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JANNETTE GUTIERREZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

JANNETTE GUTIERREZ, an individual,

Plaintiff,

v.

ONYX PAVING COMPANY, INC., a
California corporation; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 30-2020-01174124-CU-WT-CJC *sb*

FIRST AMENDED COMPLAINT FOR:

- 1. DISCRIMINATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
- 2. HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
- 3. RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
- 4. FAILURE TO PREVENT DISCRIMINATION, HARASSMENT AND RETALIATION IN VIOLATION OF GOV'T CODE §12940(k);**
- 5. FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
- 6. FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
- 7. FOR DECLARATORY JUDGMENT**
- 8. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 9. FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 1194);**
- 10. FAILURE TO PAY PREVAILING WAGES (CAL. LABOR CODE §§1773, ET SEQ.);**

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- 11. FAILURE TO PAY MINIMUM WAGES (CAL. LABOR CODE §§1182.12, 1194, 1194.2, 1197);
 - 12. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);
 - 13. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);
 - 14. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);
 - 15. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203); AND
 - 16. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.);
 - 17. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ.);
- DEMAND OVER \$25,000**
- DEMAND FOR JURY TRIAL**

15 **COMES NOW PLAINTIFF, JANNETTE GUTIERREZ**, and for causes of action against the
16 Defendants and each of them, alleges as follows:

17
18 **JURISDICTION**

19 1. This Court is the proper court, and this action is properly filed in Orange County, because
20 Defendants' obligations and liability arise therein, because Defendants maintain offices and transact
21 business within Orange County, and because the work that is the subject of this action was performed by
22 Plaintiff in Orange County.

23
24 **THE PARTIES**

25 2. Plaintiff, JANNETTE GUTIERREZ, is and at all times relevant hereto was a resident of
26 the County of Riverside, State of California.

27 3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
28 hereto, Defendant ONYX PAVING COMPANY, INC. (hereinafter referred to as "Employer), was and

1 is a California corporation doing business at 2890 East LA Cresta Avenue, in the City of Anaheim,
2 County of Orange, State of California.

3 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
4 hereto, Employer owned and operated a private construction company.

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

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

13 7. The true names and capacities, whether individual, corporate, associate, or otherwise, of
14 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
15 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
16 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
17 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
18 Defendants is responsible for the wrongful acts alleged herein and is therefore liable to Plaintiff as alleged
19 hereinafter.

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

26 9. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
27 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
28 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the

1 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code
2 §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
3 each of them, including those defendants named as DOES 1-20, and each of them, formed and executed
4 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
5 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
6 actually causing Plaintiff harm.

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

10 11. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to prevent
11 discrimination or retaliation, failure to accommodate, failure to engage in the interactive process, and
12 wrongful termination under Government Code §§12940, et seq., the California Fair Employment and
13 Housing Act (“FEHA”) with the California Department of Fair Employment and Housing (“DFEH”) and
14 has satisfied Plaintiff’s administrative prerequisites with respect to these and all related filings.

15
16 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

17 12. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
18 of interest and ownership between Employer and DOES 1-20 that the individuality and separateness of
19 defendants have ceased to exist.

20 13. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
21 purported corporate existence, Employer and DOES 1-20 are, in reality, one and the same, including, but
22 not limited to because:

23 a. Employer is completely dominated and controlled by one another and DOES 1-20,
24 who personally committed the frauds and violated the laws as set forth in this complaint, and who have
25 hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or accomplish
26 some other wrongful or inequitable purpose.

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

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

7 d. Employer do not comply with all requisite corporate formalities to maintain a legal
8 and separate corporate existence.

9 e. The business affairs of Employer and DOES 1-20 are, and at all times relevant
10 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
11 inextricable confusion. Employer is, and at all times relevant hereto were, used by one another and DOES
12 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and were, the
13 alter ego of one another and DOES 1-20. The recognition of the separate existence of Defendants would
14 not promote justice, in that it would permit Defendants to insulate themselves from liability to Plaintiff
15 for violations of the Government Code and other statutory violations. The corporate existence of
16 Employer and DOES 1-20 should be disregarded in equity and for the ends of justice because such
17 disregard is necessary to avoid fraud and injustice to Plaintiff herein.

18 14. Accordingly, Employer constitutes the alter ego of one another and DOES 1-20, and the
19 fiction of their separate corporate existence must be disregarded.

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

26 16. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
27 between DOES 1-20, Employer, or any of them, (1) there is an express or implied agreement of
28 assumption pursuant to which Employer and/or DOES 1-20 agreed to be liable for the debts of the other

1 Defendants, (2) the transaction between Employer and/or DOES 1-20 and the other Defendants amounts
2 to a consolidation or merger of the two corporations, (3) Employer and/or DOES 1-20 are a mere
3 continuation of the other Defendants, or (4) the transfer of assets to Employer and/or DOES 1-20 is for
4 the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employer and/or DOES
5 1-20 are the successors of one or more of the other Defendants and are liable on that basis.

6
7 **FACTUAL ALLEGATIONS**

8 17. On or about June 20, 2019, Defendants hired Plaintiff to work as a forewoman. Plaintiff
9 was a full-time, non-exempt employee, and performed all of Plaintiff's job duties satisfactorily before
10 Plaintiff was wrongfully terminated on or about April 7, 2020.

11 18. At the time of Plaintiff's termination, Plaintiff was 48 years old.

12 19. Between approximately June 20, 2019 and April 7, 2020, Plaintiff's prevailing wage
13 hourly rate was \$74.90. During this time period, Plaintiff's fixed schedule was five days per week,
14 Monday through Friday, for approximately 12 to 14 hours per day.

15 20. On multiple occasions throughout Plaintiff's employment, Defendants reduced Plaintiff's
16 hourly rate to wages below the prevailing wage rate Plaintiff was entitled to.

17 21. Plaintiff worked approximately 25 hours each week, for which Plaintiff received no wages
18 at all, not Plaintiff's hourly wage rate, or even the requisite minimum wage.

19 22. Plaintiff worked approximately 30 overtime hours each week but was not paid for 25
20 overtime hours at all. For approximately 5 overtime hours, Plaintiff only received Plaintiff's regularly
21 hourly wage rate for these hours, with no overtime premium.

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

25 24. Throughout Plaintiff's employment, Plaintiff did not receive uninterrupted statutory 30-
26 minute meal periods for days on which Plaintiff worked at least 5 hours, which was each day Plaintiff
27 worked. Throughout Plaintiff's employment, Plaintiff did not receive a second uninterrupted statutory
28 30-minute meal periods for days on which Plaintiff worked at least 10 hours, which was 5 days each

1 week. One or more of Plaintiff's 30-minute meal periods were not provided or interrupted approximately 5 times per week.

25. Beginning in or around November 2019, Plaintiff was sexually harassed by her male co-workers. On multiple occasions, Plaintiff's co-workers grabbed their genitals in front of her while asking her to go out on dates and making sexual comments.

26. Plaintiff reported the harassment to Defendants, who failed to investigate her complaints or take any action to stop the harassment and protect her from future incidents of harassment. At one point, one co-worker even grabbed Plaintiff. Plaintiff complained and reported this unwanted behavior to her Defendants. Despite her complaints, Defendants never acted to stop the harassment.

27. On or about December 9, 2019, Plaintiff was injured while performing her job duties when she fell off a truck. The injury limited Plaintiff's ability to perform the major life activity of working and, therefore, constituted a disability. The following day Plaintiff reported her injury to the superintendent, Tyler Doe., and obtained medical treatment.

28. Plaintiff's doctor placed her on a short medical leave, which Plaintiff reported to Defendants. However, while on medical leave, Defendants decreased Plaintiff's hourly wage rate.

29. Shortly thereafter, Plaintiff was cleared to return to work with work restrictions. When Plaintiff provided her work restrictions to Defendants, Defendants cut Plaintiff's hourly wage rate yet again.

30. Plaintiff continued to treat her disability and regularly provided her updated work restrictions to Defendants. In or around January 2020, Defendants informed her that she could no longer work because of her work restrictions, and that she had to be cleared to work without restrictions.

31. Shortly thereafter, on or about April 7, 2020, Defendants terminated Plaintiff's employment.

32. Defendants discriminated and retaliated against Plaintiff by terminating her employment and for exercising Plaintiff's right to request an accommodation of Plaintiff's disability and/or medical condition.

33. Defendants also subjected Plaintiff to harassment by refusing and failing to investigate Plaintiff's reports of harassment and protect Plaintiff from future incidents of harassment.

1 34. At all relevant times, Defendants failed to properly engage in a good faith interactive
2 process in an effort to properly accommodate Plaintiff's disability and/or medical condition such that
3 Plaintiff could continue working for Defendants.

4 35. At all relevant times, Defendants failed to reasonably accommodate Plaintiff even though
5 Plaintiff was able to perform the essential job duties of Plaintiff's position or another position with or
6 without accommodations.

7 36. Plaintiff's termination was substantially motivated by Plaintiff's age, gender, sex,
8 disability or perceived disability, medical condition or perceived medical condition, request for
9 accommodation, and/or engagement in protected activities, without any discussion of disability
10 accommodations or any good faith attempt to engage in the interactive process with Plaintiff.
11 Defendants' discriminatory animus is evidenced by the previously mentioned facts.

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

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

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

26 40. Plaintiff claims general damages for emotional and mental distress and aggravation in a
27 sum in excess of the jurisdictional minimum of this Court.
28

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

6
7 **FIRST CAUSE OF ACTION**
8 **FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
9 **AGAINST ALL DEFENDANTS**

10 42. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 37, inclusive, as
11 though set forth in full herein.

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

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

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

20 46. Plaintiff was a member of multiple protected classes as a result of Plaintiff's age, gender,
21 sex, disability, medical condition and/or the perception that Plaintiff was suffering from a disability
22 and/or medical condition.

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

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

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

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

51. The damage allegations of Paragraphs 38 through 41, inclusive, are herein incorporated by reference.

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

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

SECOND CAUSE OF ACTION

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

AGAINST ALL DEFENDANTS

54. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 37, inclusive, as though set forth in full herein.

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

56. As such term is used under FEHA, “on the bases enumerated in this part” means or refers to harassment on the bases of one or more of the protected characteristics under FEHA.

57. These laws set forth in the preceding paragraph require Defendants to refrain from harassing, or creating, or maintaining a hostile work environment against an employee based upon the

1 employee's age, gender, sex, disability and/or medical condition, real or perceived, use of medical leave,
2 and engagement in protected activities, as set forth hereinabove.

3 58. Defendants' harassing conduct was severe or pervasive, was unwelcome by Plaintiff, and
4 a reasonable person in Plaintiff's circumstances would have considered the work environment to be
5 hostile or abusive.

6 59. Defendants violated the FEHA and the public policy of the State of California which is
7 embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of
8 Plaintiff's age, gender, sex, disability and/or medical condition, real or perceived, use of medical leave,
9 engagement in protected activities, and/or some combination of these protected characteristics, as set
10 forth hereinabove.

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

13 61. The above said acts of Defendants constitute violations of the FEHA and violations of the
14 public policy of the State of California. Such violations were a proximate cause in Plaintiff's damage as
15 stated below.

16 62. The damage allegations of Paragraphs 38 through 41, inclusive, are herein incorporated
17 by reference.

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

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

THIRD CAUSE OF ACTION
FOR RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST ALL DEFENDANTS

65. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 37, inclusive, as though set forth in full herein.

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

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

68. Plaintiff engaged in the protected activities of requesting accommodation, requesting medical leave and/or exercising Plaintiff's right to medical leave, and complaining about and protesting Defendants' discriminatory and harassing conduct towards Plaintiff based upon Plaintiff's age, gender, sex, disability, medical condition, real or perceived, and use of medical leave.

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

70. Plaintiff is informed and believes that Plaintiff's conduct of requesting accommodation, requesting medical leave and/or exercising Plaintiff's right to medical leave, complaining about and protesting about Defendants' discriminatory and harassing conduct, and/or some combination of these factors, were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

71. Defendants violated the FEHA by retaliating against Plaintiff and terminating Plaintiff for attempting to exercise Plaintiff's protected rights, as set forth hereinabove.

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

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

1 74. The damage allegations of Paragraphs 38 through 41, inclusive, are herein incorporated
2 by reference.

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

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

11
12 **FOURTH CAUSE OF ACTION**
13 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION**
14 **IN VIOLATION OF GOV'T CODE §12940(k)**
15 **AGAINST ALL DEFENDANTS**

16 77. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 37, inclusive, as
17 though set forth in full herein.

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

23 79. The above said acts of Defendants constitute violations of the FEHA and were a proximate
24 cause in Plaintiff's damage as stated below.

25 80. The damage allegations of Paragraphs 38 through 41, inclusive, are herein incorporated
26 by reference.

27 81. The foregoing conduct of Defendants individually, or by and through their officers,
28 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was

1 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
2 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
3 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
4 punitive damages in an amount appropriate to punish or make an example of Defendants.

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

7
8 **FIFTH CAUSE OF ACTION**
9 **FOR FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS**
10 **IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
11 **AGAINST ALL DEFENDANTS**

12 83. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as
13 though set forth in full herein.

14 84. At all times hereto, the FEHA, including in particular Government Code §12940(m), was
15 in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty on
16 Defendants to make reasonable accommodation for the known physical disability and/or medical
17 condition of an employee.

18 85. At all relevant times, Plaintiff was a member of a protected class within the meaning of,
19 in particular, Government Code §§12940(a) & 12986(1) et seq. because Plaintiff had a disability, a
20 physical condition that affected Plaintiff's major life activities, and medical condition of which
21 Defendants had both actual and constructive knowledge.

22 86. At all times herein, Plaintiff was willing and able to perform the duties and functions of
23 the position in which Plaintiff was employed or could have performed the duties and functions of that
24 position with reasonable accommodations. At no time would the performance of the functions of the
25 employment position, with a reasonable accommodation for Plaintiff's disability or medical condition,
26 actual or as it was perceived by Defendants, have been a danger to Plaintiff's or any other person's health
27 or safety. Accommodation of Plaintiff's disability, real or perceived, or medical condition, real or
28 perceived by Defendants, would not have imposed an undue hardship on Defendants. Defendants failed

1 and refused to accommodate Plaintiff's disability, failed to engage in the interactive process with Plaintiff
2 and continue to violate this obligation, up to and including the date of Plaintiff's termination or, if
3 Defendant contends Plaintiff was never terminated, through the present and ongoing.

4 87. The above said acts of Defendants constitute violations of the FEHA and were a proximate
5 cause in Plaintiff's damage as stated below.

6 88. The damage allegations of Paragraphs 38 through 41, inclusive, are herein incorporated
7 by reference.

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

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

16
17 **SIXTH CAUSE OF ACTION**

18 **FOR FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS**

19 **IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**

20 **AGAINST ALL DEFENDANTS**

21 91. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 37, inclusive, as
22 though set forth in full herein.

23 92. At all times hereto, the FEHA, including in particular Government Code §12940(n), was
24 in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty on
25 Defendants to engage in a timely, good faith, interactive process with the employee to determine effective
26 reasonable accommodations, if any, in response to a request for reasonable accommodation by an
27 employee with a known physical disability or known medical condition and/or becoming aware of the
28 employee's need for accommodation.

1 93. At all relevant times, Plaintiff was a member of a protected class within the meaning of,
2 in particular, Government Code §§12940(a) & 12986(1) et seq. because Plaintiff had a physical disability
3 that affected Plaintiff's major life activities, and medical condition of which Defendants had both actual
4 and constructive knowledge.

5 94. Plaintiff reported the disability to Defendants and requested accommodation, triggering
6 Defendants' obligation to engage in the interactive process with Plaintiff, but at all times herein,
7 Defendants failed and refused to do so. Thereafter, despite Defendants continuing obligation to engage
8 in the interactive process with Plaintiff, Defendants failed and refused to have any dialogue with Plaintiff
9 whatsoever, on any of these occasions, and Defendants violated, and continued to violate this obligation
10 up to and including the date of Plaintiff's termination or, if Defendant contends Plaintiff was never
11 terminated, through the present and ongoing.

12 95. The above said acts of Defendants constitute violations of the FEHA and were a proximate
13 cause in Plaintiff's damage as stated below.

14 96. The damage allegations of Paragraphs 38 through 41, inclusive, are herein incorporated
15 by reference.

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

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

SEVENTH CAUSE OF ACTION
FOR DECLARATORY JUDGMENT
AGAINST ALL DEFENDANTS

99. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 98, inclusive, as though set forth in full herein.

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

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

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for these reasons foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advancement, and substantially and adversely affects the interests of employees, employers, and the public in general.

Further, the practice of discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information in housing accommodations is declared to be against public policy.

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

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

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

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

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

The opportunity to seek, obtain, and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic

1 information, marital status, sex, gender, gender identity, gender
2 expression, age, or sexual orientation is hereby recognized as and declared
3 to be a civil right.

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

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

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

26 106. A judicial declaration is necessary and appropriate at this time under the circumstances in
27 order that Plaintiff, for Plaintiff and on behalf of employees in the State of California and in conformity
28 with the public policy of the State, obtain a judicial declaration of the wrongdoing of Defendants and to

1 condemn such discriminatory employment policies or practices prospectively. *Harris v. City of Santa*
2 *Monica* (2013) 56 Cal.4th 203.

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

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

11
12 **EIGHTH CAUSE OF ACTION**
13 **FOR WRONGFUL TERMINATION**
14 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
15 **AGAINST ALL DEFENDANTS**

16 109. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 37, inclusive, as
17 though set forth in full herein.

18 110. At all relevant times mentioned in this complaint, the FEHA was in full force and effect
19 and was binding on Defendants. This law requires Defendants to refrain, among other things, from
20 discriminating against any employee on the basis of age, gender, sex, disability, medical condition, real
21 or perceived, and use of medical leave, and from retaliating against any employee who engages in
22 protected activity. At all times mentioned in this complaint, Article I, Section 8 of the California
23 Constitution was in full force and effect and binding on Defendants. This law requires Defendants to
24 refrain from disqualifying a person from pursuing employment on the basis of race, color, national origin,
25 or sex.

26 111. At all times mentioned in this complaint, it was a fundamental policy of the State of
27 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of age,
28

1 gender, sex, disability, medical condition, real or perceived, use of medical leave and/or engagement in
2 protected activity.

3 112. Plaintiff believes and thereon alleges that Plaintiff's age, gender, sex, disability and/or
4 medical condition, real or perceived, use of medical leave, engagement in protected activity with respect
5 to these protected classes, and/or some combination thereof, were factors in Defendants' conduct as
6 alleged hereinabove.

7 113. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
8 employment on the basis of age, gender, sex, disability, medical condition, real or perceived, or use of
9 medical leave, Plaintiff's complaining of harassment and discrimination due to these protected classes,
10 Plaintiff's engagement in protected activity, and/or some combination of these factors, were a proximate
11 cause in Plaintiff's damages as stated below.

12 114. The above said acts of Defendants constitute violations of the Government Code and the
13 public policy of the State of California embodied therein as set forth above. Defendants violated these
14 laws by discriminating and retaliating against Plaintiff and terminating Plaintiff's employment in
15 retaliation for exercise of protected rights.

16 115. At all times mentioned in his complaint, it was a fundamental policy of the State of
17 California that Defendants cannot discriminate and/or retaliate against any employee in violation of the
18 FEHA.

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

21 117. The damage allegations of Paragraphs 38 through 41, inclusive, are herein incorporated
22 by reference.

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

NINTH CAUSE OF ACTION
FOR FAILURE TO PAY WAGES DUE
LABOR CODE §§201, 1182.12, 1194, 1194.2
AGAINST ALL DEFENDANTS

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

120. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and required by 8 Code of Regulations §11160, as set forth hereinabove. As alleged herein, Defendants routinely failed to pay Plaintiff for hours worked beyond eight in a day or 40 per week.

121. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8 Code of Regulations §11160, and Industrial Welfare Commission Order No. 16-2001.

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

123. Labor Code §558(a) provides that any person acting on behalf of an employer who violates, or causes to be violated, any statute or provision regulating hours and days of work in any order of the Industrial Welfare Commission pay a civil penalty in the amount of \$50.00 for each underpaid employee for each pay period in which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the person acting on behalf of an employer is liable in the amount of \$100.00 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

124. In addition to the unpaid wages, Plaintiff is entitled to civil penalties in this amount stated above based upon Defendants' underpayment of minimum and overtime wages. Within the one year immediately preceding the filing of this Complaint, Defendants, and each of them, violated Labor Code §558 on 24 pay periods, the first of which Defendants are penalized \$50.00, and the remainder of which Defendants are penalized \$100.00 each, for a total due in Labor Code §558 penalties of \$2,350.00.

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

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

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

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

Effective	26+ employees	1-25 employees
1/1/20	\$13.00	\$12.00
1/1/19	\$12.00	\$11.00
1/1/18	\$11.00	\$10.50
1/1/17	\$10.50	\$10.00

Effective	New wage	Old Wage
1/1/16	\$10.00	\$9.00
7/1/14	\$9.00	\$8.00
1/1/08	\$8.00	\$7.50
1/1/07	\$7.50	\$6.75

128. At all relevant times, Employers employed 26 or more employees.

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

130. Defendants failed to pay Plaintiff the requisite minimum wage in each of the following ways in the four years immediately preceding the filing of this complaint:

a. From June 20, 2019 to December 31, 2019, Plaintiff worked approximately 25 hours per week without getting paid anything. Therefore Plaintiff is owed \$8,100.00 calculated at 25 hours per week for 27 weeks, at \$12.00 per hour.

1 b. From January 1, 2020 to April 7, 2020, Plaintiff worked approximately 25 hours
2 per week without getting paid anything. Therefore, Plaintiff is owed \$4,225.00 calculated at 25 hours
3 per week for 13 weeks, at \$13.00 per hour.

4 131. Thus, for the entirety of the time periods set forth above, Plaintiff is owed unpaid minimum
5 wages in the amount of \$12,325.00.

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

10 133. Pursuant to Labor Code §1194, Plaintiff requests that the court award reasonable
11 attorneys' fees and costs incurred by Plaintiff in this action.

12 134. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated
13 damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an
14 additional \$12,325.00, plus interest thereon.

15
16 **ELEVENTH CAUSE OF ACTION**
17 **FOR FAILURE TO PAY PREVAILING WAGES**
18 **LABOR CODE §§1773, ET SEQ.**
19 **AGAINST ALL DEFENDANTS**

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

22 136. Labor Code §1173 requires employers, who are awarded "any contract for public work,
23 or otherwise undertaking any public work, shall obtain the general prevailing rate of per diem wages and
24 the general prevailing rate for holiday and overtime work in the locality in which the public work is to be
25 performed for each craft, classification, or type of worker needed to execute the contract from the director
26 of Industrial Relations."

1 137. At all relevant times, Defendants failed and refused to pay Plaintiff all prevailing wages
2 required by Labor Code §1173 et seq., 8 Code of Regulations §11160, and Industrial Welfare
3 Commission Order No. 16-2001.

4 138. From approximately June 20, 2019 to April 6, 2020, Plaintiff regularly worked on a public
5 work job site on Defendants' behalf. During this same time period, Plaintiff's supervisor regularly altered
6 Plaintiff's time records. The resulting records were not accurate and reflected artificially reduced hours.

7 139. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
8 Code §1773, et seq., 8 Code Regulations §11160, and Industrial Welfare Commission Order No. 16-
9 2001.

10 140. In addition, Labor Code §1175(a)(1) states "[t]he contractor and any subcontractor under
11 the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made
12 or awarded, forfeit not more than two hundred dollars (\$200.00) for each calendar day, or portion thereof,
13 of each worker paid less than the prevailing wage rates as determined by the director for the work or craft
14 in which the worker is employed for any public work done under the contract by the contractor or, except
15 as provided in subdivision (b), by any subcontractor under the contractor."

16 141. Furthermore, under Labor Code §1777.1(a) a contractor or subcontractor performing work
17 on a public works project who is "found by a Labor Commissioner to be in violation of this chapter with
18 intent to defraud" can be deemed ineligible, for no less than one year or no more than three years, to bid
19 on or be awarded a public works project or perform work as a subcontractor on a public works project.

20 142. Thus, for the entirety of the time periods set forth above, Plaintiff is owed prevailing wages
21 in an amount to be determined upon further proof.

22 143. Plaintiff has been deprived of Plaintiff's rightfully earned prevailing wage compensation
23 as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is
24 entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

TWELFTH CAUSE OF ACTION
FOR FAILURE TO PAY OVERTIME COMPENSATION
LABOR CODE §§510, 1194
AGAINST ALL DEFENDANTS

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

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

146. At all relevant times, Defendants required Plaintiff to work more than eight hours per day and/or more than 40 hours per workweek.

147. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime compensation required by Labor Code §510, 8 Code of Regulations §11160, and Industrial Welfare Commission Order No. 16-2001.

148. In the four years last past, Plaintiff worked 30 hours of overtime each week, all of which should have been paid at 1.5 times Plaintiff's regularly hour wage rate at that time. Defendants failed to pay Plaintiff the requisite overtime wages in each of the following ways in the four years immediately preceding the filing of this complaint:

a. From approximately June 20, 2019 to December 31, 2019, Plaintiff's hourly overtime rate was \$112.35. During this time period, Plaintiff worked an average of 25 overtime hours each week for 27 weeks, or 675 hour, but did not get paid for these hours at all. Therefore, less the minimum wage portion of \$12.00 that is claimed in the preceding cause of action, Plaintiff is owed the difference of \$100.35 per hour, totaling \$67,736.25.

1 b. From approximately January 1, 2020 to April 7, 2020, Plaintiff's hourly overtime
2 rate was \$112.35. During this time period, Plaintiff worked an average of 25 hours of overtime each
3 week, for 13 weeks, or 325 hours, but did not receive any wages for these hours at all. Therefore, less
4 the minimum wage portions of \$13.00 for which Plaintiff has already claimed in the preceding cause of
5 action, Plaintiff is owed the difference of \$99.35 per hour, totaling \$32,288.75.

6 c. From approximately June 20, 2019, to April 7, 2020, Plaintiff's hourly overtime
7 rate was \$112.35. During this time period, Plaintiff worked an average of 5 hours of overtime each week,
8 for 40 weeks, or 200 hours, but received only Plaintiff's regular hourly wage rate, no premium.
9 Therefore, Plaintiff is owed \$37.45 for each of those hours, totaling \$7,490.00.

10 149. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
11 Code §510, 8 Code Regulations §11160, and Industrial Welfare Commission Order No. 16-2001.

12 150. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages
13 of \$107,515.00, above and beyond the minimum wages sought in the preceding cause of action for these
14 same hours.

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

18
19 **THIRTEENTH CAUSE OF ACTION**
20 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
21 **LABOR CODE §§226.7, 512**
22 **AGAINST ALL DEFENDANTS**

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

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

1 154. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted
2 rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion
3 thereof.

4 155. In the four years last past, Plaintiff regularly worked in excess of 10 hours per day and
5 was thereby entitled to take uninterrupted two 30-minute meal periods and two 10-minute rest periods on
6 each day of work. In the four years last past, Plaintiff regularly worked in excess of twelve hours per day
7 and was thereby entitled to take two uninterrupted 30-minute meal periods and three 10-minute rest
8 periods on each day of work.

9 156. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
10 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the
11 applicable sections of 8 Code of Regulations §11160 and Industrial Welfare Commission Order No. 16-
12 2001 , as follows:

13 a. From approximately June 20, 2019 to April 7, 2020, Plaintiff's statutory 30-minute
14 meal periods were interrupted and cut short approximately 5 times per week for 40 weeks, or on
15 approximately 200 days. During this same time period, Plaintiff was deprived of one or more of
16 Plaintiff's statutory 10-minute rest periods on approximately 200 days (5 days per week for 40 weeks).

17 157. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
18 Code of Regulations §11160 and Industrial Welfare Commission Order No. 16-2001. Consequently,
19 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
20 whichever is greater, for each day that Plaintiff was denied such meal periods, and is owed one hour of
21 pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each day
22 that Plaintiff was denied such rest periods, calculated as follows:

23 a. From approximately June 20, 2019, to April 7, 2020, 9, Defendants failed to
24 provide Plaintiff with an uninterrupted statutory meal period on approximately 200 separate days.
25 Consequently, Plaintiff is owed one hour of pay at \$74.90 for each day, or \$14,980.00, plus interest
26 thereon, for unpaid interrupted meal periods. During this same time period, Defendants failed to provide
27 Plaintiff with the statutory rest period on approximately 200 separate days. Consequently, Plaintiff is
28 owed one hour of pay at \$74.90 for each day, or \$14,980.00, plus interest thereon, for unpaid rest periods.

1 Thus, Plaintiff is owed a total of \$29,960.00, plus interest thereon, for unpaid meal and rest periods for
2 this time period.

3 158. Thus, the total missed meal and rest period compensation owing Plaintiff for this time
4 period is \$29,960.00.

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

7 160. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
8 such amounts in the combined amount of \$29,960.00, pursuant to Labor Code §226.7(b), plus interest
9 thereon and costs of suit.

10
11 **FOURTEENTH CAUSE OF ACTION**

12 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**

13 **LABOR CODE §§226 ET SEQ.**

14 **AGAINST ALL DEFENDANTS**

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

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

25 163. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates
26 Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation
27 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.
28

1 164. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
2 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
3 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
4 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
5 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
6 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying
7 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not
8 one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none
9 of the required information, including hours actually worked.

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

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

19 167. Plaintiff was paid on a weekly basis, and therefore Defendants violated Labor Code §226
20 approximately 24 times during the one year preceding the filing of this complaint. Consequently,
21 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
22 amount of \$4,000.00, whichever is greater.

23 168. In addition thereto, for Defendants' 24 violations, Defendants are penalized \$250.00 for
24 the first violation, and the remainder of which Defendants are penalized \$1,000.00 each, for a total due
25 in Labor Code §226.3 penalties of \$23,250.00.

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

FIFTEENTH CAUSE OF ACTION
FOR WAITING TIME PENALTIES
LABOR CODE §§201-203
AGAINST ALL DEFENDANTS

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

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

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

173. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and more than \$31,458.00 in wait time penalties, calculated based on 30 days of Plaintiff's daily wage rate of \$1,048.60, inclusive of overtime.

174. Based on Defendants' conduct as alleged herein, Defendants are liable for \$31,458.00 in statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys' fees and costs.

1 **SIXTEENTH CAUSE OF ACTION**

2 **FOR UNFAIR COMPETITION**

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

4 **AGAINST ALL DEFENDANTS**

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

7 176. Defendants' violations of 8 Code of Regulations §11160, Industrial Welfare Commission
8 Order No. 16-2001, Labor Code §§201-203, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, and
9 other applicable provisions, as alleged herein, including Defendants' failure and refusal to pay minimum
10 wages, overtime wages, Defendants' failure to provide meal and rest breaks, Defendants' failure to
11 provide timely and accurate wage and hour statements, Defendants' failure to pay compensation due in a
12 timely manner upon termination or resignation, and Defendants' failure to maintain complete and
13 accurate payroll records for the Plaintiff, constitute unfair business practices in violation of Business &
14 Professions Code §§17200, et seq.

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

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

22 **SEVENTEENTH CAUSE OF ACTION**

23 **FOR PRIVATE ATTORNEY GENERAL ACT**

24 **LABOR CODE §2699**

25 **AGAINST ALL DEFENDANTS**

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

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

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

7 182. On October 8, 2020, more than 63 calendar days before filing this Complaint, Plaintiff
8 provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail
9 to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
10 satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ §§
11 1182.12, 1194, 1194.2, 1197, 510, 512, 226.7, 226, 203, 221, 206.6, 98.6, 110.25, 2802, 2699.5, 246,
12 227.3, 226.8 each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

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

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

22 185. These penalties recoverable for Plaintiff alone totals approximately \$14,700.00. Plaintiff
23 may also seek these same penalties on behalf of all other aggrieved employees.

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

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff seeks judgment against Defendants and each of them, in an amount
3 according to proof as follows:

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

8 2. For payment of unpaid minimum wage compensation pursuant to Labor Code §§1182.12,
9 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 16-2001, in the amount of no less than
10 \$12,325.00;

11 3. For liquidated damages pursuant to Labor Code §1194.2 in the amount of \$12,325.00, plus
12 interest;

13 4. For payment of unpaid prevailing wages pursuant to Labor Code §§1773, ET SEQ.,
14 Industrial Welfare Commission Order No. 16-2001, and 8 Code of Regulations §11160, in an amount to
15 be determined upon further proof, plus interest;

16 5. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194,
17 Industrial Welfare Commission Order No. 16-2001, and 8 Code of Regulations §11160, in the amount of
18 no less than \$107,515.00;

19 6. For statutory penalties or damages pursuant to Labor Code §558 in the amount of no less
20 than \$2,350.00;

21 7. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512,
22 in the amount of no less than \$29,960.00;

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

24 9. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
25 less than \$23,250.00;

26 10. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
27 than \$31,458.00;

1 11. For statutory penalties pursuant to Labor Code §2699(f), in the amount of no less than
2 \$14,700.00 on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants' aggrieved
3 employees;

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

6 **WHEREFORE**, Plaintiff further seeks judgment against Defendants, and each of them, in an
7 amount according to proof, as follows:

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

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

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

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

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

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

22 19. For post-judgment interest; and

23 20. For any other relief that is just and proper.

24 DATED: May 21, 2021

**LAW OFFICES OF RAMIN R. YOUNESSI
A PROFESSIONAL LAW CORPORATION**

26 By: 

27 Ramin R. Younessi, Esq.
28 Liliuokalani H. Martin, Esq.
Attorney for Plaintiff
JANNETTE GUTIERREZ

1 **JURY TRIAL DEMANDED**

2 Plaintiff demands trial of all issues by jury.

3
4 DATED: May 21, 2021

**LAW OFFICES OF RAMIN R. YOUNESSI
A PROFESSIONAL LAW CORPORATION**

5
6 By: 
7 Ramin R. Younessi, Esq.
8 Liliuokalani H. Martin, Esq.
9 Attorney for Plaintiff
10 JANNETTE GUTIERREZ
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