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County of Los Angeles
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Sherri R. Carter, Executive Officer / Clerk of Court

By: J. Arceo Deputy

Attorneys for Plaintiff WILLIAM RICHARTE

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

WILLIAM RICHARTE,
Plaintiffs,

v.

RAPID PLUMBING, an unknown
entity; RAY DOE, an individual; DOES
1-100;

Defendants.

) **CASE NO. 20STCV48643**

) **UNLIMITED JURISDICTION**

) **PLAINTIFF'S FIRST AMENDED COMPLAINT
FOR DAMAGES & DEMAND FOR JURY**

) **TRIAL:**

) **1. FAILURE TO PAY WAGES [Labor Code
§§ 201-202, 218, 218.5, 1194, 1194.2, 1197.1]**

) **2. FAILURE TO PROVIDE MEAL AND
REST PERIODS [LC § 226.7, § 512, and IWC
Wage Orders];**

) **3. FAILURE TO PAY MINIMUM WAGE
[Labor Code § 1194 et seq.];**

) **4. FAILURE TO PAY OVERTIME WAGES
[Labor Code §§ 1194 and 1194.2 et seq]**

) **5. FAILURE TO PAY WAGES DUE UPON
TERMINATION: WAITING TIME PENALTIES
[Labor Code §§ 201, 202, 203]**

) **6. FAILURE TO ISSUE ACCURATE
ITEMIZED WAGE STATEMENTS [Labor Code
§ 226, 226.3]**

) **7. UNLAWFUL/UNFAIR BUSINESS
PRACTICE [Cal. Business & Professions Code §
17200 et seq.]**

) **8. RETALIATION – FEHA**

) **9. GENDER DISCRIMINATION**

) **10. FAILURE TO PREVENT
DISCRIMINATION AND RETALIATION**

) **11. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY**

) **12. PRIVATE ATTORNEY GENERAL ACT**

Complaint filed: 12/22/2020

1 Plaintiff WILLIAM RICHARTE comes now and complains and alleges as follows:

2 **NATURE OF ACTION**

- 3 1. Plaintiff WILLIAM RICHARTE, an individual, bring claims against their former
4 employer for failure to pay all wages due, failure to pay overtime wages, failure to provide
5 meal and rest periods, and violation of Labor Code § 201-203 waiting time penalties,
6 Labor Code § 226 inaccurate itemized wage statements. As a result of these
7 aforementioned acts Defendants have committed unlawful business practices in violation
8 of Business and Profession Code § 17200 et seq. and violated several sections of the
9 California Labor Code, including failing to pay timely wages, failing to pay overtime
10 wages and failing to issue accurate itemized wage statements, wrongful termination, and
11 various other violations.

12 **THE PARTIES**

- 13 2. Plaintiff WILLIAM RICHARTE, an individual, (hereafter "Plaintiff") is a former non-
14 exempt employee of Defendants.
- 15 3. At all times herein mentioned, Defendant RAPID PLUMBING, was doing business as a
16 plumbing business in the state of California, County of LOS ANGELES. Plaintiff worked
17 for Defendants at its workplace in the County of Los Angeles.
- 18 4. At all times herein mentioned, Plaintiff is informed and believes RAY DOE was
19 Plaintiff's supervisor and the owner of RAPID PLUMBING. Plaintiff worked for
20 Defendants at its workplace in the County of Los Angeles.
- 21 5. Plaintiff is informed and believe, and based thereupon allege, that at all times relevant
22 hereto, Defendant RAY DOE was Plaintiff's employer, manager, corporate agent, and/or
23 supervisor. Specifically, Plaintiff is informed and believes, and based thereon alleges, that
24 RAY DOE dictated Plaintiffs' compensation and had plenary ability to supervise, manage,
25 hire, and fire, and did participate in the hiring and firing of Plaintiff. Defendant RAY DOE
26 exercised control and management of the work performed by Plaintiffs as to establish or
27 change corporate policies for which Plaintiffs were required to perform. Defendant RAY
28 DOE had the ability to ensure Plaintiff was properly compensated and allotted meal

breaks, rest periods, and other provisions issued to employees. Furthermore, Plaintiff was of the belief that RAY DOE was also their employer.

6. On information and belief, RAY DOE were the primary, if not the sole, decision makers and authors of Defendants' corporate policies as to: (1) setting employees' working hours and rates of pay; (2) whether, and how much, to pay employees for overtime hours worked; (3) whether to allow employees the opportunity to take meal periods and rest breaks; (4) determining whether to issue itemized wages statements to employees; (5) determining whether an employee was exempt or non-exempt for purposes of applicable compliance with the Labor Code and order of the Industrial Welfare Commission; and (6) ensure compliance with all applicable Labor Code sections and orders of the Industrial Welfare Commission.
7. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate, or associate, of those Defendants fictitiously sued as DOES 1 through 100 inclusive, and so Plaintiff sues them by those fictitious names. Plaintiffs are informed and believes that each of the DOE Defendants reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named Defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named Defendants.
8. Plaintiffs are ignorant of the true names and capacities of the few separate and distinct principle limited partners and members that have not respected the limited partnership and/or Defendants' separate identity, and therefore sues them by the fictitious name of DOES 1 through 100 so that such partners and members may be personally liable for the corporate Defendants' actions in order to redress fraud, protect the rights of third persons, or prevent a palpable injustice and allowing this Court to treat the corporate Defendants and DOES 1 through 100 as identical entities with identical obligations, if necessary. Upon discovering the true names and capacities of DOES 1 through 100, Plaintiff will amend this complaint to show the true names and capacities of DOES 1 through 100.

- 1 9. Unless otherwise alleged in this complaint, Plaintiffs are informed, and on the basis of that
2 information and belief alleges that at all times herein mentioned, each of the remaining co-
3 Defendants, in doing the things hereinafter alleged, were acting within the course, scope
4 and under the authority of their agency, employment, or representative capacity, with the
5 consent of her/his Co-defendants.
- 6 10. Plaintiffs are informed, believe and thereupon allege that Defendant Corporation is and at
7 all times herein mentioned was, a mere shell and sham without capital, assets, stock, or
8 stockholders. Plaintiffs are informed, believes and thereupon alleges that Defendant
9 Corporation were conceived, intended, and used by Defendants and DOES 1-100 as a
10 device to avoid individual personal liability and/or for the purposes of substituting a
11 financially insolvent corporation in the place of Defendants. Plaintiffs are informed,
12 believes and thereupon alleges that at no time after Defendant became incorporated was
13 any stock authorized to be issued or issued, nor has any permit for issuance of stock been
14 applied for with the Commissioner of Corporations.
- 15 11. Plaintiffs are informed, believes and thereupon alleges that Defendants are and at all times
16 herein mentioned were, so inadequately capitalized that, its capitalization was illusory and
17 trifling. Plaintiffs are informed, believes and thereupon allege that Defendants are, and at
18 all times herein mentioned were, the alter ego of Defendants and there exists, and at all
19 times mentioned herein existed, a unity of interest and ownership between such defendants
20 such that any separateness has ceased to exist, and Defendants used assets of the
21 corporation for their personal use, caused assets of the corporation to be transferred to
22 them without adequate consideration, and withdrew funds from the corporation's bank
23 accounts for their personal use.
- 24 12. Plaintiffs are informed believes and alleges that all times mentioned herein, Defendants
25 have a shared interest in the business, profits, losses, revenue, labor, employment, policies
26 and operations that these two separate corporate entities can be legally considered the
27 same and/or legally be considered joint employers of all Plaintiffs' named herein.
28 Specifically, the corporate entities share employees, supplies, inventory, employment

1 procedures, payroll account, bank accounts, and jointly create management policies,
2 procedures and guidelines such that it would not offend the interest of justices to consider
3 them the same legal entities for the purposes of liability and judgment in this action.

4 13. Plaintiffs are informed, believes and thereupon alleges that Defendants and all separate
5 entities known or unknown, employed Plaintiff simultaneously, and/or jointly, including
6 but not limited to: sharing employee's services, acting in the interest of both employers for
7 employment purposes, sharing control over employees, including hiring, firing, payroll,
8 supervision, and modifying conditions of employment. Plaintiffs are informed, believes
9 and thereupon alleges that Defendants and all separate entities known or unknown also
10 shared a common management, an interrelationship of operations, and had centralized
11 control of labor and financial resources.

12 **GENERAL ALLEGATIONS**

13 14. At all times pertinent to this action, Plaintiff WILLIAM RICHARTE (hereafter
14 "Plaintiff"), was employed as a plumber for Defendants.

15 15. Plaintiff was employed from about October 2020 to November 19, 2020. Plaintiff was
16 paid an hourly wage of \$22.

17 16. During his employment, Plaintiff was required to work more than 40 hours per week,
18 without receiving overtime wages for those hours worked. Instead of paying overtime
19 wages to Plaintiff, Defendants would sometimes pay straight time. Since Plaintiff was
20 working over eight (8) hours per day, Plaintiff should have been receiving overtime
21 compensation at one and one half (1.5) times his regular rate for any time worked over
22 eight (8) hours until twelve (12), after which Plaintiff should have been receiving overtime
23 compensation at two (2) times his regular rate for any time worked over twelve (12) hours.
24 Defendants would not report all the hours on Plaintiff's itemized statements.

25 17. Since Plaintiff was working over forty (40) hours per week, they should have been
26 receiving overtime pay at one and one half (1.5) times his regular rate for each hour
27 worked beyond forty (40) hours per week. As a result of this practice, Plaintiff did not
28 receive his regular wages for time worked over forty (40) hours nor additional

1 compensation for overtime hours worked and does not know whether they were paid all
2 regular wages for all regular hours worked because Defendants did not provide him with
3 an accurate wage statement of his hours worked. Moreover, Plaintiff did not receive
4 additional compensation for overtime hours worked and does not know whether they were
5 paid all regular wages for all regular hours worked because Defendants did not provide
6 him with an accurate wage statement of his hours worked.

7 18. Additionally and alternative, because Plaintiff worked a weekly schedule consisting of at
8 least 40 weekly hours, and Defendants only paid for forty (40) hours worked, Plaintiff was
9 not receiving at least a minimum wage for all hours worked. Specifically, California law
10 requires that for each hour worked by an employee under the control and direction of the
11 employer, such employee should be compensated at least the minimum wage set by the
12 state of California. Defendant failed to pay plaintiff all wages for all hours worked.

13 19. Defendants' conduct, namely not paying additional overtime wages for overtime hours
14 worked, failure to pay minimum wage, violated California wage and hour laws by not
15 paying Plaintiff all wages earned.

16 20. At all times herein mentioned, Plaintiff was a non-exempt employee, which entitled
17 Plaintiff to overtime pay and meal and rest period breaks.

18 21. Plaintiff was coerced into giving up full 30 minute meal breaks. Their meal breaks and rest
19 breaks were refused or were regularly interrupted. The Defendants grinded Plaintiff and
20 coerced them into working without breaks, in direct violation of California wage and hour
21 laws.

22 22. Defendants have adopted and are using unfair business practices to minimize their
23 employees' compensation and increase Defendants' profits. Among these unfair business
24 practices are causing Plaintiff to work without paying all regular wages, all overtime
25 wages and coercing Plaintiff into taking shorter meal breaks than required. Defendants'
26 unlawful practices mentioned herein above resulted in Defendants' failure to pay all wages
27 due to Plaintiff and failing to provide accurate itemized wage statements of all hours
28 worked, including hours worked for overtime.

1 23. Defendants' policies and practices of failing to pay overtime compensation and failing to
2 abide by the California Labor Code are repeated and systematic practices depriving
3 Plaintiff of his rights under California Labor laws and all for the benefit of Defendants
4 herein.

5 24. Defendants' conduct, namely not paying additional overtime wages for overtime hours
6 worked, failure to pay minimum wage, violated California wage and hour laws by not
7 paying Plaintiff all wages earned.

8 **FACTS PERTAINING TO TERMINATION**

9 25. Plaintiff realleges the information set forth above and incorporates herein as though fully
10 set forth and alleged.

11 26. Plaintiff had a child born in late October. Plaintiff took time to take care of this child.
12 Defendants terminated Plaintiff because he took time to take care of this child. Plaintiff is
13 a male. Defendants discriminated and retaliated Plaintiff for not conforming to his gender
14 role, along with taking leave pursuant to Families First Coronavirus Response Act, which
15 allowed Plaintiff to take leave if care was unavailable due to COVID-19.

16 27. Plaintiff exhausted her administrative remedies under the California Fair Employment and
17 Housing Act and the Department of Fair Housing and Employment has issued the Notice
18 of Case Closure/Right-to-Sue Letter with respect to said defendants.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY ALL WAGES**

21 **[California Labor Code §§ 201-202, 218, 218.5, 1194, 1194.2, 1197.1]**

22 **(PLAINTIFF AGAINST ALL DEFENDANTS)**

23 28. Plaintiff realleges the information set forth above and incorporates herein as though fully
24 set forth and alleged.

25 29. At all relevant times herein, Defendants were required to compensate its hourly employees
26 for all hours worked upon reporting to work at the appointed time stated by the employer
27 pursuant to the Industrial Commission Order 5-2001 and 5-2001, California Code of
28 Regulations, Title 8, section 11010.

1 30. Labor Code § 1194 provides in relevant part: “Notwithstanding any agreement to work for
2 a lesser wage, any employee receiving less than the legal minimum wage ... applicable to
3 the employee is entitled to recover in a civil action the unpaid balance of the full amount
4 of this minimum wage ... , including interest thereon, reasonable attorney's fees, and costs
5 of suit.”

6 31. “In any action under ... Section 1194 to recover wages because of the payment of a wage
7 less than the minimum wage fixed by an order of the commission, an employee shall be
8 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
9 and interest thereon.” Labor Code § 1194.

10 32. As mentioned hereinabove, Defendants failed to pay wages for all hours worked,
11 specifically not paying all overtime wages and not paying a minimum wage for all hours
12 worked. Defendants failed to pay any overtime hours worked and instead paid employees
13 no overtime wages or reduced wages for overtime hours worked.

14 33. Accordingly, pursuant to California Labor Code §1194 and 218, Plaintiffs are entitled to
15 recover wages for all hours worked off-the-clock, for all overtime hours worked and for all
16 other hours worked that were not adequately compensated.

17 34. Furthermore, pursuant to California Labor Code §1194.2, Plaintiffs are entitled to recover
18 liquidated damages in an additional amount equal to the amount they are entitled to under
19 §1194 for all wages that were not paid at the legal minimum wage rate.

20 35. Pursuant to Labor Code § 218.5, 1194, and 1197 et seq., Plaintiffs are also entitled to
21 recover applicable statutory and civil penalties, interest, costs, and attorneys’ fees
22 associated with this cause of action.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PROVIDE MEAL AND REST PERIODS**

25 **[Labor Code §§ 226.7(a), 512]**

26 **(AS AGAINST ALL DEFENDANTS)**

27 36. Plaintiff realleges and incorporates by reference each and every allegation set forth in each
28 of the preceding paragraphs, as though fully set forth and alleged herein.

- 1 37. Under Section 11 of Industrial Welfare Commission Order 5-2001 and 7-2001, codified by
2 California Code of Regulations, Title 8, Section 11010, Defendants are required to offer
3 its employees and Plaintiff a thirty (30) minute meal period for shifts worked over five
4 hours in a day, and a second thirty (30) minute meal period for any shift of more than ten
5 (10) hours. Labor Code § 512 codifies the same language from Section 11 of the
6 Industrial Welfare Commission Wage Orders regarding meal periods.
- 7 38. Under Section 12 of Industrial Welfare Commission Order 5-2001 and 7-2001, California
8 Code of Regulations, Title 8, Section 11010, Defendants are required to offer Plaintiff a
9 ten (10) minute minimum rest period per four (4) hours worked, or major fraction thereof,
10 to be taken, as far as practicable, in the middle of the work period.
- 11 39. Labor Code § 226.7, subdivision (a), provides: “No employer shall require any employee
12 to work during any meal or rest periods mandated by applicable order of the Industrial
13 Welfare Commission.”
- 14 40. At all times mentioned herein, Plaintiff was entitled to the protections of the Industrial
15 Welfare Commission Orders, California Code of Regulations, Title 8, Section 11010 and
16 Labor Code §§ 512 et seq. and 226.7.
- 17 41. During the course of Plaintiff’s employment, Defendants failed to offer Plaintiff with
18 mandated meal and rest periods and required Plaintiff to work during mandated meal
19 periods, in violation of the Industrial Welfare Commission Orders mentioned herein,
20 Labor Code Section 226.7, subdivision (a), and Labor Code section 512.
- 21 42. Pursuant to Section 11 (D) of Industrial Welfare Commission Order 5-2001 and 7-2001,
22 California Code of Regulations, Title 8, Section 11010, Defendants were required to pay
23 Plaintiff one additional hour of pay at Plaintiff’s regular rate of compensation for each
24 work day that the meal and rest period was not offered to Plaintiff, in addition to paying
25 Plaintiff compensation for the time worked during the missed meal and rest period.
- 26 43. Defendants willfully refused and continue to refuse to pay Plaintiff compensation for
27 missed meal and rest periods as required by the aforementioned statutes and regulations.
28

1 44. Under Labor Code section 226.7 and applicable IWC Wage Orders, Plaintiffs are entitled
2 to an award of all unpaid premium pay for missed rest breaks.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGE**

5 **[Labor Code §§ 1194 and 1194.2 et seq.]**

6 **(AS AGAINST ALL DEFENDANTS)**

7 45. Plaintiffs reallege and incorporates by reference each and every allegation set forth in each
8 of the preceding paragraphs, as though fully set forth and alleged herein.

9 46. At all relevant times herein, Defendants were required to compensate their hourly
10 employees for all hours worked upon reporting to work at the appointed time stated by the
11 employer pursuant to the Industrial Commission Orders 1-90 and 1-98, codified as
12 California Code of Regulations, Title 8, section 11010.

13 47. At all relevant times herein, Defendants were required to compensate all employees not
14 less than the minimum wage set by the state of California for all hours worked. Labor
15 Code § 1194 provides that: “Notwithstanding any agreement to work for a lesser wage,
16 any employee receiving less than the legal minimum wage ... applicable to the employee is
17 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
18 wage ... , including interest thereon, reasonable attorney's fees, and costs of suit.”

19 48. “In any action under ... Section 1194 to recover wages because of the payment of a wage
20 less than the minimum wage fixed by an order of the commission, an employee shall be
21 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
22 and interest thereon.” (emphasis added) Labor Code § 1194.

23 49. Defendant fails to compensate Plaintiff at less the requisite minimum wage for all hours
24 worked. Specifically, because the Defendant only compensated plaintiffs’ for a 40 hour
25 work week even though plaintiff worked at least 40 hours per week – the defendant failed
26 to compensate the plaintiff for a minimum wage for every hour worked.

27 50. Accordingly, pursuant to Labor Code § 1194 and § 218, Plaintiffs are entitled to recover
28 minimum wages for all hours worked as described hereinabove.

1 51. Pursuant to California Labor Code §§ 1194.2 and 218, Plaintiffs are entitled to recover
2 liquidated damages in an additional amount equal to the amount they are entitled to under
3 §1194.

4 52. Pursuant to Labor Code § 1194, Plaintiffs are also entitled to recover interest, costs, and
5 attorneys' fees associated with this cause of action.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME COMPENSATION**

8 **[Labor Code §§ 510 and 1194]**

9 **(AS AGAINST ALL DEFENDANTS)**

10 53. Plaintiff realleges and incorporates by reference each and every allegation set forth in each
11 of the preceding paragraphs, as though fully set forth and alleged herein.

12 54. Pursuant to Labor Code § 510, Defendants were required to compensate its employees at a
13 rate of no less than one and one-half (1.5) their hourly rate for work in excess of eight (8)
14 hours daily, forty (40) hours a week, and the first eight (8) hours worked on the seventh
15 day. Furthermore, Labor Code § 510 expressly states that "in addition, any work in excess
16 of eight (8) hours on the seventh day of a workweek shall be compensated at no less than
17 twice the regular rate of pay of an employee."

18 55. Labor Code § 1194 also establishes the fundamental public policy of paying the proper
19 legal overtime rate: "notwithstanding any agreement to work for a lesser wage, any
20 employee receiving less than the legal minimum wage or the legal overtime compensation
21 applicable to the employee is entitled to recover in a civil action the unpaid balance of the
22 full amount of this minimum wage or overtime compensation, including interest thereon,
23 reasonable attorneys' fees and costs of suit."

24 56. Plaintiff was a non-exempt employee entitled to the protections of the Industrial Welfare
25 Commission Orders mentioned herein, California Code of Regulations, Title 8, Section
26 11010.

27 57. Defendants' conduct described herein, namely, requiring Plaintiff to work without paying
28 overtime wages for hours worked over eighth (8) hours per day, or forty (40) hours per

1 week without paying certain overtime wages, is a violation of the California overtime
2 laws. Pursuant to Labor Code Sections 510, and 1194, Plaintiffs are entitled to recover
3 unpaid overtime wages for the nonpayment of overtime hours worked, penalties, costs
4 plus reasonable attorneys' fees.

5 58. Under Labor Code section 1194.6, Plaintiffs are entitled to an award of interest on all due
6 and unpaid wages at the rate of interest specified in Civil Code section 3289, subdivision
7 (b), in this action for the nonpayment of the legal overtime compensation and including
8 costs of suit.

9 **FIFTH CAUSE OF ACTION**

10 **FAILURE TO PAY WAGES DUE UPON TERMINATION:**

11 **WAITING TIME PENALTIES**

12 **[Labor Code §§ 201, 202 and 203]**

13 **(AS AGAINST ALL DEFENDANTS)**

14 59. Plaintiffs reallege the information set forth above and incorporate herein, as though fully
15 set forth and alleged herein.

16 60. California Labor Code §§ 201 and 202 require Defendants to pay all compensation due
17 and owing to former employees at or around the time their employment is terminated.

18 61. California Labor Code § 203 provides that if an employer willfully fails to pay
19 compensation promptly upon discharge or resignation, as required by §§ 201 and 202, then
20 the employer is liable for penalties in the form of continued compensation up to thirty (30)
21 work days.

22 62. Defendants willful failure to pay Plaintiff all wages and failed to pay proper premium pay
23 wages, failure to pay a minimum wage, failure to pay overtime wages, failure to pay
24 wages for off-the-clock hours worked and for all employees who are no longer employed
25 by Defendants for all wages due to them at the time of his separation as required by
26 California Labor Code §§ 201 and 202.

1 63. California Labor Code § 203 provides that an employee's wages not paid upon termination
2 shall continue as a penalty until paid or for a period of up to thirty (30) days from the time
3 they were due.

4 64. Defendant's failure to pay all wages owed was willful and intentional and Plaintiffs are
5 thus entitled to penalties under Labor Code § 203.

6 65. Pursuant to Labor Code § 203, Plaintiffs are entitled to thirty (30) days worth of wages as
7 a penalty, plus attorneys' fees, calculated against Defendant by multiplying their daily rate
8 of pay by thirty (30) days.

9 **SIXTH CAUSE OF ACTION**

10 **FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS**

11 **[Labor Code § 226 et seq.]**

12 **(AS AGAINST ALL DEFENDANTS)**

13 66. Plaintiffs reallege the information set forth above and incorporates herein, as though fully
14 set forth and alleged herein.

15 67. California Labor Code § 226(a) requires that employers, when paying their non-exempt
16 employees wages, include an "itemized statement in writing showing" the "total hours
17 worked by the employee," and "all applicable hourly rates in effect during the pay period
18 and the corresponding number of hours worked at each hourly rate."

19 68. Defendants implemented an employment practice whereby it failed to provide Plaintiff
20 with accurate wage statements or paychecks. Defendants failed to provide or maintain an
21 accurate record of overtime hours worked.

22 69. Defendants have willfully and intentionally violated California Labor Code § 226(a) by
23 failing to maintain an accurate record of the total hours worked, failing to maintain an
24 accurate record of the applicable overtime rates paid or owed, failing to maintain an
25 accurate record of overtime hours worked, and failing to pay overtime rates on Plaintiff's
26 wage statements, paychecks and check stubs.

1 70. As a result of Defendants' violation of Labor Code § 226, Plaintiffs are entitled to \$50.00
2 for each pay period in which there is an initial violation of Section 226 and \$100.00 for
3 each subsequent pay period in which there is a further violation.

4 71. Plaintiffs seek injunctive relief under Labor Code § 226 in the form of an order from the
5 Court ordering Defendants to properly state the wages earned, the proper hours worked
6 and the proper overtime wages paid – and to furnish accurate wage statements to
7 Plaintiffs, as well as other similarly situated employees of Defendant.

8 72. Plaintiffs allege that they are due a maximum of \$4,000.00, as non-taxed penalties and
9 restitution, plus cost and attorneys' fees, for pay periods in which Defendants has failed to
10 comply with Labor Code § 226 and for up to one year from the date of filing this action.

11 **SEVENTH CAUSE OF ACTION**

12 **UNLAWFUL/UNFAIR BUSINESS PRACTICES**

13 **[Business and Professions Code § 17200 et seq.]**

14 **(AS AGAINST ALL DEFENDANTS)**

15 73. Plaintiffs reallege the information set forth above and incorporates herein, as though fully
16 set forth and alleged herein.

17 74. California Business & Professions Code § 17200 et seq. prohibits any unlawful, unfair, or
18 fraudulent business practices.

19 75. Labor Code § 90.5(a) states that it is the public policy of California to force vigorously
20 minimum labor standards in order to ensure employees are not required to work under
21 substandard and unlawful conditions, and to protect employers who comply with the law
22 from those who attempt to gain competitive advantage at the expense of their workers by
23 failing to comply with minimum labor standards.

24 76. By violating the aforementioned statutes and regulations, including California Labor
25 Code, §§ 226, 510, 512, 1194, and sections of IWC Wage Orders, as alleged above and
26 incorporated herein, the acts of Defendants constitute unfair and unlawful business
27 practices under California Business & Professions Code, Section 17200, et seq.
28

1 77. Defendants' violations of sections of the California Labor Code, as alleged above,
2 constitute an unfair business practice because these were done repeatedly over a
3 significant period of time and in a systematic manner to the detriment of Plaintiff. All of
4 the foregoing harmed Plaintiff by not paying wages owned and earned.

5 78. Under Section 17208 of the California Business and Professions Code, the statute of
6 limitations for a claim under Section 17200 is four years. Accordingly, the actionable
7 period for the unpaid wage causes of actions alleged hereinabove are extended from three
8 years of recovery for wage claims to an additional fourth year of recovery.

9 79. Defendants engaged in unfair competition in violation of Cal. Bus & Prof. Code, § 17200
10 et seq. by violating, inter alia, each of the above causes of actions and Cal. Labor Code §
11 1194 and 1194.2, Cal. Labor Code §§ 203, 222, 222.5, 223 and 227.3, 226.7, 512 and Cal.
12 Labor Code §§ 2800, 2802.

13 80. Defendants' course of conduct, act and practice in violation of the California laws
14 mentioned in each paragraph above constitute separate and independent violations of
15 17200 et seq. of the California Business and Professions Code.

16 81. Pursuant to California Business and Professions Code § 17000 et seq. and § 17200 et seq.,
17 the acts constituting continuing and ongoing unlawful activities justify the issuance of an
18 injunction and all remedies available in the form of unpaid wages, penalties and specific
19 damages are cumulative and recovered for Plaintiff and each aggrieved employee.

20 82. Further, Plaintiff request attorneys' fees and costs pursuant to Code of Civil Procedure
21 section 1021.5 upon proof they have acted in the public interest as set forth in the Private
22 Attorney General Act.

23 **EIGHTH CAUSE OF ACTION**

24 **RETALIATION IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT**

25 83. Plaintiff realleges the information set forth above and incorporate herein, as though fully
26 set forth and alleged herein.

27 84. This cause of action is based upon California Government Code Section 12940, et seq.
28 which prohibits retaliation against an employee for opposing any practice forbidden by the

1 Fair Employment and Housing Act or for complaining about or protesting gender
2 discrimination.

3 85. Plaintiff exhausted his administrative remedies under the California Fair Employment and
4 Housing Act and the Department of Fair Housing and Employment has issued the Notice
5 of Case Closure/Right-to-Sue Letter with respect to said defendants.

6 86. Defendants violated Calif. Gov. Code § 12940, et seq. by retaliating against Plaintiff
7 because he opposed, complained about and protested Defendant's gender discrimination.

8 87. As a direct, foreseeable, and proximate result of the conduct of all Defendants named in
9 this cause of action, and each of them, the Plaintiff has suffered, and continues to suffer
10 emotional distress, lost wages and benefits and medical expenses, all to her damage in a
11 sum within the jurisdiction of this court, to be ascertain according to proof.

12 88. The grossly reckless, and/or intentional, malicious, and bad faith manner in which all
13 named Defendants, and each of them, engaged in those acts as described in this cause of
14 action by willfully violating those statutes enumerated in this cause of action, the Plaintiff
15 is entitled to punitive damages against said Defendants, and each of them, in an amount
16 within the jurisdiction of this court, to be ascertained by the fact finder, that is sufficiently
17 high to punish said Defendants, deter them from engaging in such conduct again, and to
18 make an example of them to others.

19 89. The Plaintiff is informed, believes, and based thereon, alleges that the outrageous conduct
20 of said Defendants described above were done with oppression and malice by the
21 Plaintiffs supervisor and managers and/or were ratified by those other individuals who
22 were managing agents of said Defendant employers. These unlawful acts were further
23 ratified by the Defendant employers and done with a conscious disregard for the Plaintiffs
24 rights and with the intent, design and purpose of injuring the Plaintiff. By reason thereof,
25 the Plaintiff is entitled to punitive or exemplary damages against said Defendants, and
26 each of them, for their acts as described in this cause of action in a sum to be determined
27 at the time of trial.

1 90. The Plaintiff also requests costs and attorney fees, as allowed by FEHA for the Plaintiffs
2 prosecution of this action in reference to the FEHA code violations described herein.

3 **NINTH CAUSE OF ACTION**

4 **GENDER DISCRMINATION**

5 91. Plaintiff hereby incorporates by reference and realleges all preceding paragraphs of this
6 complaint as if fully set forth herein.

7 92. Plaintiff was employed by Defendants. Defendants terminated Plaintiff's position. Plaintiff
8 was over 40 years old at the time of termination. Plaintiff's age was a substantial
9 motivating reason for Defendant's decision to terminate Plaintiff. Particularly, Plaintiff
10 was the oldest person in her department. She was the only person whose position was
11 mysteriously transferred from her department at or near the time of her termination.
12 Plaintiff was discriminated on the basis of his gender for failing to conform to his gender
13 role as a male who does not help take care of children during the workday.

14 93. On the basis of the above, plaintiff believes and alleges that her age was a substantial
15 motivating factor in defendants' termination of her employment.

16 94. As a proximate result of defendants' willful, knowing, and intentional discrimination
17 against plaintiff, plaintiff has sustained and continues to sustain substantial losses of
18 earnings and other employment benefits.

19 95. As a proximate result of defendants' willful, knowing, and intentional discrimination
20 against plaintiff, plaintiff has suffered and continues to suffer humiliation, emotional
21 distress, and mental and physical pain and anguish, all to her damage in a sum according
22 to proof.

23 96. Defendants' discrimination was done intentionally, in a malicious, fraudulent, oppressive
24 manner, entitling plaintiff to punitive damages.

25 97. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Pursuant to
26 Government Code section 12965(b), plaintiff is entitled to recover reasonable attorneys'
27 fees and costs (including expert costs) in an amount according to proof.

1 **TENTH CAUSE OF ACTION**

2 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION**

3 98. Plaintiffs reallege the information set forth above and incorporates herein as though fully
4 set forth and alleged.

5 99. This cause of action is based upon California statutes requiring employers to prevent
6 discrimination and retaliation including, but not limited to California Government Code
7 Sections 12940, et seq. which requires employers to prohibit discrimination and
8 retaliation.

9 100. Plaintiff exhausted her administrative remedies under the California Fair
10 Employment and Housing Act and the Department of Fair Housing and Employment has
11 issued the Notice of Case Closure/Right-to-Sue Letter with respect to said defendants.

12 101. Plaintiff is informed, believes and thereupon alleges that Defendants failed to
13 prevent gender discriminating conduct and retaliation.

14 102. Furthermore, the Plaintiff is informed, believes, and thereon alleges that
15 Defendants is strictly liable for the acts as alleged herein as it failed to take all reasonable
16 steps necessary to prevent gender discriminating conduct and retaliation in the workplace
17 from occurring.

18 103. As a direct, foreseeable, and proximate result of the conduct of all Defendants
19 named in this cause of action, and each of them, the Plaintiff has suffered, and continues to
20 suffer emotional distress, lost wages and benefits and medical expenses, all to her damage
21 in a sum within the jurisdiction of this court, to be ascertain according to proof.

22 104. The grossly reckless, and/or intentional, malicious, and bad faith manner in which
23 all named Defendants, and each of them, engaged in those acts as described in this cause
24 of action by willfully violating those statutes enumerated in this cause of action, the
25 Plaintiff is entitled to punitive damages against said Defendants, and each of them, in an
26 amount within the jurisdiction of this court, to be ascertained by the fact finder, that is
27 sufficiently high to punish said Defendants, deter them from engaging in such conduct
28 again, and to make an example of them to others.

1 105. The Plaintiff is informed, believes, and based thereon, alleges that the outrageous
2 conduct of said Defendants described above were done with oppression and malice by the
3 Plaintiffs supervisor and managers and were ratified by those other individuals who were
4 managing agents of said Defendant employers. These unlawful acts were further ratified
5 by the Defendant employers and done with a conscious disregard for the Plaintiffs rights
6 and with the intent, design and purpose of injuring the Plaintiff. By reason thereof, the
7 Plaintiff is entitled to punitive or exemplary damages against said Defendants, and each of
8 them, for their acts as described in this cause of action in a sum to be determined at the
9 time of trial.

10 106. The Plaintiff also prays for reasonable costs and attorney fees, as allowed by
11 FEHA for the Plaintiffs prosecution of this action in reference to the FEHA code
12 violations described in this cause of action.

13 **ELEVENTH CAUSE OF ACTION**

14 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

15 107. Plaintiffs reallege the information set forth above and incorporates herein as
16 though fully set forth and alleged.

17 108. Plaintiff was discharged on or about November 19, 2020.

18 109. Plaintiff's complaints regarding discrimination were a substantial motivating
19 reason for Plaintiff's discharge. Plaintiff's use of Families First Coronavirus Response
20 Act, which allowed leave if a child's place of care is unavailable due to COVID-19, was
21 also a substantial factor in terminating Plaintiff.

22 110. The discharge was a substantial factor in causing Plaintiff's harm, namely past and
23 future medical expenses, past and future wages, past and future pain and suffering, past
24 and future emotional distress.

25 111. Because of defendant's wrongful acts as alleged herein, Plaintiff will likely be
26 required to employ medical providers to examine, treat, and care for her, and will incur
27 additional medical expenses in an amount to be proven at the time of trial.
28

1 112. As a direct and proximate result of Defendant's unlawful conduct, Plaintiffs have
2 each sustained substantial losses in earnings and other employment benefits in an amount
3 according to proof at the time of trial. As a further proximate result of Defendant's
4 wrongful conduct, Plaintiffs have each suffered and continues to suffer shock,
5 embarrassment, humiliation, emotional distress and mental anguish, and other injuries, all
6 to their damage in an amount according to proof at time of trial.

7 **TWELFTH CAUSE OF ACTION**

8 **PRIVATE ATTORNEY GENERAL ACT**

9 **(VIOLATION OF LABOR CODE §§ 201-203, 204, 210, 216, 225.5, 226.3, 450, 512, 558)**

10 113. By Plaintiff in their individual capacities and in their capacities as representatives
11 against all DEFENDANTS.

12 114. Plaintiff realleges the information set forth above and incorporate herein, as though
13 fully set forth and alleged herein.

14 115. As alleged herein, Defendants have committed several Labor Code violations
15 against Plaintiff and other former and current employees in the State of California.

16 116. Plaintiff, as an "aggrieved employee" within the meaning of California Labor Code
17 sections 2698 et seq., acting on behalf of themselves and other former and current non
18 exempt employees of Defendants, bring this action to recover the civil penalties provided
19 for under the Labor Code Private Attorney General Act of 2004 (hereafter, "PAGA"),
20 including, but not limited to, the penalties provided under Labor Code sections 210, 225.5,
21 226.3, 558 and 2699, subdivisions (a) and (f), for the following knowing and intentional
22 Labor Code violations:

- 23 a. Failing and/or refusing to provide required meal periods to Plaintiff and other
24 aggrieved employees, in violation of California Labor Code section 512 and Wage
25 Order 9 2001 (Cal. Lab. Code, §§ 558 & 2699(a));
- 26 b. Failing and/or refusing to provide required rest periods to Plaintiff and other
27 aggrieved employees, in violation of California Labor Code section 226.7 (a) and
28 Wage Order 9 2001 (Cal. Lab. Code, §§ 558 & 2699(a));

- c. Failing and/or refusing to pay Plaintiff and other aggrieved employees the additional hour of compensation for every shift that a mandated meal period is not provided, in violation of California Labor Code section 226.7 and Wage Order 9 2001 (Cal. Lab. Code, § 2699(f));
- d. Failing and/or refusing to pay Plaintiff and other aggrieved employees the additional hour of compensation for every shift that a mandated rest period is not provided, in violation of California Labor Code section 226.7 and Wage Order 9 2001 (Cal. Lab. Code, § 2699(f));
- e. Failing and/or refusing to pay all wages and compensation earned by Plaintiff and other aggrieved employees within the time limits prescribed by California Labor Code section 204 (Cal. Lab. Code, §§ 210 & 2699(a));
- f. Failing and/or refusing to properly maintain records of, and furnish to Plaintiff and other aggrieved employees, accurate, itemized wage statements, in violation of California Labor Code section 226 (Cal. Lab. Code, §§ 226.3 & 2699(a));
- g. Failure to pay Plaintiff and other aggrieved employees overtime wages pursuant to Labor Code §§ 218, 218.5, 1194, and 1197 et seq.
- h. Unlawfully withholding accrued wages owing to Plaintiff and other aggrieved employees, in violation of California Labor Code section 216 (Cal. Lab. Code, §§ 225.5 & 2699(a)); and
- i. Other violations of the California Labor Code as may be disclosed in discovery.

117. Plaintiff sent a written notice by certified mail to Defendants, and to the California Labor and Workforce Development Agency (hereafter, "LWDA"), giving notice of Defendants' violations of the California Labor Code, and of Plaintiff's intent to bring a claim for civil penalties under the California Labor Code Private Attorney General Act, Cal. Lab. Code, §§ 2698 et seq. Additional written notices were sent to both defendants and the LWDA on September 1, 2010 and on February 10, 2011, as additional information were obtained in discovery in this action. On June 28, 2010, and on

September 30, 2010, the LWDA notified PLAINTIFFS in writing that it does not intend to investigate the allegations against defendants.

118. Plaintiff has complied with the requirements for aggrieved employees to commence a civil action, pursuant to California Labor Code section 2699.3, subdivision (a)(2)(A). Accordingly, Plaintiff will prosecute this cause of action to recover civil penalties against Defendants arising from the above cited violations. These civil penalties include the prescribed monetary penalties under Labor Code sections 210 and 2699(f) as well as the recovery of such amounts sufficient to recover underpaid wages of Plaintiff and other aggrieved employees, pursuant to Labor Code section 558(a). Any wages recovered under this cause of action shall be paid to the affected employees.

119. Pursuant to California Labor Code § 2699, Plaintiff should be awarded twenty five percent (25%) of all penalties due under California law. Plaintiff was also compelled to retain the services of counsel to file this court action to protect their interests and those of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants to the Labor and Workplace Development Agency. Plaintiff thereby incurred attorneys' fees and costs, which they are entitled to recover under California Labor Code section 2699.

DEMAND FOR JURY TRIAL

Plaintiffs hereby formally demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for the following relief:

As to the First Cause of Action:

1. A declaratory judgment that Defendants violated Labor Code §§ 1194 and §1194.2 by failing to pay all wages and unlawful deduction of work related expenses;
2. For all unpaid wages for an amount in excess of \$10,000,000;
3. For injunctive relief as justice requires, including an accounting of all hours worked, all wages paid and any financial records relating to Plaintiffs' employment, restitution and other equitable relief as justice requires.

1 4. For attorney fees and costs under all applicable statutes alleged herein;

2 As to the Second Cause of Action:

3 5. A declaratory judgment that Defendants violated Labor Code §§ 226.7 and 512 and
4 applicable Industrial Welfare Commission Wage Orders 7-2001 by failing to provide meal
5 periods and rest periods and failing to pay premium wages for missed rest periods.

6 6. For unpaid premium pay wages for missed breaks:

7 7. For Plaintiffs missed meal and rest breaks in an amount according to proof;

8 8. For injunctive relief as justice requires, including an accounting of all hours worked, all
9 wages paid and any financial records relating to Plaintiff's employment, restitution and
10 other equitable relief as justice requires.

11 As to the Third Cause of Action:

12 9. A declaratory judgment that Defendants violated Labor Code § 1194 for failing to pay a
13 minimum wage for all hours worked;

14 10. For all unpaid minimum wages for Plaintiffs in an amount according to proof;

15 11. For all penalties under Seq. 1194.2, including liquidated damages: for an amount in excess
16 of \$10,000,000;

17 12. For all penalties under Seq. 1194.1, including (\$100) for the initial failure to pay all
18 minimum wages, and (\$250) for each subsequent failure to pay minimum wages, for each
19 pay period that wages are underpaid;

20 13. For all interest, costs, and reasonably attorney's fees in accordance with Labor Code §§
21 1194 and 1194.2 et seq;

22 14. For injunctive relief as justice requires, including an accounting of all hours worked, all
23 wages paid and any financial records relating to Plaintiff's employment, restitution and
24 other equitable relief as justice requires;

25 As to the Fourth Cause of Action:

26 15. A declaratory judgment that Defendants violated Labor Code § 510 and § 1194 for failing
27 to pay overtime wages for hours worked over eight hours per day, or forty hours per week.

28 16. For all unpaid overtime wages for an amount in excess of \$10,000,000:

1 17. To Plaintiffs in an amount according to proof;

2 18. For all penalties and an award of costs, interest and reasonably attorney's fees in
3 accordance with Labor Code §§ 1194 and 1194.2 et seq;

4 19. For injunctive relief as justice requires, including an accounting of all hours worked, all
5 wages paid and any financial records relating to Plaintiff's employment, restitution and
6 other equitable relief as justice requires.

7 As to the Fifth Cause of Action:

8 20. A declaratory judgment that Defendants violated Labor Code §§ 201, 202, and 203 by
9 failing to pay Plaintiffs, and each of them, for all wages due at time of his separation.

10 21. For all penalties and an award of costs, interest and reasonably attorneys fees in
11 accordance with Labor Code §§ 201, 202, and 203;

12 22. To Plaintiffs in an amount for an amount in excess of \$10,000,000 in waiting time
13 penalties.

14 23. For injunctive relief as justice requires, including an accounting of all hours worked, all
15 wages paid and any financial records relating to Plaintiff's employment, restitution and
16 other equitable relief as justice requires.

17 As to the Sixth Cause of Action:

18 24. A declaratory judgment that Defendants violated Labor Code § 226 et seq. by failing to
19 provide Plaintiff an accurate itemized wage statement.

20 25. For all penalties pursuant to Labor Code §§ 226 et seq , which is the great of all actual
21 damages, or the maximum penalty of \$4,000 to Plaintiff, in the amount of \$50 for the
22 initial penalty, plus \$100 for each subsequent penalty;

23 26. For an award of costs, interest and reasonably attorneys fees in accordance with Labor
24 Code §§ 226 et seq.;

25 27. For injunctive relief as justice requires, including an accounting of all hours worked, all
26 wages paid and any financial records relating to Plaintiff's employment, restitution and
27 other equitable relief as justice requires.

28 As to the Seventh Cause of Action:

1 28. For equitable relief in the form of an order requiring Defendant, its agents, servants, and
2 employees and all persons acting directly or indirectly, in concert with them, to restore and
3 disgorge all funds to Plaintiff acquired by means of any act or practice declared by this
4 Court to be unlawful, unfair or fraudulent and therefore constituting unfair competition
5 under § 17200 et. seq of the Cal. Business & Professions Code.

6 29. For all unpaid wages as alleged and detailed above;

7 30. For additional cumulative penalties, forfeitures in the amount of \$2,500 for plaintiff in
8 penalties; and for additional penalties for an amount in excess of \$10,000,000;

9 31. For equitable relief in the form of an order and restitution in the form of an additional
10 fourth year of recovery for unpaid wages as result of Defendant's violation of California
11 wage and hour laws mentioned herein.

12 As to All Causes of Action:

13 32. For general, compensatory, and/or special damages in an amount according to proof for
14 Plaintiffs injuries, mental and/or emotional distress, medical expenses, loss of past and
15 future earnings, and all damages flowing therefrom for an amount in excess of
16 \$10,000,000;

17 33. That the Twelfth Cause of Action may be maintained as a representative cause of action;

18 34. For restitution of all monies due from the unlawful business practices and injunctive relief
19 for an amount in excess of \$10,000,000;

20 35. For all general and special damages to compensate Plaintiff for an amount in excess of
21 \$10,000,000;

22 36. For punitive damages, as allowed by law, that will sufficiently punish, make an example
23 of, and deter future conduct by Defendants for an amount in excess of \$10,000,000;

24 37. For all interest as allowed by law for an amount in excess of \$10,000,000;

25 38. For attorney's fees and costs for an amount in excess of \$10,000,000; and

26 39. For such other and further relief as the Court deems just and proper.
27
28

1 DATED: April 16, 2021

JONNY LAW

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3 By: _____

4 Jonathan D. Roven
5 Attorney for Plaintiff
6 WILLIAM RICARTE
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