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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MATTHEW MCFATE; ANDREA BUSH;) CASE NO.: **21STCV16172**
)

Plaintiffs,

) **COMPLAINT FOR DAMAGES FOR:**
)

vs.

) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**

) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**

ARTHA WELLNESS SM, LLC; ARTHA)
 WELLNESS, LLC; ARTHA WELLNESS)
 WEHO, LLC; AAMIR IRSHAD and DOES)
 1 to 25, inclusive,)

) **3) FAILURE TO PAY OVERTIME;**

) **4) FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**

Defendants.

) **5) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**

) **6) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**

) **7) VIOLATION OF LABOR CODE**
) **SECTION 558;**

) **8) FAILURE TO MAINTAIN**
) **ACCURATE RECORDS;**

) **9) FAILURE TO GIVE REST BREAKS;**

) **10) FAILURE TO GIVE MEAL BREAKS**

) **11) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**

) **12) FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**

) **13) DISCRIMINATION ON THE BASIS**
) **OF PHYSICAL DISABILITY IN**

) **VIOLATION OF FAIR**
) **EMPLOYMENT AND HOUSING**

) **ACT;**

) **14) FAILURE TO PREVENT**

) **DISCRIMINATION IN VIOLATION**
) **OF FEHA;**
) **15) WRONGFUL TERMINATION IN**
) **VIOLATION OF PUBLIC POLICY;**
) **16) RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 1102.5;**
) **17) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**
) **DEMAND FOR JURY TRIAL**

COMES NOW Plaintiffs MATTHEW MCFATE and ANDREA BUSH (hereinafter collectively “Plaintiffs”), and allege as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants ARTHA WELLNESS SM, LLC; ARTHA WELLNESS, LLC; ARTHA WELLNESS WEHO, LLC; AAMIR IRSHAD and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiffs in the County of Los Angeles is the subject of this action. Moreover, Plaintiffs’ damages sought herein exceed \$25,000.

2. Plaintiff MATTHEW MCFATE (“MCFATE” or “PLAINTIFF MCFATE”) is a male resident of the County of Los Angeles, State of California.

3. Plaintiff ANDREA BUSH (“BUSH” or “PLAINTIFF BUSH”) is a female resident of the County of Los Angeles, State of California.

4. Plaintiffs are informed and believe that at all times herein mentioned, Defendant ARTHA WELLNESS SM, LLC is and was a California corporation, doing business in Los Angeles County, California, and which employed Plaintiffs.

5. Plaintiffs are informed and believe that at all times herein mentioned, Defendant

1 ARTHA WELLNESS, LLC is and was a California corporation, doing business in Los
2 Angeles County, California, and which employed Plaintiffs.

3 6. Plaintiffs are informed and believe that at all times herein mentioned, Defendant
4 ARTHA WELLNESS WEHO, LLC is and was a California corporation, doing business in Los
5 Angeles County, California, and which employed Plaintiffs.

6 7. Plaintiffs are informed and believe that at all times herein mentioned, Defendant
7 AAMIR IRSHAD is and was a male resident of the County of Los Angeles, State of California
8 and the owner/managing agent of ARTHA WELLNESS SM, LLC; ARTHA WELLNESS,
9 LLC; and ARTHA WELLNESS WEHO, LLC and as such was personally involved in the day-
10 to-day operations of those businesses. Defendant AAMIR IRSHAD is being included in this
11 lawsuit pursuant to Labor Code Section 558.1 as he controlled the wages, hours, and working
12 conditions of Plaintiffs and other similarly situated aggrieved employees.
13

14 8. It also Plaintiffs' position that ARTHA WELLNESS SM, LLC, ARTHA WELLNESS,
15 LLC and ARTHA WELLNESS WEHO, LLC are joint employers in that they all controlled the
16 wages, hours, and working conditions of Plaintiffs and other similarly situated aggrieved
17 employees. Moreover, all of the named entities above are and were an "Integrated Enterprise"
18 under the law. The integrated enterprise test sets forth four factors for assessing whether
19 entities are considered a single entity for purposes of liability: (1) interrelation of operations;
20 (2) common management; (3) centralized control of labor relations; and (4) common ownership
21 or financial control. Even though one does not have to show proof of all factors to prevail on
22 an integrated enterprise claim, here all four factors are unequivocally met as both companies
23 have the exact same ownership and management, including Plaintiff Aamir Irshad who is listed
24 as the one and only officer/managing agent for both companies. Furthermore, there is
25 centralized control of labor relations. ARTHA WELLNESS SM, LLC, ARTHA WELLNESS,
26 LLC, ARTHA WELLNESS WEHO, LLC and AAMIR IRSHAD are collectively referred to
27 herein as "ARTHA" or "Defendant(s)".
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3 9. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate,
4 or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiffs
5 sue them by these fictitious names. Plaintiffs are informed and believe that each of the DOE
6 defendants, numbers 1 to 25, reside in the State of California and are in some manner
7 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
8 these fictitiously named defendants, Plaintiffs will amend this complaint to show the true
9 names and capacities of these fictitiously named defendants.

11 10. Unless otherwise alleged in this complaint, Plaintiffs are informed, and on the basis of
12 that information and belief, allege that at all times herein mentioned, each of the remaining
13 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
14 under the authority of their agency, employment, or representative capacity, with the consent
15 of his/her codefendants.

17 GENERAL ALLEGATIONS

18 11. Plaintiff McFate started working for ARTHA on or around middle of September 2020.
19 Plaintiff McFate was classified as an hourly, non-exempt employee and his final rate of pay
20 was \$20/hour. Plaintiff McFate did commonly work weekends and would work more than 40
21 hours per week. Plaintiff McFate and others were paid on a biweekly basis. Plaintiff McFate's
22 employment with ARTHA ended on or around December 18, 2020.

23 12. Plaintiff Bush started working for ARTHA on or around the latter part of 2020 and was
24 employed there for a total of 3 months prior to being terminated in early December 2020.
25 Plaintiff Bush was also classified as an hourly, non-exempt employee and her final rate of pay
26 was \$18 per hour. Plaintiff Bush was similarly terminated from her employment on or around
27 December 18, 2020.

1 13. It is Plaintiffs' position that ARTHA has violated numerous Labor Code Sections
2 against Plaintiffs and other similarly situated aggrieved employees, who include all exempt
3 and non-exempt employees who worked for ARTHA in the State of California during the
4 relevant PAGA period.

5 14. ARTHA violated Labor Code section 226.8 in that company had hired independent
6 contractors to perform work for them. Pursuant to Labor Code section 226.8(a)(1), it is unlawful
7 for any person or employer to willfully misclassify an individual as an independent contractor.
8 "Willful misclassification means avoiding employee status for an individual by voluntarily and
9 knowingly misclassifying that individual as an independent contractor." Cal. Lab. Code Section
10 226.8(i)(4). If a person or employer has willfully misclassified an individual as an independent
11 contractor, the person or employer shall be subject to a civil penalty of not less than five thousand
12 dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in
13 addition to any other penalties or fines permitted by law. Cal. Lab. Code Section 226.8(b). If the
14 person or employer has engaged in or is engaging in a pattern or practice of willfully
15 misclassifying individuals as independent contractors, the person or employer shall be subject to
16 a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five
17 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted
18 by law. Cal. Lab. Code Section 226.8(c).

19 15. In a very important decision, Dynamex Operations v. Superior Court (2018) 4 Cal. 5th
20 903, the Supreme Court developed the "ABC Test" to determine whether an independent
21 contractor is an employee. Under the ABC test, a worker will be deemed to have been "suffered
22 or permitted to work," and thus, an employee for wage order purposes, unless the putative
23 employer proves:

24 (A) that the worker is free from the control and direction of the hiring entity in connection
25 with the performance of the work, both under the contract for the performance of the
26 work and in fact;

27 (B) that the worker performs work that is outside the usual course of the hiring entity's
28 business; and

1 (C) that the worker is customarily engaged in an independently established trade,
2 occupation, or business of the same nature as the work performed.

3
4 Note that each of these requirements need to be met in order for the presumption that a worker
5 is an employee to be rebutted, and for a court to recognize that a worker has been properly
6 classified as an independent contractor. Here, it is unequivocally clear that ARTHA would not
7 be able to get past the second part of the test since ARTHA hired individuals as independent
8 contractors who provided services that went to the core of the business. As such, ARTHA
9 willfully misclassified aggrieved employees as independent contractors.

10 16. ARTHA violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay
11 Plaintiffs and other similarly situated aggrieved employees for all hours worked, including the
12 statutory minimum wage for all hours worked and for “off the clock” work. This is so because
13 Plaintiffs would have to work through their meal periods while being clocked out and would not
14 compensated for this time. Moreover, ARTHA had a company policy of rounding down
15 employees’ work hours so as to not pay employees for all hours worked, leading to minimum
16 wage violations. Furthermore, at the beginning of their employment, ARTHA did not have a
17 formal digital timekeeping system, which translated to not being able to keep accurate track of
18 all hours worked and leading to employees, such as Plaintiffs, not being paid for all hours
19 worked. Due to the above “off the clock” violations, ARTHA also violated Labor Code §510
20 because it failed to pay Plaintiffs and other aggrieved employees overtime compensation, even
21 though they worked more than 8 hours per day, over 12 hours per day, and/or over 40 hours per
22 week throughout their employment. Plaintiffs’ other aggrieved employees’ actual work hours
23 entitled them to overtime compensation, however, ARTHA did not compensate its employees
24 with any overtime pay as overtime compensation was not part of company policy. Moreover,
25 ARTHA did not include non-discretionary bonuses and other such compensation in calculating
26 the regular rate of pay for purposes of deciphering the correct overtime rate of pay and the correct
27 overtime compensation.
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1 17. ARTHA also violated Labor Code § 226.7 and the appropriate Industrial Welfare
2 Commission Wage Order 2 because it failed to provide Plaintiffs and other similarly situated
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4 aggrieved employees with 10-minute rest periods for every four hours of work, or majority
5 portion thereof, throughout their employment. ARTHA did not completely relieve Plaintiffs and
6 others of all duty during said rest periods. ARTHA did not pay to Plaintiffs and others one
7 additional hour of pay at Plaintiffs' regular rate of compensation for each workday that one or
8 more statutory rest periods was not provided. Due to the understaffing, it was not possible for
9 Plaintiffs and others to take timely, statutory rest breaks. It was not part of the company policy
10 for employees to take rest breaks. The concept of rest breaks was never discussed with employees
11 nor was it ever implemented as it was not company policy. As such, the culture as well as the
12 policies and procedures of ARTHA did not lend itself to the employees receiving statutory rest
13 breaks wherein they were relieved of all work duties. The environment at ARTHA was not
14 conducive to receiving statutory rest breaks under California law and timely, statutory rest breaks
15 were not authorized or enforced. In fact, due to the work environment being too hectic and there
16 not being enough coverage, management would often say "do you really need a break?"
17 ARTHA also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission
18 Wage Order 2 because it failed to provide hourly, non-exempt employees, including Plaintiffs
19 and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work
20 throughout their employment. ARTHA did not completely relieve Plaintiffs and other
21 employees of all duty during said meal periods. ARTHA did not pay to Plaintiffs and its hourly,
22 non-exempt employees one additional hour of pay at their regular rate of compensation for each
23 workday that one or more statutory meal periods was not provided. The hourly, non-exempt
24 employees would often not be able to receive their meal periods before the 5th hour worked. Like
25 the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not part of the
26 company culture and was not enforced by ARTHA. Furthermore, any argument by ARTHA that
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1 the employees signed an “On Duty Meal Period Agreement” would not hold water since the
2 nature of their job did not prevent them from being relieved of all work duties and the company
3 could have easily hired more employees to act as “breakers” to make sure that all employees
4 were receiving timely, statutory meal periods wherein they were relieved of all work duties.
5 Consequently, it was the normal practice and custom of ARTHA not to authorize, permit, and
6 enforce timely statutory meal periods. Furthermore, if employee shifts were 6 hours or less,
7 ARTHA did not allow employees to take their meal periods even though they did not waive that
8 meal period in writing per California law.
9

10 18. Furthermore, during the relevant time period and based on the above, ARTHA failed to
11 pay Plaintiffs and others all wages due to them within any time period specified by California
12 Labor Code section 204. In fact, Plaintiffs was paid \$500 on a monthly basis, instead of being
13 paid at least twice per month per Labor Code Section 204. ARTHA was also in violation of
14 California Labor Code section 226(a), by failing to include pertinent information on the wage
15 statements, including but not limited to, the full and correct name of the legal employer, along
16 with the employer’s correct legal address, all hours worked (including “off the clock” hours and
17 overtime), all applicable hourly rates in effect, the correct identifying information for each
18 employee, gross wages earned, net wages earned, premium pay for the missed meal and rest
19 breaks, the correct start and end of the pay period, and all deductions, among others. As such,
20 ARTHA did not provide Plaintiffs and other similarly situated aggrieved employees with
21 complete, accurate itemized wage statements.
22

23 19. During the relevant time period, ARTHA also failed to keep accurate and complete
24 payroll records showing the actual hours worked per day and the wages paid to Plaintiffs and
25 others pursuant to California Labor Code sections 1174(d). ARTHA also violated Labor Code
26 § 203 because it willfully failed to pay Plaintiffs and other similarly situated aggrieved
27 employees earned and due wages upon separation of employment, either immediately upon
28 involuntary termination, or within 72 hours of resignation. These earned but unpaid wages

1 include compensation for all hours worked, including minimum wages, overtime compensation,
2 and premium pay for missed meal and rest breaks.

3 20. During the relevant time period, Plaintiffs and other aggrieved employees incurred
4 necessary, business-related expenses and costs that were not reimbursed by ARTHA. These costs
5 include, but are not limited to, use of personal phones for business-related purposes as well as
6 parking meter expenses. Accordingly, ARTHA was in violation of California Labor Code
7 sections 2800 and 2802. Moreover, ARTHA failed to provide sick pay pursuant to Labor Code
8 section 246 and also failed to provide Worker's Compensation coverage for Plaintiffs and other
9 aggrieved employees in violation of Labor Code Section 3700.5.

10 21. Moreover, ARTHA violated the Labor Code §6400 which requires employers to
11 furnish employment and a place of employment that is safe and healthful for the employees
12 therein. ARTHA violated Labor Code §6402 which states that no employer shall require, or
13 permit any employee to go or be in any employment or place of employment which is not safe
14 and healthful. ARTHA violated Labor Code §6404 which provides that no employer shall
15 occupy or maintain any place of employment that is not safe and healthful. ARTHA violated
16 these aforementioned sections and violated "OSHA" regulations because Plaintiffs and other
17 similarly situated aggrieved employees were not provided the proper safeguards and measures
18 to protect from covid-19 exposure, including but not limited to, requirement for use of masks,
19 social distancing, and other related measures. Moreover, ARTHA violated these sections
20 because Plaintiffs and other similarly situated aggrieved employees were forced to work in
21 unsafe and hazardous conditions, doing massages and facials, in that they were forced to work
22 by assuming a very real risk of contracting covid-19 in the workplace. In fact, and not as a
23 surprise, Plaintiff BUSH ended up contracting covid-19. Plaintiffs BUSH and MCFATE live
24 together and are roommates, therefore Plaintiff MCFATE was in close proximity and likely
25 exposed to covid-19. ARTHA knew that Plaintiff BUSH had tested positive for covid-19 and
26 further knew that Plaintiff MCFATE lived with Plaintiff BUSH. In addition, Plaintiffs
27 complained to Human Resources regarding ARTHA violating state and local laws and
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1 guidelines with respect to covid-19 prevention. Plaintiffs were subsequently
2 discriminated against and retaliated against by being terminated from their employment due to
3 having COVID-19 (or being perceived to have covid-19) and due to Plaintiffs' whistleblowing
4 complaints to ARTHA regarding violations of local and state guidelines regarding covid-19
5 prevention. Prior to filing the current action, Plaintiffs exhausted their administrative
6 remedies and received their Right to Sue Notice from the Department of Fair Employment and
7 Housing.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

10 **(California Industrial Welfare Commission Order 2-2001, California Code of**
11 **Regulations Title 8 Section 11020, and California Labor Code Section 1198)**

12 **(Plaintiffs against all named defendants and all DOE defendants)**

13 22. Plaintiffs re-allege and incorporate by reference each and every allegation in
14 paragraphs 1 through 21, inclusive, of this Complaint as though fully set forth herein.

15 23. At all times relevant herein, Defendants were required to compensate its employees for
16 all hours worked upon reporting for work at the appointed time stated by the employer
17 pursuant to Industrial Welfare Commission Order 2-2001, California Code of Regulations,
18 Title 8, Section 11020.

19 24. For the three (3) years preceding filing of this action, Defendants failed to compensate
20 Plaintiffs for all hours worked.

21 25. Under the aforementioned wage order and regulations, Plaintiffs are to recover
22 compensation for all hours worked but not paid by Defendants for the three (3) years
23 preceding the filing of this Complaint.

24 26. As a proximate result of the aforementioned violations, Plaintiffs have been damaged in
25 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
26 this Court.

27 27. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
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1 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiffs are
2 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
3 reasonable attorney's fees and costs of suit.

4 28. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
5 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
6 amount known to Plaintiffs once they have obtained all of their payroll records from
7 Defendants.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY MINIMUM WAGES**

10 **(California Labor Code Sections 1194, 1194.2, 1197)**

11 **(Plaintiffs against all named defendants and all DOE defendants)**

12 29. Plaintiffs re-allege and incorporate by reference each and every allegation in
13 paragraphs 1 through 28, inclusive, of this Complaint as though fully set forth herein.

14 30. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
15 to suffer or permit a California employee to work without paying wages at the minimum wage
16 rate for all hours worked as required by the applicable Industrial Welfare Commission
17 (hereinafter "IWC") Wage Order No. 2-2001, codified at California Code of Regulations, Title
18 8, Section 11020, subdivision 4.

19 31. Pursuant to IWC Wage Order no. 2-2001, subdivision 2(G), at all relevant times, "hours
20 worked" included "the time during which an employee is subject to the control of an employer,
21 and includes all the time the employee is suffered or permitted to work, whether or not required
22 to do so..."

23 32. During their employment, Plaintiffs were regularly required as a matter of uniform
24 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiffs
25 were paid less than the minimum wage rate by Defendants for hours worked in violation of
26 California Labor Code Section 1197 and the applicable California Industrial Wage
27 Commission wage order(s).
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1 33. Plaintiffs were, at all relevant times, under the control of Defendants and suffered or
2 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
3 compensate Plaintiffs were not in good faith nor were there reasonable grounds for Defendants
4 to believe that their acts or omissions were not contrary to California law.

5 34. For all hours worked by Plaintiffs for which they were paid less than the minimum
6 wage rate by Defendants, Plaintiffs are entitled to not less than the applicable California
7 minimum wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an
8 amount equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section
9 1194, Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

10 35. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
11 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
12 trial.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PAY OVERTIME**

15 **(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of**
16 **Regulations Title 8 Section 11040/11070)**

17 **(Plaintiffs against all named defendants and all DOE defendants)**

18 36. Plaintiffs re-allege and incorporate by reference each and every allegation in
19 paragraphs 1 through 35, inclusive, of this Complaint as though fully set forth herein.

20 37. Pursuant to Industrial Welfare Commission Order No. 2-2001, California Code of
21 Regulations, Title 8, Section 11020, for the period of Plaintiffs' employment, Defendants were
22 required to compensate Plaintiffs for all overtime, which is calculated at one and one-half (1.5)
23 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
24 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
25 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
26 week.
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1 38. Plaintiffs were non-exempt employees entitled to the protections of the California
2 Industrial Welfare Commission Order No. 2-2001, California Code of Regulations, Title 8,
3 Section 11020.

4 39. Plaintiffs worked more than eight (8) hours in a single workday or forty (40) hours in a
5 single workweek on numerous occasions.

6 40. Plaintiffs worked more than twelve (12) hours in a single workday.

7 41. Plaintiffs were entitled to the above overtime premiums.

8 42. Defendants did not pay Plaintiffs premium wages of at least one and one-half times
9 Plaintiffs' regular rate of pay for hours worked past eight (8) in a day.

10 43. Defendants did not pay Plaintiffs premium wages of at least one and one-half times
11 Plaintiffs' regular rate of pay for hours worked past forty (40) in a week.

12 44. Defendants did not pay Plaintiffs premium wages of at least two times Plaintiffs'
13 regular rate of pay for hours worked past twelve (12) in a day.

14 45. Plaintiffs worked at least one pay period in which they were not properly paid overtime
15 within the three (3) years prior to the initiation of this lawsuit.

16 46. Defendants know or should know the actual dates of overtime worked, the amount of
17 overtime worked, and the amount of unpaid overtime due.

18 47. As a proximate result of Defendants' violations, Plaintiffs have been damaged in an
19 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
20 Court.

21 48. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
22 Regulations, Title 8, Sections 11020, Plaintiffs are entitled to recover damages for the
23 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
24 reasonable attorney's fees and costs of suit.

25 49. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
26 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
27 trial.
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FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code Section 226)

(Plaintiffs against all named defendants and all DOE defendants)

50. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 49, inclusive, of this Complaint as though fully set forth herein.

51. Pursuant to California Labor Code Section 226, every employer must furnish each employee an itemized statement of wages and deductions at the time of payment of wages.

52. Defendants knowingly and intentionally did not furnish Plaintiffs with any pay stubs that accurately reflected all information required by Labor Code Section 226, including but not limited to, gross wages earned, net wages earned, total hours worked by the employee, all deductions, all hours worked, all applicable hourly rates, the correct identifying information for each employee, the correct start and end of the pay period, the correct name and address of the legal employer, business expense reimbursement, and premium pay for missed rest and meal breaks. Therefore, Defendants failed to maintain and provide accurate itemized wage statements to Plaintiffs in accordance with California Labor Code Section 226(a).

53. Pursuant to California Labor Code Section 226(e), Plaintiffs are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and reasonable attorney's fees. Plaintiffs only claims damages under this cause of action pursuant to the 1-year period immediately preceding the date this lawsuit was filed.

54. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiffs are entitled to recover penalties, in an amount to be established at trial, as well as costs and attorney's fees pursuant to statute.

1 55. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
2 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
3 trial.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

6 **(California Labor Code Sections 201, 203)**

7 **(Plaintiffs against all named defendants and all DOE defendants)**

8 56. Plaintiffs re-allege and incorporate by reference each and every allegation in
9 paragraphs 1 through 55, inclusive, of this Complaint as though fully set forth herein.

10 57. Pursuant to California Labor Code Section 201(a), an employer who discharges an
11 employee must immediately pay for all compensation due and owing.

12 58. Pursuant to California Labor Code Section 202, when an employee resigns, the
13 employer must pay all compensation due and owing within 72 hours of resignation, or on the
14 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

15 59. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
16 without abatement or reduction, any wages of an employee whose employment ends, the wages
17 of the employee shall continue as a penalty from the due date at the same rate until paid or until
18 an action is commenced; however, the wages shall not continue for more than 30 days for
19 failure to pay an employee owed wages.

20 60. After Plaintiffs' employment with Defendants ended, Defendants willfully refused and
21 continue to refuse to pay them unpaid wages as required by Labor Code Section 203.

22 61. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
23 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
24 trial. Moreover, Plaintiffs prays for the above-mentioned money from 3 years immediately
25 preceding the filing of this lawsuit.

26 62. Under this cause of action, Plaintiffs also pray for attorney's fees and costs under
27 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
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1 forth herein. Plaintiffs also pray for interest under California Labor Code Section 218.6.

2 63. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
3 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
4 trial.

5 **SIXTH CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

7 **(California Labor Code Section 204)**

8 **(Plaintiffs against all named defendants and all DOE defendants)**

9 64. Plaintiffs re-allege and incorporate by reference each and every allegation in
10 paragraphs 1 through 63, inclusive, of this Complaint as though fully set forth herein.

11 65. California Labor Code Section 204 establishes the fundamental right of all employees
12 in the State of California to be paid wages in a timely fashion for their work.

13 66. At all times relevant during the liability period, Defendants failed to pay Plaintiffs the
14 full amount of all owed wages when due as required by California Labor Code Section 204.

15 67. Defendants failed to pay Plaintiffs all wages earned each pay period as alleged above.
16 Plaintiffs are informed, believe, and thereon allege, that all times relevant during the liability
17 period, Defendants maintained a policy or practice of not paying Plaintiffs wages for all hours
18 worked, including overtime hours and the minimum wage.

19 68. As a result of Defendants' unlawful conduct, Plaintiffs have suffered damages in an
20 amount, subject to proof, to the extent they were not paid all wages each pay period. The
21 precise amount of unpaid wages is not presently known to Plaintiffs but can be determined
22 directly from Defendants' records or indirectly based on information from Defendants'
23 records.

24 69. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
25 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
26 trial.

27 **SEVENTH CAUSE OF ACTION**

VIOLATION OF LABOR CODE SECTION 558

(California Labor Code Section 558)

(Plaintiffs against all named defendants and all DOE defendants)

70. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 69, inclusive, of this Complaint as though fully set forth herein.

71. California Labor Code Section 558 states that any person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Plaintiffs claim penalties for five (5) years immediately preceding the date this lawsuit was filed.

72. Plaintiffs hereby allege that named Defendants violated Labor Code Section 558. Thus, Defendants are subject to civil penalties under the following laws:

- a. California Labor Code Section 558. Defendants failed to pay Plaintiffs regular and overtime wages for overtime hours worked. As such, Defendants violated Section 558 under which penalties are due. Plaintiffs therefore pray for penalties of \$50.00 for the first pay period and \$100.00 for each subsequent violation for each pay period for which Plaintiffs were underpaid in addition to an amount sufficient to recover underpaid wages.
- b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for relief associated with Plaintiffs' prosecution of this cause of action under California Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not

1 paying Plaintiffs for their overtime hours worked and for all hours worked.

- 2 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
3 fees for relief associated with Plaintiffs' prosecution of this cause of action under
4 California Labor Code Sections 200, et seq.

5 73. Under this cause of action, Plaintiffs pray for all penalties and pay otherwise due under
6 the statutes, regulations, and wage orders alleged in this cause of action along with any
7 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

8 74. Plaintiffs also pray for Labor Code Section 211 and 218.5 recovery of costs an
9 attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

10
11 **EIGHTH CAUSE OF ACTION**

12 **FAILURE TO MAINTAIN ACCURATE RECORDS**

13 **(California Labor Code Section 1174(d))**

14 **(Plaintiffs against all named defendants and all DOE defendants)**

15 75. Plaintiffs re-allege and incorporate by reference each and every allegation in
16 paragraphs 1 through 74, inclusive, of this Complaint as though fully set forth herein.

17 76. Labor Code section 1174(d) requires that employers, including Defendants, maintain
18 accurate records showing the hours worked daily by its employees and to whom wages were
19 paid.

20 77. Additionally, the "Records" section of the applicable IWC Wage Order obligates the
21 employer, including Defendants, to keep accurate information with respect to each one of their
22 employees including, but not limited to, the total wages paid each payroll period, and time
23 records showing when the employee begins and ends each work period, meal periods, split
24 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
25 the applicable rates of pay.

26 78. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails
27 to maintain accurate and complete records required by Labor Code section 1174(d) is subject
28

1 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate
2 records of Plaintiffs' total daily hours, the total hours worked in the payroll period, the
3 applicable rates of pay, and total wages earned for the payroll period.

4 79. As a direct result of Defendants' violations alleged herein, Plaintiffs have suffered and
5 continue to suffer substantial losses related to Defendants' failure to record and maintain
6 records of meal and rest periods as well as time records.

7 80. Plaintiffs seek all available remedies for Defendants' violations including, but not
8 limited penalties, and costs to the extent permitted by law and according to proof at trial.

9 **NINTH CAUSE OF ACTION**

10 **FAILURE TO GIVE REST BREAKS**

11 **(Plaintiffs against all named defendants and all DOE defendants)**

12 81. Plaintiffs re-allege and incorporate by reference each and every allegation in
13 paragraphs 1 through 80, inclusive, of this Complaint as though fully set forth herein.

14 82. Plaintiffs bring this cause of action under the following laws, for the following reasons:

- 15 a. Title 8 of the California Code of Regulations Sections 11020(12)(A), which
16 provides that every employer shall authorize and permit all employees to take rest
17 periods, which insofar as practicable shall be in the middle of each work period.
18 The authorized rest period time shall be based on the total hours worked daily at the
19 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
20
21 b. Title 8 of the California Code of Regulations Sections 11020(12)(B), which
22 provides that if an employer fails to provide an employee a rest period in
23 accordance with the applicable provisions of this order, the employer shall pay the
24 employee one (1) hour of pay at employee's regular rate of compensation for each
25 workday that the rest period is not provided;
26
27 c. Title 8 of the California Code of Regulations sections 11020(20)(A), which
28

1 penalizes the employer \$50.00 for each initial violation, per employee, of any
2 provision of the Wage Order, and \$100.00 for each additional violation thereafter
3 per employee; and

- 4 d. California Labor Code section 226.7, which states that (a) no employer shall require
5 any employee to work during any rest period mandated by an applicable order of
6 the Industrial Welfare Commission, and (b) if an employer fails to provide an
7 employee a rest period in accordance with an applicable order of the Industrial
8 Welfare Commission, the employer shall pay the employee one (1) additional hour
9 of pay at employee's regular rate of compensation for each work day that the rest
10 period is not provided.
11

12 83. Plaintiffs allege that they were not authorized and permitted to take a ten (10) minute
13 rest break after every four (4) hours of work or major fraction thereof, as required by California
14 law.
15

16 84. Under this cause of action, Plaintiffs pray for wages due to them under the statutes,
17 regulations, and wage orders alleged in this cause of action along with any allowable interest,
18 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiffs pray for
19 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
20

21 85. Plaintiffs also pray for Labor Code section 218.5 recovery of costs and attorney's
22 fees as well as interest under Labor Code section 218.6.
23

24 86. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
25 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
26 trial.
27

28 **TENTH CAUSE OF ACTION**

FAILURE TO GIVE MEAL BREAKS

(Plaintiffs against all named defendants and all DOE defendants)

1 87. Plaintiffs re-allege and incorporate by reference each and every allegation in
2 paragraphs 1 through 86, inclusive, of this Complaint as though fully set forth herein.

3 88. Plaintiffs bring this cause of action under the following laws, for the following reasons:

- 4 a. California Labor Code section 512(a), which requires that employees be given a 30-
5 minute uninterrupted meal break after five (5) hours of work, and a second
6 uninterrupted meal break after ten (10) hours of work;
7
8 b. California Labor Code section 226.7, which states that (a) no employer shall require
9 any employee to work during any meal period mandated by an applicable order of
10 the Industrial Welfare Commission, and (b) if any employer fails to provide an
11 employee a meal period in accordance with an applicable order of the Industrial
12 Welfare Commission, the employer shall pay the employee one (1) additional hour
13 of pay at the employee's regular rate of compensation for each workday that the
14 meal period is not provided;
15
16 c. California Industrial Welfare Commission Order No. 2 section 11(D), as codified
17 under Title 8 of the California Code of Regulations Section 11020, which states that
18 if an employer fails to provide an employee a meal period in accordance with the
19 applicable provisions of the Wage Order, the employer shall pay the employee one
20 (1) hour of pay at the employee's regular rate of compensation for each workday
21 that the meal period is not provided;
22
23 d. California Industrial Welfare Commission Wage Order No. 2 Section 7(A)(3), as
24 codified under Title 8 of the California Code of Regulations Section 11020, which
25 requires an employer to maintain records documenting its employees' meal periods;
26
27 e. California Industrial Welfare Commission wage order No. 2 Section 20(A), as
28 codified under California Code of Regulations Section 11020, which penalizes the

1 employer \$50.00 for each initial violation, per employee, of any provision of the
2 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
3 f. California Labor Code section 1171 and 1173, which have given the California
4 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 2)
5 as enforceable law.

6 89. Plaintiffs allege that they were not authorized and permitted to take relieved meal
7 breaks after five (5) hours of work. Plaintiffs further allege that they were not authorized and
8 permitted to take a second relieved meal break after ten (10) hours of work, as required by
9 California law. California Labor Code section 512(a) and California Industrial Welfare
10 Commission Order No. 4, as codified under California Code of Regulations Sections 11020 et.
11 seq., require that employees receive uninterrupted meal periods every five (5) hours of
12 consecutive work, and that the meal period be at least 30 minutes in length, wherein employee
13 is relieved of all work duty. California Labor Code section 226.7 provides that employers may
14 not require their employees to work through their meal periods. California Labor Code section
15 226.7 and California Code of Regulations section 11020 requires that if the employer fails to
16 provide the employee with an uninterrupted meal period, the employer must pay the employee
17 one (1) hour of pay for each work day that the meal period is not given.

20 90. Under this cause of action, Plaintiffs prays for wages due to them under the statutes,
21 regulations, and wage orders alleged in this cause of action along with any allowable interest,
22 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiffs prays for
23 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

24 91. Plaintiffs also pray for Labor Code section 218.5 recovery of costs and attorney's
25 fees as well as interest under Labor Code section 218.6.

26 92. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
27 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
28

trial.

ELEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Individual and Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 226.8, 232, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5, 6400, 6402, 6404)

(Plaintiffs Against All Named Defendants and all DOE Defendants)

93. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 92, inclusive, of this Complaint as though fully set forth herein.

94. Pursuant to law, Plaintiffs provided the required written notice to the LWDA and Defendants of the specific violations of the California Labor Code that Defendants and DOE defendants have violated and continue to violate.

95. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

96. Plaintiffs therefore have exhausted all administrative remedies required of them under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

97. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

98. Plaintiffs are "aggrieved employees" because Plaintiffs were employed by the alleged violator and had one or more of the alleged violations committed against them, and therefore are properly suited to represent the interests of other current and former hourly, non-exempt

1 employees and employees who were misclassified as 1099 Independent Contractors and who
2 worked for ARTHA in the State of California during the PAGA period.

3 99. Based on the acts alleged above, Plaintiffs, on behalf of themselves and others, seek
4 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
5 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

6 100. Plaintiffs therefore have exhausted all administrative remedies required of them under
7 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
8 cause of action and pursue penalties in a representative action for Defendants' violations of the
9 Labor Code.

10 101. California Labor Code section 2699 et seq. imposes penalties upon culpable
11 Defendants for violating the Labor Code.

12 102. California Labor Code section 558 establishes a civil penalty as follows: Any
13 employer or other person action on behalf of an employer who violates, or causes to be
14 violated, a section of this chapter or any provision regulating hours and days of work in any
15 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
16 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
17 dollars (\$50) for each underpaid employee for each pay period for which the employee was
18 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
19 employee for each pay period for which the employee was underpaid ...;

20 103. Plaintiffs seek penalties for Defendants' misconduct as alleged herein as permitted by
21 law, but only those penalties that are required to be shared with the LWDA as Plaintiffs are not
22 seeking individual/victim specific relief or underpaid wages under this particular cause of
23 action. Specifically, Plaintiffs seek penalties under California Labor Code section 2699, for
24 the following:

25 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210,
26 226, 226.3, 226.7, 226.8, 232, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802,
27 3700.5, 6400, 6402, 6404 via 2698 and 2699 any other Labor Codes and Wage Orders
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(including no. 2) violated on the facts alleged in this Complaint.

104. Pursuant to Labor Code section 2698 et seq., Plaintiff seek to recover attorney's fees, costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

TWELFTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Plaintiffs against all Defendants and DOE Defendants, and each of them)

105. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 104, inclusive, of this Complaint as thought fully set forth herein.

106. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

107. Beginning at least 3 years prior to the filing of this complaint, in order to discharge their duties for Defendant, Plaintiffs incurred reasonable and necessary expenses in the course of completing their job duties, which were not reimbursed by Defendant. These expenses include, but are not limited to, use of personal phones for business-related purposes as well as parking meter expenses.

108. Plaintiffs are entitled to reimbursement for these necessary expenditures, plus interest and attorney's fees and costs, under Labor Code section 2802.

THIRTEENTH CAUSE OF ACTION

DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY IN VIOLATION

OF FEHA

**(Plaintiffs against ARTHA WELLNESS SM, LLC; ARTHA WELLNESS, LLC;
ARTHA WELLNESS WEHO, LLC and all DOE Defendants)**

109. Plaintiffs re-allege and incorporate by reference each and every allegation in

1 paragraphs 1 through 108, inclusive, of this Complaint as thought fully set forth herein.

2 110. Defendants and DOES 1 to 25, inclusive, are covered employers under California's
3 Fair Employment and Housing Act.

4 111. California Government Code section 12926(m) has established a "broad definition" of
5 physical disability; disability protections under the Fair Employment and Housing Act
6 ("FEHA") even extend to "perceived" physical disabilities. Id. Under the law of this state,
7 "working" is a major life activity. See section 12926.1(c).

8 112. Plaintiff BUSH contracted the COVID-19 virus at work and Plaintiff MCFATE lived
9 with Plaintiff BUSH. ARTHA knew that BUSH had covid-19 and perceived that MCFATE
10 also had covid-19 by virtue of living with BUSH and being in close proximity to BUSH.
11 COVID-19 diagnoses and COVID-19 symptoms, which are debilitating, and which limited a
12 major life activity, clearly qualifies as a disability under FEHA, and Plaintiffs were entitled to
13 its protection.
14

15 113. Defendants knew of Plaintiffs' actual or perceived disability and violated California
16 Government Code section 12940 et. seq. by discriminating against Plaintiffs on the basis of
17 their disability.
18

19 114. As a direct and proximate result of the aforementioned acts and omissions of
20 Defendants, Plaintiffs suffered general and compensatory damages, including but not limited
21 to, loss of income (past and future), loss of employment benefits (past and future), general and
22 compensatory damages (past and future), mental pain and anguish and emotional distress (past
23 and future), and will continue to suffer in the future, in an amount to be proved at trial.
24

25 115. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and
26 each of their directors, officers and/or managing agents, constitutes malice, fraud, and
27 oppression and was authorized, ratified, and carried on with a conscious and willful disregard
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1 of their workers' right to work in an environment in which personnel decisions and company
2 policies are made without regard to physical disability, so as to justify the imposition of
3 punitive damages to punish and set an example of said Defendants.

4 116. As a proximate result of the foregoing conduct, which violated the provisions of
5 Government Code section 12940, et seq., Plaintiffs have been forced to and will incur
6 attorney's fees and costs in the prosecution of this claim, in an amount to be proven at trial.

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8 **FOURTEENTH CAUSE OF ACTION**

9 **FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF FEHA**

10 **(Plaintiffs against ARTHA WELLNESS SM, LLC; ARTHA WELLNESS, LLC; ARTHA**
11 **WELLNESS WEHO, LLC and all DOE Defendants)**

12 117. Plaintiffs re-allege and incorporate by reference each and every allegation in
13 paragraphs 1 through 116, inclusive, of this Complaint as thought fully set forth herein.

14 118. At all times herein mentioned, FEHA, California Government Code section 12940(k),
15 was in full force and effect and was binding on Defendants . This statute states that it is an
16 unlawful employment practice in California for an employer to "fail to take all reasonable steps
17 necessary to prevent discrimination and harassment from occurring."

18 119. During the course of Plaintiffs' employment, Defendants failed to prevent their
19 employees, including management, from engaging in intentional actions that resulted in
20 Plaintiff being treated less favorably and eventually being terminated because of Plaintiffs'
21 protected status (i.e. actual or perceived physical disabilities). During the course of Plaintiffs'
22 employment, Defendants failed to prevent their employees from engaging in unjustified
23 employment practices against employees in such protected classes. During the course of
24 Plaintiff's employment, Defendants failed to prevent a pattern and practice by its employees of
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1 intentional discrimination and retaliation on the basis of actual or perceived physical disability,
2 and/or other protected status and/or protected activity.

3 120. Plaintiffs believe and, on that basis, allege that their physical disabilities and
4 other protected status and/or protected activity was a substantial motivating factor in
5 Defendants' employees' discriminating against them and retaliating against them.

6 121. As a direct and proximate result of the aforementioned acts and omissions of
7 Defendants, Plaintiffs suffered general and compensatory damages, including but not limited
8 to, loss of income (past and future), loss of employment benefits (past and future), general and
9 compensatory damages (past and future), mental pain and anguish and emotional distress (past
10 and future), and will continue to suffer in the future, in an amount to be proved at trial.

11 122. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and
12 each of their directors, officers and/or managing agents, constitutes malice, fraud, and
13 oppression and was authorized, ratified, and carried on with a conscious and willful disregard
14 of their workers' right to work in an environment in which personnel decisions and company
15 policies are made without regard to physical disability, so as to justify the imposition of
16 punitive damages to punish and set an example of said Defendants .

17 123. As a proximate result of the foregoing conduct, which violated the provisions of
18 Government Code section 12940, et seq., Plaintiffs have been forced to and will incur
19 attorney's fees and costs in the prosecution of this claim, in an amount to be proven at trial.

20 **FIFTEENTH CAUSE OF ACTION**

21 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC**
22 **POLICY**

23 **(Plaintiffs against ARTHA WELLNESS SM, LLC; ARTHA WELLNESS,**
24 **LLC; ARTHA WELLNESS WEHO, LLC and all DOE Defendants)**

25 124. Plaintiffs re-allege and incorporate by reference each and every allegation in
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1 paragraphs 1 through 123, inclusive, of this Complaint as though fully set forth herein.

2 125. At all times during his employment with Defendants , Plaintiffs performed their duties
3 with the utmost diligence and competence.

4 126. Plaintiffs are informed and believe and thereon allege that Defendants ' decisions to
5 discriminate against them and retaliate against them, as alleged herein, was motivated by
6 Plaintiffs' actual or perceived physical disabilities. Plaintiffs are further informed and believe
7 and thereon allege that any other reasons proffered by Defendants were and are pretextual in
8 nature. Defendants intentionally created the aforementioned discrimination and retaliation and
9 failed to reasonably accommodate Plaintiffs' physical disabilities, thereby not giving Plaintiff
10 an opportunity to work in an environment free of discrimination and retaliation.
11

12 127. The employment of Plaintiffs was wrongfully terminated on or around December
13 2020 in violation of the fundamental public policy of the State of California with respect to
14 discriminating against an employee on account of his or her actual or perceived physical
15 disabilities. Plaintiffs were forced to hire an attorney to assist them to end these illegal
16 activities. Said conduct violated statutory and constitutional expressions of public policy
17 including, but not limited to, California Government Code sections 12940 et seq.,
18 California Labor Code sections 233, 246, 1102.5 and the California Constitution, Article 1
19 section 8.
20

21 128. As set forth above, said actions by Defendants were wrongful and in violation of the
22 fundamental principles of the public policy of the State of California as reflected in its laws,
23 objectives and policies. Said statutes and constitutional expressions of public policy include,
24 but are not limited to, California Government Code sections 12940 et seq., California Labor
25 Code sections 233, 246, 1102.5, and the California Constitution, Article 1 section 8. These
26 laws inure to the benefit of the public at large, and not just the private interests of the
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1 employers and employees whom they govern or protect.

2 129. As a direct and proximate result of the aforementioned acts and omissions of
3 Defendants , Plaintiffs suffered general and compensatory damages, including but not limited
4 to, loss of income (past and future), loss of employment benefits (past and future), general and
5 compensatory damages (past and future), mental pain and anguish and emotional distress (past
6 and future), and will continue to suffer in the future, in an amount to be proved at trial.

7 130. The foregoing conduct engaged in by Defendants and each of their directors, officers
8 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
9 and carried on with a conscious and willful disregard of their workers' right to work in an
10 environment free of discrimination and retaliation based on physical, and where workers do not
11 get retaliated against due to issues related to their physical disabilities, so as to justify the
12 imposition of punitive damages to punish and set an example of said Defendants.
13

14 **SIXTEENTH CAUSE OF ACTION**

15 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

16 **(Plaintiffs against ARTHA WELLNESS SM, LLC; ARTHA WELLNESS, LLC; ARTHA**
17 **WELLNESS WEHO, LLC and all DOE Defendants)**

18 131. Plaintiffs re-allege and incorporate by reference each and every allegation in
19 paragraphs 1 through 130, inclusive, of this Complaint as though fully set forth herein.
20

21 132. At all times material to this Complaint, California Labor Code § 1102.5 was in effect
22 and binding on Defendants. This section requires Defendant to refrain from
23 retaliating against an employee for refusing to participate in an activity that he/she reasonably
24 believes would result in a violation of state or federal statute, or a violation or
25 noncompliance with a state or federal rule or regulation. California Labor Code section
26 1102.5 also requires Defendants to refrain from retaliating against an employee for disclosing
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1 information to a person with authority over the employee if the employee has reasonable cause
2 to believe that the information discloses a violation of state or federal statute, or a violation of
3 or noncompliance with a local, state, or federal rule or regulation, regardless of whether
4 disclosing the information is part of the employee's job duties.

5 133. As discussed fully above, Plaintiffs complained to Defendants and Human Resources
6 about the company's illegal conduct in failing to implement covid-19 protections and
7 safeguards in the workplace to keep employees safe.

8 134. Defendants retaliated against Plaintiffs for their whistleblowing, as alleged above,
9 all in violation of Labor Code § 1102.5.

10 135. As a direct and proximate result of the aforementioned acts and omissions of
11 Defendants, Plaintiffs suffered general and compensatory damages, including but not limited
12 to, loss of income (past and future), loss of employment benefits (past and future), general and
13 compensatory damages (past and future), mental pain and anguish and emotional distress (past
14 and future), and will continue to suffer in the future, in an amount to be proved at trial.

15 136. Plaintiffs request all available relief under Labor Code § 1102.5 including damages
16 and the imposition of civil penalties of \$10,000 for each violation as well as attorneys fees.

17
18 **SEVENTEENTH CAUSE OF ACTION**

19 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

20 **(California Business and Professions Code Section 17200)**

21 **(Plaintiffs against ARTHA WELLNESS SM, LLC; ARTHA WELLNESS, LLC;**

22 **ARTHA WELLNESS WEHO, LLC and all DOE Defendants)**

23 137. Plaintiffs re-allege and incorporate by reference each and every allegation in
24 paragraphs 1 through 136, inclusive, of this Complaint as though fully set forth herein.

25 138. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
26 constitute unfair and unlawful business practices under California Business and Professions
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Code Section 17200, et seq.

139. Defendant's violations of California labor laws and FEHA constitutes a business practice because it was done repeatedly over a significant period of time in a systematic manner that was detrimental to Plaintiffs and other similarly situated aggrieved employees.

140. For the four years preceding the filing of this action, Plaintiffs have suffered damages and request damages and/or restitution of all monies and profits to be disgorged from Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of this Court.

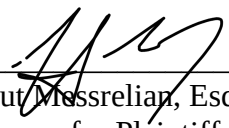
WHEREFORE, Plaintiffs pray for Judgment against Defendants, and each of them, as follows:

1. For compensatory damages including lost past and future wages, loss of earning capacity, overtime, commissions, and all other sums of money, including employment benefits, together with interest on said amounts, and any other economic injury to Plaintiff, according to proof;
2. For general damages according to proof at trial;
3. For damages for wages and overtime not paid to Plaintiffs in an amount subject to proof at trial;
4. For damages and penalties under Labor Code Section 226 for Plaintiffs in an amount subject to proof at trial;
5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
6. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiffs in an amount subject to proof at trial;
7. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
8. For one hour of wages due to Plaintiffs for each work period of more than five (5)

- hours when Plaintiffs did not receive an uninterrupted thirty (30) minute meal period;
9. For one hour of wages due to Plaintiffs for each work period of four (4) hours or major fraction thereof when Plaintiffs did not receive a ten (10) minute rest break;
10. For special, liquidated, and consequential damages to the extent allowed by law;
11. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claims;
12. For all remedies available to Plaintiffs under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
13. For punitive damages against Defendants according to proof;
14. For the imposition of civil penalties and/or statutory penalties;
15. For all interest as allowed by law;
16. For all costs and disbursements incurred in this suit;
17. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, FEHA, and/or other applicable laws; and
18. For such other and further relief as this Court may deem proper.

DATED: April 29, 2021

MESSRELIAN LAW INC.

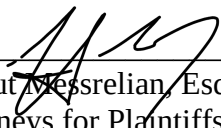
By 
Harout Messrelian, Esq.
Attorneys for Plaintiffs

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand, as a matter of right, a trial by jury in this case.

3 DATED: April 29, 2021

MESSRELIAN LAW INC.

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5 By  _____
6 Harout Messrelian, Esq.
7 Attorneys for Plaintiffs
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