one-
28 half overtime rates unless Defendants decided to make rare pre-authorized exceptions. TANNER

1 is entitled to overtime rate compensation for overtime work performed during the course of
2 TANNER's employment for Defendants which Defendants never paid.

3 63. Accordingly, pursuant to Labor Code sections 201-204, 210, 218.6, 226, 510, 558,
4 1194, 1194.2, Civil Code section 3289, and the IWC Wage Orders, TANNER, is entitled to recover:
5 penalties, the unpaid balance of hourly pay owed, overtime compensation, interest, penalties,
6 attorneys' fees, and costs of suit. Defendants are further subject to criminal penalties pursuant to
7 Labor Code sections 215 and 1199.

8 64. Defendants ROBERT K. SCHAFFER and DOES 1-100 as owners, directors,
9 officers, and managing agents of Defendants ROBERT K. SCHAFFER, D.D.S., INC., and DOES
10 1-100 were employers or other persons acting on behalf of Defendants ROBERT K. SCHAFFER,
11 D.D.S., INC. and DOES 1-100, who violated or caused to be violated the Labor Code statutes and
12 IWC Wage Order regulations as alleged above. Accordingly, all Defendants including, but not
13 limited to, ROBERT K. SCHAFFER and DOES 1-100 are individually and personally liable along
14 with Defendants ROBERT K. SCHAFFER, D.D.S., INC. and DOES 1-100 for all of the above
15 described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil penalties,
16 interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues through a Labor
17 Code section 2699 et al. PAGA claim.

18 **FOURTH CAUSE OF ACTION**

19 **(Failure to Provide Meal Periods – LC § 226.7)**

20 **(Against all Defendants)**

21 65. TANNER re-alleges and incorporates herein by reference all paragraphs outside this
22 section as though fully set forth herein.

23 66. Pursuant to California Labor Code sections 226.7 and 512, and IWC Wage Order
24 4-2001, section 11, duty-free meal periods of no less than 30 minutes are required for all non-exempt
25 employees who work more than five (5) hours in a work period per workday, except that if the
26 employee's total work period per workday is no more than six (6) hours, the meal period may be
27 waived by mutual consent of the employer and employee. An employer may not employ an
28 employee for a work period of more than 10 hours per workday without providing the employee

1 with a second meal period of not less than 30 minutes, except that if the total hours worked is no
2 more than 12 hours, the second meal period may be waived by mutual consent of the employer and
3 the employee, but only if the first meal period was not waived. Time records of meal breaks must
4 be kept except that meal periods during which operations cease need not be recorded. However, an
5 employer who fails to provide duty-free meal periods must pay the employee an additional one (1)
6 hour of regular pay for each workday in which a required duty-free meal period is not provided.

7 67. Based on TANNER's daily duties being more than 50% non-exempt duties, Plaintiff
8 was a non-exempt employee entitled to the protections of the IWC Wage Order sections and Labor
9 Code sections identified above. Defendants failed to provide TANNER duty-free meal periods
10 during work periods lasting more than five (5) hours; and failed to record meal periods. For
11 example, Defendants' regular work schedule for Plaintiffs on Fridays was approximately 6:45am to
12 1pm without any meal period, totaling a work period of at least approximately 6 hours, 15 minutes
13 of work every Friday without a meal period. Defendants also never obtained written, signed meal
14 period waivers from TANNER. Also, TANNER estimates that Defendants failed to provide
15 TANNER compliant meal periods over 50% of the time on Mondays through Thursday because
16 Defendants' Dental Office was too busy with patients. Thus, Defendants failed to provide compliant
17 meal periods to TANNER in direct violation of California Labor Code sections cited herein.
18 Further, Defendants also failed to pay TANNER meal period premiums for missed meal periods.

19 68. Accordingly, TANNER is entitled to recover damages, interest, penalties, attorneys'
20 fees, and costs available pursuant to Labor Code sections 226.7 and 512, Civil Code section 3289,
21 and the IWC Wage Orders. Defendants are further subject to criminal penalties pursuant to Labor
22 Code sections 215 and 1199.

23 69. Defendants ROBERT K. SCHAFFER and DOES 1-100 as owners, directors,
24 officers, and managing agents of Defendants ROBERT K. SCHAFFER, D.D.S., INC., and DOES
25 1-100 were employers or other persons acting on behalf of Defendants ROBERT K. SCHAFFER,
26 D.D.S., INC. and DOES 1-100, who violated or caused to be violated the Labor Code statutes and
27 IWC Wage Order regulations as alleged above. Accordingly, all Defendants including, but not
28 limited to, ROBERT K. SCHAFFER and DOES 1-100 are individually and personally liable along

1 with Defendants ROBERT K. SCHAFFER, D.D.S., INC. and DOES 1-100 for all of the above
2 described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil penalties,
3 interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues through a Labor
4 Code section 2699 et al. PAGA claim.

5 **FIFTH CAUSE OF ACTION**

6 **(Failure to Provide Rest Periods – LC § 226.7)**

7 **(Against all Defendants)**

8 70. TANNER re-alleges and incorporates herein by reference all paragraphs outside this
9 section as though fully set forth herein.

10 71. Pursuant to California Labor Code section 226.7 and IWC Wage Order 4-2001,
11 section 12, employers must also provide non-exempt employees a paid 10-minute duty-free rest
12 period for every four (4) hours worked. Rest periods need not be recorded. An employer who fails
13 to provide duty-free rest periods must pay the employee an additional one (1) hour of regular pay
14 for each workday in which a duty-free rest period is not provided.

15 72. Based on TANNER's daily duties being more than 50% non-exempt duties,
16 TANNER was a non-exempt employee entitled to the protections of the IWC Wage Order sections
17 and Labor Code sections identified above. Defendants failed to provide TANNER paid duty-free
18 rest periods for every (4) hour hours worked in a workday because Defendants implemented a policy
19 and practice of not providing Plaintiffs 10-minute rest periods by never even informing Plaintiffs
20 that they even had a right to take such breaks. Further, the busy patient volume at Defendants'
21 Dental Office inhibited taking breaks. Defendants also did not pay TANNER missed rest period
22 wage premiums.

23 73. At all times mentioned herein, Defendants violated Labor Code section 226.7 and
24 IWC Wage Orders section 12 by failing to allow TANNER to take uninterrupted rest periods and
25 failing to pay an additional hour of wages for each workday with a missed rest period.

26 74. Accordingly, TANNER is entitled to recover damages, interest, penalties, attorneys'
27 fees, and costs available pursuant to Labor Code sections 226.7, Civil Code section 3289, and the
28 IWC Wage Orders. Defendants are further subject to criminal penalties pursuant to Labor Code

1 sections 215 and 1199.

2 75. Defendants ROBERT K. SCHAFFER and DOES 1-100 as owners, directors,
3 officers, and managing agents of Defendants ROBERT K. SCHAFFER, D.D.S., INC., and DOES
4 1-100 were employers or other persons acting on behalf of Defendants ROBERT K. SCHAFFER,
5 D.D.S., INC. and DOES 1-100, who violated or caused to be violated the Labor Code statutes and
6 IWC Wage Order regulations as alleged above. Accordingly, all Defendants including, but not
7 limited to, ROBERT K. SCHAFFER and DOES 1-100 are individually and personally liable along
8 with Defendants ROBERT K. SCHAFFER, D.D.S., INC. and DOES 1-100 for all of the above
9 described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil penalties,
10 interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues through a Labor
11 Code section 2699 et al. PAGA claim.

12 **SIXTH CAUSE OF ACTION**

13 **(Failure to Provide Compliant Wage Statements and Keep Records – LC § 226)**

14 **(Against all Defendants)**

15 76. TANNER re-alleges and incorporates herein by reference all paragraphs outside this
16 section as though fully set forth herein.

17 77. Labor Code section 226(a) states in pertinent part, as follows: “[a]n employer,
18 semimonthly or at the time of each payment of wages, shall furnish to his or her employee ... an
19 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
20 the employee ..., (5) net wages earned ..., and (9) all applicable hourly rates in effect during the
21 pay period and the corresponding number of hours worked at each hourly rate by the employee...”
22 Labor Code section 226 also requires employers to keep a copy of the wage statements. Labor Code
23 section 246 requires employers to include the amount of paid sick leave available in the wage
24 statement or in a separate writing on pay dates.

25 78. Defendants failed to provide TANNER compliant wage statements at the time
26 wages were paid or semimonthly. The wage statements Defendants provided to TANNER were
27 inaccurate and incomplete due to Defendants’ unlawful policies and practices including, but not
28 limited to, not paying all earned wages for all hours worked at the applicable hourly rates such as

1 minimum wage or overtime rates, not tracking and paying all hours worked, and not indicating gross
2 earned wages among other inadequacies.

3 79. As a result, pursuant to Labor Code section 226(e)(1), TANNER is entitled to
4 recover from Defendants, “the greater of all actual damages or fifty dollars (\$50) for the initial pay
5 period in which a violation occurs and one hundred dollars (\$100) per employee for each violation
6 in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000),
7 and is entitled to an award of costs and reasonable attorney's fees.”

8 80. Defendants ROBERT K. SCHAFFER and DOES 1-100 as owners, directors,
9 officers, and managing agents of Defendants ROBERT K. SCHAFFER, D.D.S., INC., and DOES
10 1-100 were employers or other persons acting on behalf of Defendants ROBERT K. SCHAFFER,
11 D.D.S., INC. and DOES 1-100, who violated or caused to be violated the Labor Code statutes and
12 IWC Wage Order regulations as alleged above. Accordingly, all Defendants including, but not
13 limited to, ROBERT K. SCHAFFER and DOES 1-100 are individually and personally liable along
14 with Defendants ROBERT K. SCHAFFER, D.D.S., INC. and DOES 1-100 for all of the above
15 described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil penalties,
16 interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues through a Labor
17 Code section 2699 et al. PAGA claim.

18 **SEVENTH CAUSE OF ACTION**

19 **(Waiting Time Penalties – LC § 203)**

20 **(Against all Defendants)**

21 81. TANNER re-alleges and incorporates herein by reference all paragraphs outside this
22 section as though fully set forth herein.

23 82. Pursuant to Labor Code section 203(a), “[i]f an employer willfully fails to pay any
24 wages of an employee who is discharged or who quits, the wages of the employee shall continue as
25 a penalty from the due date thereof at the same rate until paid or until an action therefor is
26 commenced; but the wages shall not continue for more than 30 days.” Labor Code section 201
27 requires that, “[i]f an employer discharges and employee, the wages earned and unpaid at the time
28 of discharge are due and payable immediately.”

1 83. On June 22, 2020, Defendants were obligated to pay TANNER all earned and
2 unpaid wages described throughout this operative Complaint when Defendants terminated
3 TANNER. Defendants did not pay TANNER all of the earned unpaid wages described throughout
4 this operative Complaint. More than 30 days have passed, and Defendants continue to fail to pay
5 these earned unpaid wages.

6 84. Defendants committed the acts stated herein knowingly and willfully, thus
7 TANNER is entitled to 30 days of additional daily wages as a waiting time penalty as provided by
8 Labor Code sections 201, 202, 203, and 558.1, which Defendants also have not paid to TANNER
9 yet.

10 85. Defendants ROBERT K. SCHAFFER and DOES 1-100 as owners, directors,
11 officers, and managing agents of Defendants ROBERT K. SCHAFFER, D.D.S., INC., and DOES
12 1-100 were employers or other persons acting on behalf of Defendants ROBERT K. SCHAFFER,
13 D.D.S., INC. and DOES 1-100, who violated or caused to be violated the Labor Code statutes and
14 IWC Wage Order regulations as alleged above. Accordingly, all Defendants including, but not
15 limited to, ROBERT K. SCHAFFER and DOES 1-100 are individually and personally liable along
16 with Defendants ROBERT K. SCHAFFER, D.D.S., INC. and DOES 1-100 for all of the above
17 described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil penalties,
18 interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues through a Labor
19 Code section 2699 et al. PAGA claim.

20 **EIGHTH CAUSE OF ACTION**

21 **(Failure to Indemnify Business Expenses – LC § 2802)**

22 **(Against all Defendants)**

23 86. TANNER re-alleges and incorporates herein by reference all paragraphs outside this
24 section as though fully set forth herein.

25 87. Pursuant to California Labor Code section 2802, “[a]n employer shall indemnify his
26 or her employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
28 employer, even though unlawful, unless the employee, at the time of obeying the directions, believed

1 them to be unlawful.”

2 88. Defendants violated Labor Code section 2802 by requiring TANNER to work from
3 home and use her personal laptop and personal cell phone to perform work duties for a few months
4 beginning in March 2020. Defendants never compensated TANNER for the use of her own
5 equipment among other expenses.

6 89. Accordingly, Defendants are liable for damages, interest, penalties, attorneys’ fees,
7 and costs pursuant to Labor Code sections 558.1 and 2802.

8 90. Defendants ROBERT K. SCHAFFER and DOES 1-100 as owners, directors,
9 officers, and managing agents of Defendants ROBERT K. SCHAFFER, D.D.S., INC., and DOES
10 1-100 were employers or other persons acting on behalf of Defendants ROBERT K. SCHAFFER,
11 D.D.S., INC. and DOES 1-100, who violated or caused to be violated the Labor Code statutes and
12 IWC Wage Order regulations as alleged above. Accordingly, all Defendants including, but not
13 limited to, ROBERT K. SCHAFFER and DOES 1-100 are individually and personally liable along
14 with Defendants ROBERT K. SCHAFFER, D.D.S., INC. and DOES 1-100 for all of the above
15 described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil penalties,
16 interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues through a Labor
17 Code section 2699 et al. PAGA claim.

18 **NINTH CAUSE OF ACTION**

19 **(Unfair Business Practices – LC § 17200)**

20 **(Against all Defendants)**

21 91. TANNER re-alleges and incorporates herein by reference all paragraphs outside this
22 section as though fully set forth herein.

23 92. The acts, omissions, and practices of Defendants as alleged throughout this
24 Complaint for violations of the Labor Code constitute unlawful and unfair business acts and
25 practices within the meaning of sections 17200, et seq. of the California Business & Professions
26 Code.

27 93. TANNER is informed and believes Defendants have engaged in “unlawful”
28 business acts and practices with all Plaintiffs, including TANNER, through Defendants’ policies

1 and practices of failure to pay at least minimum wage for all hours worked, failure to pay overtime
2 at applicable rates, failure to pay wages timely, failure to provide meal and rest periods, failure to
3 pay a one hour wage premium for each workday with a missed meal period and for each workday
4 with a missed rest period, failure to indemnify business expenses, failure to provide compliant wage
5 statements and keep records, failure to pay all earned unpaid wages due when employment ends,
6 and failure to pay accrued waiting time penalties, etc. These failures are all in violation of the
7 statutes and regulations referenced throughout this Complaint.

8 94. Defendants “unfair” business acts and practices, alleged above, caused harm to
9 Plaintiffs which outweighs the utility of such conduct. Such conduct offends public policy, is
10 unethical and dishonest, caused and continues to cause substantial injury to Plaintiffs, and provides
11 Defendants with an unfair competitive advantage over those employers that abide by the law,
12 properly pay earned wages at the required minimum rates timely, properly provide required meal
13 and rest periods or pay wage premiums in lieu thereof, properly provide compliant wage statements,
14 and properly indemnify employees for all necessary expenditures and losses incurred during the
15 course of employment.

16 95. As a result of the conduct described above, Defendants have been and will be
17 unjustly enriched at the expense of Plaintiffs whom Defendants employed. Specifically, Defendants
18 have been unjustly enriched by the retention of a significant sum of dollars in wages earned and
19 wrongfully withheld from Plaintiffs.

20 96. Pursuant to section 17203 of the California Business & Professions Code, TANNER
21 requests that this Court order Defendants to disgorge all ill-gotten gains and award Plaintiffs full
22 restitution of all monies wrongfully acquired by Defendants by such “unfair” business act and
23 practices as outlined herein above, plus interest and attorneys’ fees pursuant to, *inter alia*, section
24 1021.5 of the California Code of Civil Procedure. TANNER additionally request that such funds
25 be impounded by the Court or that an asset freeze or constructive trust be imposed upon such
26 revenues and profits to avoid dissipation or fraudulent transfers or concealment of such monies by
27 Defendants. Plaintiffs may be irreparably harmed or denied an effective and complete remedy if
28 such an order is not granted.

97. Pursuant to section 17203 of the California Business & Professions Code, TANNER further seeks an order of this Court for equitable or injunctive relief in the form of requiring Defendants to correct their unfair business acts and practices by way of properly paying all earned wages timely; providing meal and rest periods when required by law; paying one hour of additional wages as a premium for every workday with an unlawfully missed meal period and every workday with a missed rest period; and indemnifying all business expenses incurred by employees for all of Defendants employees going forward.

98. Accordingly, Plaintiff seeks injunctive relief, restitution, damages, interest, penalties, attorney fees, and costs available pursuant to the Labor Code, Business & Professions Code, and IWC Wage Orders.

TENTH CAUSE OF ACTION

(Retaliation – LC § 1102.5)

(Against Robert K. Schaffer, D.D.S., Inc. and Does 1-100)

99. TANNER re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

100. Labor Code section 1102.5(b) mandates that, “[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has authority to investigate, discover, or correct the violation of 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...” Pursuant to Labor Code section 1102.5(f), “[i]n addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.”

101. On several occasions in 2019, TANNER disclosed to Defendants in staff meetings and to Defendants' office manager outside of staff meetings that the office manager kept making billing errors with higher paying codes incorrectly billed to insurance companies. The errors also

1 caused several months in delays before Defendants received insurance payments and significantly
2 delayed patients' obligations to pay their co-pay portions of the billed services to Defendants.

3 102. Defendants' office manager began treating TANNER poorly after the disclosures.
4 TANNER had no prior write ups and competently performed all of her job duties.

5 103. In August 2019, Defendants terminated TANNER. TANNER is informed and
6 believes that Defendants claimed to the Employment Development Department that the reason was
7 because TANNER used her cell phone at work, which TANNER believes is pretext. Shortly after
8 that, Defendants' office manager went on medical leave and Defendants hired a temporary employee
9 to fill in for their office manager. TANNER is informed and believes that the temporary employee
10 discovered that Defendants had a significant number of old accounts that were open and past due in
11 Defendants' system. TANNER is further informed and believes that the temporary employee then
12 contacted the patients on the past due accounts and attempted to collect, but the patients told the
13 temporary employee that Defendants' office manager had previously contacted them already and
14 made deals with them to pay reduced amounts to satisfy the balances. Shortly thereafter, Defendants
15 terminated and replaced their office manager.

16 104. TANNER is informed and believes that Defendants terminated TANNER in
17 retaliation because she raised concerns about illegal business practices including but not necessarily
18 limited to medical insurance fraud, and Defendants believed that TANNER might disclose the
19 violations to a government agency or a person with authority to correct the noncompliance with the
20 law.

21 105. In November 2019, Defendants apologized to TANNER for terminating her, told
22 her it was a mistake, and asked her to return to her employment without elaborating on any details
23 about how or why Defendants' made a mistake. On or about December 2, 2019, after over 3 months
24 of unemployment, lost wages, and emotional distress from being terminated, TANNER returned to
25 work for Defendants.

26 106. As a direct, foreseeable and proximate result of Defendants' wrongful acts,
27 TANNER has lost earnings, and suffered the expected past severe humiliation, past embarrassment,
28 past mental and emotional distress, and past discomfort, all to her detriment, in an amount to be

1 established according to proof at trial.

2 107. TANNER is informed and believes that in taking the actions alleged herein,
3 Defendants acted with malice, fraud and oppression, and in reckless disregard of TANNER's rights
4 to disclose information which revealed violations of various California laws and regulations.

5 108. Accordingly, TANNER seeks reinstatement, other injunctive relief, declaratory
6 relief, compensatory and punitive damages, interest, attorney fees and costs in an amount to be
7 proven at trial.

8 **ELEVENTH CAUSE OF ACTION**

9 **(Retaliation – LC § 12940(m)(2))**

10 **(Against Robert K. Schaffer, D.D.S., Inc. and Does 1-100)**

11 109. TANNER re-alleges and incorporates herein by reference all paragraphs outside this
12 section as though fully set forth herein.

13 110. Government Code section 12940(m)(2) provides that it is unlawful, "[f]or an
14 employer or other entity covered by this part to, in addition to the employee protections provided
15 pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting
16 accommodation under this subdivision, regardless of whether the request was granted."

17 111. On or about May 15, 2020, TANNER informed Defendants that she was pregnant.
18 Defendants responded that they would hire a new employee, whom TANNER would train, for
19 additional help with TANNER's duties. On or about June 1, 2020, Defendants' new employee
20 began her first day working at the Dental Office. TANNER began training the new employee.

21 112. On or about June 8, 2020, TANNER texted Defendants that she was very sick, and
22 would either be very late for work that day or could not make it to work at all that day. Later that
23 day, TANNER told Defendants that she had to take Thursday, June 11, 2020, off for a prenatal
24 doctor appointment. These were TANNER's requests for reasonable accommodations for illnesses
25 and conditions which were disabilities.

26 113. On or about June 10, 2020, Defendants told TANNER not to come into work on
27 June 11th or 12th (Thursday and Friday) because Defendants wanted to see how the new employee
28 worked on her own without TANNER. On or about June 14, 2020, Defendants asked TANNER to

1 stay home on a 2-week paid leave from June 15, 2020, through June 26, 2020, while Defendants
2 figure out the fit with new employee.

3 114. On or about June 16, 2020, Defendants texted TANNER asking her to come in to
4 pick up her paycheck and sign some paperwork. TANNER informed Defendants that due to her
5 doctor appointment(s) and other commitments scheduled relying on Defendants giving her the 2-
6 week leave, she could not come in until June 22nd. Also, TANNER had heard from co-workers
7 that Defendants terminated her so TANNER asked Defendants if that was true. Defendants
8 responded that they were interviewing for other front desk employees, and reiterated their request
9 that TANNER pick up a paycheck and sign paperwork.

10 115. On or about June 22, 2020, TANNER went to Defendants' Dental Office and
11 Defendants terminated her. TANNER asked why. Defendants refused to explain why they
12 terminated TANNER but handed her a written severance agreement and conditioned Defendants
13 providing TANNER a \$1,600.00 check if TANNER signed the severance agreement. TANNER
14 never signed the agreement nor received the check. TANNER is informed and believes that
15 Defendants terminated her in retaliation for her accommodation request for her medical disability.

16 116. As a direct, foreseeable and proximate result of Defendants' wrongful acts,
17 TANNER has lost earnings, and suffered the expected past severe humiliation, past embarrassment,
18 past mental and emotional distress, and past discomfort, all to her detriment, in an amount to be
19 established according to proof at trial.

20 117. TANNER is informed and believes that in taking the actions alleged herein,
21 Defendants acted with malice, fraud and oppression, and in reckless disregard of TANNER's rights
22 to enjoy protections from being retaliated against for requesting reasonable accommodations for
23 disabilities.

24 118. Accordingly, TANNER seeks reinstatement, other injunctive relief, declaratory
25 relief, compensatory and punitive damages, interest, attorney fees and costs in an amount to be
26 proven at trial.

27 **TWELFTH CAUSE OF ACTION**

28 **(Failure to Make Reasonable Accommodation for Disability – LC § 12940(m)(1))**

(Against Robert K. Schaffer, D.D.S., Inc. and Does 1-100)

119. TANNER re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

120. Government Code section 12940(m)(1) provides that it is unlawful, “[f]or an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee.”

121. On or about May 15, 2020, TANNER informed Defendants that she was pregnant. Defendants responded that they would hire a new employee, whom TANNER would train, for additional help accommodation with TANNER’s duties. On or about June 1, 2020, Defendants’ new employee began her first day working at the Dental Office. TANNER began training the new employee.

122. On or about June 8, 2020, TANNER texted Defendants that she was very sick, and would either be very late for work that day or could not make it to work at all that day. Later that day, TANNER told Defendants that she had to take Thursday, June 11, 2020, off for a prenatal doctor appointment. These were TANNER’s requests for reasonable accommodations for illnesses and conditions which were disabilities, and TANNER was able to perform her job duties competently with reasonable accommodations.

123. On or about June 10, 2020, Defendants told TANNER not to come into work on June 11th or 12th (Thursday and Friday) because Defendants wanted to see how the new employee worked on her own without TANNER. On or about June 14, 2020, Defendants asked TANNER to stay home on a 2-week paid leave from June 15, 2020, through June 26, 2020, while Defendants figure out the fit with new employee.

124. On or about June 16, 2020, Defendants texted TANNER asking her to come in to pick up her paycheck and sign some paperwork. TANNER informed Defendants that due to her doctor appointment(s) and other commitments scheduled relying on Defendants giving her the 2-week leave, she could not come in until June 22nd. Also, TANNER had heard from co-workers that Defendants terminated her so TANNER asked Defendants if that was true. Defendants responded that they were interviewing for other front desk employees, and reiterated their request

1 that TANNER pick up a paycheck and sign paperwork.

2 125. On or about June 22, 2020, TANNER went to Defendants' Dental Office and
3 Defendants terminated her. TANNER asked why. Defendants refused to explain why they
4 terminated TANNER but handed her a written severance agreement and conditioned Defendants
5 providing TANNER a \$1,600.00 check if TANNER signed the severance agreement. TANNER
6 never signed the agreement nor received the check. TANNER is informed and believes that
7 Defendants' termination of TANNER constituted Defendants' refusal to provide a reasonable
8 accommodation for her ongoing disability caused by illness and pregnancy.

9 126. As a direct, foreseeable and proximate result of Defendants' wrongful acts,
10 TANNER has lost earnings, and suffered the expected past severe humiliation, past embarrassment,
11 past mental and emotional distress, and past discomfort, all to her detriment, in an amount to be
12 established according to proof at trial.

13 127. TANNER is informed and believes that in taking the actions alleged herein,
14 Defendants acted with malice, fraud and oppression, and in reckless disregard of TANNER's rights
15 to request and receive reasonable accommodations for her disabilities and pregnancy conditions.

16 128. Accordingly, TANNER seeks reinstatement, other injunctive relief, declaratory
17 relief, compensatory and punitive damages, interest, attorney fees and costs in an amount to be
18 proven at trial.

19 **THIRTEENTH CAUSE OF ACTION**

20 **(Disability Discrimination – LC § 12940(a))**

21 **(Against Robert K. Schaffer, D.D.S., Inc. and Does 1-100)**

22 129. TANNER re-alleges and incorporates herein by reference all paragraphs outside this
23 section as though fully set forth herein.

24 130. Government Code section 12940(a) provides that it is unlawful for an employer to
25 refuse to hire or employ any person or refuse to select any person for a training program leading to
26 employment, or discharge a person from employment or from a training program leading to
27 employment, or discriminate against any person in compensation or in terms, conditions, or
28 privileges of employment on the basis of disability.

1 131. On or about May 15, 2020, TANNER informed Defendants that she was pregnant.
2 Defendants responded that they would hire a new employee, whom TANNER would train, for
3 additional help with TANNER's duties. On or about June 1, 2020, Defendants' new employee
4 began her first day working at the Dental Office. TANNER began training the new employee.

5 132. On or about June 8, 2020, TANNER texted Defendants that she was very sick, and
6 would either be very late for work that day or could not make it to work at all that day. Later that
7 day, TANNER told Defendants that she had to take Thursday, June 11, 2020, off for a prenatal
8 doctor appointment. TANNER's illness and pregnancy caused TANNER disabilities however
9 TANNER was able to perform her duties competently with reasonable accommodations.

10 133. On or about June 10, 2020, Defendants told TANNER not to come into work on
11 June 11th or 12th (Thursday and Friday) because Defendants wanted to see how the new employee
12 worked on her own without TANNER. On or about June 14, 2020, Defendants asked TANNER to
13 stay home on a 2-week paid leave from June 15, 2020, through June 26, 2020, while Defendants
14 figure out the fit with new employee.

15 134. On or about June 16, 2020, Defendants texted TANNER asking her to come in to
16 pick up her paycheck and sign some paperwork. TANNER informed Defendants that due to her
17 doctor appointment(s) and other commitments scheduled relying on Defendants giving her the 2-
18 week leave, she could not come in until June 22nd. Also, TANNER had heard from co-workers
19 that Defendants terminated her so TANNER asked Defendants if that was true. Defendants
20 responded that they were interviewing for other front desk employees, and reiterated their request
21 that TANNER pick up a paycheck and sign paperwork.

22 135. On or about June 22, 2020, TANNER went to Defendants' Dental Office and
23 Defendants terminated her. TANNER asked why. Defendants refused to explain why they
24 terminated TANNER but handed her a written severance agreement and conditioned Defendants
25 providing TANNER a \$1,600.00 check if TANNER signed the severance agreement. TANNER
26 never signed the agreement nor received the check. TANNER is informed and believes that her
27 illness and pregnancy disability were a substantial motivating factor in Defendants' decision to
28 terminate TANNER.

136. As a direct, foreseeable and proximate result of Defendants' wrongful acts, TANNER has lost earnings, and suffered the expected past severe humiliation, past embarrassment, past mental and emotional distress, and past discomfort, all to her detriment, in an amount to be established according to proof at trial.

137. TANNER is informed and believes that in taking the actions alleged herein, Defendants acted with malice, fraud and oppression, and in reckless disregard of TANNER's rights to enjoy protections from being discriminated against on the basis of disability.

138. Accordingly, TANNER seeks reinstatement, other injunctive relief, declaratory relief, compensatory and punitive damages, interest, attorney fees and costs in an amount to be proven at trial.

FOURTEENTH CAUSE OF ACTION

(Failure to Make Reasonable Accommodation for Pregnancy – LC § 12945(a)(3)(A))

(Against Robert K. Schaffer, D.D.S., Inc. and Does 1-100)

139. TANNER re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

140. Government Code section 12940(m)(2) provides that it is unlawful, “[f]or an employer to refuse to provide reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical condition, if the employee so requests, with the advice of the employee’s health care provider.”

141. On or about May 15, 2020, TANNER informed Defendants that she was pregnant. Defendants responded that they would hire a new employee, whom TANNER would train, for additional help with TANNER's duties. On or about June 1, 2020, Defendants' new employee began her first day working at the Dental Office. TANNER began training the new employee.

142. On or about June 8, 2020, TANNER texted Defendants that she was very sick, and would either be very late for work that day or could not make it to work at all that day. Later that day, TANNER told Defendants that she had to take Thursday, June 11, 2020, off for a prenatal doctor appointment. These were TANNER's requests for reasonable accommodations for conditions which were related to her pregnancy, and TANNER was able to perform her job duties

1 competently with reasonable accommodations.

2 143. On or about June 10, 2020, Defendants told TANNER not to come into work on
3 June 11th or 12th (Thursday and Friday) because Defendants wanted to see how the new employee
4 worked on her own without TANNER. On or about June 14, 2020, Defendants asked TANNER to
5 stay home on a 2-week paid leave from June 15, 2020, through June 26, 2020, while Defendants
6 figure out the fit with new employee.

7 144. On or about June 16, 2020, Defendants texted TANNER asking her to come in to
8 pick up her paycheck and sign some paperwork. TANNER informed Defendants that due to her
9 doctor appointment(s) and other commitments scheduled relying on Defendants giving her the 2-
10 week leave, she could not come in until June 22nd. Also, TANNER had heard from co-workers
11 that Defendants terminated her so TANNER asked Defendants if that was true. Defendants
12 responded that they were interviewing for other front desk employees, and reiterated their request
13 that TANNER pick up a paycheck and sign paperwork.

14 145. On or about June 22, 2020, TANNER went to Defendants' Dental Office and
15 Defendants terminated her. TANNER asked why. Defendants refused to explain why they
16 terminated TANNER but handed her a written severance agreement and conditioned Defendants
17 providing TANNER a \$1,600.00 check if TANNER signed the severance agreement. TANNER
18 never signed the agreement nor received the check. TANNER is informed and believes that
19 Defendants' termination of TANNER constituted Defendants' refusal to provide a reasonable
20 accommodation for her medical disability related to her pregnancy.

21 146. As a direct, foreseeable and proximate result of Defendants' wrongful acts,
22 TANNER has lost earnings, and suffered the expected past severe humiliation, past embarrassment,
23 past mental and emotional distress, and past discomfort, all to her detriment, in an amount to be
24 established according to proof at trial.

25 147. TANNER is informed and believes that in taking the actions alleged herein,
26 Defendants acted with malice, fraud and oppression, and in reckless disregard of TANNER's rights
27 to request and receive reasonable accommodations for her disabilities and pregnancy conditions.

28 148. Accordingly, TANNER seeks reinstatement, other injunctive relief, declaratory

1 relief, compensatory and punitive damages, interest, attorney fees and costs in an amount to be
2 proven at trial.

3 **FIFTEENTH CAUSE OF ACTION**

4 **(Sex/Pregnancy Discrimination – LC § 12940(a))**

5 **(Against Robert K. Schaffer, D.D.S., Inc. and Does 1-100)**

6 149. TANNER re-alleges and incorporates herein by reference all paragraphs outside this
7 section as though fully set forth herein.

8 150. Government Code section 12940(a) provides that it is unlawful for an employer to
9 refuse to hire or employ any person or refuse to select any person for a training program leading to
10 employment, or discharge a person from employment or from a training program leading to
11 employment, or discriminate against any person in compensation or in terms, conditions, or
12 privileges of employment on the basis of sex. Pursuant to *Government Code* section 12926(r), “sex”
13 includes pregnancy or medical conditions related to pregnancy, as well as childbirth or medical
14 conditions related to childbirth.

15 151. On or about May 15, 2020, TANNER informed Defendants that she was pregnant.
16 Defendants responded that they would hire a new employee, whom TANNER would train, for
17 additional help with TANNER’s duties. On or about June 1, 2020, Defendants’ new employee
18 began her first day working at the Dental Office. TANNER began training the new employee. On
19 or about June 8, 2020, TANNER texted Defendants that she was very sick, and would either be very
20 late for work that day or could not make it to work at all that day. Later that day, TANNER told
21 Defendants that she had to take Thursday, June 11, 2020, off for a prenatal doctor appointment.

22 152. On or about June 10, 2020, Defendants told TANNER not to come into work on
23 June 11th or 12th (Thursday and Friday) because Defendants wanted to see how the new employee
24 worked on her own without TANNER. On or about June 14, 2020, Defendants asked TANNER to
25 stay home on a 2-week paid leave from June 15, 2020, through June 26, 2020, while Defendants
26 figure out the fit with new employee. TANNER was able to competently perform her job duties
27 with reasonable accommodations.

28 153. On or about June 16, 2020, Defendants texted TANNER asking her to come in to

1 pick up her paycheck and sign some paperwork. TANNER informed Defendants that due to her
2 doctor appointment(s) and other commitments scheduled relying on Defendants giving her the 2-
3 week leave, she could not come in until June 22nd. Also, TANNER had heard from co-workers
4 that Defendants terminated her so TANNER asked Defendants if that was true. Defendants
5 responded that they were interviewing for other front desk employees, and reiterated their request
6 that TANNER pick up a paycheck and sign paperwork.

7 154. On or about June 22, 2020, TANNER went to Defendants' Dental Office and
8 Defendants terminated her. TANNER asked why. Defendants refused to explain why they
9 terminated TANNER but handed her a written severance agreement and conditioned Defendants
10 providing TANNER a \$1,600.00 check if TANNER signed the severance agreement. TANNER
11 never signed the agreement nor received the check. TANNER is informed and believes that her sex
12 as a woman, who was going through a pregnancy with a baby on the way, was a substantial
13 motivating factor in Defendants' decision to terminate her; and that Defendants would have treated
14 a male employee with a pregnant wife and a baby on the way differently.

15 155. As a direct, foreseeable and proximate result of Defendants' wrongful acts,
16 TANNER has lost earnings, and suffered the expected past severe humiliation, past embarrassment,
17 past mental and emotional distress, and past discomfort, all to her detriment, in an amount to be
18 established according to proof at trial.

19 156. TANNER is informed and believes that in taking the actions alleged herein,
20 Defendants acted with malice, fraud and oppression, and in reckless disregard of TANNER's rights
21 to enjoy protections from being discriminated against on the basis of sex or pregnancy.

22 157. Accordingly, TANNER seeks reinstatement, other injunctive relief, declaratory
23 relief, compensatory and punitive damages, interest, attorney fees and costs in an amount to be
24 proven at trial.

25 **SIXTEENTH CAUSE OF ACTION**

26 **(Wrongful Termination in Violation of Public Policy)**

27 **(Against Robert K. Schaffer, D.D.S., Inc. and Does 1-100)**

28 158. TANNER re-alleges and incorporates herein by reference all paragraphs outside this

1 section as though fully set forth herein.

2 159. Labor Code section 1102.5(b) mandates that, “[a]n employer, or any person acting
3 on behalf of the employer, shall not retaliate against an employee for disclosing information, or
4 because the employer believes that the employee disclosed or may disclose information, to a
5 government or law enforcement agency, to a person with authority over the employee or another
6 employee who has investigate, discover, or correct the violation of noncompliance... if the
7 employee has reasonable cause to believe that the information discloses a violation of state or federal
8 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation...”
9 Pursuant to Labor Code section 1102.5(f), “[i]n addition to other penalties, an employer that is a
10 corporation or limited liability company is liable for a civil penalty not exceeding ten thousand
11 dollars (\$10,000) for each violation of this section.”

12 160. Government Code section 12940(m)(2) provides that it is unlawful, “[f]or an
13 employer or other entity covered by this part to, in addition to the employee protections provided
14 pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting
15 accommodation under this subdivision, regardless of whether the request was granted.”

16 161. Government Code section 12940(a) provides that it is unlawful for an employer to
17 refuse to hire or employ any person or refuse to select any person for a training program leading to
18 employment, or discharge a person from employment or from a training program leading to
19 employment, or discriminate against any person in compensation or in terms, conditions, or
20 privileges of employment on the basis of disability and sex. Pursuant to *Government Code* section
21 12926(r), “sex” includes pregnancy or medical conditions related to pregnancy, as well as childbirth
22 or medical conditions related to childbirth.

23 162. The above listed statutes establish California’s public policies prohibiting retaliation
24 and discrimination against employees because employees disclose violations of the law or request
25 reasonable accommodations for disabilities; and prohibiting discrimination based on disability and
26 sex.

27 163. On several occasions in 2019, TANNER disclosed to Defendants in staff meetings
28 and to Defendants’ office manager outside of staff meetings that the office manager kept making

1 billing errors with higher paying codes incorrectly billed to insurance companies. The errors also
2 caused several months in delays before Defendants received insurance payments and significantly
3 delayed patients' obligations to pay their co-pay portions of the billed services to Defendants.

4 164. Defendants' office manager began treating TANNER poorly after the disclosures.
5 TANNER had no prior write ups and competently performed all of her job duties.

6 165. In August 2019, Defendants terminated TANNER the for the first time. TANNER
7 is informed and believes that Defendants claimed to the Employment Development Department that
8 the reason was because TANNER used her cell phone at work, which TANNER believes was
9 pretext. Shortly after that, Defendants' office manager went on medical leave and Defendants hired
10 a temporary employee to fill in for their office manager. TANNER is informed and believes that
11 the temporary employee discovered that Defendants had a significant amount of old accounts that
12 were open and past due in Defendants' system. TANNER is further informed and believes that the
13 temporary employee then contacted the patients on the past due accounts and attempted to collect,
14 but the patients told the temporary employee that Defendants' office manager had previously
15 contacted them already and made deals with them to pay reduced amounts to satisfy the balances.
16 Shortly thereafter, Defendants terminated and replaced their office manager.

17 166. TANNER is informed and believes that Defendants terminated TANNER in
18 retaliation because she raised concerns about illegal business practices including but not necessarily
19 limited to medical insurance fraud, and Defendants believed that TANNER might disclose the
20 violations to a government agency or a person with authority to correct the noncompliance with the
21 law.

22 167. In November 2019, Defendants apologized to TANNER for terminating her, told
23 her it was a mistake, and asked her to return to her employment without elaborating on any details
24 about how or why Defendants' made a mistake. On or about December 2, 2019, after over 3 months
25 of unemployment, lost wages, and emotional distress from being terminated, TANNER returned to
26 work for Defendants.

27 168. On or about May 15, 2020, TANNER informed Defendants that she was pregnant.
28 Defendants responded that they would hire a new employee, whom TANNER would train, for

1 additional help with TANNER's duties. On or about June 1, 2020, Defendants' new employee
2 began her first day working at the Dental Office. TANNER began training the new employee. On
3 or about June 8, 2020, TANNER texted Defendants that she was very sick, and would either be very
4 late for work that day or could not make it to work at all that day. Later that day, TANNER told
5 Defendants that she had to take Thursday, June 11, 2020, off for a prenatal doctor appointment.

6 169. On or about June 10, 2020, Defendants told TANNER not to come into work on
7 June 11th or 12th (Thursday and Friday) because Defendants wanted to see how the new employee
8 worked on her own without TANNER. On or about June 14, 2020, Defendants asked TANNER to
9 stay home on a 2-week paid leave from June 15, 2020, through June 26, 2020, while Defendants
10 figure out the fit with new employee. TANNER was able to competently perform her job duties
11 with reasonable accommodations.

12 170. On or about June 16, 2020, Defendants texted TANNER asking her to come in to
13 pick up her paycheck and sign some paperwork. TANNER informed Defendants that due to her
14 doctor appointment(s) and other commitments scheduled relying on Defendants giving her the 2-
15 week leave, she could not come in until June 22nd. Also, TANNER had heard from co-workers
16 that Defendants terminated her so TANNER asked Defendants if that was true. Defendants
17 responded that they were interviewing for other front desk employees, and reiterated their request
18 that TANNER pick up a paycheck and sign paperwork.

19 171. On or about June 22, 2020, TANNER went to Defendants' Dental Office and
20 Defendants terminated her. TANNER asked why. Defendants refused to explain why they
21 terminated TANNER but handed her a written severance agreement and conditioned Defendants
22 providing TANNER a \$1,600.00 check if TANNER signed the severance agreement. TANNER
23 never signed the agreement nor received the check. TANNER is informed and believes that
24 Defendants' substantial motivating factors for terminating TANNER the second time were: 1) in
25 retaliation for TANNER's accommodation request on June 8, 2020 for a medical disability; 2) in
26 retaliation for her requested pregnancy accommodation for her June 11, 2020 prenatal doctor
27 appointment; 3) because she became pregnant; and 4) because of her sex as a woman who had a
28 baby on the way.

172. As a direct, foreseeable and proximate result of Defendants' wrongful acts, TANNER has lost earnings, and suffered the expected past severe humiliation, past embarrassment, past mental and emotional distress, and past discomfort, all to her detriment, in an amount to be established according to proof at trial.

173. TANNER is informed and believes that in taking the actions alleged herein, Defendants acted with malice, fraud and oppression, and in reckless disregard of TANNER's rights to disclose information which revealed violations of various laws and regulations, enjoy protections from being discriminated against on the basis of disability, sex, pregnancy, and be free from retaliation because she requested reasonable accommodations for her disabilities and pregnancy conditions.

174. Accordingly, TANNER seeks reinstatement, other injunctive relief, declaratory relief, compensatory and punitive damages, interest, attorney fees and costs in an amount to be proven at trial.

PRAAYER

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount exceeding \$25,000 as follows:

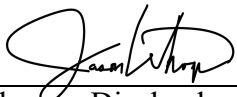
1. For civil penalties in an amount to be proven at trial
2. For compensatory damages in an amount to be proven at trial;
3. For punitive damages in an amount to be proven at trial;
4. For liquidated damages in an amount to be proven at trial;
5. For penalties in an amount to be proven at trial;
6. For attorney fees in an amount to be proven at trial;
7. For costs of suit in an amount to be proven at trial;
8. For interest;
9. For restitution;
10. For reinstatement;
11. For injunctive relief;
12. For declaratory relief; and

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13. For such other and further and relief as the court may deem just and proper.

Respectfully submitted,

Date: 01/06/2021



Thomas Diachenko (SBN 140763)
Heidi Brown (SBN 131888)
LAW OFFICES OF THOMAS M.
DIACHENKO, APC
Jason Whooper (SBN 279972)
W LAW
Counsel for Plaintiff Kimberly Tanner

EXHIBIT 1

October 13, 2020

UPLOADED VIA DIR WEBSITE

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
dir.ca.gov

W LAW
1916 3rd Ave
San Diego, CA 92101
Tel: (619) 432-2836
Fax: (619) 717-2111
Email: info@wlawinc.com

Re: *KIMBERLY TANNER, and other aggrieved employees v. ROBERT K. SCHAFFER; ROBERT K. SCHAFFER, D.D.S., Inc.; and DOES 1-100, inclusive*

To Whom It May Concern:

I, Jason Whooper, along with my co-counsel, Thomas Diachenko and Heidi Brown (of The Law Offices of Thomas M. Diachenko, APC), represent KIMBERLY TANNER (hereinafter also referred to as “TANNER” or “Plaintiff”), individually and on behalf of all other similarly aggrieved employees (hereinafter also referred to jointly as “Plaintiffs” or “Plaintiff and other aggrieved employees”), who are either former or current employees of ROBERT K. SCHAFFER; ROBERT K. SCHAFFER, D.D.S., INC.; and DOES 1-100, inclusive (all of whom are also, hereinafter sometimes referred to collectively as “Defendants”).

Pursuant to Labor Code section 2699.3, this letter constitutes written notice of Defendants’ various Labor Code violations and our intent to recover statutory penalties under the Labor Code’s Private Attorney General Act of 2004. A copy of this letter is also being sent to the Defendants. A check covering the required fee is being mailed to the Department of Industrial Relations, Accounting Unit, 455 Golden Gate Ave., 10th Floor, San Francisco, CA 94102.

INVOLVED ENTITIES AND INDIVIDUALS

Defendant ROBERT K. SCHAFFER owns and operates ROBERT K. SCHAFFER, D.D.S., INC. which collectively do business with DOES 1-100 as Schaffer Dental Excellence at 12750 Carmel Country Rd, # 205, San Diego, CA 92130.

GENERAL ALLEGATIONS

Defendants operate a dental office called Schaffer Dental Excellence (“Dental Office”) in the city of San Diego, California. Defendants hired Plaintiff TANNER, a woman, as Front Desk Staff on or about February 14, 2017. Defendant ROBERT K. SCHAFFER is and at all relevant times was a managing agent for ROBERT K. SCHAFFER, D.D.S., INC. because he is an owner, officer, and director of the entity company; and he personally managed and directed all of the Dental Office’s labor policies and practices for Plaintiffs. At all relevant times Defendants employed approximately 7 or more other aggrieved employees or Plaintiffs. Some had the same

job titles and duties as TANNER. TANNER is informed and believes all of Defendants' current and former employees are non-exempt aggrieved employees.

TANNER is informed and believes that Plaintiffs were paid on an hourly basis and Plaintiffs spent substantially more than 50 percent of their work hours every workweek performing non-exempt duties. Defendants paid TANNER on an hourly basis and TANNER's primary duties were "working the front desk"; processing emails, answering phone calls, providing general reception for patients, visitors, and; processing billing.

Defendants implemented unlawful minimum wage policies and practices. Beginning in March 2020, Defendants closed their regular dental operations because of the state's COVID-19 closure orders. Defendants continued to require TANNER to perform duties for Defendants including, but not limited to: checking and replying to Defendants' office emails from TANNER's home on her laptop; texting and emailing Defendants about certain patient issues; and going into Defendants' office to check mail, voicemails, funnel emergency calls, process insurance checks, etc. Defendants did not pay TANNER at least minimum wage for all of this time worked, and other time worked. TANNER is informed and believes that Defendants also failed to pay other Plaintiffs at least minimum wage for all hours worked.

Defendants implemented unlawful overtime policies and practices. Defendants even announced to Plaintiffs on multiple occasions that Defendants would not pay Plaintiffs overtime rates. Defendants' regular work schedule for Plaintiffs was approximately 6:45pm to 4:00pm on Mondays to Thursdays with Defendants sometimes allowing a 1-hour meal period, totaling at least approximately 8 hours, 15 minutes of work every workday Mondays to Thursdays. Defendants should have paid Plaintiffs at least 15 minutes of overtime rates virtually every workday. However, Defendants generally only paid Plaintiffs straight time or regular rates and did not pay time and one-half overtime rates unless Defendants decided to make rare pre-authorized exceptions.

Defendants implemented unlawful overtime policies and practices. Defendants even announced to Plaintiffs on multiple occasions that Defendants would not pay Plaintiffs overtime rates. Defendants' regular work schedule for Plaintiffs was approximately 6:45pm to 4:00pm on Mondays to Thursdays with Defendants sometimes allowing a 1-hour meal period, totaling at least approximately 8 hours, 15 minutes of work every workday Mondays to Thursdays. Defendants should have paid Plaintiffs at least 15 minutes of overtime rates virtually every workday. However, Defendants generally only paid Plaintiffs straight time or regular rates and did not pay time and one-half overtime rates unless Defendants decided to make rare pre-authorized exceptions.

Defendants implemented unlawful rest period policies and practices. Defendants never informed Plaintiffs of their right to receive 10-minute rest periods within every 4-hour period, or major fraction thereof. Consequently, Defendants never provided, and Plaintiffs never received or took, 10-minute rest periods. Defendants' Dental Office was also often too busy to allow for rest periods.

As described above, Defendants failed to pay at least minimum wage for all hours worked, pay overtime rates when applicable, provide meal periods, and provide paid rest periods. As a result, Defendants also failed to provide Plaintiffs complete and accurate wage statements containing the total hours worked, gross wages earned, applicable pay rates, etc. Defendants also failed to keep compliant records.

Defendants implemented unlawful business expense indemnification policies and practices. Beginning in March 2020, Defendants required TANNER to work from home, and required her to use her own personal laptop and cell phone instead of providing TANNER that type of equipment or paying her for the use of her own equipment. TANNER is informed and believes that all Plaintiffs similarly suffered from Defendants' failure to indemnify for various expenses.

As a result of Defendants' unlawful labor policies and practices including, but not limited to, intentionally failing to timely pay Plaintiffs all earned wages, Defendants also willfully failed to pay Plaintiffs, whom Defendants no longer employ, all earned wages at the time Defendants terminated their employment or within 72 hours of quitting. Further, TANNER is informed and believes that Defendants did not pay all accrued paid time off or paid vacation time when TANNER's employment ended, and TANNER is informed and believes that Defendants implemented this unlawful policy and practice with other Plaintiffs.

On several occasions in 2019, TANNER disclosed to Defendants in staff meetings and to Defendants' office manager outside of staff meetings that the office manager kept making billing errors with higher paying codes incorrectly billed to insurance companies. The errors also caused several months in delays before Defendants received insurance payments and significantly delayed patients' obligations to pay their co-pay portions of the billed services to Defendants.

Defendants' office manager began treating TANNER poorly after the disclosures. TANNER had no prior write ups and competently performed all of her job duties.

In August 2019, Defendants terminated TANNER. TANNER is informed and believes that Defendants claimed to the Employment Development Department that the reason was because TANNER used her cell phone at work, which TANNER believes was pretext. Shortly after that, Defendants' office manager went on medical leave and Defendants hired a temporary employee to fill in for their office manager. TANNER is informed and believes that the temporary employee discovered that Defendants had a significant number of old accounts that were open and past due in Defendants' system. TANNER is further informed and believes that the temporary employee then contacted the patients on the past due accounts and attempted to collect, but the patients told the temporary employee that Defendants' office manager had previously contacted them and already made deals with them to pay reduced amounts to satisfy the balances. Shortly thereafter, Defendants also terminated and replaced their office manager.

TANNER is informed and believes that Defendants terminated TANNER in retaliation because she raised concerns about illegal business practices including but not necessarily limited

to medical insurance fraud, and Defendants believed that TANNER might disclose the violations to a government agency or a person with authority to correct the noncompliance with the law.

In November 2019, Defendants apologized to TANNER for terminating her, told her it was a mistake, and asked her to return to her employment without elaborating on any details about how or why Defendants' made a mistake.

On or about December 2, 2019, after over 3 months of unemployment, lost wages, and emotional distress from being terminated, TANNER returned to work for Defendants.

On or about May 15, 2020, TANNER informed Defendants that she was pregnant. Defendants responded that they would hire a new employee, whom TANNER would train, for additional help with TANNER's duties.

On or about June 1, 2020, Defendants' new employee began her first day working at the Dental Office. TANNER began training the new employee.

On or about June 8, 2020, TANNER texted Defendants that she was very sick, and would either be very late for work that day or could not make it to work at all that day. Later that day, TANNER told Defendants that she had to take Thursday, June 11, 2020, off for a prenatal doctor appointment.

On or about June 10, 2020, Defendants told TANNER not to come into work on June 11th or 12th (Thursday and Friday) because Defendants wanted to see how the new employee worked on her own without TANNER.

On or about June 14, 2020, Defendants asked TANNER to stay home on a 2-week paid leave from June 15, 2020, through June 26, 2020, while Defendants figure out the fit with new employee.

On or about June 16, 2020, Defendants texted TANNER asking her to come in to pick up her paycheck and sign some paperwork. TANNER informed Defendants that due to her doctor appointment(s) and other commitments scheduled relying on Defendants giving her the 2-week leave, she could not come in until June 22nd.

Also, TANNER had heard from co-workers that Defendants terminated her so TANNER asked Defendants if that was true. Defendants responded that they were interviewing for other front desk employees, and reiterated their request that TANNER pick up a paycheck and sign paperwork.

On or about June 22, 2020, TANNER went to Defendants' Dental Office and Defendants terminated her. TANNER asked why. Defendants refused to explain why they terminated TANNER but handed her a written severance agreement and conditioned Defendants providing TANNER a \$1,600.00 check if TANNER signed the severance agreement. TANNER never signed the agreement nor received the check.

Defendants violations were all knowing and willful in disregard of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders. Accordingly, Plaintiffs are entitled to recovery of civil penalties pursuant to various regulations and statutes including, but not limited to, IWC Wage Order 4-2001, sections 3, 4, 7, 11, 12, 20, and pursuant to Labor Code sections including, but not limited to, sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 210, 212, 215, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.3, 226.7, 230.8, 232.5, 233, 246, 246.5, 247, 247.5, 248.5, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, and 2699.5 et al.

STATUTORY VIOLATIONS

a. Failure to Pay Wages Including Minimum Wages Pursuant to California Labor Code Sections 1194, 1195, 1197, and 1197.1

Pursuant to Labor Code section 200, “wages” includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard time, task, piece, commission basis, or other method of calculation. Under California law through Minimum Wage Order MW-2016, Minimum Wage Order MW-2019, and Labor Code section 1182.12, every employer with 25 employees or less shall pay each employee wages not less than \$10.00 per hour beginning January 1, 2017; not less than \$10.50 per hour beginning January 1, 2018; not less than \$11.00 per hour beginning January 1, 2019; not less than \$12.00 per hour beginning January 1, 2020; and not less than \$13.00 per hour beginning January 1, 2020. Pursuant to San Diego Municipal Code Chapter 3, Article 9, Division 1, section 39.0101, every employer must pay each employee who works in the geographic boundaries of the City of San Diego, minimum wage rates not less than \$10.50 per hour beginning July 11, 2016; not less than \$11.50 per hour beginning January 1, 2017; not less than \$12.00 per hour beginning January 1, 2019; and not less than \$13.00 per hour beginning January 1, 2020. Pursuant to Labor Code section 1197, payment of a wage less than the minimum wage as delineated by the commission is unlawful.

Labor Code section 1197.1 specifically states, in part, as follows: “Any employer or other person acting either individually or as an officer, agent, or employee of another person who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, [and] liquidated damages payable to the employee...”

Plaintiffs were non-exempt employees and therefore, were entitled to receive at least minimum wage for every hour they worked for Defendants. However, Defendants failed to pay for all hours worked. For example, beginning in March 2020, Defendants required TANNER to begin checking and replying to Defendants’ office emails from TANNER’s home laptop; texting and emailing Defendants about emergency patient inquiries; and going into Defendants’ office to check mail, voicemails, funnel emergency calls, process insurance checks, etc. without receiving pay for all of those hours worked. TANNER is informed and believes Defendants also failed to pay other Plaintiffs at least minimum wage for all hours worked.

Accordingly, Plaintiffs are entitled to recover the amount of their unpaid wages in addition to the difference between the applicable minimum wage and what Defendants paid Plaintiffs below

the applicable minimum wage for all hours worked pursuant to Labor Code section 1194.2 as liquidated damages, plus interest pursuant to Labor Code sections 1194, 1194.2, Civil Code section 3289, and the IWC Wage Orders from the date payment was due, penalties pursuant to Labor Code sections 204, 210, 215, 558, 1197.1, 2699, and attorneys' fees, expenses, and costs of suit pursuant to Labor Code sections 1194, 1194.3 (to enforce a judgment), and 2699. Defendants are further subject to criminal penalties pursuant to Labor Code sections 215 and 1199.

b. Failure to Pay Overtime Wages Pursuant to California Labor Code Sections 510, 1194, and 1198

Pursuant to the applicable IWC Wage Order 4-2001, section 3(A) and Labor Code sections 200, 500, 510, and 1198, Defendants were required to compensate Plaintiffs for all overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) hours in one workday and forty (40) hours in any one workweek, and for the first eight (8) hours on the seventh consecutive workday in any one workweek; with double (2) time after eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Labor Code section 558 states that, "(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... (d) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

Further, under Labor Code section 1199, "[e]very employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following: (a) [r]equires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission..."

Based on Plaintiffs' daily duties being more than 50% non-exempt duties, they were all non-exempt employees entitled to the protections of the IWC Wage Order sections and Labor Code sections identified above. For the relevant claim periods for Plaintiffs, Defendants failed to compensate them with overtime pay and rates for overtime hours worked as required by the aforementioned labor regulations. For example, Defendants announced on multiple occasions that they would not pay Plaintiffs overtime rates as Defendants general policy. Also, Defendants' regular work schedule for Plaintiffs was approximately 6:45pm to 4:00pm on Mondays to Thursdays with Defendants sometimes allowing a 1-hour meal period, totaling at least approximately 8 hours, 15 minutes of work every workday Mondays to Thursdays. Defendants should have paid Plaintiffs at least 15 minutes of overtime rates virtually every workday. However, Defendants generally only paid Plaintiffs straight time or regular rates and did not pay time and one-half overtime rates unless Defendants decided to make rare pre-authorized exceptions. Plaintiffs are entitled to overtime rate compensation for overtime work performed during the course of their employment for Defendants which Defendants never paid.

As a direct result, Plaintiffs have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, costs and attorneys' fees in seeking to compel Defendants to fully perform their obligations under state law, all to the detriment of Plaintiffs in amounts according to proof at the time of trial.

Accordingly, pursuant to Labor Code sections 201-204, 210, 218.6, 226, 510, 558, 1194, 1194.2, 2699, Civil Code section 3289, and the IWC Wage Orders, Plaintiffs, are entitled to recover penalties, the unpaid balance of hourly pay owed, overtime compensation, interest, penalties, attorneys' fees, and costs of suit. Defendants are further subject to criminal penalties pursuant to Labor Code sections 215 and 1199.

c. Failure to Provide Meal and Rest Periods or Pay Missed Meal and Rest Period Premiums Pursuant to California Labor Code Sections 226.7 and 512

Pursuant to California Labor Code sections 226.7 and 512, and IWC Wage Order 4-2001, section 11, duty-free meal periods of no less than 30 minutes are required for all non-exempt employees who work more than five (5) hours in a work period per workday, except that if the employee's total work period per workday is no more than six (6) hours, the meal period may be waived by mutual consent of the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per workday without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee, but only if the first meal period was not waived. Time records of meal breaks must be kept except that meal periods during which operations cease need not be recorded. However, an employer who fails to provide duty-free meal periods must pay the employee an additional one (1) hour of regular pay for each workday in which a required duty-free meal period is not provided.

Further, pursuant to California Labor Code section 226.7 and IWC Wage Order 4-2001, section 12, employers must also provide non-exempt employees a paid 10-minute duty-free rest period for every four (4) hours worked. Rest periods need not be recorded. An employer who fails to provide duty-free rest periods must pay the employee an additional one (1) hour of regular pay for each workday in which a duty-free rest period is not provided.

Based on Plaintiffs' daily duties being more than 50% non-exempt duties, they were all non-exempt employees entitled to the protections of the IWC Wage Order sections and Labor Code sections identified above. Defendants failed to provide Plaintiffs duty-free meal periods during work periods lasting more than five (5) hours; and failed to record meal periods. For example, Defendants' regular work schedule for Plaintiffs on Fridays was approximately 6:45am to 1pm without any meal period, totaling a work period of at least approximately 6 hours, 15 minutes of work every Friday without a meal period. Defendants also never obtained written, signed meal period waivers from Plaintiffs. Also, TANNER estimates that Defendants failed to provide Plaintiffs compliant meal periods over 50% of the time on Mondays through Thursday because Defendants' Dental Office was too busy with patients. Additionally, Defendants failed to provide Plaintiffs paid duty-free rest periods for every (4) hour hours worked in a workday because Defendants implemented a policy and practice of not providing Plaintiffs 10-minute rest periods by never even informing Plaintiffs that they even had a right to take such breaks. Further, the busy

patient volume at Defendants' Dental Office inhibited taking breaks. Thus, Defendants failed to provide compliant meal and paid rest periods to Plaintiffs in direct violation of California Labor Code sections cited herein. Further, Defendants also failed to pay Plaintiffs meal and rest period premiums for missed meal and rest periods.

Accordingly, Plaintiffs are entitled to recover damages, interest, penalties, attorneys' fees, and costs available pursuant to Labor Code sections 226.7, 512, 558, 2699, Civil Code section 3289, and the IWC Wage Orders. Defendants are further subject to criminal penalties pursuant to Labor Code sections 215 and 1199.

d. Failure to Provide Compliant Wage Statements and Keep Records Pursuant to California Labor Code Section 226

Labor Code section 226(a) states in pertinent part, as follows: "[a]n employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee ... an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee ..., (5) net wages earned ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee..." Labor Code section 226 also requires employers to keep a copy of the wage statements. Labor Code section 246 requires employers to include the amount of paid sick leave available in the wage statement or in a separate writing on pay dates.

Further, Labor Code section 226.3 states, in part, as follows: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law."

Defendants failed to provide Plaintiffs compliant wage statements at the time wages were paid or semimonthly. The wage statements Defendants provided to Plaintiffs were inaccurate and incomplete due to Defendants' unlawful policies and practices including, but not limited to, not paying all earned wages for all hours worked at the applicable hourly rates such as minimum wage or overtime rates, not tracking and paying all hours worked, and not indicating gross earned wages among other inadequacies.

As a result, pursuant to Labor Code section 226(e)(1), Plaintiffs are entitled to recover from Defendants, "the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

Accordingly, Defendants are liable to Plaintiffs for damages, interest, penalties, attorneys' fees, and costs pursuant to Labor Code sections 226, 226.3, and the IWC Wage Orders.

e. Failure to Maintain Time Records Pursuant to California Labor Code Section 1174

Pursuant to Labor Code section 1174(d), Defendants had a legal obligation to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.”

Pursuant to IWC Wage Order 4-2001, section 7, Defendants are required to “keep accurate information with respect to each employee including the following: ... (3) Time records showing when the employee begins and ends each work period. Meal periods, periods, split shift intervals and total daily hours worked shall also be recorded.”

Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

Based on Plaintiffs’ daily duties being more than 50% non-exempt duties, they were all non-exempt employees entitled to the protections of the IWC Wage Order sections and Labor Code sections identified above. TANNER is informed and believes, and based thereon alleges, that Defendants did not record many hours worked by Plaintiffs because of Defendants failure to pay at least minimum wage for all hours worked. For example, Defendants required TANNER to work many hours from home in March 2020 without paying TANNER for the work. Thus, Defendants failed to maintain records of Plaintiffs’ hours worked which Defendants were required to keep pursuant to Labor Code section 1174(d). Therefore, Defendants violated Labor Code section 1174(d) by failing to collect and keep records indicating the daily hours worked by Plaintiffs.

Accordingly, Defendants are liable for penalties, consequential damages, attorneys’ fees, and costs pursuant to Labor Code sections 1174, 1174.5, 2699 et al.

f. Failure to Timely Pay Wages Pursuant to California Labor Code Sections 204 and 210

Pursuant to Labor Code section 204(a), “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

Labor Code section 210 imposes liability for the violation of Labor Code section 204 calculated as, “[f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

Defendants routinely failed to pay Plaintiffs at least minimum wage for all hours worked, overtime rates when required, and missed meal and rest period premium wages timely on regular scheduled paydays as mandated by California law and described above.

Accordingly, Defendants are liable for civil penalties, damages, attorneys' fees, and costs pursuant to Labor Code sections 204, 210, 1194, 1197.1, 226.7, and 2699 et al.

g. Failure to Timely Pay Wages Upon Separation Pursuant to Labor Code Sections 201, 202, 203, and 256 (Waiting Time Penalties)

Pursuant to Labor Code sections 201 and 202, Plaintiffs were entitled to wages earned and unpaid at the time of discharge and no later than within 72 hours after their employment ended under any circumstances. Pursuant to Labor Code section 203(a), "[i]f an employer willfully fails to pay any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Labor Code section 201 requires that, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Further, pursuant to Labor Code section 256, employers are also liable for, "...a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203."

On June 22, 2020, Defendants were obligated to pay TANNER all of her earned and unpaid wages described throughout this letter when Defendants gave TANNER notice of her termination. Defendants did not pay TANNER all of the earned unpaid wages described throughout this letter and TANNER is informed and believes that other Plaintiffs also were not paid their earned and unpaid wages at the time when Defendants discharged them or within the maximum of 72 hours after their employment for Defendants ended. More than 30 days have passed, and Defendants continue to fail to pay these earned unpaid wages.

Defendants committed the acts stated herein knowingly and willfully, thus Plaintiffs are entitled to waiting time penalties, interest, penalties, attorneys' fees, and costs provided by Labor Code sections 201, 202, 203, 256, and 2699.

h. Failure to Indemnify Business Expenses Pursuant to Labor Code Section 2802

Labor Code section 2802(a) states, as follows: "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

Defendants violated Labor Code section 2802 by requiring TANNER to work from home and use her personal laptop and personal cell phone to perform work duties for a few months beginning in March 2020. Defendants never compensated TANNER for the use of her personal computer and personal phone. TANNER is informed and believes that Defendants also failed to indemnify or compensate other Plaintiffs for expenses they incurred on behalf of Defendants because of Defendants unlawful practices implemented here with TANNER.

Accordingly, Defendants are liable for damages, interest, penalties, attorneys' fees, and costs pursuant to Labor Code sections 2802 and 2699.

i. Individual Personal Liability Under California Labor Code Sections 558, 558.1, and 2699

Labor Code section 558 states that, "[a]ny 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..." The Section goes on to state that, "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

Labor Code section 558.1(a) also states that, "[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Labor Code section 558.1(b) explains that, 'other person acting on behalf of an employer' is limited to a natural person who is an owner, director, officer, or managing agent of the employer..."

Defendants DOES 1-100, inclusive, were directors, officers, employees or agents of Defendants ROBERT K. SCHAFFER; ROBERT K. SCHAFFER, D.D.S., INC. and at all times relevant herein were acting on behalf of Defendants ROBERT K. SCHAFFER; ROBERT K. SCHAFFER, D.D.S., INC. Further, there is no doubt that Defendant ROBERT K. SCHAFFER, a natural person is, and at all relevant times, was the owner, director, officer, and managing agent of which caused his namesake professional corporation, entity Defendant ROBERT K. SCHAFFER, D.D.S., INC., to engage in all of the violations of the Labor Code and IWC regulations outlined throughout this letter. All Defendants violated, or caused to be violated, Labor Code sections and IWC Wage Orders including, but not limited to, those requiring payment of unpaid earned wages, payment of meal and rest period premiums for missed meal and rest periods, and indemnification for Defendants' business expenses as alleged throughout this letter.

Accordingly, Plaintiffs are entitled to recovery of damages, interest, penalties, attorneys' fees, and costs as set forth in Labor Code sections 558.1, from all Defendants who are personally liable including, but not limited to ROBERT K. SCHAFFER and DOES 1-100, inclusive.

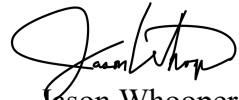
REQUEST TO THE LWDA

Accordingly, TANNER respectfully requests that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, TANNER fully intends to bring a Superior Court action on his/her/their own behalf and in a representative capacity on behalf of other current or former aggrieved employees, for penalties pursuant to various regulations and statutes including, but not limited to, IWC Wage Order 4-2001, sections 3, 4, 7, 11, 12, 20, and pursuant to Labor

Code sections including, but not limited to, sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 210, 212, 215, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.3, 226.7, 230.8, 232.5, 233, 246, 246.5, 247, 247.5, 248.5, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, and 2699.5 et al.

If you have any questions or concerns regarding the above, please do not hesitate to contact my office. Thank you for your attention to this matter.

Sincerely,



Jason Whooper

cc:

SENT VIA CERTIFIED U.S. MAIL

Robert K. Schaffer, D.D.S., Inc.
12750 Carmel Country Rd.
Suite 205
San Diego, CA 92130

Dr. Robert K. Schaffer
12750 Carmel Country Rd.
Suite 205
San Diego, CA 92130

EXHIBIT 2



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

October 13, 2020

Jason Whooper
1916 3rd Ave
San Diego, California 92101

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202010-11487809
Right to Sue: Tanner / Robert K. Schaffer, D.D.S., Inc.

Dear Jason Whooper:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

October 13, 2020

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202010-11487809
Right to Sue: Tanner / Robert K. Schaffer, D.D.S., Inc.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

October 13, 2020

Kimberly Tanner
1916 3rd Ave
San Diego, California 92101

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202010-11487809
Right to Sue: Tanner / Robert K. Schaffer, D.D.S., Inc.

Dear Kimberly Tanner:

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective October 13, 2020 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Kimberly Tanner

DFEH No. 202010-11487809

Complainant,

vs.

Robert K. Schaffer, D.D.S., Inc.
12750 Carmel Country Rd., Suite 205
San Diego, California 92130

Respondents

1. Respondent **Robert K. Schaffer, D.D.S., Inc.** is an employer **Robert K. Schaffer, D.D.S., Inc.** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2.

3. Complainant **Kimberly Tanner**, resides in the City of **San Diego**, State of **California**.

4. Complainant alleges that on or about **October 13, 2020**, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's sex/gender, gender identity or expression, family care or medical leave (cfra) (employers of 50 or more people), genetic information or characteristic, disability (physical or mental), medical condition (cancer or genetic characteristic), pregnancy, childbirth, breast feeding, and/or related medical conditions and as a result of the discrimination was terminated, denied any employment benefit or privilege, denied reasonable accommodation for a disability, denied family care or medical leave (cfra) (employers of 50 or more people), denied accommodation for pregnancy, denied employer paid health care while on pregnancy disability leave, denied work opportunities or assignments.

Complainant experienced retaliation because complainant requested or used a pregnancy-disability related accom., requested or used a disability-related accommodation, requested or used leave under the california family rights act or fmla (employers of 50 or more people) and as a result was terminated, denied any employment benefit or privilege, denied reasonable accommodation for a disability, denied family care or medical leave (cfra) (employers of 50 or more people), denied accommodation for pregnancy, denied employer

1 paid health care while on pregnancy disability leave, denied work opportunities or
2 assignments.

3 **Additional Complaint Details:** Defendant ROBERT K. SCHAFFER owns and operates
4 ROBERT K. SCHAFFER, D.D.S., INC. ("Defendants") which collectively do business with
5 DOES 1-100 as Schaffer Dental Excellence at 12750 Carmel Country Rd, # 205, San Diego,
CA 92130.

6 Defendants operate a dental office called Schaffer Dental Excellence ("Dental Office") in the
7 city of San Diego, California. Defendants hired Plaintiff TANNER, a woman, as Front Desk
8 Staff on or about February 14, 2017. Defendant ROBERT K. SCHAFFER is and at all
9 relevant times was a managing agent for ROBERT K. SCHAFFER, D.D.S., INC. because he
10 is an owner, officer, and director of the entity company; and he personally managed and
11 directed all of the Dental Office's labor policies and practices for Plaintiffs. At all relevant
12 times Defendants employed approximately 7 or more other aggrieved employees or
13 Plaintiffs. Some had the same job titles and duties as TANNER. TANNER is informed and
14 believes all of Defendants' current and former employees are non-exempt aggrieved
employees.

15 TANNER is informed and believes that Plaintiffs were paid on an hourly basis and Plaintiffs
16 spent substantially more than 50 percent of their work hours every workweek performing
17 non-exempt duties. Defendants paid TANNER on an hourly basis and TANNER's primary
18 duties were "working the front desk"; processing emails, answering phone calls, providing
19 general reception for patients, visitors, and; processing billing.

20 Defendants implemented unlawful minimum wage policies and practices. Beginning in
21 March 2020, Defendants closed their regular dental operations because of the state's
22 COVID-19 closure orders. Defendants continued to require TANNER to perform duties for
23 Defendants including, but not limited to: checking and replying to Defendants' office emails
24 from TANNER's home on her laptop; texting and emailing Defendants about certain patient
25 issues; and going into Defendants' office to check mail, voicemails, funnel emergency calls,
26 process insurance checks, etc. Defendants did not pay TANNER at least minimum wage for
27 all of this time worked, and other time worked. TANNER is informed and believes that
28 Defendants also failed to pay other Plaintiffs at least minimum wage for all hours worked.

Defendants implemented unlawful overtime policies and practices. Defendants even
announced to Plaintiffs on multiple occasions that Defendants would not pay Plaintiffs
overtime rates. Defendants' regular work schedule for Plaintiffs was approximately 6:45pm
to 4:00pm on Mondays to Thursdays with Defendants sometimes allowing a 1-hour meal
period, totaling at least approximately 8 hours, 15 minutes of work every workday Mondays
to Thursdays. Defendants should have paid Plaintiffs at least 15 minutes of overtime rates
virtually every workday. However, Defendants generally only paid Plaintiffs straight time or
regular rates and did not pay time and one-half overtime rates unless Defendants decided to
make rare pre-authorized exceptions.

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7 virtually every workday. However, Defendants generally only paid Plaintiffs straight time or
8 regular rates and did not pay time and one-half overtime rates unless Defendants decided to
9 make rare pre-authorized exceptions.

10 Defendants implemented unlawful rest period policies and practices. Defendants
11 never informed Plaintiffs of their right to receive 10-minute rest periods within every 4-hour
12 period, or major fraction thereof. Consequently, Defendants never provided, and Plaintiffs
13 never received or took, 10-minute rest periods. Defendants' Dental Office was also often
14 too busy to allow for rest periods.

15 As described above, Defendants failed to pay at least minimum wage for all hours worked,
16 pay overtime rates when applicable, provide meal periods, and provide paid rest periods. As
17 a result, Defendants also failed to provide Plaintiffs complete and accurate wage statements
18 containing the total hours worked, gross wages earned, applicable pay rates, etc.
19 Defendants also failed to keep compliant records.

20 Defendants implemented unlawful business expense indemnification policies and practices.
21 Beginning in March 2020, Defendants required TANNER to work from home, and required
22 her to use her own personal laptop and cell phone instead of providing TANNER that type of
23 equipment or paying her for the use of her own equipment. TANNER is informed and
24 believes that all Plaintiffs similarly suffered from Defendants' failure to indemnify for various
25 expenses.

26 As a result of Defendants' unlawful labor policies and practices including, but not limited to,
27 intentionally failing to timely pay Plaintiffs all earned wages, Defendants also willfully failed
28 to pay Plaintiffs, whom Defendants no longer employ, all earned wages at the time
29 Defendants terminated their employment or within 72 hours of quitting. Further, TANNER is
30 informed and believes that Defendants did not pay all accrued paid time off or paid vacation
31 time when TANNER's employment ended, and TANNER is informed and believes that
32 Defendants implemented this unlawful policy and practice with other Plaintiffs.

33 On several occasions in 2019, TANNER disclosed to Defendants in staff meetings and to
34 Defendants' office manager outside of staff meetings that the office manager kept making
35 billing errors with higher paying codes incorrectly billed to insurance companies. The errors
36 also caused several months in delays before Defendants received insurance payments and
37 significantly delayed patients' obligations to pay their co-pay portions of the billed services to
38 Defendants.

39 Defendants' office manager began treating TANNER poorly after the disclosures. TANNER
40 had no prior write ups and competently performed all of her job duties.

1 In August 2019, Defendants terminated TANNER. TANNER is informed and believes that
2 Defendants claimed to the Employment Development Department that the reason was
3 because TANNER used her cell phone at work, which TANNER believes was pretext.
4 Shortly after that, Defendants' office manager went on medical leave and Defendants hired
5 a temporary employee to fill in for their office manager. TANNER is informed and believes
6 that the temporary employee discovered that Defendants had a significant number of old
7 accounts that were open and past due in Defendants' system. TANNER is further informed
8 and believes that the temporary employee then contacted the patients on the past due
9 accounts and attempted to collect, but the patients told the temporary employee that
10 Defendants' office manager had previously contacted them and already made deals with
11 them to pay reduced amounts to satisfy the balances. Shortly thereafter, Defendants also
12 terminated and replaced their office manager.

TANNER is informed and believes that Defendants terminated TANNER in retaliation
because she raised concerns about illegal business practices including but not necessarily
limited to medical insurance fraud, and Defendants believed that TANNER might disclose
the violations to a government agency or a person with authority to correct the
noncompliance with the law.

10 In November 2019, Defendants apologized to TANNER for terminating her, told her it was a
11 mistake, and asked her to return to her employment without elaborating on any details about
12 how or why Defendants' made a mistake.

13 On or about December 2, 2019, after over 3 months of unemployment, lost wages, and
14 emotional distress from being terminated, TANNER returned to work for Defendants.

15 On or about May 15, 2020, TANNER informed Defendants that she was pregnant.
16 Defendants responded that they would hire a new employee, whom TANNER would train,
17 for additional help with TANNER's duties.

18 On or about June 1, 2020, Defendants' new employee began her first day working at the
19 Dental Office. TANNER began training the new employee. On or about June 8, 2020,
20 TANNER texted Defendants that she was very sick, and would either be very late for work
21 that day or could not make it to work at all that day. Later that day, TANNER told
22 Defendants that she had to take Thursday, June 11, 2020, off for a prenatal doctor
23 appointment.

24 On or about June 10, 2020, Defendants told TANNER not to come into work on June 11th or
25 12th (Thursday and Friday) because Defendants wanted to see how the new employee
26 worked on her own without TANNER.

27 On or about June 14, 2020, Defendants asked TANNER to stay home on a 2-week paid
28 leave from June 15, 2020, through June 26, 2020, while Defendants figure out the fit with
new employee.

On or about June 16, 2020, Defendants texted TANNER asking her to come in to pick up
her paycheck and sign some paperwork. TANNER informed Defendants that due to her

1 doctor appointment(s) and other commitments scheduled relying on Defendants giving her
2 the 2-week leave, she could not come in until June 22nd.

3 Also, TANNER had heard from co-workers that Defendants terminated her so TANNER
4 asked Defendants if that was true. Defendants responded that they were interviewing for
5 other front desk employees, and reiterated their request that TANNER pick up a paycheck
6 and sign paperwork.

7 On or about June 22, 2020, TANNER went to Defendants' Dental Office and Defendants
8 terminated her. TANNER asked why. Defendants refused to explain why they terminated
9 TANNER but handed her a written severance agreement and conditioned Defendants
10 providing TANNER a \$1,600.00 check if TANNER signed the severance agreement.
11 TANNER never signed the agreement nor received the check.

12 TANNER is informed and believes that Defendants' substantial motivating factors for
13 terminating TANNER the second time were: 1) in retaliation for TANNER's accommodation
14 request on June 8, 2020 for a medical disability; 2) in retaliation for her requested
15 pregnancy accommodation for her June 11, 2020 prenatal doctor appointment; 3) because
16 she became pregnant; and 4) because of her sex as a woman who had a baby on the way.
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1 VERIFICATION

2 I, **Jason Whooper**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On October 13, 2020, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **San Diego, California**
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