

1 **BIBIYAN LAW GROUP**
A Professional Corporation
2 David D. Bibiyan (SBN 287811)
david@tomorrowlaw.com
3 Malalai Anbari (SBN 304482)
malalai@tomorrowlaw.com
4 Sara Ehsani-Nia (SBN 326501)
sara@tomorrowlaw.com
5 8484 Wilshire Blvd., Suite 500
6 Beverly Hills, California 90211
7 Telephone: (310) 438-5555
8 Facsimile: (310) 300-1705
9 Attorneys for Plaintiff,
10 VIRGINIA REYES

FILED
Superior Court of California
County of Los Angeles

10/06/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: P. Cortez Deputy

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

11
12 VIRGINIA REYES, an individual,

13 Plaintiff,

14 v.

15
16 MERCADO BENITO JUAREZ, INC, a
17 California corporation; and DOES 1 through
18 100, inclusive,

19 Defendants.
20
21
22
23
24
25
26
27
28

CASE NO.: 21STCV06937

[Assigned for all purposes to the Hon. Terry Green in
Dept. 14]

FIRST AMENDED COMPLAINT FOR:

- (1) PREGNANCY DISCRIMINATION;
- (2) DENIAL OF PREGNANCY LEAVE;
- (3) RETALIATION;
- (4) WRONGFUL TERMINATION
- (5) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and
- (6) CIVIL PENALTIES UNDER LABOR CODE SECTION 2698 *et seq.*
- (7) SEX DISCRIMINATION;
- (8) DISABILITY DISCRIMINATION;
- (9) FAILURE TO ACCOMMODATE;
- (10) FAILURE TO ENGAGE IN GOOD FAITH INTERACTIVE PROCESS;
- (11) HARASSMENT IN VIOLATION OF FEHA;
- (12) FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

1 COMES NOW plaintiff, VIRGINIA REYES ("Ms. Reyes" or "Plaintiff"), as and for her
2 Complaint, who complains and alleges as follows:

3 **THE PARTIES**

4 1. Plaintiff Ms. Reyes is, and at all times relevant hereto was, an individual residing in
5 the County of Los Angeles, State of California.

6 2. Plaintiff is informed and believes, and based thereon alleges that she was pregnant
7 and, while pregnant, requested pregnancy and/or maternity leave. Plaintiff is informed and believes,
8 and based thereon alleges that due to her pregnancy, Plaintiff is entitled to protection under
9 California Department Fair Employment and Housing Act under Government Code section 12900,
10 *et seq.* (hereinafter "FEHA") and the California common law.

11 3. Plaintiff is informed and believes, and based thereon alleges, that defendant
12 MERCADO BENITO JUAREZ, INC ("Mercado" or "Defendant"), is, and at all times relevant
13 hereto was, a California corporation duly organized, authorized, and licensed to do business in the
14 State of California, with its principal office located at 3270 West 8th Street Los Angeles, California.

15 4. The true names and capacities, whether individual, corporate or associate, or
16 otherwise, of the defendants named herein as DOES 1 through 100, inclusive, are unknown to
17 Plaintiff, who therefore sue said defendants by such fictitious names pursuant to California Code of
18 Civil Procedure section 474, and Plaintiff will amend this complaint to show their true names and
19 capacities when the same have been ascertained. Plaintiff is informed and believes, and based
20 thereon alleges, that all defendants sued herein as DOES are in some manner responsible for the
21 acts herein alleged and that Plaintiff's damages were proximately caused by their conduct.

22 **AGENCY, ALTER EGO AND JOINT EMPLOYER ALLEGATIONS**

23 5. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
24 unity of interest and ownership between Defendant and DOES 1 through 100, that the individuality
25 and separateness of defendants have ceased to exist.

26 6. Plaintiff is informed and believes, and based thereon alleges, that despite the
27 formation of the purported corporate existence of Defendant and DOES 1 through 100 are, in reality,
28 one and the same, due to, but not limited to, the following reasons:

1 a. Defendant and DOES 1 through 50 are, in reality, completely dominated and
2 controlled by DOES 51 through 100, who personally committed the wrongful and illegal acts and
3 violated the laws as set forth in this Complaint, and who has hidden and currently hides behind
4 Defendant and DOES 1 through 50 to perpetrate frauds, circumvent statutes, or accomplish some
5 other wrongful or inequitable purpose;

6 b. DOES 51 through 100 derive actual and significant monetary benefits by ‘
7 and through the unlawful conduct of Defendant and DOES 1 through 50, and by using them, and
8 each of them, as the funding source for her own personal expenditures;

9 c. Plaintiff is informed and believes and thereon alleges that Defendant and
10 DOES 1 through 50, on the one hand, and DOES 51 through 100, on the other, while really one
11 and the same, were segregated to appear as though separate and distinct for purposes of perpetrating
12 a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable purpose;

13 d. Plaintiff is informed and believes and thereon alleges that the business
14 affairs of Defendant and DOES 1 through 50 are, and at all relevant times mentioned herein were,
15 so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
16 inextricable confusion. Defendant and DOES 1 through 50 are, and at all relevant times mentioned
17 herein were, used by DOES 51 through 100 as a mere shell and conduit for the conduct of certain
18 of defendants’ affairs. Defendant and DOES 1 through 50 and at all relevant times mentioned
19 herein were, the alter egos of DOES 51 through 100.

20 e. The recognition of the separate existence of Defendant and DOES 1 through
21 50, on the one hand, and DOES 51 through 100 on the other hand, would promote injustice insofar
22 that it would permit defendants to insulate themselves from liability to Plaintiff for violations of
23 the California Government Code, Civil Code, Labor Code, and other statutory violations. The
24 corporate existence of Defendant and DOES 1 through 50 should thus be disregarded in equity and
25 for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff,
26 and all other aggrieved employees herein.

27 ///

28 ///

1 7. Accordingly, Defendant and DOES 1 through 50 constitute the alter egos of DOES
2 51 through 100 and the fiction of their separate corporate existence must be disregarded.

3 8. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
4 thereon alleges that Defendant and DOES 1 through 100 are joint employers by virtue of a joint
5 enterprise, and that Plaintiff, and all other aggrieved employees, were employees of Defendant and
6 DOES 1 through 100. Plaintiff, and all other aggrieved employees, performed services for each and
7 every defendant, and to the mutual benefit of all defendants, and all defendants shared control of
8 Plaintiff and all other similarly situated employees, either directly or indirectly, and in the manner
9 in which defendants' business was and is conducted.

10 9. Whenever, in this Complaint, reference is made to "Defendants," such allegations
11 refer to the conduct, acts and/or omissions of defendants Mercado and DOES 1 through 100 acting
12 individually, jointly and/or severally.

13 **FACTUAL ALLEGATIONS COMMON TO SOME OR ALL CAUSES OF ACTION**

14 10. On or around June of 2016, Plaintiff was hired by Defendants as a cashier and
15 customer service representative, with duties that included, customer service and cash management.

16 11. Approximately two years into her employment, Plaintiff became pregnant.

17 12. Plaintiff's doctor informed her that due to her pregnancy she would need to take time
18 off of work to rest.

19 13. Plaintiff informed Defendants of her doctor's instructions regarding her pregnancy
20 in or around October of 2019 and Plaintiff requested to take parental leave and/or family care and
21 medical leave and/or pregnancy disability leave from, on or around, December 22, 2019 through on
22 or about, March 15, 2020.

23 14. Defendants informed Plaintiff that her request would be granted and that she would
24 have full employment when she returned from her leave.

25 15. In or around early March of 2020, Plaintiff informed Defendants that she was ready
26 to return to work. However, Defendants did not permit her to return to work.

27 16. In or around April of 2020, Plaintiff again informed Defendants that she was ready
28 to return to work, however Defendants again told Plaintiff that she could not return.

1 17. Plaintiff was never again scheduled for work by Defendants and was effectively
2 terminated.

3 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4 11. Plaintiff filed a complaint with the Department of Fair Employment and Housing
5 (“DFEH”) against Defendants and obtained the Notice of Right to Sue on December 18, 2020,
6 thereby exhausting her administrative remedies.

7 **JURISDICTION AND VENUE**

8 12. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
9 of Civil Procedure section 410.10.

10 13. Venue is proper in the County of Los Angeles, California pursuant to Code of Civil
11 Procedure sections 392, *et seq.* and Government Code section 12965, subdivision (b), because,
12 among other things, Los Angeles County is the county in which the unlawful practices herein alleged
13 have been committed, is the county in which the records relevant to the practices are maintained,
14 and is the county in which Plaintiff worked for Defendants.

15 14. The amount of damages sought by Plaintiff herein exceeds the minimum
16 jurisdictional limit of this Court: \$25,000.00.

17 15. Plaintiff is an “aggrieved employee” under the Labor Code Private Attorneys
18 General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), as Plaintiff was
19 employed by Defendants during the applicable statutory period and suffered one or more of the
20 Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover PAGA civil
21 penalties, as the term “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th
22 175, plus reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and
23 former employees of Defendants during the Civil Penalty Period.

24 16. Specifically, Plaintiff seeks to recover PAGA civil penalties through a
25 representative action permitted by PAGA and the California Supreme Court in, among other
26 authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities,
27 class certification of the PAGA allegations described herein is not required.

28 / / /

17. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1198.5, 2699, 2802, and 2810.5, among others.

18. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3.

19. On or around December 18, 2020 Plaintiff provided written notice pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them.

20. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the December 18, 2020 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

FIRST CAUSE OF ACTION

(Pregnancy Discrimination - Against MERCADO and DOES 1-100)

21. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

22. At all times relevant hereto, Defendants were employers within the meaning of Government Code section 12926.

23. At all times mentioned herein, Plaintiff was an employee within the meaning of California Government Code section 12926, and at all times during her employment she performed in a competent, satisfactory manner.

///

1 24. Plaintiff is informed and believes that she suffered from pregnancy-related
2 complications and/or disabilities which necessitated visits with her healthcare provider and time off
3 from work.

4 25. On or about December 20, 2019, Plaintiff took a finite, three-month medical leave
5 from which she was never permitted to return, thus effectively terminating her employment.
6 Plaintiff is informed and believes, and based thereon alleges, that Defendants terminated her
7 employment because of her pregnancy and pregnancy and/or parental leave request in violation of
8 Government Code section 12940, *et seq.* and California Code of Regulations section 11039,
9 subdivision (a)(E).

10 26. At all times during her employment, Plaintiff could competently perform her job
11 duties with or without a reasonable accommodation.

12 27. Plaintiff is informed and believes, and based thereon alleges, that in addition to the
13 practices enumerated above, Defendants may have engaged in other discriminatory practices against
14 her which are not fully known yet. At such time as such discriminatory practices become known to
15 her, Plaintiff will seek leave of Court to amend this Complaint in that regard.

16 28. Plaintiff filed Charges of Discrimination with the DFEH. Plaintiff has exhausted her
17 administrative remedies, received her Notice of Right to Sue, and timely files this Action.

18 29. As a direct and proximate result of Defendants' willful, knowing and intentional
19 discrimination against her, Plaintiff has sustained, and continues to sustain, loss of earnings and
20 benefits, the full nature and extent of which are presently unknown to Plaintiff, who, therefore, will
21 seek leave of Court to amend her Complaint at such time as these damages are fully ascertained.

22 30. As a further direct and proximate result of Defendants' discriminatory conduct
23 against her in violation of Government Code section 12900, *et seq.* as heretofore described, Plaintiff
24 has been damaged and deprived of the security, solace, and peace of mind for which she entered the
25 employment relationship with Defendants, and each of the, thereby causing her to suffer emotional
26 and mental distress, anguish, embarrassment, and humiliation, all to her general damages in an
27 amount according to proof at trial, but in excess of the jurisdictional amount of this Court.

28 ///

31. As a further result of Defendants' conduct, Plaintiff has incurred, and will continue to incur, attorney's fees and costs and is entitled to recover reasonable attorneys' fees and costs from Defendants pursuant to Government Code section 12965.

32. Plaintiff is informed and believes, and based thereon alleges, that the outrageous conduct of Defendants described above was done with malice, fraud, and oppression with conscious disregard for her rights and with the intent, design, and purpose of injuring her. Defendants, through their officers, managing agents, and/or supervisors, authorized, condoned and/or ratified the unlawful conduct of all of the other Defendants named in this Action. By reason thereof, Plaintiff is entitled to punitive or exemplary damages from all Defendants in a sum according to proof of at trial.

SECOND CAUSE OF ACTION

(Denial of Pregnancy Leave - Against MERCADO and DOES 1-100)

33. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

34. Defendants, and each of them, failed and refused to allow Plaintiff to take leave for a reasonable period of time due to her pregnancy, in violation of the Pregnancy Disability Leave Law, codified at Government Code section 12945.

35. At all times relevant hereto, Defendants were employers within the meaning of Government Code section 12926.

36. At all times during her employment, Plaintiff could competently perform her job duties with or without a reasonable accommodation.

37. Plaintiff is informed and believes, and based thereon alleges, that the reasonable period of time that she requested for pregnancy leave would not have created an undue burden for Defendants.

38. Plaintiff is informed and believes, and based thereon alleges, that in addition to the practices enumerated above, Defendants may have engaged in other discriminatory practices against her which are not fully known yet. At such time as such discriminatory practices become known to her, Plaintiff will seek leave of Court to amend this Complaint in that regard.

1 39. Plaintiff filed Charges of Discrimination with the DFEH. Plaintiff has exhausted her
2 administrative remedies, received her Notice of Right to Sue, and timely files this Action.

40. As a direct and proximate result of Defendants' conduct, Plaintiff has sustained, and continues to sustain, loss of earnings and benefits, the full nature and extent of which are presently unknown to Plaintiff, who, therefore, will seek leave of Court to amend her Complaint at such time as these damages are fully ascertained.

7 41. As a further direct and proximate result of Defendants' conduct, Plaintiff has been
8 damaged and deprived of the security, solace, and peace of mind for which she entered the
9 employment relationship with Defendants, and each of them, thereby causing her to suffer emotional
10 and mental distress, anguish, embarrassment, and humiliation, all to her general damages in an
11 amount according to proof at trial, but in excess of the jurisdictional amount of this Court.

12 42. As a further result of Defendants' conduct, Plaintiff has incurred, and will continue
13 to incur, attorney's fees and costs and is entitled to recover reasonable attorneys' fees and costs from
14 Defendants pursuant to Government Code section 12965.

43. Plaintiff is informed and believes, and based thereon alleges, that the outrageous conduct of Defendants described above was done with malice, fraud, and oppression with conscious disregard for her rights and with the intent, design, and purpose of injuring her. Defendants, through their officers, managing agents, and/or supervisors, authorized, condoned and/or ratified the unlawful conduct of all of the other Defendants named in this Action. By reason thereof, Plaintiff is entitled to punitive or exemplary damages from all Defendants in a sum according to proof of at trial.

THIRD CAUSE OF ACTION

(Retaliation - Against MERCADO and DOES 1-100)

44. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

26 45. At all times relevant hereto, Defendants were employers within the meaning of
27 Government Code section 12926.

28 |||

1 46. Government Code section 12940, subdivision (m)(2) and section 11021 of the
2 California Code of Regulations makes it unlawful for an employer to retaliate against a person for
3 requesting an accommodation based on a disability. Moreover, section 11094, subdivision (b) of
4 the California Code of Regulations prohibits an employer from retaliating against an employee for
5 having attempted to exercise CFRA rights and section 11039, subdivision (a)(F) further prohibits
6 an employer from retaliating against an employee for exercising a right to reasonable
7 accommodation, to transfer or to take pregnancy disability leave.

8 47. Plaintiff is informed and believes, and based thereon alleges that, among other things,
9 that when Plaintiff became pregnant during her employment with Defendants, she was subjected to
10 retaliation, including, without limitation, denial of full employment benefits, denial of leave,
11 reprimand, and termination by Defendants.

12 48. At all times during her employment, Plaintiff could competently perform her job
13 duties with or without a reasonable accommodation.

14 49. Plaintiff filed Charges of Discrimination with the DFEH. Plaintiff has exhausted her
15 administrative remedies, received her Notice of Right to Sue, and timely files this Action.

16 50. As a direct and proximate result of Defendants' willful, knowing and intentional
17 retaliatory conduct against her, Plaintiff has sustained, and continues to sustain, loss of earnings and
18 benefits, the full nature and extent of which are presently unknown to Plaintiff, who, therefore, will
19 seek leave of Court to amend her Complaint at such time as these damages are fully ascertained.

20 51. As a further direct and proximate result of Defendants' retaliatory conduct against
21 her in violation of Government Code sections 12940 and 12945, as heretofore described, Plaintiff
22 has been damaged and deprived of the security, solace, and peace of mind for which she entered the
23 employment relationship with Defendants, and each of them, thereby causing her to suffer emotional
24 and mental distress, anguish, embarrassment, and humiliation, all to her general damages in an
25 amount according to proof at trial, but in excess of the jurisdictional amount of this Court.

26 52. As a further result of Defendants' conduct, Plaintiff has incurred, and will continue
27 to incur, attorney's fees and costs and is entitled to recover reasonable attorneys' fees and costs from
28 Defendants pursuant to Government Code section 12965.

53. Plaintiff is informed and believes, and based thereon alleges that, furthermore, Defendants committed the retaliatory conduct, acts and/or omissions described and alleged herein, deliberately, intentionally, oppressively, fraudulently, maliciously and in conscious disregard for Plaintiff's rights and safety. As such, Defendants acted in a willful and intentional manner and their conduct, as herein set forth, was and continues to be despicable, malicious and outrageous in that it caused Plaintiff to needlessly suffer cruel and unjust hardship. Therefore, Defendants retaliatory conduct, acts and/or omissions, as herein alleged, justifies an award of punitive and exemplary damages in an amount sufficient to deter them from ever engaging in such conduct again in the future. Punitive and exemplary damages are further warranted to deter other employers who are similarly situated to Defendants from also behaving in the same manner as Defendants.

FOURTH CAUSE OF ACTION

(Wrongful Termination - Against MERCADO and DOES 1-100)

54. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

55. At all times relevant hereto, Defendants were employers within the meaning of Government Code section 12926.

56. At relevant times, Plaintiff was an employee within the meaning of Government Code section 12926 and at all times during her employment she could perform in a competent, satisfactory manner.

57. Plaintiff is informed and believes, and based thereon alleges, that her employment was terminated as a result of her sex and/or pregnancy in violation of Government Code 12926, subdivisions (a), (o), (p), (r)(1)(A); 12940, subdivision (a); and 12945, subdivision (a).

58. Plaintiff filed Charges of Discrimination with the DFEH. Plaintiff has exhausted her administrative remedies, received her Notice of Right to Sue, and timely files this Action.

59. As a direct and proximate result of Defendants' conduct against her in violation of Government Code sections 12940 and 12945, Plaintiff has sustained, and continues to sustain, loss of earnings and benefits, the full nature and extent of which are presently unknown to Plaintiff, who,

///

1 therefore, will seek leave of Court to amend her Complaint at such time as these damages are fully
2 ascertained.

3 60. As a further direct and proximate result of Defendants' conduct against her in
4 violation of Government Code sections 12940 and 12945, as heretofore described, Plaintiff has been
5 damaged and deprived of the security, solace, and peace of mind for which she entered the
6 employment relationship with Defendants, and each of the, thereby causing her to suffer emotional
7 and mental distress, anguish, embarrassment, and humiliation, all to her general damages in an
8 amount according to proof at trial, but in excess of the jurisdictional amount of this Court.

9 61. As a further result of Defendants' conduct, Plaintiff has incurred, and will continue
10 to incur, attorney's fees and costs and is entitled to recover reasonable attorneys' fees and costs from
11 Defendants pursuant to Government Code section 12965.

12 62. Plaintiff is informed and believes, and based thereon alleges, that the outrageous
13 conduct of Defendants described above was done with malice, fraud, and oppression with conscious
14 disregard for her rights and with the intent, design, and purpose of injuring her. Defendants, through
15 their officers, managing agents, and/or supervisors, authorized, condoned and/or ratified the
16 unlawful conduct of all of the other Defendants named in this Action. By reason thereof, Plaintiff
17 is entitled to punitive or exemplary damages from all Defendants in a sum according to proof of at
18 trial.

19 **FIFTH CAUSE OF ACTION**

20 **(Wrongful Termination in Violation of Public Policy – Against MERCADO and**
21 **DOES 1-100)**

22 63. Plaintiff realleges and incorporates by reference all of the allegations contained in
23 the preceding paragraphs of this Complaint as though fully set forth herein.

24 64. It is the public policy of the State of California as expressed in the FEHA and the
25 California Constitution, Article I, Section 8 that individuals shall not be terminated from their
26 employment due to their pregnancy and/or pregnancy-related disability.

27 65. Plaintiff is informed and believes, and based thereon alleges that her employment
28 was terminated, and she was discriminated against, as a result of her pregnancy.

66. Plaintiff is informed and believes, and based thereon alleges that her disabilities were a substantial motivating reason for Plaintiff's discharge.

67. As a direct and proximate result of Defendants' wrongful termination of Plaintiff's employment in violation of public policy, Plaintiff has sustained, and continues to sustain, loss of earnings and benefits, the full nature and extent of which are presently unknown to Plaintiff, who, therefore, will seek leave of court to amend her complaint at such time as these damages are fully ascertained.

68. As a further direct and proximate result of Defendants' wrongful termination of Plaintiff's employment in violation of public policy, Plaintiff has been damaged and deprived of the security, solace, and peace of mind for which she entered the employment relationship with Defendants, and each of them, thereby causing her to suffer emotional and mental distress, anguish, embarrassment, and humiliation, all to her general damages in an amount according to proof at trial, but in excess of the jurisdictional amount of this Court.

69. Plaintiff is informed and believes, and based thereon alleges, that the outrageous conduct of Defendants described above was done with malice, fraud, and oppression with conscious disregard for her rights and with the intent, design, and purpose of injuring her. Defendants, through their officers, managing agents, and/or supervisors, authorized, condoned and/or ratified the unlawful conduct of all of the other Defendants named in this Action. By reason thereof, Plaintiff is entitled to punitive or exemplary damages from all Defendants in a sum according to proof of at trial.

SIXTH CAUSE OF ACTION

(PAGA Civil Penalties – Against MERCADO and DOES 1-100)

70. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

71. Plaintiff is informed and believes, and based thereon alleges, that she is an aggrieved employee.

72. Plaintiff is informed and believes and based thereon alleges that she and other aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders.

1 73. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
2 and have a policy or practice of requiring its employees to work more than eight (8) hours per day,
3 forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them
4 proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for
5 all minutes actually worked; engaging, suffering, or permitting employees to work off the clock,
6 including, without limitation, by requiring employees: to come early to work and leave late work
7 without being able to clock in for all that time, to complete pre-shift tasks before clocking in and
8 post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out
9 for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend
10 company meetings off the clock, to make phone calls or drive off the clock; failing to include all
11 forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and
12 other forms of remuneration into the regular rate of pay for the pay periods where overtime was
13 worked and the additional compensation was earned for the purpose of calculating the overtime
14 rate of pay; detrimental rounding of employee time entires, editing and/or manipulation of time
15 entires to show less hours than actually worked, and for paying straight pay instead of overtime
16 pay to the detriment of Employee and other aggrieved employees.

17 74. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
18 and have a practice or policy of failing to compensate Employee and other aggrieved employees
19 with minimum wages for all hours worked or otherwise under Employer's control as a result of,
20 without limitation, failing to accurately track and/or pay for all minutes actually worked;
21 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
22 by requiring employees: to come early to work and leave late work without being able to clock in
23 for all that time, to complete pre-shift tasks before clocking in and post-shift tasks after clocking
24 out, to clock out for meal periods and continue working, to clock out for rest periods, to don and
25 doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to
26 make phone calls or drive off the clock; detrimental rounding of employee time entires; editing
27 and/or manipulation of time entires to show less hours than actually worked; failing to pay
28 reporting time pay; and failing to pay split shift premiums.

1 75. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
2 and have a policy or practice of compelling its employees to work in excess of five (5) and ten
3 (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
4 periods or compensation in lieu thereof including, without limitation: by interrupting meal periods;
5 not providing timely meal periods; failing to provide first and second meal periods; providing
6 short meal periods; requiring that employees carry cellular telephones or walkie-talkies during
7 meal periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call
8 meal periods; and auto-deducting meal periods that could not be auto-deducted by law or during
9 which employees worked.

10 76. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 maintain policies or practices of compelling its non-exempt employees, including, without
12 limitation, Plaintiff, to work over four-hour periods (or major fractions thereof) without
13 authorizing and permitting Employee and other aggrieved employees to take uninterrupted, timely,
14 and complete ten-minute rest periods in which the employees are completely relieved of all of
15 their duties, including, without limitation: by failing to provide rest periods all together; requiring
16 that they be bundled together and/or with meal periods; interrupting them; requiring that
17 employees carry cellular telephones or walkie-talkies during rest periods not providing them in a
18 timely fashion; and not permitting employees to leave the premises; and otherwise requiring on-
19 duty/on-call rest periods.

20 77. Plaintiff is informed and believes, and based thereon alleges that Defendants failed
21 and continue to fail to keep adequate or accurate time records including wage statements and
22 similar payroll documents under Labor Code section 226, documents signed to obtain or hold
23 employment under Labor Code section 432, personnel records under Labor Code section 1198.5,
24 and time records under Labor Code section 1174, making it difficult for Plaintiff and other
25 aggrieved employees to calculate their unpaid wages and/or premium payments. Defendants also
26 failed to provide these documents to Plaintiff and other aggrieved employees upon request.

27 ///

28 ///

1 78. As a result of, among other things, Defendants' herein-described policy or practice
2 of failing to: accurately record time; failing to pay overtime and minimum wages; provide meal
3 periods; provide rest periods; and provide compensation in lieu of meal or rest periods; as
4 described above, Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 also intentionally failed and continues to fail to furnish aggrieved employees, including, without
6 limitation, Plaintiff, with itemized wage statements that accurately reflect: gross wages earned;
7 total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates
8 in effect during the pay period and the corresponding number of hours worked at each hourly rate
9 by the employee; the legal name and address of the other; and other such information as required
10 by Labor Code section 226, subdivision (a). Specifically, Defendants intentionally failed to
11 furnish employees with itemized wage statements that accurately reflect the hours worked by
12 Plaintiff and other aggrieved employees and the rates of pay at which they were or should have
13 been paid, thus resulting in a failure to reflect gross and net wages earned and paid at each rate, as
14 well.

15 79. Plaintiff is informed and believes, and based thereon alleges, that Defendants also
16 failed and refused, and continue to fail and refuse, to timely pay compensation to Plaintiff and
17 other terminated or resigned employees, including but not limited to, all overtime wages owed; all
18 minimum wages owed; and all premium pay owed as set out above.

19 80. Plaintiff is further informed and believes, and based thereon alleges that Employer
20 failed and refused, and continues to fail and refuse, to comply with the notice requirements of
21 Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things,
22 failing to provide Plaintiff and other aggrieved employees with the rates of pay and overtime rates
23 of pay applicable to their employment, allowances claimed as part of the minimum wage, the
24 regular payday designated by Defendants, the name of the employer, including any "doing
25 business as" names used, the name, address and telephone number of the workers' compensation
26 insurance carrier, information regarding paid sick leave, and other pertinent information required
27 to be disclosed by Defendants under Labor Code section 2810.5. Plaintiff is informed and
28 believes that failure to provide such information, including rates of pay that are in effect, has

1 permitted Defendants to pay employees at rates of pay that were not agreed upon and violate
2 minimum wage and overtime wage laws in California.

3 81. Plaintiff is informed and believes, and based thereon alleges that Defendants also
4 failed and refused, and continues to fail and refuse, to reimburse employees, including, without
5 limitation, Plaintiff and other aggrieved employees, with their costs incurred for driving personal
6 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
7 separately laundering mandatory uniforms, for the purchase of tools and safety equipment, and for
8 the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence
9 of the discharge of their duties, or of their obedience to the directions of Defendants, as required
10 by Labor Code section 2802, and other statutory and common law offenses.

11 82. Plaintiff is further informed and believes, and based thereon alleges, that
12 Defendants have or had a policy or practice of failing to reimburse deposits made, including
13 uniform deposits together with all interest owed at the separation of employment in violation of
14 Labor Code section 404.

15 83. Plaintiff is further informed and believes, and based thereon alleges, that
16 Defendants have or had a policy or practice of failing to provide Plaintiff and other aggrieved
17 employees with the amount of paid sick leave required to be provided pursuant to California and
18 local laws (including, without limitation, Labor Code section 246, *et seq.* and Los Angeles
19 Municipal Code section 187.01 *et seq.*). Plaintiff is further informed and believes that Defendants
20 also did not permit its use upon request by Defendants and other aggrieved employees as
21 contemplated under California and local laws.

22 84. Plaintiff is informed and believes, and based thereon alleges that Defendants had
23 and have a policy or practice of failing to pay aggrieved employees their paid time off and
24 vacation time owed upon separation of employment as wages at their final rate of pay in violation
25 of Labor Code section 227.3 and applicable Wage Orders.

26 85. Plaintiff is informed and believes, and based thereon alleges that Defendants had
27 and have a policy or practice of failing to pay aggrieved employees their wages in accordance with
28 Labor Code Section 204, which requires that: "[l]abor performed between the 1st and 15th days,

1 inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
2 during which the labor was performed, and labor performed between the 16th and the last day,
3 inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following
4 month." Plaintiff is informed and believes and based thereon alleges that Defendants did not and
5 do not pay Plaintiff and other aggrieved employees in accordance with Labor Code Section 204.
6 As such, Plaintiff is informed and believes, and based thereon alleges that Employer violated
7 Labor Code section 204.

8 86. Consequently, Plaintiff is informed and believes, and based thereon alleges, that
9 Defendants are liable for civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5,
10 1197.1, and 2699.

11 **SEVENTH CAUSE OF ACTION**

12 **(Sex Discrimination - Against MERCADO and DOES 1-100)**

13 87. Plaintiff realleges and incorporates by reference all of the allegations contained in
14 the preceding paragraphs of this Complaint as though fully set forth herein.

15 88. At all times relevant hereto, Defendants were employers within the meaning of
16 Government Code section 12926.

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

19 90. FEHA requires Defendants to refrain from discriminating against an employee on
20 the basis of sex, and to prevent from occurring discrimination, harassment, and retaliation on the
21 same bases. Plaintiff was a member of multiple protected classes as a result of Plaintiff's sex.

22 91. Defendants' conduct, as alleged, violated FEHA, and Defendants committed
23 unlawful employment practices(s), including but not limited to, by discriminating against and
24 terminating Plaintiff's employment due to Plaintiff's sex.

25 92. Plaintiff is informed and believes that Plaintiff's sex was a motivating reason
26 and/or factor in the decisions to subject Plaintiff to the aforementioned adverse employment
27 actions.

28 ///

93. As a direct, foreseeable, and proximate result of Defendants' conduct as alleged herein, Plaintiff has suffered and will continue to suffer actual damages, including lost earnings and other employment benefits, in a sum in excess of the jurisdictional limit of this Court, the exact amount of which is not yet known, which amount will be proved at the time of trial.

94. As a direct, foreseeable, and proximate result of said wrongful acts and failures to act by Defendants, Plaintiff has suffered and will continue to suffer substantial emotional distress, and will incur other incidental and consequential damages and losses, all in an amount to be proven at the time of trial. Plaintiff claims such amounts as damages together with prejudgment interest pursuant to any provision of law providing for prejudgment interest.

95. 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 section 3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

96. Pursuant to Government Code section 12965(b), Plaintiff filed a complaint with the DFEH, in full compliance with administrative requirements, received her Notice of Right to Sue, and timely files this Action.

97. Additionally, Plaintiff requests a reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

EIGHTH CAUSE OF ACTION

(Disability Discrimination - Against MERCADO and DOES 1-100)

98. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

99. At all times herein mentioned, California's FEHA, was in full force and effect and was binding on Defendants. This statute requires defendant to refrain from discriminating, harassing, and retaliating against any employee on the basis of a disability. Within the time

1 provided by law, Plaintiff filed a complaint with the DFEH, in full compliance with administrative
2 requirements, received her Notice of Right to Sue, and timely files this Action.

3 100. Defendants' conduct, as alleged, violated FEHA, and Defendants committed
4 unlawful employment practice(s), including, without limitation, by the following, separate bases
5 for liability:

6 101. Plaintiff is informed and believes and thereon alleges that Plaintiff's pregnancy
7 disability was a motivating factor in Defendants' wrongdoing in this case, which included, without
8 limitation, the following: 1) Defendants' refusal to reasonably accommodate Plaintiff's pregnancy
9 disability; 2) Defendants' failure to engage in timely, good faith interactive process with Plaintiff
10 regarding reasonable accommodations for her pregnancy disability; and 3) terminating Plaintiff's
11 employment due to Plaintiff's pregnancy disability.

12 102. At all relevant times alleged herein, Plaintiff was an individual with a disability
13 within the meaning of Government Code § 12926 (k). Additionally, at all times relevant herein,
14 Plaintiff was willing, able, and qualified to perform the duties and functions of the position in
15 which she was employed and/or trained, or could have performed the duties and functions of that
16 position with reasonable accommodations. At no time, would the performance of the functions of
17 the employment position, with a reasonable accommodation for Plaintiff's disability, based on her
18 pregnancy, have been a danger to Plaintiff or any other person's health or safety. Accommodation
19 of Plaintiff's disability would not have imposed an undue hardship on Defendants.

20 103. Defendants' acts and omissions (including terminating Plaintiff's employment)
21 constitutes unlawful and discriminatory employment practices on account of Plaintiff's physical
22 disability in violation of Government Code § 12900 et seq.

23 104. As a direct, foreseeable, and proximate result of Defendants' conduct as alleged
24 herein, Plaintiff has suffered and will continue to suffer actual damages, including lost earnings
25 and other employment benefits, in a sum in excess of the jurisdictional limit of this Court, the
26 exact amount of which is not yet known, which amount will be proved at the time of trial.

27 105. As a further direct, foreseeable, and proximate result of said wrongful acts and
28 failures to act by Defendants, Plaintiff has suffered and will continue to suffer substantial

1 emotional distress, and will incur other incidental and consequential damages and losses, all in an
2 amount to be proven at time of trial. Plaintiff claims such amounts as damages together with
3 prejudgment interest pursuant to any provision of law providing for prejudgment interest.

4 106. As a further direct and proximate result of Defendants' discriminatory and
5 wrongful actions against Plaintiff as alleged herein, Plaintiff suffered special damages that include,
6 without limitation, the loss of wages, salary, benefits, and/or additional amounts of money
7 Plaintiff would have received but for Defendants' discriminatory and /or retaliatory action as
8 alleged herein. Plaintiff also continues to suffer the intangible loss of such employment-related
9 opportunities as, including without limitation, experience in the position Plaintiff held and
10 advancement opportunities.

11 107. As further direct, foreseeable, and proximate result of said wrongful acts and
12 failures to act by Defendants, Plaintiff has suffered and will continue to suffer humiliation, shame,
13 despair, embarrassment, depression, and mental pain and anguish, all to Plaintiff's damage in an
14 amount to be proven at time of trial.

15 108. The aforementioned acts were carried out by Defendants in a malicious, willful,
16 and oppressive manner with the intent to injure and damage Plaintiffs to recover exemplary
17 damages from Defendants under Civil Code § 3294. Defendants' decision to terminate Plaintiff's
18 employment based on Plaintiff's disability was done with intent to injure Plaintiff and with the
19 intent to prevent the exercise of Plaintiff's statutory rights and obligations. Defendants' officers,
20 directors, and managerial and supervisory employees participated in the unlawful conduct as
21 alleged above or had actual knowledge that the above- alleged conduct was unlawful and
22 nevertheless authorized and/or ratified the practices with conscious disregard of the rights of
23 Plaintiff.

24 109. Additionally, under the FEHA, Plaintiff is entitled to an award of reasonable
25 attorney's fees and prejudgment interest.

26 ///

27 ///

28 ///

NINTH CAUSE OF ACTION

(Failure to Accommodate - Against MERCADO and DOES 1-100)

110. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

111. At all times herein mentioned, FEHA, Government Code § 12940(a) and 12940(m) were in full force and effect and were binding on Defendants. This subsection imposes an ongoing duty on Defendants to make reasonable accommodation for the known physical or mental disability of an employee. Within the time provided by law, Plaintiff filed a complaint with the DFEH, in full compliance with administrative requirements, received her Notice of Right to Sue, and timely files this Action.

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

113. At all times herein, Defendant was aware of Plaintiff's disability. Plaintiff attempted to obtain reasonable accommodation for Plaintiff's physical disability by, among other things, providing Plaintiff with maternity leave and medical leave. At all times herein, Plaintiff was willing and able to perform the duties and functions of the position in which Plaintiff was employed, or could have performed the duties and functions of that position with reasonable accommodations. At no time would the performance of the functions of the employment position, with a reasonable accommodation for Plaintiff's disability, actual or as it was perceived by Defendants, have been a danger to Plaintiff's or any other person's health or safety.

114. Accommodation of Plaintiff's disability, real or perceived by Defendants, would not have imposed an undue hardship on Defendants. Defendants failed and refused to accommodate Plaintiff's disability, failed to engage in the interactive process with Plaintiff and continue to violate this obligation, up to and including the date of Plaintiff's termination or, if Defendant contends Plaintiff was never terminated, through the present and ongoing.

///

1 115. Defendants' discriminatory actions against Plaintiff, as alleged above, constituted
2 unlawful discrimination in employment on account of Plaintiff's disability, in violation of the
3 FEHA in that Defendants failure to reasonably accommodate Plaintiff's disability violated
4 Government Code § 12940 (m).

5 116. As a direct and proximate result of Defendants wrongful actions against Plaintiff as
6 alleged herein, Plaintiff suffered special damages that include, without limitation, the loss of
7 wages, salary, benefits, and/or additional amounts of money she would have received but for
8 Defendants' actions as alleged herein. Plaintiff also continues to suffer the intangible loss of such
9 employment-related opportunities as, including without limitation, experience in the position she
10 held and advancement opportunities. Such damages are in a sum in excess of the jurisdictional
11 limit of this Court, the exact amount of which is not yet known, which amount will be proved at
12 the time of trial.

13 117. As a direct, foreseeable, and proximate result of said wrongful acts and failures to
14 act by Defendants, Plaintiff has suffered and will continue to suffer humiliation, shame, despair,
15 embarrassment, depression, and mental pain and anguish, all to Plaintiff damages in an amount to
16 be proven at time of trial.

17 118. As a direct, foreseeable, and proximate result of said wrongful acts and failures to
18 act by Defendants, Plaintiff has suffered and will continue to suffer substantial emotional distress,
19 and will incur other incidental and consequential damages and losses, all in an amount to be
20 proven at the time of trial. Plaintiff claims such amounts as damages together with prejudgment
21 interest pursuant to any provision of law proving for prejudgment interest.

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

120. Additionally, under the FEHA, Plaintiff is entitled to an award of reasonable attorney's fees and prejudgment interest.

TENTH CAUSE OF ACTION

(Failure to Engage in the Good Faith Interactive Process - Against MERCADO and DOES 1-100)

121. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

122. At all times relevant hereto, Defendants were employers within the meaning of Government Code section 12926.

123. At all times hereto, the FEHA, including in particular Government Code section 12940(n), was in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty on Defendants to engage in a timely, good faith, interactive process with the employee to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee with a known physical or disability or known medical condition and/or becoming aware of the employee's need for accommodation. Within the time provided by law, Plaintiff filed a complaint with the DFEH, in full compliance with administrative requirements, received her Notice of Right to Sue, and timely files this Action.

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

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

1 126. As a direct and proximate result of Defendants wrongful actions against Plaintiff as
2 alleged herein, Plaintiff suffered special damages that include, without limitation, the loss of
3 wages, salary, benefits, and/or additional amounts of money he would have received but for
4 Defendants' actions as alleged herein. Plaintiff also continues to suffer the intangible loss of such
5 employment-related opportunities as, including without limitation, experience in the position she
6 held and advancement opportunities. Such damages are in a sum in excess of the jurisdictional
7 limit of this Court, the exact amount of which is not yet known, which amount will be proved at
8 the time of trial.

9 127. As a direct, foreseeable, and proximate result of said wrongful acts and failures to
10 act by Defendants, Plaintiff has suffered and will continue to suffer humiliation, shame, despair,
11 embarrassment, depression, and mental pain and anguish, all to Plaintiff damages in an amount to
12 be proven at time of trial.

13 128. As a direct, foreseeable, and proximate result of said wrongful acts and failures to
14 act by Defendants, Plaintiff has suffered and will continue to suffer substantial emotional distress,
15 and will incur other incidental and consequential damages and losses, all in an amount to be
16 proven at the time of trial. Plaintiff claims such amounts as damages together with prejudgment
17 interest pursuant to any provision of law providing for prejudgment interest.

18 129. The aforementioned acts were carried out by Defendants in a malicious, willful,
19 and oppressive manner with the intent to injure and damage Plaintiffs to recover exemplary
20 damages from defendants under Civil Code § 3294. Defendants' decision to fail to engage in a
21 timely, good faith, interactive process with Plaintiff despite the fact that they were aware that
22 Plaintiff was disabled was done with intent to injure Plaintiff and with the intent to prevent the
23 exercise of Plaintiff's statutory rights and obligations. Defendants' officers, directors, and
24 managerial and supervisory employees participated in the unlawful conduct as alleged above or
25 had actual knowledge that the above- alleged conduct was unlawful and nevertheless authorized
26 and/or ratified the practices with conscious disregard of the rights of Plaintiff.

27 130. Under the FEHA, Plaintiff is entitled to an award of reasonable attorney's fees and
28 prejudgment interest.

ELEVENTH CAUSE OF ACTION

(Harassment - Against MERCADO and DOES 1-100)

131. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

132. At all times hereto, the FEHA was in full force and effect and was binding upon Defendants and each of them. At all times mentioned herein, Plaintiff was an employee within the meaning of California Government Code section 12926, and at all times during her employment she performed in a competent, satisfactory manner.

133. Pursuant to Government Code section 12965(b), Plaintiff filed a complaint with the DFEH, in full compliance with administrative requirements, received her Notice of Right to Sue, and timely files this Action.

134. 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.

135. 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 employee's pregnancy, sex and/or disability as set forth hereinabove.

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

137. Defendants violated the FEHA and the public policy of the State of California which is embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of Plaintiff's pregnancy, sex and/or disability, and/or some combination of these protected characteristics, as set forth hereinabove.

138. As a direct and proximate result of Defendants' wrongful actions against Plaintiff as alleged herein, Plaintiff suffered special damages that include, without limitation, the loss of wages, salary, benefits, and/or additional amounts of money she would have received but for Defendants' actions as alleged herein. Plaintiff also continues to suffer the intangible loss of such employment-related opportunities as, including without limitation, experience in the position she

1 held and advancement opportunities. Such damages are in a sum in excess of the jurisdictional
2 limit of this Court, the exact amount of which is not yet known, which amount will be proved at
3 the time of trial.

4 139. As a direct, foreseeable, and proximate result of said wrongful acts and failures to
5 act by Defendants, Plaintiff has suffered and will continue to suffer humiliation, shame, despair,
6 embarrassment, depression, and mental pain and anguish, all to Plaintiff damages in an amount to
7 be proven at time of trial.

8 140. As a direct, foreseeable, and proximate result of said wrongful acts and failures to
9 act by Defendants, Plaintiff has suffered and will continue to suffer substantial emotional distress,
10 and will incur other incidental and consequential damages and losses, all in an amount to be
11 proven at the time of trial. Plaintiff claims such amounts as damages together with prejudgment
12 interest pursuant to any provision of law providing for prejudgment interest.

13 141. The foregoing conduct of Defendants individually, or by and through their officers,
14 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff
15 or was despicable conduct carried on by the Defendants with a willful and conscious disregard of
16 the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of
17 Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code section 3294,
18 thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or make an
19 example of Defendants. Additionally, Plaintiff requests a reasonable award of attorneys' fees and
20 costs, including expert fees pursuant to the FEHA.

21 **TWELFTH CAUSE OF ACTION**

22 **(Failure to Prevent Discrimination, Harassment, and Retaliation - Against MERCADO**
23 **and DOES 1-100)**

24 142. Plaintiff realleges and incorporates by reference all of the allegations contained in
25 the preceding paragraphs of this Complaint as though fully set forth herein.

26 143. At all times hereto, the FEHA, including in particular Government Code section
27 12940(k), was in full force and effect and was binding upon Defendants. This subsection imposes
28 a duty on Defendants to take all reasonable steps necessary to prevent discrimination, harassment,

1 and retaliation from occurring. As alleged above, Defendants violated this subsection and
2 breached their duty by failing to take all reasonable steps necessary to prevent discrimination,
3 harassment and retaliation from occurring. Within the time provided by law, Plaintiff filed a
4 complaint with the DFEH, in full compliance with administrative requirements, received her
5 Notice of Right to Sue, and timely files this Action.

6 144. As a direct and proximate result of Defendants wrongful actions against Plaintiff as
7 alleged herein, Plaintiff suffered special damages that include, without limitation, the loss of
8 wages, salary, benefits, and/or additional amounts of money she would have received but for
9 Defendants' actions as alleged herein. Plaintiff also continues to suffer the intangible loss of such
10 employment-related opportunities as, including without limitation, experience in the position she
11 held and advancement opportunities. Such damages are in a sum in excess of the jurisdictional
12 limit of this Court, the exact amount of which is not yet known, which amount will be proved at
13 the time of trial.

14 145. As a direct, foreseeable, and proximate result of said wrongful acts and failures to
15 act by Defendants, Plaintiff has suffered and will continue to suffer humiliation, shame, despair,
16 embarrassment, depression, and mental pain and anguish, all to Plaintiff damages in an amount to
17 be proven at time of trial.

18 146. As a direct, foreseeable, and proximate result of said wrongful acts and failures to
19 act by Defendants, Plaintiff has suffered and will continue to suffer substantial emotional distress,
20 and will incur other incidental and consequential damages and losses, all in an amount to be
21 proven at the time of trial. Plaintiff claims such amounts as damages together with prejudgment
22 interest pursuant to any provision of law proving for prejudgment interest.

23 147. 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
25 or was despicable conduct carried on by the Defendants with a willful and conscious disregard of
26 the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of
27 Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code section 3294,
28 thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or make an

1 example of Defendants. Additionally, Plaintiff requests a reasonable award of attorneys' fees and
2 costs, including expert fees pursuant to the FEHA.

3 **JURY TRIAL**

4 148. Plaintiff prays for a trial by jury.

5 **PRAYER**

6 WHEREFORE, Plaintiff prays for Judgment against Defendants as follows:

7 A. For general and compensatory damages according to proof, including, without
8 limitation, past, present and future economic and non-economic damages;

9 B. For lost salary, both front and back pay, bonuses, benefits, and any other
10 benefits to which Plaintiff would have been entitled to by reason of her employment with
11 Defendants, according to proof;

12 C. For punitive and exemplary damages against Defendants;

13 D. For prejudgment interest at the maximum rate allowed by law;

14 E. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
15 1174.5, 1197.1 and 2699;

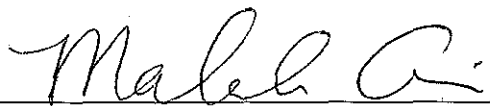
16 F. For reasonable attorneys' fees;

17 G. For costs of suit incurred herein; and

18 H. For such other and further relief as the Court deems just and proper.

19
20 Dated: October 6, 2021

BIBIYAN LAW GROUP, P.C.

21
22 BY: 

23 MALALAI ANBARI

24 DAVID D. BIBIYAN

Attorneys for Plaintiff VIRGINIA REYES
25
26
27
28