

Electronically FILED by Superior Court of California, County of Los Angeles on 08/11/2021 09:10 AM Sherri R. Carter, Executive Officer/Clerk of Court, by H. Flores-Hernandez, Deputy Clerk

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 MARGARITA VILLALPANDO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

MARGARITA VILLALPANDO, an individual,

Plaintiff,

v.

UMA ENTERPRISES, INC., a California corporation d/b/a UMA HOME DECOR; UMA HOME DECOR, an entity of unknown formation; FAIRWAY STAFFING SERVICES, a California corporation; SIMPLIFY HR, INC., a California corporation; SOUTH EAST EMPLOYEE LEASING SERVICES, INC., a Florida corporation; VICTOR SIERRA, an individual; and DOES 1 through 20, inclusive,

Defendants.

Case No. **21STCV29507**

COMPLAINT FOR DAMAGES FOR:

- 1. DISCRIMINATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.;**
- 2. HARASSMENT IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.;**
- 3. RETALIATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.;**
- 4. FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION IN VIOLATION OF GOV'T CODE § 12940(k);**
- 5. FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.;**
- 6. FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.;**
- 7. RETALIATION (LAB. CODE §§ 98.6, 232.5, 1030, 6310, ET SEQ.);**
- 8. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 9. FOR DECLARATORY JUDGMENT;**

10. FAILURE TO PAY WAGES AND
IMPROPER DEDUCTIONS (CAL. LABOR
CODE §§ 201, 221, 226.7, 512, 1030);
11. FAILURE TO PAY MINIMUM WAGES
(CAL. LABOR CODE §§1182.12, 1194,
1194.2, 1197);
12. FAILURE TO PAY OVERTIME
COMPENSATION (CAL. LABOR CODE
§§510, 1194);
13. FAILURE TO PROVIDE MEAL AND
REST PERIODS (CAL. LABOR CODE §§
226.7, 512);
14. FAILURE TO PROVIDE ITEMIZED
WAGE AND HOUR STATEMENTS (CAL.
LABOR CODE §§ 226, ET SEQ.);
15. WAITING TIME PENALTIES (CAL.
LABOR CODE §§ 201-203);
16. PRIVATE ATTORNEY GENERAL ACT
(CAL. LABOR CODE § 2699, ET SEQ.);
17. UNFAIR COMPETITION (BUS. & PROF.
CODE § 17200 ET SEQ.); AND
18. FAILURE TO PERMIT INSPECTION OF
PERSONNEL AND PAYROLL RECORDS
(CAL. LABOR CODE §§ 226 *et seq.*, 1198.5).

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, MARGARITA VILLALPANDO, and for causes of action
against the Defendants and each of them, alleges as follows:

JURISDICTION

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

THE PARTIES

2. Plaintiff, MARGARITA VILLALPANDO, is and at all times relevant hereto was a resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant UMA ENTERPRISES, INC., D/B/A UMA HOME DÉCOR, a California corporation and UMA HOME DÉCOR, an entity of unknown format, (hereinafter collectively referred to as “UMA”) were and are California corporations doing business at 350 West Apra Street, Compton, California 90220, in the County of Los Angeles, State of California.

4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, UMA owned a manufacturing and distribution company for home décor and furnishings.

5. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant FAIRWAY STAFFING SERVICES, a California corporation (hereinafter referred to as “FAIRWAY”) was and is a California corporation doing business at 17777 Center Court Drive, North #150, Cerritos, CA 91342, in the County of Los Angeles, State of California.

6. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant SIMPLIFY HR, INC., a California corporation (hereinafter referred to as “SIMPLIFY”) was and is a California corporation doing business at 480 West Alluvial Avenue, Fresno, California 93650, in the County of Fresno, State of California.

7. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant SOUTH EAST EMPLOYEE LEASING SERVICES, INC., a Florida corporation (hereinafter referred to as “SOUTH EAST”) was and is a Florida corporation doing business at 2739 US Highway 19, Suite 100, Holiday, Florida, in the County of Pasco, State of Florida.

8. UMA, FAIRWAY, SIMPLIFY and SOUTH EAST are collectively referred to as “EMPLOYERS.”

9. At all times relevant herein, UMA and DOES 1-20 were Plaintiff’s employers, joint employers and/or special employers within the meaning of Government Code §§ 12926, subdivision (d),

1 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more
2 persons and are therefore subject to the jurisdiction of this Court.

3 10. At all times relevant herein, Defendants and DOES 1-20 were Plaintiff's employers, joint
4 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
5 Commission Order No. 1-2001, and are each any "employer or other person acting on behalf of an
6 employer" as such term is used in Labor Code section 558 and/or 558.1, and liable to Plaintiff on that
7 basis.

8 11. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
9 hereto, Defendant VICTOR SIERRA was and is an individual resident of the County of Los Angeles,
10 State of California, and is hereinafter referred to as "SIERRA", and was Plaintiff's manager, corporate
11 agent, supervisor, and/or coworker at EMPLOYERS.

12 12. Plaintiff is informed and believes, and thereon alleges that at all time relevant to this
13 action, SIERRA and DOES 1-20 were managers and/or supervisors of Defendant, acting as managing
14 agents for Defendant; SIERRA and DOES 1-20 were each acting within the course and scope of his or
15 her employment and on behalf of Defendant such that his or her acts or omissions are imputed to
16 Defendant under the doctrine of *respondeat superior*; or, alternatively, at all times relevant to this action,
17 Defendant cloaked SIERRA and DOES 1-20 with the appearance of actual authority, such that Plaintiff
18 was justified in relying thereon, and therefore his or her acts or omissions are imputed to Defendant under
19 the doctrine of *respondeat superior*.

20 13. UMA, SIERRA, and DOES 1-20, inclusive, are hereinafter collectively referred to as
21 "Defendants."

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

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

7 16. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
8 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
9 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
10 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code
11 §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
12 each of them, including those defendants named as DOES 1-20, and each of them, formed and executed
13 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
14 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
15 actually causing Plaintiff harm.

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

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

24
25 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

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

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

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5 a. EMPLOYERS and DOES 1-20 are completely dominated and controlled by one
6 another, and DOES 1-20 personally committed the frauds and violated the laws as set forth in this
7 complaint, and have hidden and currently hide behind Defendants to perpetrate frauds, circumvent
8 statutes, or accomplish some other wrongful or inequitable purpose.

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

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

15 d. EMPLOYERS do not comply with all requisite corporate formalities to maintain
16 a legal and separate corporate existence.

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

26 21. Accordingly, EMPLOYERS and DOES 1-20 constitute the alter ego of one another, and
27 the fiction of their separate corporate existence must be disregarded.

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

23. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and between DOES 1-20, EMPLOYERS, or any of them, (1) there is an express or implied agreement of assumption pursuant to which EMPLOYERS and/or DOES 1-20 agreed to be liable for the debts of the other Defendants, (2) the transaction between EMPLOYERS and/or DOES 1-20 and the other Defendants amounts to a consolidation or merger of the two corporations, (3) EMPLOYERS and/or DOES 1-20 are a mere continuation of the other Defendants, or (4) the transfer of assets to EMPLOYERS and/or DOES 1-20 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, EMPLOYERS and/or DOES 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

FACTUAL ALLEGATIONS

24. On or about May 2020, EMPLOYERS hired Plaintiff to work as a packer. Thereafter, Plaintiff was switched into a different department. At all relevant times, Plaintiff was a full-time, non-exempt employee, who performed all of Plaintiff's job duties satisfactorily before Plaintiff was wrongfully terminated on or about November 13, 2020.

25. Plaintiff's fixed schedule was 4 days per week, for a least 10 hours per day.

26. At all relevant times, EMPLOYERS promised to pay Plaintiff \$13.10 per hour.

27. During May 2020 through November 13, 2020 (the “Claim Period”), EMPLOYERS automatically “clocked out” Plaintiff at her scheduled clock-out time, despite the fact that Plaintiff spent at least ten (10) minutes cleaning thereafter, depriving Plaintiff of minimum wages and premium overtime wages.

1 28. During the Claim Period, Plaintiff was not permitted to, and not advised of her right to
2 take one or more of her statutory 10-minute rest break for every four hours worked or majority portion
3 thereof, nor was Plaintiff even told she had the right to do so.

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6 29. During the Claim Period, Plaintiff did not receive an uninterrupted statutory 30-minute
7 meal periods for days on which Plaintiff worked at least 5 hours, which was each day Plaintiff worked,
8 nor did she receive a second 30-minute meal break when she worked at least 10 hours.

9 30. During the Claim Period, EMPLOYERS violated Labor Code §221 by collecting and/or
10 receiving from Plaintiff, and other aggrieved employees, part of their wages paid by EMPLOYERS to
11 said employees.

12 31. EMPLOYERS violated Labor Code §§ 204 and 223 because EMPLOYERS failed to pay
13 wages for all hours worked paid at least twice during each calendar month to employees as required “by
14 contract” under Labor Code section 223, as well as an improper collection of wages paid to an employee
15 under Labor Code section 221. *Gonzales v. Downtown LA Motors*, 215 Cal. App. 4th 36 (2d App. Dist.
16 Mar. 6, 2013).

17 32. During the Claim Period, Plaintiff was not provided with paystubs that complied with
18 Labor Code §226, as EMPLOYERS consistently provided incorrect and inaccurate paystubs.

19 33. EMPLOYERS violated Labor Code §227.3 because EMPLOYERS failed to pay
20 Plaintiff, and other aggrieved employees, unused, vested vacation time.

21 34. Plaintiff is informed and believes, and thereon alleges, that herself and other employees
22 were subject to the same violations and, therefore, are aggrieved employees within the meaning of
23 California Labor Code §2699. Thus, Plaintiff, as an aggrieved employee, reserves her right to bring an
24 action against Defendants, on behalf of herself and other current and former employees.

25 35. Additionally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23
26 Cal.App.5th 745, as an aggrieved employee, Plaintiff may investigate and pursue claims and penalties on
27 behalf of other aggrieved employees for other violations that she was not personally “aggrieved” by.

FEHA Allegations

36. Throughout Plaintiff's employment, SIERRA fostered a hostile work environment and made efforts to intimidate, abuse, offend, and oppress Plaintiff, and Plaintiff felt the same due to Plaintiff's national origin, race, and/or her real or perceived disability and medical condition.

37. For instance, SIERRA continuously interfered with Plaintiff's work performance by commenting on Plaintiff's language proficiency, even though speaking English was not a job requirement. SIERRA also frequently advised Plaintiff that she did not belong at the job because she did not speak English.

38. On or around October 25, 2020, Plaintiff was packaging boxes at work and suffered a work-related injury to her body. Plaintiff's work-related injury caused the major life activity of working to be more difficult, thus constituting a disability.

39. Plaintiff immediately notified SIERRA that she suffered an injury to her body, but SIERRA ignored her complaints and failed to make a report or offer Plaintiff workers' compensation benefits or treatment. Instead, Defendants insisted that Plaintiff get back to work because Black Friday was upcoming, and they did not want to fall behind schedule.

40. Due to the severe pain Plaintiff was suffering, she requested from Defendants to work at a new station with less strenuous work. SIERRA denied her request and said she could not be placed in a different station because she did not speak English even though there was no English language requirement to be gleaned.

41. Plaintiff continued trying to work over the next weeks, during which time Defendants still failed to advise Plaintiff of her rights to workers' compensation benefits, or offer any accommodation despite Plaintiff visibly having difficulty doing her work.

42. As a result of Defendants ignoring Plaintiff's requests, Plaintiff's injuries were exacerbated as she continued to suffer more injuries and incur more pain because she had to continue working at the same station performing the same work that caused her injury.

43. On or around November 7, 2020, Plaintiff had a verbal altercation with SIERRA because he was falsely accusing a fellow employee for sexually harassing another coworker. Plaintiff confronted him about falsehood.

1 44. Plaintiff and other employees, including the alleged harassment victim confirmed that
2 SIERRA's accusations were false. Plaintiff told SIERRA that he should not go around accusing people
3 of things that were not true, especially if the victim is not the one making those claims against the
4 employee herself.

5 45. On or around November 9, 2020, SIERRA gave Plaintiff her job application back and said
6 something to the effect of "I told you it would be your neck."

7 46. On or around November 13, 2020, Plaintiff showed up to work and was greeted by
8 SIERRA's assistant. The assistant told Plaintiff that she was not allowed on the premises.

9 47. Plaintiff asked why and was told that she didn't work there anymore.

10 48. Defendants discriminated, harassed and retaliated against Plaintiff, evidenced by
11 Defendants wrongfully terminating Plaintiff because of an illegal English only policy and/or because she
12 confronted SIERRA about the false allegations of sexual harassment, and/or because she reported an
13 injury and disability or medical condition to SIERRA.

14 49. Defendants also subjected the Plaintiff to harassment by commenting about her language
15 proficiency and forcing her to perform the same work after her injury.

16 50. Plaintiff's termination was substantially motivated by Plaintiff's race, ancestry, national
17 origin, real or perceived disability, real or perceived medical condition, association of a member of a
18 protected class, and/or engagement in protected activity. Defendants' discriminatory animus is evidenced
19 by the previously mentioned facts.

20 51. Defendants' conduct described herein was undertaken, authorized, and/or ratified
21 Defendants' officers, directors and/or managing agents, including, but not limited to DEMSKY and
22 DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create policy for
23 Defendants. The aforementioned conduct of said managing agents and individuals was therefore
24 undertaken on behalf of Defendants who further had advanced knowledge of the actions and conduct of
25 said individuals whose actions and conduct were ratified, authorized, and approved by managing agents.

26 52. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
27 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
28

1 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
2 counseling and treatment, and past and future lost wages and benefits.

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

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6 54. Plaintiff claims general damages for emotional and mental distress and aggravation in a
7 sum in excess of the jurisdictional minimum of this Court.

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

13
14 **FIRST CAUSE OF ACTION**
15 **FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
16 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

17 56. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 55, inclusive, as
18 though set forth in full herein.

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

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

23 59. FEHA requires Defendants to refrain from discriminating against an employee on the
24 basis of race, ancestry, national origin, real or perceived disability, real or perceived medical condition,
25 anticipated use of medical leave, association with a member of a protected class, and/or engagement in
26 protected activity, and to prevent from occurring discrimination, harassment, and retaliation on the same
27 bases. Cal. Code Regs., tit. 2, § 11035.

1 60. Plaintiff was a member of multiple protected classes as a result of Plaintiff's race,
2 ancestry, national origin, real or perceived disability, real or perceived medical condition, anticipated use
3 of medical leave, association of a member of a protected class, and/or engagement in protected activity.

4 61. At all times relevant hereto, Plaintiff was performing competently in the position Plaintiff
5 held with Defendants.

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7 62. Plaintiff suffered the adverse employment actions of unlawful harassment; discrimination;
8 retaliation; demotion; failure to investigate, remedy, and/or prevent discrimination; failure to reinstate
9 and/or return to work, and termination, and was harmed thereby.

10 63. Plaintiff is informed and believes that Plaintiff's race, ancestry, national origin, real or
11 perceived disability, real or perceived medical condition, anticipated use of medical leave, association
12 with a member of a protected class, and/or engagement in protected activity, and/or some combination
13 of these protected characteristics under Government Code § 12926(j) were motivating reasons and/or
14 factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

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

17 65. The damage allegations of Paragraphs 52 through 55, inclusive, are herein incorporated
18 by reference.

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

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

SECOND CAUSE OF ACTION
FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

68. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 50, inclusive, as though set forth in full herein.

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

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

71. These laws set forth in the preceding paragraph require Defendants to refrain from harassing, or creating, or maintaining a hostile work environment against an employee based upon the employee's race, ancestry, national origin, real or perceived disability, real or perceived medical condition, anticipated use of medical leave, association of a member of a protected class, and/or engagement in protected activity, as set forth hereinabove.

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

73. Defendants violated the FEHA and the public policy of the State of California which is embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of Plaintiff's race, ancestry, national origin, real or perceived disability, real or perceived medical condition, anticipated use of medical leave, association of a member of a protected class, and/or engagement in protected activity, and/or some combination of these protected characteristics, as set forth hereinabove.

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

75. SIERRA subjected Plaintiff to harassment through unwelcome words, beyond the scope of employment, and by making Plaintiff perform the same work which caused her injury, thereby exacerbating her injuries, out of personal gratification because of intentional meanness, bigotry, or for other personal motive.

1 76. The above said acts of Defendants constitute violations of the FEHA and violations of the
2 public policy of the State of California. Such violations were a proximate cause in Plaintiff's damage as
3 stated below.

4 77. The damage allegations of Paragraphs 52 through 55, inclusive, are herein incorporated
5 by reference.

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

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

14
15 **THIRD CAUSE OF ACTION**
16 **FOR RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
17 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

18 80. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 50, inclusive, as
19 though set forth in full herein.

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

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

24 83. Plaintiff engaged in the protected activities of and complaining about and protesting
25 Defendants' discriminatory and harassing conduct towards Plaintiff based upon race, ancestry, national
26 origin, real or perceived disability, real or perceived medical condition, anticipated use of medical leave,
27 association of a member of a protected class, and/or engagement in protected activity.

1 84. Plaintiff suffered the adverse employment actions of unlawful harassment; discrimination;
2 retaliation; demotion; failure to investigate, remedy, and/or prevent discrimination, failure to reinstate
3 and/or return to work, and termination, and was harmed thereby.

4 85. Plaintiff is informed and believes that Plaintiff's conduct of complaining about and
5 protesting about Defendants' discriminatory and harassing conduct, and/or some combination of these
6 factors, were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned
7 adverse employment actions.

8 ///

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

11 87. Plaintiff is informed and believes, and based thereon alleges, that the above acts of
12 retaliation committed by Defendants were done with the knowledge, consent, and/or ratification of, or at
13 the direction of SIERRA, and other managers at EMPLOYERS.

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

16 89. The damage allegations of Paragraphs 52 through 55, inclusive, are herein incorporated
17 by reference.

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

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

FOURTH CAUSE OF ACTION
FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION
IN VIOLATION OF GOV'T CODE §12940(k)
AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

92. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 51, inclusive, as though set forth in full herein.

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

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

95. The damage allegations of Paragraphs 52 through 55, inclusive, are herein incorporated by reference.

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

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

FIFTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS
IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

98. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 50, inclusive, as though set forth in full herein.

99. At all times hereto, the FEHA, including in particular Government Code §1 2940(m), was in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty on Defendants to make reasonable accommodation for the known physical disability and/or medical condition of an employee. Cal. Code Regs., tit. 2, § 11035(s).

100. At all relevant times, Plaintiff was a member of a protected class within the meaning of, in particular, Government Code §§ 12940(a) & 12986(1) et seq. because of Plaintiff's disability and/or medical condition of which Defendants had both actual and constructive knowledge.

101. At all times herein, Plaintiff was willing and able to perform the duties and functions of the position in which Plaintiff was employed, or could have performed the duties and functions of that position with reasonable accommodations. At no time would the performance of the functions of the employment position, with a reasonable accommodation for Plaintiff's medical condition, actually or as it was perceived by Defendants, have been a danger to Plaintiff's or any other person's health or safety. Accommodation of Plaintiff's medical condition, real or perceived by Defendants, would not have imposed an undue hardship on Defendants. Defendants failed and refused to accommodate Plaintiff's disability and/or medical condition, failed to engage in the interactive process with Plaintiff and continue to violate this obligation, up to and including the date of failing to promote Plaintiff.

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

103. The damage allegations of Paragraphs 52 through 55, inclusive, are herein incorporated by reference.

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

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

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

7
8 **SIXTH CAUSE OF ACTION**
9 **FOR FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS**
10 **IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
11 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

12 106. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 50, inclusive, as
13 though set forth in full herein.

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

20 108. At all relevant times, Plaintiff was a member of a protected class within the meaning of,
21 in particular, Government Code §§ 12940(a) & 12986(1) et seq. because Plaintiff required lactation
22 breaks and had a medical condition of which Defendants had both actual and constructive knowledge.

23 109. Plaintiff reported the pregnancy-related issues to Defendants and requested
24 accommodation and requested accommodation for private milk expression, triggering Defendants'
25 obligation to engage in the interactive process with Plaintiff, but at all times herein, Defendants failed
26 and refused to do so. Thereafter, despite Defendants continuing obligation to engage in the interactive
27 process with Plaintiff, despite Plaintiff's express desire to continue working in some capacity, Defendants
28 failed and refused to have any dialogue with Plaintiff whatsoever, on any of these occasions, and

1 Defendants violated, and continued to violate this obligation up to and including the date of failing to
2 promote Plaintiff.

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

5 111. The damage allegations of Paragraphs 52 through 55, inclusive, are herein incorporated
6 by reference.

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

13 ///

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

16
17 **SEVENTH CAUSE OF ACTION**

18 **RETALIATION**

19 **LABOR CODE §§98.6, 232.5, 1030, et seq., 1102.5.**

20 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

21 114. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 50, inclusive, as
22 though set forth in full herein.

23 115. Labor Code § 98.6(a) prohibits an employer from discharging or in any manner
24 discriminating or retaliating against an employee who, among other things, has exercised her or her rights
25 under that Chapter, including conduct delineated in Chapter 5 of the Labor Code, which encompasses §
26 1102.5. An employee who has been discharged or retaliated against in violation of Labor Code § 98.6 is
27 entitled to recovery of a civil penalty against the employer in an amount not exceeding ten thousand
28 dollars (\$10,000.00) for each violation of that section.

1 116. At all relevant times, Labor Code § 232.5 was in full force and effect and binding on
2 Defendants. Labor Code § 232.5(b) prohibits an employer from discharging, formally disciplining, or
3 otherwise discriminating against an employee who discloses information about the employer's working
4 conditions.

5 117. Labor Code § 1102.5(b) prohibits an employer from retaliating against an employee for
6 disclosing to persons with authority over the employee for disclosing *or believing that the employee may*
7 *disclose* what the employee reasonably believes is a violation of state or federal statute, or a violation of
8 or noncompliance with a local, state, or federal rule or regulation. An employee who has been discharged
9 or retaliated against in violation of Labor Code § 1102.5 is entitled to recovery of a civil penalty against
10 the employer in an amount not exceeding ten thousand dollars (\$10,000.00) for each violation of that
11 section. The Labor code furthers that any employer who willfully refuses to rehire, promote, or otherwise
12 restore an employee is guilty of a misdemeanor.

13 ///

14 118. Sections 98.6, 232.5, and 1102.5, create an entitlement to recovery by Plaintiff in a civil
15 action for the unlawful actions by Defendants.

16 119. Plaintiff was terminated from her employment with Defendants as a result of complaining
17 about EMPLOYERS failure to provide reasonable accommodation for her injury and for complaining to
18 SIERRA about a false sexual harassment allegation of a coworker, along with the exercise of her rights
19 under Labor Code §§ 98.6, 1030, et seq., and 1102.5, Defendants' retaliatory animus is evidenced by,
20 among other things, the following facts: SIERRA's conduct occurred following Plaintiff complaining
21 about unfair treatment; there were no legitimate performance issues or any other reason, nor even offered,
22 for terminating Plaintiff; and due to Plaintiff exercising or attempting to engage in protected activity.

23 120. Plaintiff was harmed.

24 121. The damage allegations of Paragraphs 52 through 55, inclusive, are herein incorporated
25 by reference.

26 122. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty of \$10,000.00 for
27 Defendants' violations of Labor Code §§ 98.6 and 1102.5.

28 123. Defendants' conduct described herein was undertaken, authorized, and/or ratified by

1 Defendants, and Defendants' officers and/or managing agents, including SIERRA and those identified
2 herein as DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create
3 policy for Defendants. The aforementioned conduct of said managing agents and individuals was
4 therefore undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions
5 and conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
6 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
7 and designated herein as DOES 1-20, inclusive.

8 124. Because the acts taken toward Plaintiff were carried out by managerial employees acting
9 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's rights and
10 in order to injure and damage Plaintiff, Plaintiff requests that punitive damages be levied against
11 Defendants and each of them, in sums in excess of the jurisdictional minimum of this court.

12 125. Plaintiff is also entitled to reasonable attorneys' fees and costs, pursuant to Labor Code §§
13 98.7(e) and other Labor Code sections.

14 **EIGHTH CAUSE OF ACTION**
15 **FOR WRONGFUL TERMINATION**
16 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
17 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

18 126. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 50, inclusive, as
19 though set forth in full herein.

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

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

1 ancestry, national origin, real or perceived disability, real or perceived medical condition, anticipated use
2 of medical leave, association of a member of a protected class, use of medical leave, and/or engagement
3 in protected activity.

4 129. Plaintiff believes and thereon alleges that Plaintiff's race, ancestry, national origin, real or
5 perceived disability, real or perceived medical condition, anticipated use of medical leave, association of
6 a member of a protected class, and/or engagement in protected activity with respect to these protected
7 classes, and/or some combination thereof, were factors in Defendants' conduct as alleged hereinabove.

8 130. At all times mentioned in this complaint, Labor Code §§ 98.6, 232.5, 1030, *et seq.*, and
9 1102.5 were in full force and effect and binding on Defendants. Labor Code § 98.6 reflects the State's
10 broad public policy interest in protecting the rights of individual employees and job applicants who could
11 not otherwise afford to protect themselves from violations of the Labor Code. Labor Code § 1102.5
12 reflects the State's broad public policy interest in encouraging workplace "whistleblowers," who may
13 without fear of retaliation report concerns regarding an employer's suspected illegal conduct, irrespective
14 of whether the reporting is made to governmental agencies or to the employer itself, and irrespective of
15 whether the employee's suspicions are correct that the challenged conduct actually violates some law.
16 Indeed, the law in California is that an employee's good faith but mistaken belief in the illegality of his
17 or her co-workers', supervisor's, and employer's conduct is protected from employer retaliation in the
18 whistle-blowing context. These laws require Defendants to refrain, among other things, from
19 discharging, suspending, or in any other manner discriminating against an employee because the
20 employee has made a bona fide oral or written complaint to his or her employer and disclosed the
21 employer's working conditions, or the employer believes that the employee disclosed or may disclose
22 information to a government or law enforcement agency, and the employee shall be entitled to
23 reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.
24 The Labor code furthers that any employer who willfully refuses to rehire, promote, or otherwise restore
25 an employee is guilty of a misdemeanor.

26 131. Plaintiff believes and thereon alleges that Plaintiff's request of accommodation and
27 complaints of Defendant's false sexual harassment allegations, and Plaintiff's engagement in protected
28

1 activity, including complaining to supervisors of Labor Code violations, were factors in Defendants'
2 conduct as alleged hereinabove.

3 132. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
4 employment on the basis of sex, including gender expression, sexual orientation, disability, medical
5 condition, real or perceived, or use of medical leave, Plaintiff's complaining of discrimination due to
6 these protected classes, Plaintiff's engagement in protected activity, and/or some combination of these
7 factors, were a proximate cause in Plaintiff's damages as stated below.

8 133. The above said acts of Defendants constitute violations of the Government Code, Labor
9 Code, and the public policy of the State of California embodied therein as set forth above. Defendants
10 violated these laws by discriminating and retaliating against Plaintiff and terminating Plaintiff's
11 employment in retaliation for exercise of protected rights.

12 134. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's status as a
13 protected member of the class under the FEHA and Labor Code was a proximate cause in Plaintiff's
14 damages as stated below.

15 135. The damage allegations of Paragraphs 52 through 55, inclusive, are herein incorporated
16 by reference.

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

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

NINTH CAUSE OF ACTION
FOR DECLARATORY JUDGMENT
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

138. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 137, inclusive, as though set forth in full herein.

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

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

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

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

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

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

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

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

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

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

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

4 142. An actual controversy has arisen and now exists between Plaintiff and Defendants
5 concerning their respective rights and duties as it is believed that Defendants may allege that they did not
6 discriminate and retaliate against Plaintiff; that Plaintiff was not given a promotion as a result of
7 Plaintiff's race, ancestry, national origin, real or perceived disability, real or perceived medical condition,
8 anticipated use of medical leave, association of a member of a protected class, and/or engagement in
9 protected activity, and/or some combination of these protected characteristics. Plaintiff contends that
10 Defendants did discriminate and retaliate against Plaintiff on the basis of Plaintiff's race, ancestry,
11 national origin, real or perceived disability, real or perceived medical condition, anticipated use of
12 medical leave, association of a member of a protected class, and/or engagement in protected activity; and
13 that Plaintiff was retaliated against and, ultimately refused a promotion as a result of Plaintiff's race,
14 ancestry, national origin, real or perceived disability, real or perceived medical condition, anticipated use
15 of medical leave, association of a member of a protected class, and/or engagement in protected activity,
16 and/or some combination of these protected characteristics. Plaintiff is informed and believes, and on
17 that basis alleges, that Defendants shall dispute Plaintiff's contentions.

18 143. Pursuant to Code of Civil Procedure § 1060, Plaintiff desires a judicial determination of
19 Plaintiff's rights and duties, and a declaration that Defendants harassed Plaintiff on the basis of Plaintiff's
20 race, ancestry, national origin, real or perceived disability, real or perceived medical condition,
21 anticipated use of medical leave, association of a member of a protected class, and/or engagement in
22 protected activity, and/or some combination of these protected characteristics.

23 144. Pursuant to Code of Civil Procedure § 1060, Plaintiff seeks a judicial determination of
24 Plaintiff's rights and duties, and a declaration that Plaintiff's race, ancestry, national origin, real or
25 perceived disability, real or perceived medical condition, anticipated use of medical leave, association of
26 a member of a protected class, and/or engagement in protected activity, and/or some combination of these
27 protected characteristics was a substantial motivating factor in the decision to subject Plaintiff to the
28 aforementioned adverse employment actions.

1 145. A judicial declaration is necessary and appropriate at this time under the circumstances in
2 order that Plaintiff, for Plaintiff and on behalf of employees in the State of California and in conformity
3 with the public policy of the State, obtain a judicial declaration of the wrongdoing of Defendants and to
4 condemn such discriminatory employment policies or practices prospectively. *Harris v. City of Santa*
5 *Monica* (2013) 56 Cal.4th 203.

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

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

14
15 **TENTH CAUSE OF ACTION**
16 **FOR FAILURE TO PAY WAGES DUE AND IMPROPER DEDUCTIONS**
17 **LABOR CODE §§ 201, 226.7, 512, 1030**
18 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

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

21 149. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and
22 required by 8 Code of Regulations § 11010, as set forth hereinabove. As alleged herein, Defendants
23 routinely failed to pay Plaintiff minimum wages, premium overtime wages, and wages for the failure to
24 take Plaintiff's statutory rest and meal breaks.

25 150. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code § 510,
26 8 Code of Regulations § 11010, and Industrial Welfare Commission Order No. 1-2001.

1 151. During Plaintiff's employment, Defendants violated Labor Code § 221 by collecting
2 and/or receiving from Plaintiff, and other aggrieved employees, part of their wages paid by Defendants
3 to said employees.

4 152. Defendants violated Labor Code §§ 204 and 223 because Defendants failed to pay wages
5 for all hours worked paid at least twice during each calendar month to employees as required "by
6 contract" under Labor Code section 223, as well as an improper collection of wages paid to an employee
7 under Labor Code section 221. *Gonzales v. Downtown LA Motors*, 215 Cal. App. 4th 36 (2d App. Dist.
8 Mar. 6, 2013).

9 153. Plaintiff also seeks to recover unpaid wages for working when Plaintiff should have been
10 on her meal break in violation of applicable law and, under the Unfair Competition Law (UCL), it should
11 be restored to Plaintiff in the form of compensation for the time work, as EMPLOYERS took that time
12 from Plaintiff. *Cortez v. Purolator Air Filtration Products*, 96 Cal.Rptr.2d 518, 528 (2000) ("the concept
13 of restoration or restitution, as used in the UCL, is not limited only to the return of money or property
14 that was once in the possession of that person ... earned wages that are due and payable pursuant to
15 section 200 et seq. of the Labor Code are as much the property of the employee who has given his or her
16 labor to the employer in exchange for that property as is property a person surrenders through an unfair
17 business practice").

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

21 155. In addition to the unpaid wages, Plaintiff is entitled to civil penalties in this amount stated
22 above based upon Defendants' underpayment of wages and in violation of Labor Code §§ 226.7, 512.

23
24 **ELEVENTH CAUSE OF ACTION**
25 **FOR FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF**
26 **LABOR CODE §§ 1182.12, 1194, 1194.2, 1197**
27 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

28 156. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as

1 though set forth in full herein.

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

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

Effective	26+ employees	1-25 employees
1/1/21	\$14.00	\$13.00
1/1/20	\$13.00	\$12.00
1/1/19	\$12.00	\$11.00
1/1/18	\$11.00	\$10.50

12
13 159. In the four years immediately preceding the filing of this complaint, Defendants failed
14 and refused to pay Plaintiff the legal minimum wage in the State of California, as set forth in Labor Code
15 section 1182.12, in each of the of the following ways:

16 a. During the Claim Period (28 weeks), Defendants failed to pay Plaintiff at least 10
17 minutes on each day she worked, totaling 18.66 hours (10 minutes per day x 4 days/week x 28 weeks).
18 Thus, Plaintiff was underpaid 244.53 during the Claim Period. During the same time period, Defendants
19 interrupted Plaintiff's meal break and required her to work an average of 5 minutes on each day she
20 worked, which she received no wages for. Thus, Defendants failed to Plaintiff 9.33 hours During the
21 Claim period, totaling \$122.27 (5 minutes per day x 4 days/week x 28 weeks). Therefore, during the
22 Claim Period, Plaintiff is owed \$366.80.

23 160. Thus, for the entirety of time periods set forth above, Defendant owes Plaintiff unpaid
24 minimum wages in the amount of approximately \$366.80.

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

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

163. In addition, pursuant to Labor Code section 1194.2, Plaintiff is entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully paid as previously alleged, an estimated additional \$366.80 plus interest thereon.

TWELFTH CAUSE OF ACTION

FOR FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF LABOR CODE

§§ 510, 1194

AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

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

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

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

167. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime compensation required by Labor Code §510, 8 Code of Regulations §11010, and Industrial Welfare Commission Order No. 1-2001.

168. In the four years last past, Plaintiff worked over 8 hours of each day, entitling her to overtime premium wages, all of which should have been paid at 1.5 times Plaintiff's regular hourly wage rate, at that time, or \$19.65 (\$13.10 x 1.5).

1 169. Defendants failed to pay Plaintiff the requisite overtime wages in each of the following
2 ways in the four years immediately preceding the filing of this complaint:

3 a. During the Claim Period, Plaintiff's hourly overtime rate was \$19.65 per hour, and Plaintiff was
4 not paid wages for approximately 27.99 hours. Therefore, less the minimum wage portion of \$13.10 per
5 hour which Plaintiff has already claimed in the preceding cause of action, Plaintiff is owed \$6.55 for each
6 of those hours, totaling \$183.33.

7 170. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
8 Code §510, 8 Code Regulations §11010, and Industrial Welfare Commission Order No. 1-2001.

9 171. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages
10 of \$183.33 above and beyond the minimum wages sought in the preceding cause of action for these same
11 hours.

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

15
16 **THIRTEENTH CAUSE OF ACTION**
17 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
18 **LABOR CODE §§226.7, 512**
19 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

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

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

24 175. Labor Code §226.7 requires an employer to provide every employee with an
25 uninterrupted rest period of not less than 10 minutes, for every period worked of four hours, or
26 substantial portion thereof.

27 176. As alleged herein, Plaintiff is not exempt from the rest break requirements of 8 Code of
28 Regulations §11010 and Industrial Welfare Commission Order No. 1-2001. Consequently, Plaintiff is

1 owed one hour of pay at her then regular hourly rate, or the requisite minimum wage, whichever is
2 greater, for each day that he was denied such rest and meal periods.

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

6 178. Defendants failed and refused to provide Plaintiff with uninterrupted rest and meal
7 periods, and failed to compensate Plaintiff for missed or uninterrupted meal and rest periods, as
8 required by Labor Code §§226.7 and the applicable sections of 8 Code of Regulations §11010 and
9 Industrial Welfare Commission Order No. 1-2001, as follows:

10 a. During the Claim Period, Plaintiff's statutory 30-minute meal periods were missed, interrupted or
11 cut short approximately 4 times per week for 28 weeks, or on approximately 112 days. Consequently,
12 Plaintiff is owed one hour of pay at \$13.10 for each day, or \$1,467.20, plus interest thereon, for unpaid
13 meal periods. During this same time period, Plaintiff was deprived of one or more of Plaintiff's statutory
14 10-minute rest periods on approximately 112 days. Consequently, Plaintiff is owed one hour of pay at
15 \$13.10 for each day, or \$1,467.20, plus interest thereon, for unpaid rest periods. Thus, Plaintiff is owed
16 \$2,934.40 for unpaid meal and rest breaks during the Claim Period.

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

19 180. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
20 such amounts in the combined amount of \$2,934.40, pursuant to Labor Code §226.7(b), plus interest
21 thereon and costs of suit.

22
23 **FOURTEENTH CAUSE OF ACTION**
24 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
25 **LABOR CODE §§226 ET SEQ.**
26 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

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

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

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

12 184. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
13 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
14 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours
15 and rates in effect during each pay period and the corresponding number of hours worked at each hourly
16 rate by Plaintiff. Not one of the paystubs that Plaintiff received complied with Labor Code §226, and
17 contained almost none of the required information, including hours actually worked.

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

19 186. This failure has injured Plaintiff, by misrepresenting and depriving her of hour, wage,
20 and earnings information to which she is entitled, causing her difficulty and expense in attempting to
21 reconstruct time and pay records, causing her not to be paid wages she is entitled to, causing her to be
22 unable to rely on earnings statements in dealings with third parties, eviscerating her right under Labor
23 Code §226(b) to review itemized wage statement information by inspecting the employer's underlying
24 records, and deceiving her regarding her entitlement to meal period and rest period wages. For the
25 time periods that Plaintiff was not provided with paystubs at all, her aforementioned injuries are
26 presumed as a matter of law.

27 187. Plaintiff was paid on a bi-weekly basis, and therefore Defendants violated Labor Code
28 §226 multiple times during the last year that Plaintiffs worked for Defendants. Consequently,

1 Defendants are liable to Plaintiff for her actual damages, or penalties in the statutory maximum amount
2 of \$4,000.00, whichever is greater.

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

6
7 **FIFTEENTH CAUSE OF ACTION**
8 **FOR WAITING TIME PENALTIES**

9 **LABOR CODE §§201-203**
10 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

11 189. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 51, inclusive, as
12 though set forth in full herein.

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

18 191. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
19 203.

20 192. As a direct and proximate result of Defendants' willful failure to pay these wages,
21 Plaintiff is entitled to payment of her underpaid wages meal and rest periods as previously pleaded
22 herein, and more than \$4,128.90 in wait time penalties, calculated based on 30 days of a regular daily
23 wage of approximately \$137.63, including wages for missed meal and rest periods.

24 193. Based on Defendants' conduct as alleged herein, Defendants are liable for \$4,128.90 in
25 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
26 fees and costs.

SIXTEENTH CAUSE OF ACTION
FOR PRIVATE ATTORNEY GENERAL ACT

LABOR CODE §2699
AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

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

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

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

197. On February 19, 2021, more than 65 calendar days before filing this Complaint, Plaintiff provided written notice by certified mail to the Labor and Workforce Development Agency and to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a). This Complaint include violations of Labor Code §§ 98.6, 201.3, 202, 203, 204, 221, 223, 226, 226.7, 227.3, 246, 510, 512, 551, 552, 1102.5, 1102.6, 1194, 1194.2, 2802, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

198. Here, Plaintiff's civil action alleges violations of provisions listed in Labor Code §2699.5 and violations of provisions other than those listed in Labor Code §2699.5. As such, Labor Code §2699.3(a) and §2699.3(c) apply to this action.

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

200. Further, as of the filing of this Complaint, Plaintiff has not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of the actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given

1 authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor
2 Code §2699.

3 4 **PENALTIES**

5 201. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code
6 that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
7 Agency (“LWDA”) (or any of its departments, divisions, commissions, board agency or employees), such
8 civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved
9 employee on behalf of himself or herself and other current or former employees) and Labor Code
10 §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which
11 a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil
12 penalties, as follows:

- 13 a) As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor Code
14 except for those for which a civil penalty is specifically provided, in the amount of one hundred
15 dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two
16 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
17 violation, including those violations notated in Paragraph 197; and
- 18 b) As applicable, civil penalties under Labor Code §558 (in addition to and entirely independent
19 and apart from any other penalty provided for in the Labor Code), for violations of Labor Code
20 §§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the
21 aggrieved employee was underpaid, and \$100 for each subsequent violation for each underpaid
22 employee for each pay period for which the employee was underpaid, with all wages recovered
23 pursuant to Labor Code §557 paid to the aggrieved employees. Plaintiff is entitled to recover
24 approximately \$2,550 for civil penalties, including for violations under Labor Code §§ 226.7,
25 512, 1030. Plaintiff is also able to collect an additional penalty to be distributed to the other
26 aggrieved employees in an amount according to proof;
- 27 c) As applicable, civil penalties under Labor Code §1197.1 (in addition to and entirely
28 independent and apart from any other penalty provided in the Labor Code) for violations of

1 Labor Code §§1194 and 1197, in the amount of \$100 for each underpaid aggrieved employee
2 for each pay period the aggrieved employee was intentionally underpaid in addition to an
3 amount sufficient to recover underpaid wages, and \$250 for each subsequent violation for each
4 underpaid aggrieved employees regardless of whether the initial violation was intentionally
5 committed in addition to an amount sufficient to recover underpaid wages, with all wages
6 recovered pursuant to Labor Code §1197.1. Plaintiff may also recover penalties under § 1197.1
7 on behalf of herself and for the other aggrieved employees;

8 d) As applicable, civil penalties under Labor Code §225.5 (in addition to and entirely independent
9 and apart from any other penalty provided in the Labor Code) for violations of Labor Code §
10 221 and 223, in the amount of \$100 for each underpaid aggrieved employee for each pay period
11 the aggrieved employee was underpaid, and \$200 for each subsequent violation or any willful
12 or intentional violation, for each underpaid aggrieved employees regardless of whether the
13 initial violation was intentionally committed, in addition to 25 percent of the amount
14 unlawfully withheld;

15 e) As applicable, civil penalties under Labor Code §210 (in addition to and entirely independent
16 and apart from any other penalty provided in the Labor Code), for each employee who is/was
17 not paid wages in accordance with Labor Code §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5
18 and 1197.5, in the amount of a civil penalty of \$100 for each aggrieved employee per pay
19 period for each initial violation, and \$200 for each aggrieved employee per pay period for each
20 subsequent violation, plus 25 percent of the amount unlawfully withheld;

21 f) As applicable, civil penalties under Labor Code §2802 (in addition to and entirely independent
22 and apart from any other penalty provided in the Labor Code), for each violation of Labor
23 Code §2802, in the amount of \$100 for each aggrieved employee per pay period for each
24 violation; and \$200 for each aggrieved employee per pay period for each subsequent violation;

25 g) As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely independent
26 and apart from any other civil penalty provided in the Labor Code), for each violation of Labor
27 Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each
28

violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

h) As applicable, civil penalties under Labor Code §§203 and/or 256 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days; and

i) As applicable, any and all additional applicable civil penalties and sums as provided by the Labor Code and/or other relevant statutes.

202. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all penalties obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%) to the aggrieved employees.

203. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek recovery of pre-judgment interest on all amounts recovered herein.

204. As a direct and proximate result of Defendants' California Labor Code violations as set forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty, §§203, 210, 225.5, 226.3, 226.7, 510, 512, 558, and 1030.

205. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek recovery of pre-judgment interest on all amounts recovered herein.

206. Further, Plaintiff is entitled; to recover reasonable attorneys' fees and costs pursuant to Labor Code §2699(g)(1) and any other applicable statute.

SEVENTEENTH CAUSE OF ACTION
FOR UNFAIR COMPETITION
BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.
AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

207. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 206, inclusive, as though set forth in full herein.

208. The court has jurisdiction over this action pursuant to Business and Professions Code section 17200 et seq., specifically Business and Professions Code section 17203, which provides that any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction; and the court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition; and Business and Professions Code Section 17204, which provides for actions for any relief pursuant to the Unfair Competition Law to be prosecuted exclusively in a court of competent jurisdiction by any board, officer, person, corporation or association or by any person acting for the interests of itself, or its members and that has suffered an injury in fact and lost money or property as a result of Defendants' conduct.

209. Defendants have engaged in, and continue to engage in the following unlawful, unfair and/or fraudulent business practices in violation of Section 17200 of the California Business and Professions Code: discrimination, harassment, retaliation and failure to prevent the same under the FEHA, related FEHA causes of action, retaliation under the Labor Code, failure to pay wages, failure to provide minimum wages, failure to provide overtime wages, failure to provide and pay premium wages for missed meal and rest breaks, among other unfair conduct as alleged herein above.

210. As a direct, proximate, and foreseeable result of Defendants' wrongful conduct as alleged above, Defendants' business acts or practices have caused injury to the Plaintiff and the public. Plaintiff is entitled to relief, including full restitution and/or disgorgement of all revenues, earnings,

1 profits, compensation and benefits that may have been obtained by Defendants as a result of such
2 business acts or practices.

3 211. Plaintiff is informed and believes and based thereon alleges that Defendants' illegal acts
4 as described above are a serious and continuing threat to Plaintiff and the public. If Defendants are
5 allowed to continue their unfair and unlawful acts, Plaintiff and the public will suffer further immediate
6 and irreparable injury, loss and damage. Plaintiff is further informed and believes, and based thereon
7 alleges, that, in the absence of a temporary restraining order and preliminary and permanent injunctions
8 as prayed for below, Defendants will continue to unfairly and unlawfully compete.

9
10 **EIGHTEENTH CAUSE OF ACTION**

11 **FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS**

12 **LABOR CODE §§226 *et seq.*, 1198.5**

13 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

14 212. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 51, inclusive, as
15 though set forth in full herein.

16 213. Labor Code §226(c) requires an employer, within twenty-one (21) days of a written
17 request thereof, to inspect or receive a copy of an employee's records. Pursuant to Labor Code §226(f),
18 an employer's failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

19 214. Labor Code §1198.5 requires an employer, within thirty (30) days of a written request
20 thereof, to inspect or receive a copy of an employee's personnel and payroll records. An employer's
21 failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

22 215. On November 30, 2020, Plaintiff made a written request to inspect or receive a copy of
23 her personnel and payroll records from EMPLOYERS, which EMPLOYERS received.

24 216. EMPLOYERS failed and refused to permit the inspection of the entirety of Plaintiff's
25 personnel and payroll records, and failed to provide the entirety of a copy of Plaintiff's personnel and
26 payroll records to her within the time required by Labor Code §§ 226 *et seq.*, 1198.5, or ever.

27 217. As a result of EMPLOYER DEFENDANTS' failure and refusal to comply with Labor
28 Code §§ 226, and 1198.5, Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00.

1
2 **PRAYER FOR RELIEF**

3 **WHEREFORE**, Plaintiff seeks judgment against Defendants and each of them, in an amount
4 according to proof but estimated to be no less than \$5,000,000 as follows:

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

9 2. For payment failure to pay wages due pursuant to Labor Code §§201, 221, 226.7, 227.3,
10 512, 1030, and Industrial Welfare Commission Order No. 1-2001, and 8 Code of Regulations §11010,
11 in the amount according to proof;

12 3. For statutory penalties and damages pursuant to Labor Code §558 in the amount according
13 to proof;

14 4. For payment of unpaid minimum wage compensation pursuant to Labor Code §§1182.12,
15 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 1-2001, in the amount of no less than
16 \$366.80;

17 5. For liquidated damages pursuant to Labor Code §1194.2 in the amount of \$366.80, plus
18 interest;

19 6. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194,
20 Industrial Welfare Commission Order No. 1-2001, and 8 Code of Regulations §11010, in the amount of
21 no less than \$183.33;

22 7. For payment of missed meal and rest period compensation pursuant to Labor Code
23 §§226.7, 512 in the amount of no less than \$2,934.40;

24 8. For damages pursuant to Labor Code §221 in the amount according to proof;

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

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

- 1 11. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
2 than \$4,128.90;
- 3 12. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than \$10,000.00;
- 4 13. For civil penalties pursuant to Labor Code §1102.5 in the amount of no less than
5 \$10,000.00;
- 6 14. For criminal sanctions pursuant to Labor Code §§ 98.6 and 1102.5 for retaliatory conduct;
- 7 15. For statutory penalties pursuant to Labor Code §§ 226(f), 1198.5 in the amount of no less
8 than \$750.00 each, totaling \$1,500;
- 9 16. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely
10 independent and apart from other penalties in the Labor Code and for Labor Code violations without a
11 specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each
12 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;
- 13 17. For civil penalties under Labor Code §210, in addition to and entirely independent and
14 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
15 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
16 each subsequent violation, plus 25 percent of the amount unlawfully withheld;
- 17 18. For civil penalties under Labor Code §2802, in addition to and entirely independent and
18 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
19 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
20 each subsequent violation;
- 21 19. For civil penalties under Labor Code §§ 210 and 225.5, in addition to and entirely
22 independent and apart from any other penalty provided in the Labor Code, for each violation of Labor
23 Code §§204, 221 and 223, in the amount of \$100 for each aggrieved employee per pay period for each
24 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation or for each
25 willful or intentional violation, in addition to 25 percent of the amount unlawfully withheld;
- 26 20. For civil penalties under Labor Code §226.3, in addition to and entirely independent and
27 apart from any other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved
28

1 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for
2 each subsequent violation;

3 21. For civil penalties under Labor Code §§203 and/or 256, in addition to and entirely
4 independent and apart from any other penalty provided in the Labor Code, in the amount of one day of
5 pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination,
6 until payment was/is made, up to a maximum of thirty (30) days;

7 22. For prejudgment interest on all amounts recovered herein pursuant to Labor Code §218.6,
8 Labor Code §1194(a), and/or Civil Code §3287;

9 23. For reasonable attorneys' fees and costs incurred pursuant to Labor Code §2699(g)(1) and
10 any other applicable statute; and

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

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

15 25. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
16 condemning Defendants' discriminatory practices;

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

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

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

23 29. For post-judgment interest; and

24 30. For any other relief that is just and proper.

1 DATED: August 10, 2021

GUERRA & CASILLAS LLP

2
3 By:



Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorney for Plaintiff
MARGARITA VILLALPANDO

4
5
6 **JURY TRIAL DEMANDED**

7 Plaintiff demands trial of all issues by jury.

8
9 DATED: August 10, 2021

GUERRA & CASILLAS LLP

10
11 By:



Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorney for Plaintiff
MARGARITA VILLALPANDO