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JAVIER HERNANDEZ MEJIA

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

JAVIER HERNANDEZ MEJIA, an individual,

Plaintiff,

v.

R. BERG ENTERPRISES, INC. D/B/A 7-
ELEVEN, a California corporation; 7-
ELEVEN, a business entity of unknown format;
HARRY DOE, an individual; NAZARIO DOE,
an individual; and DOES 1 through 20,
inclusive,

Defendants.

Case No. **21STCV32606**

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. FOR DECLARATORY JUDGMENT**
- 8. RETALIATION (LAB. CODE §§98.6, 232.5,
1030, 6310, ET SEQ.);**
- 9. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**

10. FAILURE TO PAY WAGES AND
IMPROPER DEDUCTIONS (CAL. LABOR
CODE §§201, 221, 226.7;
11. FAILURE TO PROVIDE MEAL AND
REST PERIODS (CAL. LABOR CODE §§
226.7, 512);
12. FAILURE TO PROVIDE ITEMIZED
WAGE AND HOUR STATEMENTS (CAL.
LABOR CODE §§ 226, ET SEQ.);
13. PRIVATE ATTORNEY GENERAL ACT
(CAL. LABOR CODE § 2699, ET SEQ);
14. FAILURE TO PERMIT INSPECTION OF
PERSONNEL AND PAYROLL RECORDS
(CAL. LABOR CODE §§ 226, 1198.5); AND
15. UNFAIR COMPETITION (BUS. & PROF.
CODE § 17200 ET SEQ.)

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, JAVIER HERNANDEZ MEJIA, 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.

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THE PARTIES

2. Plaintiff, JAVIER HERNANDEZ MEJIA, 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 R. BERG ENTERPRISES, INC. D/B/A 7-ELEVEN (hereinafter referred to as “R. BERG”) was and is California corporation doing business at 11656 Wilshire Boulevard, Los Angeles, 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, Defendant 7-ELEVEN (hereinafter referred to as “7-ELEVEN”) was and is a business entity of unknown format doing business at 11656 Wilshire Boulevard, Los Angeles, in the County of Los Angeles, State of California.

5. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant HARRY DOE (hereinafter referred to as “HARRY”) was and is an individual residing 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 NAZARIO DOE (hereinafter referred to as “NAZARIO”) was and is an individual residing in the County of Los Angeles, State of California.

7. R. BERG and 7-ELEVEN are hereinafter collectively referred to as “EMPLOYER DEFENDANTS.”

8. HARRY and NAZARIO are hereinafter collectively referred to as “INDIVIDUAL DEFENDANTS.”

9. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, EMPLOYER DEFENDANTS owned and operated a private retail business.

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

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

6 12. At all times relevant herein, the INDIVIDUAL DEFENDANTS were Plaintiff's
7 "supervisors," as that term is defined in Government Code § 12926, subdivision (t). Plaintiff is informed
8 and believes, and thereon alleges that at all times relevant to this action, INDIVIDUAL DEFENDANTS
9 and DOES 1-20 were managers and/or supervisors of EMPLOYER DEFENDANTS, acting as managing
10 agents for EMPLOYER DEFENDANTS; INDIVIDUAL DEFENDANTS and DOES 1-20 were each
11 acting within the course and scope of his or her employment and on behalf of EMPLOYER
12 DEFENDANTS such that his or her acts or omissions are imputed to EMPLOYER DEFENDANTS under
13 the doctrine of *respondeat superior*, or, alternatively, at all times relevant to this action, EMPLOYER
14 DEFENDANTS cloaked INDIVIDUAL DEFENDANTS and DOES 1-20 with the appearance of actual
15 authority, such that Plaintiff was justified in relying thereon, and therefore his or her acts or omissions
16 are imputed to EMPLOYER DEFENDANTS under the doctrine of *respondeat superior*.

17 13. EMPLOYER DEFENDANTS, INDIVIDUAL DEFENDANTS and DOES 1-20 are
18 hereinafter collectively referred to as "Defendants."

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

26 15. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
27 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
28 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the

1 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
2 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
3 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

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

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

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

21
22 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

23 19. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
24 of interest and ownership between or among EMPLOYER DEFENDANTS, INDIVIDUAL
25 DEFENDANTS, and DOES 1-20 that the individuality and separateness of defendants have ceased to
26 exist.

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

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

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

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

14 d. EMPLOYER DEFENDANTS do not comply with all requisite corporate
15 formalities to maintain a legal and separate corporate existence.

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

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

27 22. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
28 thereon alleges that EMPLOYER DEFENDANTS and DOES 1-20 are Plaintiff's joint employers by

1 virtue of a joint enterprise, and that Plaintiff was an employee of EMPLOYER DEFENDANTS and
2 DOES 1-20. Plaintiff performed services for each and every one of Defendants, and to the mutual benefit
3 of all Defendants, and all Defendants shared control of Plaintiff as an employee, either directly or
4 indirectly, and the manner in which Defendants' business was and is conducted.

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

13 14 **FACTUAL ALLEGATIONS**

15 24. On or about October 12, 2019, EMPLOYER DEFENDANTS hired Plaintiff, a male of
16 Nicaraguan descent, to work as a cashier. Plaintiff was a full-time, non-exempt employee, who performed
17 all of Plaintiff's job duties satisfactorily before Plaintiff was wrongfully terminated on or about July 2020.

18 **Wage And Hour Allegations**

19 25. At all relevant times, Plaintiff was not permitted to, and not advised of his right to take
20 one or more of his statutory 10-minute rest break for every four hours worked or majority portion thereof,
21 nor was Plaintiff even told he had the right to do so.

22 26. At all relevant times, Plaintiff was not permitted to, and not advised of his right to take
23 one or more of his statutory 30-minute meal break for every five hours worked, nor was Plaintiff even
24 told he had the right to do so.

25 27. Throughout Plaintiff' employment, EMPLOYER DEFENDANTS violated Labor Code
26 § 221 by collecting and/or receiving from Plaintiff, and other aggrieved employees, part of their wages
27 paid by EMPLOYER DEFENDANTS to said employees.

1 28. EMPLOYER DEFENDANTS violated Labor Code §§ 204 and 223 because
2 EMPLOYER DEFENDANTS failed to pay wages for all hours worked paid at least twice during each
3 calendar month to employees as required “by contract” under Labor Code section 223, as well as an
4 improper collection of wages paid to an employee under Labor Code section 221. *Gonzales v.*
5 *Downtown LA Motors*, 215 Cal. App. 4th 36 (2d App. Dist. Mar. 6, 2013). During the Claim Period,
6 Plaintiff was not provided with paystubs that complied with Labor Code §226, as EMPLOYER
7 DEFENDANTS consistently provided incorrect and inaccurate paystubs.

8 29. EMPLOYER DEFENDANTS violated Labor Code §227.3 because EMPLOYER
9 DEFENDANTS failed to pay Plaintiff, and other aggrieved employees, unused, vested vacation time.

10 30. Plaintiff is informed and believes, and thereon alleges, that himself and other employees
11 were subject to the same violations and, therefore, are aggrieved employees within the meaning of
12 California Labor Code §2699. Thus, Plaintiff, as an aggrieved employee, reserves his right to bring an
13 action against Defendants, on behalf of himself and other current and former employees.

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

17 **FEHA And Retaliation Under The Labor Code Factual Allegations**

18 32. Defendants fostered and subjected Plaintiff to a hostile work environment. On several
19 occasions, HARRY made racist and offensive remarks; for instance, HARRY referred to Plaintiff as a
20 “stupid Mexican” and stated that he had no rights.

21 33. Similarly, NAZARIO regularly called Plaintiff a “maricon,” which roughly translates to
22 “faggot” in English.

23 34. HARRY also told Plaintiff that he was useless because he was old, and consistently
24 referred to Plaintiff as a “dickhead” and “old faggot.”

25 35. Plaintiff was forced to deal with these harassing, discriminatory and intimidating
26 comments nearly every day he worked with Defendants. The INDIVIDUAL DEFENDANTS led a
27 campaign to harass Plaintiff and created and maintained a hostile work environment. On information and
28

1 belief, the INDIVIDUAL DEFENDANTS engaged in harassing conduct out of intentional meanness,
2 bigotry, and other personal motives.

3 36. Plaintiff suffers from a medical condition which causes the major life activity of working
4 to be more difficult, therefore constituting a disability.

5 37. At all relevant times, the INDIVIDUAL DEFENDANTS had actual or constructive
6 knowledge of Plaintiff's disability and/or medical condition.

7 38. Despite the fact that the INDIVIDUAL DEFENDANTS knew about Plaintiff's medical
8 conditions and limitations, Plaintiff was required to carry items that were too heavy for one person to
9 carry. When Plaintiff struggled to carry the heavy objects, the INDIVIDUAL DEFENDANTS would
10 belittle Plaintiff by calling him a "useless old faggot."

11 39. Thereafter, Defendants systematically and continuously scheduled Plaintiff for less and
12 less hours until his constructive wrongful termination on or about July 2020.

13 40. Plaintiff was sixty (60) years of age at the time of his wrongful termination. After
14 Plaintiff's wrongful termination, Defendants replaced Plaintiff with a younger employee.

15 41. Defendants discriminated and retaliated against Plaintiff by insulting him day in and day
16 out, forcing him to perform labor he was unable to complete due to his disability, and for exercising
17 Plaintiff's right to request medical leave as an accommodation of Plaintiff's disability and/or medical
18 condition.

19 42. Defendants also subjected the Plaintiff to harassment through their offensive and hateful
20 comments and by lessening Plaintiff's hours until his termination.

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

24 44. At all relevant times, Defendants failed to reasonably accommodate Plaintiff even though
25 Plaintiff was able to perform the essential job duties of Plaintiff's position or another position with or
26 without accommodations.

27 45. Plaintiff's termination was substantially motivated by Plaintiff's age, ancestry, color,
28 national origin, race, sex/gender, sexual orientation, real or perceived medical condition, real or perceived

1 disability, medical leave or anticipated medical leave, without any discussion of disability
2 accommodations or any good faith attempt to engage in the interactive process with Plaintiff.
3 Defendants' discriminatory animus is evidenced by the previously mentioned facts.

4 46. Defendants' conduct described herein was undertaken, authorized, and/or ratified
5 Defendants' officers, directors and/or managing agents, including, but not limited to HARRY and
6 NAZARIO and those identified herein as DOES 1 through 20, who were authorized and empowered to
7 make decisions that reflect and/or create policy for Defendants. The aforementioned conduct of said
8 managing agents and individuals was therefore undertaken on behalf of Defendants who further had
9 advanced knowledge of the actions and conduct of said individuals whose actions and conduct were
10 ratified, authorized, and approved by managing agents whose precise identities are unknown to Plaintiff
11 at this time and are therefore identified and designated herein as DOES 1 through 20, inclusive.

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

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

18 49. Plaintiff claims general damages for emotional and mental distress and aggravation in a
19 sum in excess of the jurisdictional minimum of this Court.

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

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

51. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 45, inclusive, as though set forth in full herein.

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

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

54. FEHA requires Defendants to refrain from discriminating against an employee on the basis of age, ancestry, color, national origin, race, sex/gender, sexual orientation, real or perceived medical condition, real or perceived disability, medical leave or anticipated medical leave, and to prevent from occurring discrimination, harassment, and retaliation on the same bases.

55. Plaintiff was a member of multiple protected classes as a result of Plaintiff's age, ancestry, color, national origin, race, sex/gender, sexual orientation, real or perceived medical condition, real or perceived disability, use of medical leave or anticipated use of medical leave.

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

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

58. Plaintiff is informed and believes that Plaintiff's age, ancestry, color, national origin, race, sex/gender, sexual orientation, real or perceived medical condition, real or perceived disability, use of medical leave or anticipated use of medical leave, and/or some combination of these protected characteristics under Government Code § 12926(j) were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

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

1 60. The damage allegations of Paragraphs 46 through 50, inclusive, are herein incorporated
2 by reference.

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

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

11
12 **SECOND CAUSE OF ACTION**
13 **FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**
14 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

15 63. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 45, inclusive, as
16 though set forth in full herein.

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

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

21 66. These laws set forth in the preceding paragraph require Defendants to refrain from
22 harassing, or creating, or maintaining a hostile work environment against an employee based upon the
23 employee's age, ancestry, color, national origin, race, sex/gender, sexual orientation, real or perceived
24 medical condition, real or perceived disability, use of medical leave or anticipated use of medical leave,
25 as set forth hereinabove.

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

1 68. Defendants violated the FEHA and the public policy of the State of California which is
2 embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of
3 Plaintiff's age, ancestry, color, national origin, race, sex/gender, sexual orientation, real or perceived
4 medical condition, real or perceived disability, use of medical leave or anticipated use of medical leave,
5 and/or some combination of these protected characteristics, as set forth hereinabove.

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

8 70. The above said acts of Defendants constitute violations of the FEHA and violations of the
9 public policy of the State of California. Such violations were a proximate cause in Plaintiff's damage as
10 stated below.

11 71. The damage allegations of Paragraphs 46 through 50, inclusive, are herein incorporated
12 by reference.

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

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

21
22 **THIRD CAUSE OF ACTION**
23 **FOR RETALIATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**
24 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

25 74. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 45, inclusive, as
26 though set forth in full herein.

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

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

3 77. Plaintiff engaged in the protected activities of requesting accommodation, requesting
4 medical leave and/or exercising Plaintiff's right to medical leave, and complaining about and protesting
5 Defendants' discriminatory and harassing conduct towards Plaintiff based upon Plaintiff's age, ancestry,
6 color, national origin, race, sex/gender, sexual orientation, real or perceived medical condition, real or
7 perceived disability, use of medical leave or anticipated use of medical leave.

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

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

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

18 81. Plaintiff is informed and believes, and based thereon alleges, that the above acts of
19 retaliation committed by Defendants were done with the knowledge, consent, and/or ratification of, or at
20 the direction of each of the other Defendants and the other Managers, including those identified as DOES
21 1-20, inclusive.

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

24 83. The damage allegations of Paragraphs 46 through 50, inclusive, are herein incorporated
25 by reference.

26 84. The foregoing conduct of Defendants individually, or by and through their officers,
27 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
28 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of

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

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

6
7 **FOURTHFOURTH CAUSE OF ACTION**
8 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION**
9 **IN VIOLATION OF GOV'T CODE § 12940(k)**
10 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

11 86. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 45, inclusive, as
12 though set forth in full herein.

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

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

20 89. The damage allegations of Paragraphs 46 through 50, inclusive, are herein incorporated
21 by reference.

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

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

3
4 **FIFTH CAUSE OF ACTION**
5 **FOR FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS**
6 **IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**
7 **AGAINST EMPLOYER DEFENDANTS AND DOES 20, INCLUSIVE**

8 92. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 45 inclusive, as
9 though set forth in full herein.

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

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

18 95. At all times herein, Plaintiff was willing and able to perform the duties and functions of
19 the position in which Plaintiff was employed or could have performed the duties and functions of that
20 position with reasonable accommodations. At no time would the performance of the functions of the
21 employment position, with a reasonable accommodation for Plaintiff's disability or medical condition,
22 actual or as it was perceived by Defendants, have been a danger to Plaintiff's or any other person's health
23 or safety. Accommodation of Plaintiff's disability or disability or medical condition, real or perceived
24 by Defendants, would not have imposed an undue hardship on Defendants. Defendants failed and refused
25 to accommodate Plaintiff's disability, failed to engage in the interactive process with Plaintiff and
26 continue to violate this obligation, up to and including the date of Plaintiff's termination or, if Defendant
27 contends Plaintiff was never terminated, through the present and ongoing.

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

3 97. The damage allegations of Paragraphs 46 through 50, inclusive, are herein incorporated
4 by reference.

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

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

13
14 **SIXTH CAUSE OF ACTION**
15 **FOR FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS**
16 **IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**
17 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

18 100. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 45, inclusive, as
19 though set forth in full herein.

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

26 102. At all relevant times, Plaintiff was a member of a protected class within the meaning of,
27 in particular, Government Code §§ 12940(a) & 12986(1) et seq. because Plaintiff had a physical disability
28

1 that affected Plaintiff's major life activities, and medical condition of which Defendants had both actual
2 and constructive knowledge.

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

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

13 105. The damage allegations of Paragraphs 46 through 50, inclusive, are herein incorporated
14 by reference.

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

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

23
24 **SEVENTH CAUSE OF ACTION**
25 **FOR DECLARATORY JUDGMENT**
26 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

27 108. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 107, inclusive,
28 as though set forth in full herein.

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

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

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

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

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

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

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

26 In order to eliminate discrimination, it is necessary to provide effective
27 remedies that will both prevent and deter unlawful employment practices
28 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.

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

2 The opportunity to seek, obtain, and hold employment without
3 discrimination because of race, religious creed, color, national origin,
4 ancestry, physical disability, mental disability, medical condition, genetic
5 information, marital status, sex, gender, gender identity, gender expression,
6 age, or sexual orientation is hereby recognized as and declared to be a civil
7 right.

8 112. An actual controversy has arisen and now exists between Plaintiff and Defendants
9 concerning their respective rights and duties as it is believed that Defendants may allege that they did not

1 discriminate and retaliate against Plaintiff; that Plaintiff was not terminated as a result of Plaintiff's age,
2 ancestry, color, national origin, race, sex/gender, sexual orientation, real or perceived medical condition,
3 real or perceived disability, use of medical leave or anticipated use of medical leave, and/or some
4 combination of these protected characteristics. Plaintiff contends that Defendants did discriminate and
5 retaliate against Plaintiff on the basis of Plaintiff's age, ancestry, color, national origin, race, sex/gender,
6 sexual orientation, real or perceived medical condition, real or perceived disability, use of medical leave
7 or anticipated use of medical leave, and/or some combination of these protected characteristics; and that
8 Plaintiff was retaliated against and, ultimately wrongfully terminated as a result of Plaintiff's age,
9 ancestry, color, national origin, race, sex/gender, sexual orientation, real or perceived medical condition,
10 real or perceived disability, use of medical leave or anticipated use of medical leave, and/or some
11 combination of these protected characteristics. Plaintiff is informed and believes, and on that basis
12 alleges, that Defendants shall dispute Plaintiff's contentions.

13 113. Pursuant to Code of Civil Procedure § 1060, Plaintiff desires a judicial determination of
14 Plaintiff's rights and duties, and a declaration that Defendants harassed Plaintiff on the basis of Plaintiff's
15 age, ancestry, color, national origin, race, sex/gender, sexual orientation, real or perceived medical
16 condition, real or perceived disability, use of medical leave or anticipated use of medical leave, and/or
17 some combination of these protected characteristics.

18 114. Pursuant to Code of Civil Procedure § 1060, Plaintiff seeks a judicial determination of
19 Plaintiff's rights and duties, and a declaration that Plaintiff's age, ancestry, color, national origin, race,
20 sex/gender, sexual orientation, real or perceived medical condition, real or perceived disability, use of
21 medical leave or anticipated use of medical leave, and/or some combination of these protected
22 characteristics was a substantial motivating factor in the decision to subject Plaintiff to the
23 aforementioned adverse employment actions.

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

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

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

10
11 **EIGHTH CAUSE OF ACTION**

12 **RETALIATION**

13 **LABOR CODE §§ 98.6, 232.5, 1102.5**

14 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

15 118. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 45, inclusive, as
16 though set forth in full herein.

17 119. Labor Code § 98.6(a) prohibits an employer from discharging or discriminating against
18 an employee for political activities; for complaining that he or she is owed unpaid wages, for
19 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
20 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's
21 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
22 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private
23 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code. Thus,
24 Section 98.6 prohibits an employer from discharging or in any manner discriminating or retaliating
25 against an employee who, among other things, has exercised her or her rights under that Chapter,
26 including the right to take meal breaks, and/or made a written or oral complaint that he or she is owed
27 unpaid wages. An employee who has been discharged or retaliated against in violation of Labor Code §
28 98.6 is entitled to recovery of a civil penalty against the employer in an amount not exceeding ten

1 thousand dollars (\$10,000.00) for each violation of that section.

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

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

14 122. 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.

16 123. Plaintiff is informed and believe, and based thereupon allege, that Plaintiff was terminated
17 from Plaintiff's employment with Defendants as a result of Plaintiff's the exercise of his rights under
18 Labor Code §§ 98.6, 1030, et seq., and 1102.5, and due to his complaints about being harassed and
19 discriminated against which Plaintiff expressed was against the law. Further, Plaintiff complained about
20 not being paid all wages due, not receiving meal and/or rest breaks, and exercising Plaintiff's right to take
21 meal and/or rest breaks. Defendants' retaliatory animus is evidenced by, among other things, the
22 following facts: EMPLOYERS DEFENDANTS's conduct occurred following Plaintiff complaining
23 about wages and unfair treatment; there were no legitimate performance issues or any other reason, nor
24 even offered, for terminating Plaintiff; and due to Plaintiff exercising or attempting to engage in protected
25 activity.

26 124. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
27 Defendants, and Defendants' officers and/or managing agents, including HARRY and NAZARIO and
28 those identified herein as DOES 1-20, who were authorized and empowered to make decisions that reflect

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

6 125. The damage allegations of Paragraphs 46 through 50, inclusive, are herein incorporated
7 by reference.

8 126. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty of \$20,000.00 for
9 Defendants' violations of Labor Code §§ 98.6 and 1102.5, respectively.

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

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

19 128. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 45, inclusive, as
20 though set forth in full herein.

21 129. At all relevant times mentioned in this complaint, the FEHA was in full force and effect
22 and was binding on Defendants. This law requires Defendants to refrain, among other things, from
23 discriminating against any employee on the basis of age, ancestry, color, national origin, race, sex/gender,
24 sexual orientation, real or perceived medical condition, real or perceived disability, use of medical leave
25 or anticipated use of medical leave. At all times mentioned in this complaint, Article I, Section 8 of the
26 California Constitution was in full force and effect and binding on Defendants. This law requires
27 Defendants to refrain from disqualifying a person from pursuing employment on the basis of race, color,
28 national origin, or sex.

1 130. At all times mentioned in this complaint, it was a fundamental policy of the State of
2 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of age,
3 ancestry, color, national origin, race, sex/gender, sexual orientation, real or perceived medical condition,
4 real or perceived disability, use of medical leave or anticipated use of medical leave.

5 131. Plaintiff believes and thereon alleges that Plaintiff's age, ancestry, color, national origin,
6 race, sex/gender, sexual orientation, real or perceived medical condition, real or perceived disability, use
7 of medical leave or anticipated use of medical leave, and/or some combination thereof, were factors in
8 Defendants' conduct as alleged hereinabove.

9 132. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
10 employment on the basis of age, ancestry, color, national origin, race, sex/gender, sexual orientation, real
11 or perceived medical condition, real or perceived disability, use of medical leave or anticipated use of
12 medical leave, and/or some combination of these factors, were a proximate cause in Plaintiff's damages
13 as stated below.

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

1 wages and work benefits caused by the acts of the employer. The Labor code furthers that any employer
2 who willfully refuses to rehire, promote, or otherwise restore an employee is guilty of a misdemeanor.

3 134. Plaintiff believes and thereon alleges that Plaintiff's complaints of the discrimination
4 and request of being paid correct wages and Plaintiff's engagement in protected activity, including
5 complaining to supervisors of Labor Code violations, were factors in Defendants' conduct as alleged
6 hereinabove.

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

11 136. At all times mentioned in this complaint, it was a fundamental policy of the State of
12 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of age,
13 ancestry, color, national origin, race, sex/gender, sexual orientation, real or perceived medical condition,
14 real or perceived disability, use of medical leave or anticipated use of medical leave.

15 137. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's age,
16 ancestry, color, national origin, race, sex/gender, sexual orientation, real or perceived medical condition,
17 real or perceived disability, use of medical leave or anticipated use of medical leave, was a proximate
18 cause in Plaintiff's damages as stated below.

19 138. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's
20 engagement in protected activities under Labor Code §§ 98.6 and/or 1102.5 was a proximate cause in
21 Plaintiff's damages as stated below.

22 139. The damage allegations of Paragraphs 46 through 50, inclusive, are herein incorporated
23 by reference.

24 140. The foregoing conduct of Defendants individually, or by and through their officers,
25 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
26 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
27 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
28

1 such as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to
2 punitive damages in an amount appropriate to punish or make an example of Defendants.

3
4
5 **TENTH CAUSE OF ACTION**
6 **FOR FAILURE TO PAY WAGES DUE AND IMPROPER DEDUCTIONS**
7 **LABOR CODE §§201, 221, 226.7, 512**
8 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

9 141. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 45, inclusive, as
10 though set forth in full herein.

11 142. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and
12 required by 8 Code of Regulations § 11040, as set forth hereinabove. As alleged herein, Defendants
13 routinely failed to pay Plaintiff for hours worked beyond eight in a day or 40 per week.

14 143. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code § 510,
15 8 Code of Regulations § 11040, and Industrial Welfare Commission Order No. 4-2001.

16 144. During Plaintiff's employment, Defendants violated Labor Code §221 by collecting
17 and/or receiving from Plaintiff, and other aggrieved employees, part of their wages paid by Defendants
18 to said employees.

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

24 146. Plaintiff also seeks to recover unpaid wages for working when Plaintiff should have been
25 on her meal break in violation of applicable law and, under the Unfair Competition Law (UCL), it should
26 be restored to Plaintiff in the form of compensation for the time work, as EMPLOYERS took that time
27 from Plaintiff. *Cortez v. Purolator Air Filtration Products*, 96 Cal.Rptr.2d 518, 528 (2000) ("the concept
28 of restoration or restitution, as used in the UCL, is not limited only to the return of money or property

1 that was once in the possession of that person ... earned wages that are due and payable pursuant to
2 section 200 et seq. of the Labor Code are as much the property of the employee who has given his or her
3 labor to the employer in exchange for that property as is property a person surrenders through an unfair
4 business practice”).

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

8 148. In addition to the unpaid wages, Plaintiff is entitled to civil penalties in this amount stated
9 above based upon Defendants’ underpayment of wages and in violation of Labor Code §§ 226.7, 512.

10
11 **ELEVENTH CAUSE OF ACTION**
12 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**

13 **LABOR CODE §§ 226.7, 512**
14 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

15 149. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 45, inclusive, as
16 though set forth in full herein.

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

19 151. Labor Code § 226.7 requires an employer to provide every employee with an uninterrupted
20 rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion
21 thereof.

22 152. Throughout Plaintiff’s employment, Plaintiff regularly worked in excess of eight hours
23 per day and was thereby entitled to take one uninterrupted 30-minute meal periods and two 10-minute
24 rest periods on each day of work.

25 153. Defendants failed and refused to provide Plaintiff with meal and rest periods and failed to
26 compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§ 226.7 and the
27 applicable sections of 8 Code of Regulations § 11040 and Industrial Welfare Commission Order No. 4-
28 2001.

1 154. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
2 Code of Regulations §11040 and Industrial Welfare Commission Order No. 16-2001. Consequently,
3 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
4 whichever is greater, for each day that Plaintiff was denied such meal periods, and is owed one hour of
5 pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each day
6 that Plaintiff was denied such rest periods, calculated as follows:

7 155. From approximately October 12, 2019, Plaintiff's statutory 30-minute meal periods were
8 missed, interrupted or cut short approximately 5 days per week for 41 weeks, or on approximately 205
9 days. Consequently, Plaintiff is owed one hour of pay at \$14.00 for each day, or \$2,870.00 plus interest
10 thereon, for unpaid missed or interrupted meal periods. During this same time period, Plaintiff was
11 deprived of one or more of Plaintiff's statutory 10-minute rest periods on approximately 205 days (5 days
12 per week for 39 weeks). Consequently, Plaintiff is owed one hour of pay at \$14.00 for each day, or
13 \$2,870.00, plus interest thereon, for unpaid rest periods. Thus, Plaintiff is owed a total of \$5,740.00, plus
14 interest thereon, for unpaid meal and rest periods for this time period.

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

17 157. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
18 such amounts in the combined amount of \$5,740.00, pursuant to Labor Code §226.7(b), plus interest
19 thereon and costs of suit.

20
21 **TWELFTH CAUSE OF ACTION**
22 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
23 **LABOR CODE §§ 226 ET SEQ.**
24 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

25 158. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 45, inclusive, as
26 though set forth in full herein.

27 159. Pursuant to Labor Code §§ 226 and 1174, employers have a duty to provide their non-
28 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,

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

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

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

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

20 163. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
21 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
22 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
23 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
24 Plaintiff's right under Labor Code § 226(b) to review itemized wage statement information by inspecting
25 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
26 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
27 all, Plaintiff's aforementioned injuries are presumed as a matter of law.
28

1 164. Plaintiff was paid on a biweekly basis, and therefore Defendants violated Labor Code §
2 226 approximately nineteen (26) times during the last year that Plaintiff worked for Defendants.
3 Consequently, Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory
4 maximum amount of \$4,000.00, whichever is greater.

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

8
9 **THIRTEENTH CAUSE OF ACTION**
10 **FOR PRIVATE ATTORNEY GENERAL ACT**
11 **LABOR CODE § 2699**
12 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

13 166. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 165, inclusive, as
14 though set forth in full herein.

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

18 168. Plaintiff was an aggrieved employee within the meaning of Labor Code §§ 2699(c) and
19 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as
20 previously pleaded in this Complaint.

21 169. On February 8, 2021, more than 63 calendar days before filing this Complaint, Plaintiff
22 provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail
23 to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
24 satisfying the requirements of Labor Code § 2699.3(a). These violations included Labor Code §§ 226.7,
25 2802, 221, 223, 226, 1174, 98.6, 232.5, 1102.5, 200, 201, 202, 203, 204, 233, 245, 227.3 and 204, each
26 of which is enumerated among the serious violations set forth in Labor Code § 2699.5.

170. 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.

171. 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, §§ 226.3, 226.7, 510, 512, and 558.

172. 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.

173. 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.

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

PENALTIES

175. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) (or any of its departments, divisions, commissions, board agency or employees), such civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees) and Labor Code §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which

1 a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil
2 penalties, as follows:

- 3 a) As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor Code
4 except for those for which a civil penalty is specifically provided, in the amount of one hundred
5 dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two
6 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
7 violation, including those violations notated in Paragraph 169; and
- 8 b) As applicable, civil penalties under Labor Code §558 (in addition to and entirely independent
9 and apart from any other penalty provided for in the Labor Code), for violations of Labor Code
10 §§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the
11 aggrieved employee was underpaid, and \$100 for each subsequent violation for each underpaid
12 employee for each pay period for which the employee was underpaid, with all wages recovered
13 pursuant to Labor Code §557 paid to the aggrieved employees. Plaintiff is entitled to recover
14 approximately \$2,550 for civil penalties, including for violations under Labor Code §§ 226.7,
15 512, 1030. Plaintiff is also able to collect an additional penalty to be distributed to the other
16 aggrieved employees in an amount according to proof;
- 17 c) As applicable, civil penalties under Labor Code §1197.1 (in addition to and entirely
18 independent and apart from any other penalty provided in the Labor Code) for violations of
19 Labor Code §§1194 and 1197, in the amount of \$100 for each underpaid aggrieved employee
20 for each pay period the aggrieved employee was intentionally underpaid in addition to an
21 amount sufficient to recover underpaid wages, and \$250 for each subsequent violation for each
22 underpaid aggrieved employees regardless of whether the initial violation was intentionally
23 committed in addition to an amount sufficient to recover underpaid wages, with all wages
24 recovered pursuant to Labor Code §1197.1. Plaintiff may also recover penalties under § 1197.1
25 on behalf of herself and for the other aggrieved employees;
- 26 d) As applicable, civil penalties under Labor Code §225.5 (in addition to and entirely independent
27 and apart from any other penalty provided in the Labor Code) for violations of Labor Code §
28 221 and 223, in the amount of \$100 for each underpaid aggrieved employee for each pay period

1 the aggrieved employee was underpaid, and \$200 for each subsequent violation or any willful
2 or intentional violation, for each underpaid aggrieved employees regardless of whether the
3 initial violation was intentionally committed, in addition to 25 percent of the amount
4 unlawfully withheld;

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

11 f) As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely independent
12 and apart from any other civil penalty provided in the Labor Code), for each violation of Labor
13 Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each
14 violation and \$1,000 for each aggrieved employee per pay period for each subsequent
15 violation;

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

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

24 176. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all penalties
25 obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and
26 employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%)
27 to the aggrieved employees.
28

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

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

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

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

13
14 **FOURTEENTH CAUSE OF ACTION**
15 **FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS**
16 **LABOR CODE §§ 226, 1198.5**
17 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

18 181. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 45, inclusive, as
19 though set forth in full herein.

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

23 183. Labor Code § 226 requires an employer, within twenty-one (21) days of a written request
24 thereof, to allow inspection or to provide a copy of an employee's personnel and payroll records. An
25 employer's failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

26 184. On July 15, 2020, Plaintiff made a written request to inspect or receive a copy of Plaintiff's
27 personnel and payroll records from Defendants, which Defendants received.

1 185. Defendants failed and refused to permit Plaintiff's inspection of Plaintiff's personnel and
2 payroll records, and failed to provide a copy of Plaintiff's personnel and payroll records to Plaintiff within
3 the time required by Labor Code § 1198.5, or ever.

4 186. As a result of Defendants' failure and refusal to comply with Labor Code § 1198.5,
5 Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00.

6 187. As a result of Defendants' failure and refusal to comply with Labor Code § 226(f), Plaintiff
7 is entitled to recover from Defendants a civil penalty of \$750.00.

8 188. Pursuant to Labor Code §§ 1198.5(l) and 226(h), Plaintiff requests a reasonable award of
9 attorneys' fees and costs.

10
11 **FIFTEENTH CAUSE OF ACTION**

12 **FOR UNFAIR COMPETITION**

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

14 **AGAINST EMPLOYER DEFENDANTS AND DOES 1-20, INCLUSIVE**

15 189. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 188, inclusive, as
16 though set forth in full herein.

17 190. Defendants' violations of 8 Code of Regulations § 11040, Industrial Welfare Commission
18 Order No. 4-2001, Labor Code §§ 226.7, 2802, 221, 223, 226, 1174, 98.6, 232.5, 1102.5, 200, 201, 202,
19 203, 204, 233, 245, 227.3 and 204, 2699, and other applicable provisions, as alleged herein, including
20 Defendants' failure to provide meal and rest breaks, Defendants' failure to provide timely and accurate
21 wage and hour statements, Defendants' failure to pay compensation due in a timely manner upon
22 termination or resignation, and Defendants' failure to maintain complete and accurate payroll records for
23 the Plaintiff, constitute unfair business practices in violation of Business & Professions Code §§ 17200,
24 et seq.

25 191. Defendants have engaged in, and continue to engage in the following unlawful, unfair
26 and/or fraudulent business practices in violation of Section 17200 of the California Business and
27 Professions Code: discrimination, harassment, retaliation and failure to prevent the same under the
28 FEHA, related FEHA causes of action, retaliation under the Labor Code, failure to pay wages, failure to

1 provide minimum wages, failure to provide overtime wages, failure to provide and pay premium wages
2 for missed meal and rest breaks, among other unfair conduct as alleged herein above.

3 192. As a direct, proximate, and foreseeable result of Defendants' wrongful conduct as alleged
4 above, Defendants' business acts or practices have caused injury to the Plaintiff and the public. Plaintiff
5 is entitled to relief, including full restitution and/or disgorgement of all revenues, earnings, profits,
6 compensation and benefits that may have been obtained by Defendants as a result of such business acts
7 or practices.

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

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

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

21 **PRAYER FOR RELIEF**

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

24 1. For a money judgment representing compensatory damages including lost wages,
25 earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money,
26 together with interest on these amounts; for other special damages; and for general damages for mental
27 pain and anguish and emotional distress and loss of earning capacity;
28

2. For civil penalties pursuant to Labor Code § 98.6 in the amount of no less than \$10,000.00;
3. For civil penalties pursuant to Labor Code § 1102.5 in the amount of no less than \$10,000.00;
4. For payment of meal and rest period compensation pursuant to Labor Code § 226.7, 512, in the amount of no less than \$5,740.00;
5. For damages pursuant to Labor Code § 226 in the amount of no less than \$4,000.00;
6. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely independent and apart from other penalties in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;
7. For civil penalties under Labor Code §210, in addition to and entirely independent and apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, plus 25 percent of the amount unlawfully withheld;
8. For civil penalties under Labor Code §§ 210 and 225.5, in addition to and entirely independent and apart from any other penalty provided in the Labor Code, for each violation of Labor Code §§204, 221 and 223, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation or for each willful or intentional violation, in addition to 25 percent of the amount unlawfully withheld;
9. For civil penalties under Labor Code §226.3, in addition to and entirely independent and apart from any other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;
10. For 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, in the amount of one day of pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination, until payment was/is made, up to a maximum of thirty (30) days;

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

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

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

7 14. As a result of Defendants' failure and refusal to comply with Labor Code § 1198.5,
8 Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00;

9 15. As a result of Defendants' failure and refusal to comply with Labor Code § 226(f), Plaintiff
10 is entitled to recover from Defendants a civil penalty of \$750.00;

11 16. 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 17. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
16 condemning Defendants' discriminatory practices;

17 18. 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 19. 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 20. For injunctive relief compelling Defendants to report to federal and state authorities wages
22 earned by Plaintiff, and other employees, and pay all state and federal taxes owing, employer matching
23 funds, unemployment premiums, social security, Medicare, and workers' compensation premiums, all
24 this in an amount according to the proof;

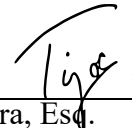
25 21. For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful
26 conduct and failure to pay wages and other compensation in accordance with the law;

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

23. For post-judgment interest; and
24. For any other relief that is just and proper.

DATED: September 1, 2021

GUERRA & CASILLAS LLP

By: 

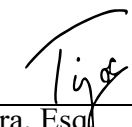
Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorneys for Plaintiff
JAVIER HERNANDEZ MEJIA

JURY TRIAL DEMANDED

Plaintiff demands trial of all issues by jury.

DATED: September 1, 2021

GUERRA & CASILLAS LLP

By: 

Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorneys for Plaintiff
JAVIER HERNANDEZ MEJIA

SHORT TITLE: JAVIER HERNANDEZ MEJIA v. R. BERG ENTERPRISES, INC. D/B/A 7-ELEVEN; et al	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐

Plaintiff

☒

Defendant

☐

Cross-Complainant

☐

Cross-Defendant

NAZARIO DOE, an individual; and DOES 1 through 20, inclusive