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DEBRA FIGUEROA

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO
HALL OF JUSTICE COURTHOUSE

DEBRA FIGUEROA, an individual,

Plaintiff,

vs.

ENSIGN SERVICES, INC., a Nevada
corporation; ANZA HEALTHCARE, INC.,
d/b/a VICTORIA POST ACUTE CARE, a
Nevada corporation; ARVIE MORA, an
individual; BARRY PORT, an individual; and
DOES 1 – 50, inclusive,

Defendants.

Case No. 37-2021-00026568-CU-WT-CTL

**PLAINTIFF'S VERIFIED
COMPLAINT FOR:**

1. Age discrimination (Gov't Code § 12940)
2. Failure to prevent discrimination (Gov't Code § 12940)
3. Harassment (Gov't Code § 12940)
4. Failure to prevent harassment (Gov't Code § 12940)
5. Wrongful termination (Gov't Code § 12940)
6. Failure to provide rest periods (Lab. Code §§ 226.7, 512; Wage Order No. 4-2001)
7. Failure to pay all wages owed upon termination (Lab. Code § 201)
8. Failure to provide accurate, itemized wage statements (Lab. Code § 226; Wage Order § 7)
9. Failure to pay overtime wages (Lab. Code §§ 510, 1194; Wage Order No. 4-2001)
10. Failure to provide vacation pay (Lab. Code § 227.3)
11. Failure to reimburse for business-related expenses (Lab. Code § 2802)
12. Unlawful business practices (Bus. & Prof. Code § 17200)
13. Civil penalties pursuant to the Private Attorneys General Act (Lab. Code §§ 2698 – 2699.6)

1 Amount demanded exceeds \$25,000.

JURY TRIAL DEMANDED

2 1. The matters stated in this Complaint are true to Plaintiff's knowledge, except the
3 matters that are therein stated on information and belief, and as to those matters Plaintiff believes
4 them to be true.

5 2. Plaintiff Debra Figueroa, an individual, hereby alleges against Defendants Ensign
6 Services, Inc., a Nevada corporation; Anza Healthcare, Inc., d/b/a Victoria Post Acute Care, a
7 Nevada corporation; Arvie Mora, an individual; Barry Port, an individual; and DOES 1 – 50,
8 inclusive, (collectively, "Defendants"), as follows:

9
10 **JURISDICTION AND VENUE**

11 3. Jurisdiction is conferred on this Court over Defendants named herein as residents
12 of the State of California and/or conductors of business in the State of California. Jurisdiction is
13 conferred on this Court as to all causes of action as they arise under state statute or common law.

14 4. Venue is proper in this Court because Defendants reside and/or conduct business
15 in this County and a substantial part of the events and omissions giving rise to Plaintiff's causes
16 of action occurred in this County.

17
18 **THE PARTIES**

19 5. Plaintiff DEBRA FIGUEROA ("Plaintiff") is an individual residing in Spring
20 Valley, California in the County of San Diego.

21 6. Defendant ENSIGN SERVICES, INC. ("Ensign") is a Nevada corporation with
22 its principal place of business in San Juan Capistrano, California.

23 7. Defendant ANZA HEALTHCARE, INC. d/b/a VICTORIA POST ACUTE
24 CARE ("Anza") is a Nevada corporation with its principal place of business in San Juan
25 Capistrano, California.

26 8. Defendant ARVIE MORA ("Arvie") is an individual who, on information and
27 belief, at all relevant times alleged herein was and is Plaintiff's supervisor during her
28 employment with Ensign and Anza.

1 9. Defendant BARRY PORT (“Barry”) is an individual who, on information and
2 belief, at all relevant times alleged herein was and is the Chief Executive Officer of Ensign.

3 10. The liability of Arvie and Barry in this case arises under Labor Code § 558.1,
4 which states in pertinent part that:

5 (a) Any employer or other person acting on behalf of an employer, who violates,
6 or causes to be violated, any provision regulating minimum wages or hours and
7 days of work in any order of the Industrial Welfare Commission, or violates, or
8 causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
9 liable as the employer for such violation.

10 (b) For purposes of this section, the term other person acting on behalf of an
11 employer is limited to a natural person who is an owner, director, officer, or
12 managing agent of the employer, and the term managing agent has the same
13 meaning as in subdivision (b) of Section 3294 of the Civil Code.

14 11. The true names, identities, or capacities, whether individual, corporate, associate,
15 or otherwise, of DOES 1 – 50, inclusive, are unknown to Plaintiff. When the true names,
16 identities, or capacities of such fictitiously designated Defendants are ascertained, Plaintiff will
17 ask leave of this Court to amend this Complaint to insert their true names, identities, and
18 capacities, together with the proper charging allegations. Plaintiff is informed and believes and
19 thereon alleges that some or all of the fictitiously named Defendants are responsible in some
20 manner for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged were
21 proximately caused by those defendants.

22 12. Plaintiff believes and therefore alleges that at all times herein mentioned, each of
23 the Defendants were the agent and employee of each of the other Defendants, and in doing the
24 acts alleged herein, was acting within the scope of such agency and employment. Plaintiff further
25 believes and therefore alleges that the conduct of each of the Defendants as alleged herein was
26 ratified by each of the other Defendants, and the benefits thereof were accepted by each of the
27 other said Defendants.

28
FACTUAL ALLEGATIONS

13 13. Plaintiff Debra Figueroa began working for Defendants ENSIGN and ANZA on
14 or around June 15, 2006, as a Licensed Vocational Nurse at Defendants’ Victoria Post Acute

1 Care facility in El Cajon, California. Plaintiff's job centered around assessing patients and
2 gathering information to send to the state government, so that Defendants could receive
3 reimbursements through Medicare and Medi-Cal. Plaintiff's tasks included performing resident
4 interviews, care plans, and care plan reviews. Plaintiff gave Defendants fourteen years of faithful
5 service, regularly staying overtime, working six or even seven days a week, rarely taking
6 vacation or sick days, and generally going the "extra mile" to do what was best for Defendants.
7 Unfortunately for Plaintiff, this was not enough to save her from being unlawfully treated, both
8 during her tenure with Defendants, and in the events surrounding her termination.

9 14. The events that led to Plaintiff's termination began in June 2020, when
10 Defendants' ownership changed and Arvie arrived as Plaintiff's new supervisor. Despite making
11 a point that she was "not going to fire anybody," and that "if anyone leaves, it's because of their
12 choice," Arvie immediately set the stage for Plaintiff's termination by launching a completely
13 unjustified and unprovoked harassment campaign against Plaintiff. Arvie delivered disparaging
14 remarks against Plaintiff's department – which consisted of only Plaintiff and one other person
15 – in front of their colleagues during morning meetings. At nearly every morning meeting, Arvie
16 had something negative to say about Plaintiff and her department. Arvie falsely accused Plaintiff
17 of inaccuracy in her work, despite the fact that Plaintiff's department received a perfect score on
18 a mock survey. When Plaintiff challenged Arvie to point out the alleged inaccuracies, Arvie
19 merely said, "Call your consultant." This "consultant" was a person at Defendants' corporate
20 headquarters, who did not even work at the clinic. When Plaintiff called her consultant, he told
21 her that he did not know what Arvie was talking about and said "I don't know. I'd have to go
22 through the audits." Arvie's response was merely a means of dismissing Plaintiff's question and
23 avoiding the fact that she had no evidence to back up her allegations of inaccuracies.

24 15. Just a few days after arriving as the new manager, Arvie put Plaintiff on a
25 trumped-up performance improvement plan ("PIP"). This PIP was based on the vague allegation
26 that Plaintiff was not a "team player," despite the fact that she had done more for Defendants
27 than almost anyone else over the years. In fact, shortly before being terminated, Plaintiff was
28 given a bonus for earning the clinic more money. Nevertheless, Arvie placed Plaintiff on this

1 PIP on June 4, 2020, and told her she had thirty days to improve her performance, or else she
2 would be terminated. Arvie also told Plaintiff that Defendants would conduct two meetings with
3 her before making a determination about her status as an employee. Both of those assurances
4 turned out to be untrue. Only one meeting occurred, on June 10. At that meeting, Defendants
5 asked Plaintiff to rate her own performance. Plaintiff told Defendants that she thought she was
6 doing well. Defendants did not follow up with her after that meeting. Then on July 1 – less than
7 thirty days later – Plaintiff was judged to have failed the PIP and was terminated.

8 16. Even before wrongfully terminating Plaintiff, Defendants inflicted upon her
9 numerous and long-running violations of California's wage and hour laws, many of which
10 emanated from their misclassifying her as an exempt, salaried employee. Because Plaintiff was
11 regularly working fifteen-hour days, often for six or even seven days a week, she was
12 accumulating large amounts of overtime hours, for which Defendants were required to pay her
13 the overtime premium. Instead of appreciating Plaintiff's dedication and service to the clinic,
14 Defendants were interested only in their bottom line, and so they responded by changing her
15 status to salaried and exempt, so that they could continue to benefit from her ninety-plus hours
16 of work per week, without having to pay her more for it. This reclassification occurred around
17 mid-August 2017 and lasted until early June 2019, when Plaintiff was finally able to prove that
18 she had been misclassified. Defendants' error was so blatant that they were forced to admit that
19 she had been misclassified, and to reclassify her as non-exempt.

20 17. As a non-exempt employee, Plaintiff was legally entitled to take a ten-minute
21 uninterrupted, duty-free rest period for every three and a half hours worked. However,
22 Defendants gave employees the impression that rest periods were only meant for smokers to take
23 their smoking breaks. As Plaintiff was not a smoker, she was misled into believing that she was
24 not entitled to take rest periods. In addition, there was always too much work to be done, so that
25 Plaintiff was never able to get away long enough to take a rest period. Accordingly, Plaintiff
26 never took a rest period during her entire fourteen years of employment, and Defendants are
27 liable to her for one hour of pay for each day that she worked at least three and a half hours.

28 18. The final paycheck Defendants provided to Plaintiff did not include the overtime

1 premium for all overtime hours she had worked, and so it failed to comply with the requirement
2 that all outstanding wages be paid on the day of termination. As of the filing of this complaint,
3 Defendants still have not paid Plaintiff those premiums. Accordingly, Defendants are liable to
4 Plaintiff for damages in the amount of thirty days' wages.

5 19. Defendants are required to provide employees with accurate, itemized wage
6 statements stating, among other things, gross wages earned, total hours worked, net wages
7 earned, all applicable hourly rates in effect during the pay period, and the number of hours
8 worked at each hourly rate. Plaintiff's time sheets and pay stubs did not include the overtime
9 premium for all overtime hours she had worked, or the time she was legally under Defendants'
10 control during her rest periods.

11 20. As mentioned above, Defendants misclassified Plaintiff as an exempt employee
12 for approximately twenty-two months and failed to pay her the overtime premium for all hours
13 she worked overtime during those months.

14 21. Employers who provide employees with vacation time must pay employees for
15 all unused vacation upon termination. In order to meet a certain loophole that the corporation
16 was demanding from that particular facility, Defendants frequently required employees to work
17 on days that the employee had requested as paid vacation days, with the promise that they would
18 reschedule the vacation day for a later date. However, these promises were not kept. There were
19 multiple instances when this occurred to Plaintiff. When she was finally terminated, Defendants
20 failed to pay Plaintiff her vacation pay upon termination.

21 22. Defendants were required to reimburse their employees fully for the expenditures
22 incurred in executing their duties for Defendants. Plaintiff was required to travel to other
23 locations for teaching seminars. These locations were often much farther away from Plaintiff's
24 home than was her regular workplace. Defendants were required to reimburse Plaintiff for
25 mileage and automobile maintenance for the cost of these trips but failed to do so.

26 23. Defendants' treatment of Plaintiff is a common phenomenon in employment
27 situations. An employee may have enjoyed years of success with an employer, but when new
28 management comes to town and brings with them certain biases or prejudices, loyal employees

1 get pushed out on the flimsiest of pretexts. Plaintiff's last few weeks with Defendants proved to
2 be a textbook example of this. By the summer of 2020, Plaintiff was sixty years old and had been
3 working for Defendants for fourteen years, which made her a prime candidate for being
4 terminated to make room for newer, younger employees who wouldn't require as much pay as a
5 seasoned veteran. Plaintiff knew that if anyone were to be terminated, it would be her instead of
6 her colleague, because her colleague was a registered nurse and Plaintiff was not.

7 24. Punitive damages may be imposed upon an employer for acts of an employee or
8 agent if a managing agent authorized or ratified the agent's or employee's wrongful acts. Civil
9 Code § 3294(b). Flores v. Autozone West, Inc., (2008) 161 Cal. App. 4th 373, 386. A "managing
10 agent" includes corporate employees vested with substantial discretionary authority over
11 decisions that ultimately determine corporate policy regarding the matter as to which punitive
12 damages are sought. White v. Ultramar, Inc., (1999) 21 Cal 4th 563, 566 – 567.

13 25. Defendants committed the acts alleged herein recklessly, maliciously,
14 fraudulently, and oppressively with the wrongful intention of injuring Plaintiff for an improper
15 and evil motive amounting to malice, and with a reckless and conscious disregard of Plaintiff's
16 rights and emotional well-being. All actions of Defendants and their agents and employees were
17 known, ratified, and approved by Defendants and each of them. Plaintiff is thus entitled to
18 recover, and seeks to recover, punitive damages from Defendants for the wanton, obnoxious,
19 and despicable acts in an amount according to proof.

20 26. Plaintiff has exhausted her administrative remedies under the Private Attorneys
21 General Act ("PAGA," Labor Code §§ 2698 – 2699.6) and includes a cause of action for
22 violations of the Labor Code, pursuant to that act.

23
24 **FIRST CAUSE OF ACTION FOR AGE DISCRIMINATION, IN VIOLATION OF**
25 **GOVERNMENT CODE § 12940, AGAINST DEFENDANTS ENSIGN, ANZA, AND**
26 **DOES 1 – 50, INCLUSIVE**

27 27. Plaintiff restates and incorporates by reference each and every allegation of the
28 foregoing paragraphs as though fully set forth herein.

1 28. For the purposes of this Cause of Action, “Defendants” means Ensign, Anza, and
2 Does 1 – 50, inclusive.

3 29. Government Code § 12940(a) makes it unlawful for an employer to discharge any
4 person from employment or to discriminate against the person in compensation or in terms,
5 conditions, or privileges of employment, because of that person’s age.

6 30. At the time Plaintiff was terminated, she was over the age of forty. Despite her
7 exceptional work performance, which she had maintained for fourteen years of working for
8 Defendants, Plaintiff was inexplicably terminated.

9 31. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiff has
10 suffered and will continue to suffer pain and anguish, emotional distress, and loss of earnings
11 and other employment benefits. Plaintiff is thereby entitled to general and compensatory
12 damages in amount to be proven at trial. Furthermore, Plaintiff has incurred and continues to
13 incur costs and attorneys’ fees and is entitled to an award of his reasonable attorneys’ fees and
14 costs pursuant to Government Code § 12965(b).

15 32. The conduct of Defendants as described above was malicious, fraudulent,
16 oppressive, done with reckless indifference, and/or a willful and conscious disregard for
17 Plaintiff’s rights and for the deleterious consequences of Defendants’ actions. Defendants and
18 their agents/employees or supervisors, authorized, condoned, and/or ratified each other’s
19 unlawful conduct. Consequently, Plaintiff is entitled to punitive damages against Defendants.
20

21 **SECOND CAUSE OF ACTION FOR FAILURE TO PREVENT DISCRIMINATION,**
22 **IN VIOLATION OF GOVERNMENT CODE § 12940, AGAINST DEFENDANTS**
23 **ENSIGN, ANZA, AND DOES 1 – 50, INCLUSIVE**

24 33. Plaintiff restates and incorporates by reference each and every allegation of the
25 foregoing paragraphs as though fully set forth herein.

26 34. For the purposes of this Cause of Action, “Defendants” means Ensign, Anza, and
27 Does 1 – 50, inclusive.

28 35. Government Code § 12940(k) makes it unlawful for an employer to fail to take

1 all reasonable steps necessary to prevent discrimination and harassment from occurring.

2 36. At the time Plaintiff was terminated, she was over the age of forty. Despite her
3 exceptional work performance, which she had maintained for fourteen years of working for
4 Defendants, Plaintiff was inexplicably terminated. Defendants had the opportunity to prevent
5 this from occurring, but they failed to do so.

6 37. In violation of Government Code § 12940(k), Defendants failed to take all
7 reasonable steps necessary to prevent disability discrimination from occurring and to remedy
8 such discrimination.

9 38. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
10 suffered and will continue to suffer pain and anguish, emotional distress, and loss of earnings
11 and other employment benefits. Plaintiff is thereby entitled to general and compensatory
12 damages in amount to be proven at trial. Furthermore, Plaintiff has incurred and continues to
13 incur costs and attorneys' fees and is entitled to an award of his reasonable attorneys' fees and
14 costs pursuant to Government Code § 12965(b).

15 39. The conduct of Defendants as described above was malicious, fraudulent,
16 oppressive, done with reckless indifference, and/or a willful and conscious disregard for
17 Plaintiff's rights and for the deleterious consequences of Defendants' actions. Defendants and
18 their agents/employees or supervisors, authorized, condoned, and/or ratified each other's
19 unlawful conduct. Consequently, Plaintiff is entitled to punitive damages against Defendants.

20
21 **THIRD CAUSE OF ACTION FOR HARASSMENT, IN VIOLATION OF**
22 **GOVERNMENT CODE § 12940, AGAINST ALL DEFENDANTS**

23 40. Plaintiff restates and incorporates by reference each and every allegation of the
24 foregoing paragraphs as though fully set forth herein.

25 41. At all times relevant to this Complaint, Government Code § 12940 was in effect
26 and applicable to Defendants. This code section makes it unlawful for an employer, or any other
27 person, to harass an employee because of his or her age.

28 42. Defendants launched a completely unjustified and unprovoked harassment

1 campaign against Plaintiff. Arvie delivered disparaging remarks against Plaintiff's department –
2 which consisted of only Plaintiff and one other woman – in front of their colleagues during
3 morning meetings. At nearly every morning meeting, Arvie had something negative to say about
4 Plaintiff and her department. Arvie falsely accused Plaintiff of inaccuracy in her work, despite
5 the fact that Plaintiff's department received a perfect score on a mock survey. When Plaintiff
6 challenged Arvie to point out the alleged inaccuracies, Arvie merely said, "Call your consultant."
7 This "consultant" was a person at Defendants' corporate headquarters, who did not even work
8 at the clinic. When Plaintiff called her consultant, he told her that he did not know what Arvie
9 was talking about, and said "I don't know. I'd have to go through the audits." Arvie's response
10 was merely a means of dismissing Plaintiff's question and avoiding the fact that she had no
11 evidence to back up her allegations of inaccuracies.

12 43. The conduct of Defendants as described herein was severe and pervasive.
13 Defendants' work environment was hostile and abusive and would be considered offensive and
14 intolerable by any reasonable person under similar circumstances.

15 44. Plaintiff has incurred and continues to incur costs and attorneys' fees and is
16 entitled to an award of reasonable costs and attorneys' fees pursuant to Government Code §
17 12965(b).

18 45. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
19 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
20 claims such amount as general damages for mental and emotional distress, aggravation, and
21 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
22 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

23
24 **FOURTH CAUSE OF ACTION FOR FAILURE TO PREVENT HARASSMENT, IN**
25 **VIOLATION OF GOVERNMENT CODE § 12940, AGAINST DEFENDANTS**
26 **ENSIGN, ANZA, AND DOES 1 – 50, INCLUSIVE**

27 46. Plaintiff restates and incorporates by reference each and every allegation of the
28 foregoing paragraphs as though fully set forth herein.

1 47. For the purposes of this Cause of Action, “Defendants” means Ensign, Anza, and
2 Does 1 – 50, inclusive.

3 48. At all times relevant to this Complaint, Government Code § 12940(k) was in
4 effect and applied to Defendants. This code makes it unlawful for an employer to fail to take all
5 reasonable steps necessary to prevent discrimination and harassment from occurring.

6 49. The harassment that Plaintiff endured lasted for an entire month. Defendants had
7 numerous opportunities to prevent the harassment, but failed to do so. Plaintiff’s supervisor
8 Arvie was not only aware of the harassment; she was the perpetrator.

9 50. Plaintiff has incurred and continues to incur costs and attorneys’ fees and is
10 entitled to an award of reasonable attorneys’ fees and costs pursuant to Government Code §
11 12965(b).

12 51. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiff has
13 experienced and will continue to experience pain and suffering, mental anguish, emotional
14 distress, and loss of earnings and other employment benefits. Plaintiff is thereby entitled to
15 general and compensatory damages in amounts to be proven at the time of trial, together with
16 pre-judgment interest pursuant to Civil Code § 3287 and any other provision of law providing
17 for pre-judgment interest.

18
19 **FIFTH CAUSE OF ACTION FOR WRONGFUL TERMINATION, IN VIOLATION**
20 **OF GOVERNMENT CODE § 12940, AGAINST DEFENDANTS ENSIGN, ANZA,**
21 **AND DOES 1 – 50, INCLUSIVE**

22 52. Plaintiff restates and incorporates by reference each and every allegation of the
23 foregoing paragraphs as though fully set forth herein.

24 53. For the purposes of this Cause of Action, “Defendants” means Ensign, Anza, and
25 Does 1 – 50, inclusive.

26 54. At all times relevant to this Complaint, Government Code § 12940(a) was in
27 effect and applied to Defendants. This code section makes it unlawful for an employer to
28 discharge a person from employment due to that person’s race or national origin.

1 55. Defendants terminated Plaintiff due to her age. This termination was the
2 culmination of the harassing and discriminatory behavior Defendants' agents inflicted on
3 Plaintiff from the beginning of Arvie's time as Plaintiff's supervisor.

4 56. Plaintiff has incurred and continues to incur costs and attorneys' fees and is
5 entitled to an award of reasonable attorneys' fees and costs pursuant to Government Code §
6 12965(b).

7 57. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
8 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
9 claims such amount as general damages for mental and emotional distress, aggravation, and
10 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
11 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

12
13 **SIXTH CAUSE OF ACTION FOR FAILURE TO PROVIDE REST PERIODS, IN**
14 **VIOLATION OF LABOR CODE § 226.7 AND WAGE ORDER § 12, AGAINST ALL**
15 **DEFENDANTS**

16 58. Plaintiff restates and incorporates by reference each and every allegation of the
17 foregoing paragraphs as though fully set forth herein.

18 59. At all times relevant to this Complaint, Industrial Welfare Commission Wage
19 Order No. 4-2001 ("Wage Order") and Labor Code § 226.7 were in effect and applicable to
20 Defendants.

21 60. Wage Order § 12 states that an employer shall authorize and permit all employees
22 to take rest periods, which, insofar as is practicable, shall be in the middle of each work period.
23 The authorized rest period time shall be based on the total hours worked daily at the rate of ten
24 minutes net rest time per four hours or major fraction thereof.

25 61. Labor Code § 226.7 provides that no employer shall require an employee to work
26 during any rest period mandated by an applicable Wage Order. The Court has explained this to
27 mean that during required rest periods, employers must relieve their employees of all duties and
28 relinquish any control over how employees spend their break time. Augustus v. ABM Security

1 Services, Inc., (2016) 2 Cal.5th 257, 260

2 62. As an hourly, non-exempt employee, Plaintiff was legally entitled to take a ten-
3 minute uninterrupted, duty-free rest period for every three and a half hours worked. However,
4 Defendants gave employees the impression that rest periods were only meant for smokers to take
5 their smoking breaks. As Plaintiff was not a smoker, she was misled into believing that she was
6 not entitled to take rest periods. In addition, there was always too much work to be done, so that
7 Plaintiff was never able to get away long enough to take a rest period. Accordingly, Plaintiff
8 never took a rest period during her entire fourteen years of employment, and Defendants are
9 liable to her for one hour of pay for each day that she worked at least three and a half hours.

10 63. Pursuant to Wage Order § 12 and Labor Code § 226.7, Plaintiff is entitled to
11 recover from Defendants one additional hour of pay at his regular hourly rate of compensation
12 for each workday that the rest period was not provided, in an amount to be proven at trial.

13 64. Additionally, Wage Order § 20 provides for civil penalties:

14 In addition to any other civil penalties provided by law, any employer . . . who
15 violates, or causes to be violated, the provisions of this order, shall be subject to the
16 civil penalty of: (1) Initial Violation – \$50.00 for each underpaid employee for each
17 pay period during which the employee was underpaid in addition to the amount
18 which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
19 for each underpaid employee for each pay period during which the employee was
20 underpaid in addition to an amount which is sufficient to recover unpaid wages.

21 Plaintiff is entitled to these civil penalties in an amount to be proven at trial.

22 65. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
23 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
24 claims such amount as general damages for mental and emotional distress, aggravation, and
25 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
26 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

27 **SEVENTH CAUSE OF ACTION FOR FAILURE TO PAY ALL WAGES OWED**
28 **UPON TERMINATION, IN VIOLATION OF LABOR CODE § 201, AGAINST**
DEFENDANTS ENSIGN, ANZA, AND DOES 1 – 50, INCLUSIVE

1 66. Plaintiff restates and incorporates by reference each and every allegation of the
2 foregoing paragraphs as though fully set forth herein.

3 67. For the purposes of this Cause of Action, “Defendants” means Ensign, Anza, and
4 Does 1 – 50, inclusive.

5 68. At all times relevant to this Complaint, Labor Code §§ 201 and 203 were in effect
6 and applicable to Defendants.

7 69. Labor Code § 201 states that if an employer discharges an employee, the wages
8 earned and unpaid at the time of discharge are due and payable immediately.

9 70. Defendants terminated Plaintiff’s employment on July 1, 2020, and so were
10 required to pay Plaintiff all wages earned and unpaid on that date. Plaintiff’s final paycheck did
11 not include all overtime she earned but was not paid, and so it failed to comply with the
12 requirement of Labor Code § 201 that all outstanding wages be paid on the day of termination.
13 As of June 18, 2021, Defendants still have not paid Plaintiff those premiums.

14 71. Labor Code § 203 states that:

15 [i]f an employer willfully fails to pay, without abatement or reduction . . . any wages
16 of any employee who is discharged or who quits, the wages of the employee shall
17 continue as a penalty from the due date thereof at the same rate until paid or until
18 an action therefor is commenced; but the wages shall not continue for more than
19 30 days.”

20 72. Accordingly, as a result of Defendants’ conduct, Plaintiff is entitled to waiting
21 time penalties in the amount of thirty days’ wages under Labor Code § 203, with interest thereon
22 and reasonable attorneys’ fees and costs pursuant to Labor Code §§ 218.5 and 1194.

23 73. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
24 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
25 claims such amount as general damages for mental and emotional distress, aggravation, and
26 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
27 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

28 **EIGHTH CAUSE OF ACTION FOR FAILURE TO PROVIDE ACCURATE,**

1 **ITEMIZED WAGE STATEMENTS, IN VIOLATION OF LABOR CODE § 226 AND**
2 **WAGE ORDER § 7 AGAINST ALL DEFENDANTS**

3 74. Plaintiff restates and incorporates by reference each and every allegation of the
4 foregoing paragraphs as though fully set forth herein.

5 75. Labor Code § 226(a) requires an employer to furnish its employees with an
6 accurate itemized statement in writing showing, among other things, gross wages earned, net
7 wages earned, all applicable hourly rates in effect during the pay period, and the corresponding
8 number of hours worked at each hourly rate by the employee.

9 76. Under Labor Code § 226(e), an employee suffering injury as a result of a knowing
10 and intentional failure by an employer to comply with § 226(a) is entitled to recover the greater
11 of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 for
12 each violation in a subsequent pay period, up to a maximum amount of \$4,000.

13 77. Wage Order § 7 requires that employers furnish to each employee an itemized
14 statement in writing showing all deductions, the inclusive dates of the period for which the
15 employee is paid, the employee's name or social security number, and the employer's name.

16 78. Defendants are required to provide employees with accurate, itemized wage
17 statements stating, among other things, gross wages earned, total hours worked, net wages
18 earned, all applicable hourly rates in effect during the pay period, and the number of hours
19 worked at each hourly rate. Plaintiff's time sheets and pay stubs did not include the overtime
20 premium for all overtime hours she had worked, or the time she was legally under Defendants'
21 control during her rest periods.

22 79. As a direct and proximate result of Defendants' conduct, Plaintiff has been
23 injured by, among other things, not being paid all wages due, not knowing how many hours she
24 worked and at what rates, and being required to file this action to recover her wages and
25 determine the number of hours worked and wages due.

26 80. Defendants are in violation of Labor Code § 226(a) and are liable to Plaintiff for
27 damages. Plaintiff is entitled to recover the damages or penalties provided by Labor Code §
28 226(e), including interest thereon, and reasonable attorneys' fees and costs.

1 81. Additionally, Wage Order § 20 provides for civil penalties:

2 In addition to any other civil penalties provided by law, any employer . . . who
3 violates, or causes to be violated, the provisions of this order, shall be subject to the
4 civil penalty of: (1) Initial Violation – \$50.00 for each underpaid employee for each
5 pay period during which the employee was underpaid in addition to the amount
6 which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
7 for each underpaid employee for each pay period during which the employee was
8 underpaid in addition to an amount which is sufficient to recover unpaid wages.

9 Plaintiff is entitled to these civil penalties in an amount to be proven at trial.

10 82. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
11 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
12 claims such amount as general damages for mental and emotional distress, aggravation, and
13 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
14 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

15 **NINTH CAUSE OF ACTION FOR FAILURE TO PAY OVERTIME WAGES, IN**
16 **VIOLATION OF LABOR CODE §§ 510 AND 1194, AND WAGE ORDER § 3**
17 **AGAINST ALL DEFENDANTS**

18 83. Plaintiff restates and incorporates by reference each and every allegation of the
19 foregoing paragraphs as though fully set forth herein.

20 84. At all times relevant to this Complaint, the Wage Order and Labor Code §§ 510
21 and 1194 were in effect and applicable to Defendants.

22 85. Wage Order § 3 states that employees shall not be employed more than eight
23 hours in any workday or more than forty hours in any workweek unless the employee receives
24 one and one-half times his or her regular rate of pay for all hours worked in excess of eight hours
25 up to and including twelve hours in any workday, and for the first eight hours worked on the
26 seventh consecutive day of work in a workweek, and double the employee's regular rate of pay
27 for all hours worked in excess of twelve hours in any workday and for all hours worked in excess
28 of eight hours on the seventh consecutive day of work in a workweek.

86. Labor Code § 510 states that:

1 any work in excess of eight hours in one workday and any work in excess of 40
2 hours in any one workweek and the first eight hours worked on the seventh day of
3 work in any one workweek shall be compensated at the rate of no less than one and
4 one-half times the regular rate of pay for an employee. Any work in excess of 12
5 hours in one day shall be compensated at the rate of no less than twice the regular
6 rate of pay for an employee. In addition, any work in excess of eight hours on any
7 seventh day of a workweek shall be compensated at the rate of no less than twice
8 the regular rate of pay of an employee.

9 87. Labor Code § 1194 states that any employee receiving less than the legal overtime
10 compensation is entitled to recover the unpaid balance of the full amount of this overtime
11 compensation, including interest, reasonable attorneys' fees, and costs.

12 88. Because Plaintiff was regularly working fifteen-hour days, often for six or even
13 seven days a week, she was accumulating large amounts of overtime hours, for which Defendants
14 were required to pay her the overtime premium. Defendants failed to do this.

15 89. Because of Defendants' failures as alleged herein, Plaintiff did not receive all the
16 overtime compensation to which she was entitled. Plaintiff is entitled to receive that
17 compensation in an amount to be proven at trial.

18 90. Additionally, Wage Order § 20 provides for civil penalties:

19 In addition to any other civil penalties provided by law, any employer . . . who
20 violates, or causes to be violated, the provisions of this order, shall be subject to the
21 civil penalty of: (1) Initial Violation – \$50.00 for each underpaid employee for each
22 pay period during which the employee was underpaid in addition to the amount
23 which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
24 for each underpaid employee for each pay period during which the employee was
25 underpaid in addition to an amount which is sufficient to recover unpaid wages.

26 91. Plaintiff is entitled to these civil penalties in an amount to be proven at trial.

27 92. By violating Wage Order § 3 and Labor Code §§ 510 and 1194, Defendants are
28 liable for Plaintiff's reasonable attorneys' fees and costs pursuant to Labor Code § 1194.

93. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
claims such amount as general damages for mental and emotional distress, aggravation, and
physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

1 **TENTH CAUSE OF ACTION FOR FAILURE TO PROVIDE VACATION PAY, IN**
2 **VIOLATION OF LABOR CODE § 227.3, AGAINST DEFENDANTS ENSIGN, ANZA,**
3 **AND DOES 1 – 50, INCLUSIVE**

4 94. Plaintiff restates and incorporates by reference each and every allegation of the
5 foregoing paragraphs as though fully set forth herein.

6 95. For the purposes of this Cause of Action, “Defendants” means Ensign, Anza, and
7 Does 1 – 50, inclusive.

8 96. Labor Code § 227.3 requires that employers that provide employees with vacation
9 time must pay employees for all unused vacation at the time of termination of employment.

10 97. Defendants violated Labor Code § 227.3 by failing to pay Plaintiff the vacation
11 time due to her at termination. In order to meet a certain loophole that the corporation was
12 demanding from that particular facility, Defendants frequently required employees to work on
13 days that the employee had requested as paid vacation days, with the promise that they would
14 reschedule the vacation day for a later date. However, these promises were not kept. There were
15 multiple instances when this occurred to Plaintiff. When she was finally terminated, Defendants
16 failed to pay Plaintiff her vacation pay upon termination. As such, Defendants are liable to
17 Plaintiff for three days of vacation pay.

18 98. As a result of Defendants’ violations, Plaintiff has suffered damages, including
19 loss of earnings for unpaid vacation time in an amount to be established at trial, an award of
20 attorneys’ fees and other applicable law, and costs.

21
22 **ELEVENTH CAUSE OF ACTION FOR FAILURE TO REIMBURSE FOR**
23 **BUSINESS EXPENSES, IN VIOLATION OF LABOR CODE § 2802 AGAINST ALL**
24 **DEFENDANTS**

25 99. Plaintiff restates and incorporates by reference each and every allegation of the
26 foregoing paragraphs as though fully set forth herein.

27 100. Labor Code § 2802(a) requires that an employer to indemnify his or her employee
28 for all necessary expenditures or losses incurred by the employee in direct consequence of his or

1 her duties. Labor Code § 2802(b) states that all awards made by a court for reimbursement of
2 necessary expenditures under this section shall carry interest at the same rate as judgments in
3 civil actions. Labor Code § 2802(c) defines the term “necessary expenditure or losses” to include
4 all reasonable costs, including attorneys’ fees. Plaintiff was required to travel to other locations
5 for teaching seminars. These locations were often significantly farther away from Plaintiff’s
6 home than was her regular workplace. Defendants were required to reimburse Plaintiff for
7 mileage and automobile maintenance for the cost of these trips but failed to do so.

8 101. Defendants have failed to indemnify or in any manner reimburse Plaintiff for
9 these expenditures and losses. By requiring Plaintiff to pay expenses and cover losses she
10 incurred in direct consequence of the discharge of her duties for Defendants and/or in obedience
11 to Defendants’ direction, Defendants have violated and continue to violate Labor Code § 2802.

12 102. As a direct and proximate result of Defendants’ conduct, Plaintiff has suffered
13 substantial losses according to proof, as well as pre-judgment interest, costs, and reasonable
14 attorneys’ fees.

15
16 **TWELFTH CAUSE OF ACTION FOR UNLAWFUL BUSINESS PRACTICES, IN**
17 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200, AGAINST**
18 **DEFENDANTS ENSIGN, ANZA, AND DOES 1 – 50, INCLUSIVE**

19 103. Plaintiff restates and incorporates each and every allegation of the foregoing
20 paragraphs as though fully set forth herein.

21 104. For the purposes of this Cause of Action, “Defendants” means Ensign, Anza, and
22 Does 1 – 50, inclusive.

23 105. Defendants’ actions and conduct alleged herein constitute unlawful, unfair,
24 deceptive, and misleading business practices, prohibited by Business & Professions Code §§
25 17200 et seq.

26 106. Plaintiff is informed and believes, and thereon alleges, that Defendants utilized
27 improper, unlawful, and tortious means to unjustly enrich themselves, and to cause deliberate
28 injury to Plaintiff.

1 107. Among other things, Plaintiff seeks restitution and a return of all moneys obtained
2 by Defendants through their wrongful conduct.

3
4 **THIRTEENTH CAUSE OF ACTION FOR CIVIL PENALTIES PURSUANT TO THE**
5 **PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE §§ 2698 – 2699.6),**
6 **AGAINST DEFENDANTS ENSIGN, ANZA, AND DOES 1 – 50, INCLUSIVE**

7 108. Plaintiff restates and incorporates each and every allegation of the foregoing
8 paragraphs as though fully set forth herein.

9 109. For the purposes of this Cause of Action, “Defendants” means Ensign, Anza, and
10 Does 1 – 50, inclusive.

11 110. Pursuant to Labor Code § 2699.3, Plaintiff provided notice by certified mail to
12 the Labor and Workforce Development Agency (“LWDA”) and to Defendants of the specific
13 provisions of the Labor Code alleged to have been violated and the facts and theories to support
14 the alleged violations. These notices were sent on March 18, 2021. The LWDA did not respond
15 to the notice within sixty-five calendar days. Thus, under Labor Code § 2699.3(a)(2)(C), Plaintiff
16 is permitted to commence a civil action pursuant to Labor Code § 2699.

17 111. Defendants’ conduct as set forth herein has caused injury to Plaintiff and all those
18 employees similarly aggrieved and has violated various provisions of the Labor Code. As such,
19 Plaintiff brings this claim as a representative action on behalf of herself and all those employees
20 similarly aggrieved.

21 112. Under Labor Code § 2699(f), for all provisions of this code except those for which
22 a civil penalty is specifically provided, there is established a civil penalty of one hundred dollars
23 for each aggrieved employee per pay period for the initial violation and two hundred dollars for
24 each aggrieved employee per pay period for each subsequent violation.

25 113. As alleged herein, Plaintiff and all those employees similarly aggrieved seek, and
26 Defendants are liable for, penalties for the violations of Labor Code, including the following:

- 27 - Violation of Labor Code §§ 226.7 and 512 for failing to provide Plaintiff and
28 all those employees similarly aggrieved with rest periods.

- 1 - Violation of Labor Code §§ 510 and 1194 for failing to provide Plaintiff and
- 2 all those employees similarly aggrieved with overtime pay.
- 3 - Violation of Labor Code § 201 for failing to provide Plaintiff and all those
- 4 employees similarly aggrieved with all wages due upon termination.
- 5 - Violation of Labor Code § 226 for failing to provide Plaintiff and all those
- 6 employees similarly aggrieved with accurate, itemized wage statements.
- 7 - Violation of Labor Code § 227.3 for failing to provide Plaintiff and all those
- 8 employees similarly aggrieved with vacation pay.
- 9 - Violation of Labor Code § 2802 for failing to reimburse Plaintiff and all those
- 10 employees similarly aggrieved for all business-related expenses.

11 114. Plaintiff is also entitled to seek on behalf of herself and all those employees
12 similarly aggrieved, all reasonable attorneys' fees and costs, pursuant to Labor Code § 2699(g).

13
14 **WHEREFORE**, Plaintiff prays for judgment against Defendants and each of them as
15 follows:

- 16 1. For general damages in an amount to be proven at trial;
- 17 2. For special damages in an amount to be proven at trial;
- 18 3. For punitive damages;
- 19 4. For pre-judgment interest to the extent allowed by law;
- 20 5. For costs of suit incurred herein;
- 21 6. For attorneys' fees; and
- 22 7. For such other and further relief as the Court deems just and proper.

23
24 Dated: June 18, 2021

JAFARI LAW GROUP, INC.



David V. Jafari
Saul Acherman
Attorneys for Plaintiff
DEBRA FIGUEROA

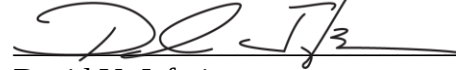
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

Dated: June 18, 2021

JAFARI LAW GROUP, INC.



David V. Jafari
Saul Acherman
Attorneys for Plaintiff
DEBRA FIGUEROA

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VERIFICATION

I am a party to this action. I am authorized to make this verification for and on behalf of myself and make this verification for this reason.

I have examined the foregoing COMPLAINT and know its contents.

The matters stated in the foregoing are true to my own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at _____ (*place*), on _____ (*date*).

Debra Figueroa