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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

JESSICA GUTIERREZ, individually, and on
behalf of the State of California and Aggrieved
Employees, as a private attorney general,

Plaintiff,

vs.

ELITE WORKSHOP, INC., a California
Corporation; HRS PROPERTY
MANAGEMENT, LLC, a California Limited
Liability Company; HOUSTON DURAND,
individually; ROBERT FLANIGAN, individually
and DOES 1 through 10, inclusive,

Defendants.

FILED
Superior Court Of California,
Sacramento
07/23/2021
mchepman3
By _____, Deputy
Case Number:
34-2021-00304582

Case No.:

BY FAX

COMPLAINT FOR:

1. **FAILURE TO PAY MINIMUM WAGE [LAB. CODE § 1194];**
2. **FAILURE TO PAY OVERTIME [LAB. CODE §§ 1194 and 510]**
3. **FAILURE TO PROVIDE MEAL PERIODS [LAB. CODE §§ 226.7 and 512(a) and WAGE ORDERS];**
4. **FAILURE TO PROVIDE REST PERIODS [LAB. CODE § 226.7 and WAGE ORDERS];**
5. **FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT [LAB. CODE §§ 204 and 210];**
6. **FAILURE TO TIMELY PAY WAGES UPON SEPARATION [LAB. CODE §§ 201, 202 and 203];**
7. **NON-COMPLIANT WAGE STATEMENTS [LAB. CODE § 226(a)];**
8. **FAILURE TO KEEP ACCURATE PAYROLL RECORDS [LAB. CODE §§ 1174(d) and 1174.5]**
9. **VIOLATION OF LABOR CODE SECTION 232.5;**
10. **RETALIATION IN VIOLATION OF LABOR CODE SECTION**

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- 1102.5;
11. RETALIATION FOR COMPLAINT ABOUT LABOR CODE VIOLATIONS [LAB. CODE § 98.6];
12. COMMON LAW CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY;
13. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”) – LABOR CODE SECTION 2698 *ET SEQ.* FOR VIOLATIONS OF LABOR CODE SECTIONS 207, 208, 219, 246, 246, 248.5, 432.5, 3550, 3551, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, 6407

Plaintiff Jessica Gutierrez, individually, and on behalf of the State of California, and as an aggrieved employee pursuant to Labor Code Section 2698 et seq. (“PAGA”) alleges against Defendants Elite Workshop, Inc., HRS Property Management, LLC., Houston Durand, Robert Flanigan, and DOES 1 through 10 (collectively “Defendants”), and each of them as follows:

GIST OF THE ACTION

1. Defendants Elite Workshop, Inc. and HRS Property Management, LLC are cannabis companies doing business in Sacramento, California. Defendants hired Plaintiff Jessica Gutierrez in September 2020 to work in their Sacramento facility. Defendants compelled Plaintiff to sign an independent contractor agreement. Defendants at all times treated Plaintiff and all other aggrieved employees as independent contractors, when they were actually employees. Defendants collectively engaged in systematic labor code violations and subjected former employee, Plaintiff Jessica Gutierrez, and other aggrieved employees to a deprivation of rights owed under the California Labor Code. Specifically, Defendants failed to pay Plaintiff for all hours worked, denied her full compensation for time worked including overtime, failed to provide compliant meal and rest breaks, failed to provide accurate wage statements contemporaneous with pay day, failed to maintain accurate payroll records and hours worked, failed to timely pay her all the full wages due and owing during employment and post termination or post resignation, and failed to reimburse

1 her for all business related expenses. Defendants also violated a number of other Labor Code
2 sections making Plaintiff an aggrieved employee under the Private Attorneys General Act and
3 addressed in the allegations below. Additionally, Defendants learned that another former
4 employee, who Plaintiff was friends with, had served Defendants with a PAGA Notice of her own.
5 Defendants began hounding Plaintiff to ascertain what she knew about her friend's potential
6 claims, and whether she would be supporting her friend in any complaint or potential lawsuit.
7 Plaintiff asked Defendants to back-off and stop asking her about it. Eventually, it appeared that
8 Defendants were criminally stalking Plaintiff and asked her to confirm that she had been
9 socializing with her friend the night prior. Fearing for her safety, and feeling uncomfortable with
10 Defendants, she resigned in April 2021.

11 **THE PARTIES**

12 2. Plaintiff Jessica Gutierrez is, and at all times was, a resident of Sacramento County,
13 California. At all relevant times herein, Plaintiff was employed by Defendants. Plaintiff is, and
14 at all relevant times was, an "aggrieved employee" as that term is defined in California Labor
15 Code Section 2699, subdivision (c).

16 3. Defendant Elite Workshop, Inc. is a corporation authorized to do business in
17 California. It operates cannabis related facilities and operations in Sacramento, California.

18 4. Defendant HRS Property Management, LLC is a California limited liability
19 company doing business in California and operating cannabis related facilities and operations in
20 Sacramento, California.

21 5. Defendant Houston Durand is an individual doing business and/or residing in
22 Sacramento County, California.

23 6. Defendant Robert Flanigan is an individual doing business and/or residing in
24 Sacramento County, California.

25 7. Defendants Elite Workshop, Inc., HRS Property Management, LLC, Houston
26 Durand, and Robert Flanagan were at all relevant times, Plaintiff's employers within the meaning
27 of all applicable California state laws, regulations, and statutes. Specifically, Section 2 of the
28 applicable Industrial Wage Commission Wage Order defines employer as any person, including

1 any natural person, organization, and corporation, who directly or indirectly, or through an agent
2 or any other person, employs or exercises control over the wages, hours, or working conditions
3 of any person.

4 8. The true names or capacities, whether individual, corporate, associate, or otherwise,
5 of Defendants DOES 1 – 10, inclusive, are presently unknown to Plaintiff, who therefore sues
6 such Defendants by such fictitious names. Plaintiff will seek leave of Court to amend this
7 Complaint to allege the true names and capacities when they are ascertained by Plaintiff.

8 **JURISDICTION AND VENUE**

9 9. Defendants have sufficient contacts with California or otherwise purposefully avail
10 themselves of the benefits in the State, so as to render the exercise of jurisdiction over each by a
11 California Court consistent with traditional notions of fair play and substantial justice.

12 10. Venue is proper in this Court because Plaintiff suffered injuries and damages
13 alleged herein in Sacramento County, California. Defendants transact business throughout
14 California and had at all relevant times a facility in Sacramento County, California, or work or
15 reside in Sacramento County, California.

16 **PAGA EXHAUSTION**

17 11. Plaintiff met all jurisdictional requirements in order to exhaust administrative
18 remedies prior to filing her PAGA claim.

19 12. Specifically, she electronically filed a PAGA notice of her claims and theories of
20 Labor Code violations with the Labor and Workforce Development Agency (“LWDA”) and
21 Division of Occupational Health and Safety (“Cal-OSHA”) at least 65 days prior to filing the
22 instant action. Additionally, she sent the PAGA notice via certified mail to the Defendants.

23 13. Plaintiff provided PAGA notices on April 7, 2021, and an amended notice on
24 April 28, 2021. Neither the LWDA, nor Cal-OSHA expressed interest in investigating the
25 matter. Plaintiff seeks PAGA remedies on behalf of all exempt or non-exempt employees of
26 Defendants that were subjected to at least the following Labor Code Section violations: Labor
27 Code Sections 207, 208, 219, 246, 248.5, 432.5, 3550, 3551, 6400, 6401, 6401.7, 6402, 6403,
28 6404, 6406, 6407.

1 **GENERAL ALLEGATIONS**

2 14. In September 2020, Defendants hired Plaintiff as a non-exempt laborer at their
3 Sacramento facility and warehouse. Defendants had Plaintiff sign an independent contractor
4 agreement, which was illegal since Plaintiff and other aggrieved employees were employees.

5 15. Under Labor Code Section 2750.5, Plaintiff and the aggrieved employees were
6 presumed to be employees and not independent contractors. Moreover, under Labor Code Section
7 2750.3, Plaintiff and the aggrieved employees were not independent contractors because
8 Defendants will fail to prove all of the following: (a) that the aggrieved employees were free from
9 the control and direction of the hiring entity in performance of the work; (b) that the aggrieved
10 employees were performing the work outside the usual course of the hiring entities' business; and
11 (c) that the aggrieved employees were customarily involved in an independently established trade,
12 occupation, or business of the same nature as that involved in the worked performed.

13 16. The independent contractor agreement was illegal in other respects as well. For
14 example, because it had a bi-lateral attorneys' fees provision that would violate the express
15 provisions affording employees attorneys' fee under various Labor Code Sections including but
16 not limited to, of Labor Code Section 1194 and Section 218.5. It imposed broadly encompassing
17 non-compete provisions in violation of Business and Professions Code Section 16600. And it had
18 oppressive invention and IP assignment provisions in violation of Labor Code Section 2870 –
19 2872.

20 17. Plaintiff was required to perform work off the clock prior to clocking and after
21 clocking out which, for which she was not compensated for. Additionally, Plaintiff frequently
22 worked in excess of eight hours without overtime compensation.

23 18. Plaintiff was deprived of compliant meal breaks. Defendants deprived Plaintiff of
24 uninterrupted, 30-minute, duty-free meal periods before the sixth hour of work.

25 19. Plaintiff was deprived of compliant rest breaks. At all relevant times, Defendants
26 failed to provide Plaintiff with one 10-minute rest break for shifts of three-and-one half to six hours
27 in length and failed to provide a second 10-minute break for shift more than six hours up to ten.
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1 Defendants pressured Plaintiff not to take rest breaks, and Plaintiff was punished if they took rest
2 breaks.

3 20. In accordance with Labor Code Section 226(a) and 226.3, Defendants were required
4 to furnish Plaintiff, semimonthly or at the time of each payment of wages, with an accurate and
5 itemized statement in writing showing (a) gross wages earned; (b) total hours worked; (c) all
6 deductions to the pay; (d) the net wages earned; (e) inclusive dates of the period for which the
7 employee is paid; (f) the name of the employee and his or her last four digits of their social security
8 number or an employee ID; (g) the name and address of the legal entity that is the employer; (h)
9 all applicable hourly rates and the corresponding number of hours worked for each applicable
10 hourly rate in effect during the pay period. Defendants failed to provide any wage statements at
11 all to Plaintiff at the time of the payment of wages.

12 21. Defendants knew or should have known that it had a duty to keep complete or
13 accurate payroll records and hours worked for Plaintiff in accordance with Labor Code Section
14 1174. Nonetheless, at all relevant times, Defendants failed to keep complete or accurate payroll
15 records for Plaintiff.

16 22. Plaintiff was entitled to receive all wages due and owing during her employment
17 with Defendants. However, because Defendants failed to pay for all hours worked, including
18 failure to compensate Plaintiff at the legal overtime rate, Defendants violated Labor Code Section
19 204 and 210.

20 23. Plaintiff was entitled to receive her final pay no later than 72 hours of resignation,
21 or immediately upon termination. Defendants failed to pay Plaintiff her final wages owed upon
22 termination or resignation in violation of Labor Code Sections 201, 202, and 203.

23 24. Labor Code Sections 2800 and 2802 require employers to reimburse employees for
24 all necessary business expenses incurred in direct consequence of the discharge of their duties to
25 employer. Plaintiff was required to use their personal cell phones to upload the Homebase
26 application required by Defendants. Defendants never reimbursed Plaintiff.

27 25. Many of the foregoing statutory Labor Code violations also resulted in violations
28 of various provisions of the Industrial Welfare Commission ("IWC") Wage Orders. Pursuant to

1 California Business and Professions Code Section 26065, the relevant IWC Wage Order No. 4-
2 2001, rather than No. 14-2001 for employees in the cannabis space.

3 26. Labor Code Section 219 (a) prohibits attempting to circumvent the payment of full
4 wages and other obligations imposed under Article I (Labor Code Sections 200-244) through any
5 contract, whether written, oral or implied. Additionally, Labor Code Section 432.5 prohibits every
6 employer from requiring any employee to agree in writing to any term or condition which employer
7 knows to be prohibit by law. Here, Plaintiff and other aggrieved employees were compelled to
8 sign void and illegal independent contractor agreements as a condition to working for Defendants.

9 27. Labor Code Section 207 requires employers to post conspicuously at the place of
10 work, a notice specifying the regular pay days and time and place of payment. Plaintiff and other
11 aggrieved employees did not receive the benefit of the information required to be posted at
12 Defendants' warehouse facility where Plaintiff and other aggrieved employees worked.

13 28. Labor Code Section 208 requires that employers pay every employee who is
14 discharged, at the place of discharge, and every employee who quits shall be paid at the office or
15 agency of the employer in the county where the employer was working. Plaintiff and other
16 aggrieved employees did not receive their last paycheck at Defendants' Sacramento facility where
17 Plaintiff and other aggrieved employees were working.

18 29. Labor Code Section 246 grants employees the right to accrue up to 24 hours of paid
19 sick days for every 12 months. Employees may accrue up to one hour for every thirty hours worked
20 until they reach 24 hours, or employers may utilize a different accrual method so long as the
21 employee has at least 24 hours of paid sick day available by the 120th calendar day of employment.
22 Plaintiff and other aggrieved employees were never provided sick time while they were employed
23 by Defendants. Labor Code Section 246(i) requires employers to provide notice either on wage
24 statements or in a separate writing on pay day. Plaintiff and other aggrieved employees never
25 received notice on pay day whether on pay stubs or other writings, that they had access to sick
26 days.

27 30. California Labor Code Section 3550(a) states that every employer shall post and
28 keep posted in a conspicuous location frequented by employees, and where the notice may be

1 easily read by employees during the hours of the workday, a notice that states the name of the
2 current compensation insurance carrier of the employer, or when such is the fact, that the employer
3 is self-insured, and who is responsible for claims adjustment. Additionally, 3550(d) states that the
4 form and content of the notice required by this section shall advise employees that all injuries
5 should be reported to their employer. The notice shall be easily understandable. It shall be posted
6 in both English and Spanish where there are Spanish-speaking employees. The notice shall include
7 the following information how to get emergency treatment; events, injuries and illnesses covered
8 by workers' compensation; and the injured employee's right to receive medical care; the rights of
9 the employee to receive temporary disability indemnity, permanent disability indemnity,
10 supplemental job displacement, and death benefits, as appropriate; to whom injuries should be
11 reported; the existence of time limits for the employer to be notified of an occupational injury; the
12 protections against discrimination provided pursuant to Section 132a; the Internet Web site address
13 and contact information that employees may use to obtain further information about the workers'
14 compensation claims process and an injured employee's rights and obligations, including the
15 location and telephone number of the nearest information and assistance officer.

16 31. Defendants violated Labor Code Section 3550 by failing to post a notice where it
17 may easily be read by Plaintiff and other aggrieved employees during the workday, and one that
18 contained the notice with the required specified information in both Spanish and English.

19 32. Labor Code Section 3551 requires every employer to provide every employee at
20 the time of employment, or by the end of the first pay period, a written notice of all the information
21 contained in Labor Code Section 3550. The notice is required to be easily understandable and in
22 English and Spanish. In addition, Section 3551 also requires the employer to provide notice to the
23 employee how to obtain appropriate medical care for a job injury; the role and function of the
24 primary treating physician; and a form that the employee may use as an optional method of
25 notifying the employer of the name of the employee's person physician or personal chiropractor.

26 33. Defendants violated Labor Code Section 3551 by failing to provide Plaintiff and
27 other aggrieved employees, with written notice containing all of the information required under
28 Labor Code Section 3550, failed to provide such information by the end of the first pay period,

1 failed to provide the information in both English and Spanish, and failed to provide notice to the
2 employees how to obtain medical care for a job injury, what the primary treating physician's role
3 is. Additionally, the Employers failed to provide a form that the employee could use to notify the
4 employer of their own personal physician or chiropractor.

5 34. Labor Code Section 6401 requires that every employer shall furnish and use safety
6 devices and safeguards, and shall adopt and use practices, means, methods, operations, and
7 processes which are reasonably adequate to render such employment and place of employment
8 safe and healthful. Every employer shall do every other thing reasonably necessary to protect the
9 life, safety, and health of employees.

10 35. Labor Code Section 6403 prohibits (a) employer from failing to provide safety
11 devices and safeguards reasonably adequate to render the employment and place of employment
12 safe; (b) employer from failing to use methods and processes reasonably adequate to render the
13 employment and place of employment safe; and (c) employer from failing to do any other thing
14 reasonably necessary to protect the life, safety and health of employees.

15 36. Labor Code Section 6406 (d) prohibits employers from failing or neglecting to do
16 everything reasonably necessary to protect the life, safety and health of employees.

17 37. California Code of Regulations, Title 8 Section 3205 went into effect in November
18 2020. It requires at least the following: Under subpart (c): That employers establish, implement
19 and maintain an effective written COVID-19 Prevention Program, that contains (1) a system for
20 communicating that is readily understandable to employees; (2) a system for identifying and
21 evaluating COVID-19 hazards; (3) a system for investigating and responding to COVID-19 cases
22 in the workplace; (4) a system for the correction of COVID-19 hazards; (5) a system for training
23 and instructing employees; (6) a system for physical distancing; (7) a system and implementation
24 of providing face coverings; (8) a system of other engineering controls, administrative controls,
25 and personal protective equipment; (9) a system for reporting, recordkeeping and access.

26 38. Moreover, Section 3205 (c)(9)(C) requires the employer to maintain records of the
27 steps taken to implement the written COVID-19 Prevention Program. Under (c)(9)(D) the
28 employer must make the COVID-19 Prevention Program available to employees. Under (c)(9)(E)

1 the employer must keep record of all COVID-19 cases with the employee's name, contact
2 information, occupation, location where they worked, last date at the workplace, and date of
3 positive test.

4 39. Here, Defendants failed to establish, implement, maintain and enforce a compliant
5 written COVID-19 Prevention Program that is in a form readily understandable to employees.
6 Moreover, they have failed to maintain records of the steps taken to implement the written
7 COVID-19 Prevention Program. To the extent they had a COVID-19 Prevention Program it failed
8 to contain the required sections (1) a system for communicating that is readily understandable to
9 employees; (2) a system for identifying and evaluating COVID-19 hazards; (3) a system for
10 investigating and responding to COVID-19 cases in the workplace; (4) a system for the correction
11 of COVID-19 hazards; (5) a system for training and instructing employees; (6) a system for
12 physical distancing; (7) a system and implementation of providing face coverings; (8) a system
13 of other engineering controls, administrative controls, and personal protective equipment; (9) a
14 system for reporting, recordkeeping and access. As a result, Defendants violated Labor Code
15 Sections 6401, 6403, and 6406, by failing to provide the aggrieved employees with a safe and
16 healthful working environment with the appropriate face coverings, gloves, and properly
17 implementing a system to appropriately clean and disinfecting machinery, equipment, tools,
18 locker rooms and door knobs, buttons and switches and areas, the clock in and clock-out areas,
19 keyboards, and telephones, and things touched throughout the work day by the numerous
20 employees.

21 40. Labor Code Section 6401 requires that every employer shall furnish and use safety
22 devices and safeguards, and shall adopt and use practices, means, methods, operations, and
23 processes which are reasonably adequate to render such employment and place of employment
24 safe and healthful. Every employer shall do every other thing reasonably necessary to protect the
25 life, safety, and health of employees.

26 41. Labor Code Section 6403 prohibits (a) employer from failing to provide safety
27 devices and safeguards reasonably adequate to render the employment and place of employment
28 safe; (b) employer from failing to use methods and processes reasonably adequate to render the

1 employment and place of employment safe; and (c) employer from failing to do any other thing
2 reasonably necessary to protect the life, safety and health of employees.

3 42. Labor Code Section 6406 (d) prohibits employers from failing or neglecting to do
4 everything reasonably necessary to protect the life, safety and health of employees.

5 43. California Code of Regulations, Title 8 Section 3205 went into effect in November
6 2020. It requires at least the following: Under subpart (c): That employers establish, implement
7 and maintain an effective written COVID-19 Prevention Program, that contains (1) a system for
8 communicating that is readily understandable to employees; (2) a system for identifying and
9 evaluating COVID-19 hazards; (3) a system for investigating and responding to COVID-19 cases
10 in the workplace; (4) a system for the correction of COVID-19 hazards; (5) a system for training
11 and instructing employees; (6) a system for physical distancing; (7) a system and implementation
12 of providing face coverings; (8) a system of other engineering controls, administrative controls,
13 and personal protective equipment; (9) a system for reporting, recordkeeping and access.

14 44. Moreover, Section 3205 (c)(9)(C) requires the employer to maintain records of the
15 steps taken to implement the written COVID-19 Prevention Program. Under (c)(9)(D) the
16 employer must make the COVID-19 Prevention Program available to employees. Under (c)(9)(E)
17 the employer must keep record of all COVID-19 cases with the employee's name, contact
18 information, occupation, location where they worked, last date at the workplace, and date of
19 positive test.

20 45. Here, Defendants failed to establish, implement, maintain and enforce a compliant
21 written COVID-19 Prevention Program that is in a form readily understandable to employees.
22 Moreover, they have failed to maintain records of the steps taken to implement the written COVID-
23 19 Prevention Program. To the extent they had a COVID-19 Prevention Program it failed to contain
24 the required sections (1) a system for communicating that is readily understandable to employees;
25 (2) a system for identifying and evaluating COVID-19 hazards; (3) a system for investigating and
26 responding to COVID-19 cases in the workplace; (4) a system for the correction of COVID-19
27 hazards; (5) a system for training and instructing employees; (6) a system for physical distancing;
28 (7) a system and implementation of providing face coverings; (8) a system of other engineering

1 controls, administrative controls, and personal protective equipment; (9) a system for reporting,
2 recordkeeping and access. As a result, Defendants violated Labor Code Sections 6401, 6403, and
3 6406, by failing to provide the aggrieved employees with a safe and healthful working environment
4 with the appropriate face coverings, gloves, and properly implementing a system to appropriately
5 clean and disinfecting machinery, equipment, tools, locker rooms and door knobs, buttons and
6 switches and areas, the clock in and clock-out areas, keyboards, and telephones, and things touched
7 throughout the work day by the numerous employees.

8 46. Finally, Labor Code Section 6401.7 requires employers to maintain effective injury
9 prevention programs, and timely correct unsafe and unhealthy conditions and practices, failing to
10 and provide with employee training obligations and record steps taken to implement injury
11 prevention programs. Defendants failed to comply with Labor Code Section 6401.7.

12 **ALTER-EGO ALLEGATIONS**

13 47. Based on information and belief, individual Defendants Flanigan and Durand
14 maintain such a unity of interest, domination and control, and ownership in Defendant Elite, that
15 the separate personalities of the corporation Defendant Elite on the one hand, and the individual
16 shareholders, Defendants Flanigan and Durand on the other hand, have ceased. Based on
17 information and belief, Defendants Flanigan and Durand treated the assets of the corporation as
18 their own; failed to issue stock certificates and failed to maintain corporate records and minutes
19 or hold elections; commingled assets of Defendant Elite with Defendant HRS.

20 48. Based on information and belief, if the acts of Defendant Elite herein are treated as
21 those of the corporation alone, an inequitable result will follow because individual shareholders
22 will be able to use the corporate form to run roughshod over the California Labor Code and cheat
23 the State of California and Federal government out of massive amounts of payroll taxes and
24 workers' compensation premiums by misclassifying Plaintiff and other aggrieved employees as
25 independent contractors.

26 49. Based on information and belief, individual Defendants Flanigan and Durand
27 maintain such a unity of interest, domination and control, and ownership in Defendant HRS, that
28 the separate personalities of the limited liability company Defendant HRS on the one hand, and

1 the individual members, Defendants Flanigan and Durand on the other hand, have ceased. Based
2 on information and belief, Defendants Flanigan and Durand treated the assets of the limited
3 liability company as their own; failed to issue membership interests and failed to maintain
4 company records and minutes or hold elections; commingled assets of Defendant Elite with
5 Defendant HRS.

6 50. Based on information and belief, if the acts of Defendant HRS herein are treated as
7 those of the corporation alone, an inequitable result will follow because individual members will
8 be able to use the corporate form to run roughshod over the California Labor Code and cheat the
9 State of California and Federal government out of massive amounts of payroll taxes and workers'
10 compensation premiums by misclassifying Plaintiff and other aggrieved employees as
11 independent contractors.

12 51. Based on information and belief, Defendants Flanigan and Durand used entity
13 Defendants HRS and Elite as a single enterprise whereas both companies were in the same
14 business; whereas employees of HRS believed they were employed by Defendant Elite; whereas
15 the employees of Defendant HRS reported to a location identified as that of Defendant Elite;
16 whereas the same individuals acting as officers and managers of Defendant Elite are the same as
17 Defendant HRS; whereas the Defendants HRS and Elite use the same law firm, accountant and
18 other professionals. Thus, each entity Defendant is merely an instrumentality or conduit of the
19 other in the furtherance of a single enterprise, and they are the alter ego of each other.

20 **FIRST CAUSE OF ACTION**

21 **(Non-Payment of Minimum Wage and Failure to Pay For All Time Worked) – Labor Code**

22 **Section 1194, 1198, 200, and IWC Orders)**

23 **(Plaintiff Against Defendants)**

24 52. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
25 though fully set forth herein.

26 53. Labor Code Section 1194(a) provides that notwithstanding any agreement to work
27 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
28 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance

1 of the full amount of this minimum wage or overtime compensation, including interest thereon,
2 reasonable attorneys' fees, and costs of suit.

3 54. Labor Code Section 200 defines wages as all amounts for labor performed by
4 employees of every description, whether the amount is fixed or ascertained by the standard of
5 time, task, piece, commission basis, or other method of calculation.

6 55. Labor Code Section 1198 makes it unlawful for employers to employ employees
7 under conditions that violate the Wage Orders. The relevant wage order defines hours worked as
8 the time during which an employee is subject to the control of an employer, and includes all the
9 time the employee is suffered or permitted to work, whether or not required to do so.

10 56. Plaintiff performed work for Defendants.

11 57. Plaintiff was paid less than the minimum wage and her hourly rate by Defendants
12 for hours worked off the clock.

13 58. As a proximate result of the aforementioned violations, Plaintiff has been damaged
14 in an amount according to proof at the time of trial, including liquidated damages under Section
15 1194.2 and penalties under Section 1197.1.

16 **SECOND CAUSE OF ACTION**

17 **(Non-Payment of Overtime Wage – Labor Code Sections 1194, 1198, 510 and IWC**
18 **Orders)**
19 **(Plaintiff Against Defendants)**

20 59. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
21 though fully set forth herein.

22 60. Plaintiff performed work for Defendants and worked overtime hours.

23 61. Defendants knew, or should have known that Plaintiff worked overtime, and that
24 Plaintiff was not paid for the overtime. Specifically, that she was working off the clock time and
25 also was working in excess of eight hours a day without overtime compensation.

26 62. Plaintiff is also entitled to liquidated damages, fines and penalties under Labor
27 Code Section 1194.2.

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1 **THIRD CAUSE OF ACTION**

2 **(Failure to Provide Meal Breaks – Labor Code Sections 226.7 and 512(a) and IWC Wage**
3 **Order)**

4 **(Plaintiff Against Defendants)**

5 63. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
6 though fully set forth herein.

7 64. At all relevant times, the IWC Order and Labor Code Sections 226.7 and 512(a)
8 were in effect and applicable to Defendants.

9 65. At all relevant times, Defendants failed to provide Plaintiff with duty free meal
10 periods in accordance with Labor Code Sections 226.7 and 512(a) and the IWC Order. In some
11 instances, she was interrupted during her meals, while in other instances, she was given meal
12 period beyond the time window provided by law – not before the end of the fifth hour.

13 66. At all relevant times, Defendants intentionally and willfully failed to compensate
14 Plaintiff with one additional hour of pay at her normal regular rate of pay for meal periods that
15 were not provided in accordance with California Labor Code Sections 226.7 and 512(a) and
16 applicable IWC Order.

17 67. Defendants' conduct violates the applicable IWC Order and California Labor
18 Code Sections 226.7 and 512(a), and Plaintiff is thus entitled to recover from Defendants one
19 additional hour of pay at her regular rate for each workday that a compliant meal period was not
20 provided.

21 **FOURTH CAUSE OF ACTION**

22 **(Failure to Provide Rest Breaks – Labor Code Section 226.7 and IWC Wage Order)**

23 **(Plaintiff Against Defendants)**

24 68. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
25 though fully set forth herein.

26 69. Labor Code Section 226.7 and the applicable IWC Wage Order provide that every
27 employer shall authorize and permit all employees to take rest breaks, which in so far as
28 practicable shall be in the middle of each work period and that the rest period time shall be based

1 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
2 major fraction thereof unless the total daily work time is less than three- and one-half hours.

3 70. At all relevant times, Defendants regularly failed to authorize and permit Plaintiff
4 to take duty-free rest periods in accordance with California Labor Code Section 226.7 and the
5 applicable IWC Wage Order. In particular, Defendants required Plaintiff to work four or more
6 hours without authorizing or permitting a ten-minute rest period per each four-hour period or
7 major fraction thereof worked.

8 71. Further, at all relevant times, Defendants failed to compensate Plaintiff premium
9 pay of one additional hour of pay at their regular pay rate for rest periods that were not provided
10 in accordance with Labor Code Section 226.7 and the applicable IWC Wage Orders.

11 72. Defendants' conduct violates the applicable IWC Wage Order and Labor Code
12 Section 226.7. Consequently, pursuant to the IWC Order and Labor Code Section 226.7, Plaintiff
13 is entitled to recover from Defendants one additional hour of pay at her regular rate of pay for
14 each workday that a rest period was not provided.

15 **FIFTH CAUSE OF ACTION**

16 **(Wages Not Timely Paid During Employment – Labor Code Sections 204 and 210)**

17 **(Plaintiff Against Defendants)**

18 73. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
19 though fully set forth herein.

20 74. Labor Code Section 204 provides that all wages earned by an employee for labor
21 performed between the 1st and the 15th days, inclusive, of any calendar month, other than those
22 wages due upon termination of an employee, are due and payable between the 16th and 26th day
23 of the month during which the work was performed. Section 204 also provides that all wages
24 earned by any employee for labor performed between the 16th day and the last day, inclusive, of
25 any calendar month, other than those wages due upon termination of an employee, are due and
26 payable between the 1st day and 10th day of the following month. The section further provides
27 that all wages earned for labor in excess of the normal week period shall be paid no later than
28 the payday for the next regular payroll period.

75. Defendants intentionally and willfully failed to pay Plaintiff all wages earned and due to her, within the time permitted under Labor Code Section 204.

76. Labor Code Section 210 authorizes the following civil penalties for violation of Labor Code Section 204, which are in addition to, and entirely independent and apart from, any other civil or criminal penalties: “(1) for any initial violation, or any willful or intentional violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” The penalties enumerated in Labor Code Section 210 may be recovered in a private civil action. California Labor Code Section 210(b). Thus, Plaintiff is therefore entitled to recover civil penalties pursuant to Labor Code Sections 210 and 218 and all other remedies available for Defendants’ violating Labor Code Section 204.

SIXTH CAUSE OF ACTION

(Final Wages Not Timely Paid – Labor Code Sections 201, 202 and 203)

(Plaintiff Against Defendants)

77. Plaintiff realleges and incorporate by reference all the preceding paragraphs as though fully set forth herein.

78. California Labor Code Sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of the discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

79. At all relevant times, Defendants intentionally and willfully failed to pay Plaintiff all her earned and unpaid wages at the time she was terminated, in violation of California Labor Code Sections 201 and 202.

80. California Labor Code Section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee

1 continue as a penalty from the due date thereof at the same rate until paid or until an action is
2 commenced; but the wages shall not continue for more than thirty (30) days.

3 81. Accordingly, Plaintiff is entitled to recover from Defendants the statutory penalty
4 wages for each day she was not paid, up to a thirty (30) day maximum pursuant to Section 203.

5 **SEVENTH CAUSE OF ACTION**

6 **(Non-Compliant Wage Statements – Labor Code Sections 226(a) and 226.3)**

7 **(Plaintiff Against Defendants)**

8 82. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
9 though fully set forth herein.

10 83. California Labor Code Section 226(a) provides that every employer shall furnish
11 each employee an accurate itemized statement in writing showing: (1) gross wages earned; (2)
12 total hours worked by the employee; (3) the number of piece-rate units earned and any
13 applicable piece rate if the employee is paid on a basis; (4) all deductions, provided that all
14 deductions made on written orders of the employee may be aggregated and shown as one item;
15 (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7)
16 the name of the employee and his or her social security number; (8) the name and address of the
17 legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period
18 and the corresponding number of hours worked at each hourly rate by the employee. The
19 deductions made from payments of wages shall be recorded in ink or other indelible form,
20 properly dated, showing the month, day, and year and a copy of the statement or a record of the
21 deductions shall be kept on file by the employer for at least three years at the place of
22 employment or at a central location within the State of California.

23 84. At all relevant times, Defendants intentionally and willfully failed to provide
24 Plaintiff with complete and accurate wage statements as required by Labor Code Section 226,
25 and failed to provide wage statements whatsoever at the time of paying wages.

26 85. As a result of Defendants' violations of California Labor Code Section 226(a),
27 Plaintiff suffered injuries and damages, including confusion over whether she received all wages
28 earned and owed, difficulty and expense involved in reconstructing pay records, and forcing her

1 to make mathematical computations to analyze whether the wages paid in fact properly
2 compensated her.

3 86. Accordingly, Plaintiff is entitled to recover from Defendants the greater of her
4 actual damages caused by Defendants' failure to comply with Section 226(a), or an aggregate
5 penalty not exceeding \$4,000 and other penalties and fines.

6 **EIGHTH CAUSE OF ACTION**

7 **(Failure to Keep Accurate Payroll Records – Labor Code Sections 1174(d) and 1174.5)**

8 **(Plaintiff Against Defendants)**

9 87. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
10 though fully set forth herein.

11 88. Pursuant to California Labor Code Section 1174(d), an employer shall keep, at a
12 central location in the state or at the plants or establishments at which employees are employed,
13 payroll records showing the hours worked daily by, and the wages paid to employees employed
14 at the respective plants or establishments. These records shall be kept on file for not less than
15 two years. And Section 1174(d) also states that an employer shall not prohibit an employee from
16 maintaining a personal record of hours worked.

17 89. At all relevant times, Defendants intentionally and willfully failed to keep accurate
18 and complete payroll records showing the actual daily hours worked and the proper wages to be
19 paid to Plaintiff.

20 90. As a result of Defendants' violation of California Labor Code Section 1174(d),
21 Plaintiff has suffered injuries and damages, including confusion over whether she received all
22 wages earned and owed to her, difficulty and expense involved in reconstructing pay records,
23 and forcing her to make mathematical computations to analyze the wages paid were accurate.
24 Additionally, Plaintiff has been injured by Defendants' intentional and willful violation of
25 California Labor Code Section 1174(d) because she was denied both the legal right to receive,
26 and the protected interest in receiving, accurate payroll records pursuant to Labor Code Section
27 1174(d).
28

91. Labor Code Section 1174.5 provides that any person employing labor who willfully fails to maintain accurate and complete records as required by Labor Code Section 1174(d) shall be subject to a civil penalty in the amount of \$500.

92. Accordingly, Plaintiff is entitled to recover a civil penalty in the amount of \$500 pursuant to Labor Code Section 1174.5 and all other remedies.

NINTH CAUSE OF ACTION

(Retaliation – Labor Code Section 232.5)

(Plaintiff Against Defendants)

93. Plaintiff realleges and incorporates by reference all the preceding paragraphs as though fully set forth herein.

94. Defendants were prohibited from discharging, formally disciplining, or discriminating against Plaintiff for disclosing information about Defendants' working conditions. Plaintiff disclosed information about Defendants' working conditions, including but not limited such information as: (a) that Plaintiff supported and agreed with former employee Janet Caddel's allegations that Defendants' failed to pay Plaintiff and other employees for all hours worked, including overtime; (b) that Plaintiff supported and agreed with former employee Janet Caddel's allegations that Defendants' lack of concern or empathy for employees, including subjecting Plaintiff and others to verbally abusive tirades; (c) that Plaintiff supported and agreed with former employee Janet Caddel's allegations that Defendants' pressure to not take breaks entitled under Labor Code without fear of retribution, discipline, lack of hours.

95. As a result of Plaintiff disclosing information about Defendants' working conditions, Defendants retaliated against her, formally disciplined her, discriminated against her, and constructively discharged her.

96. Defendants' wrongful termination of Plaintiff was a substantial factor in causing Plaintiff economic damages and lost wages, both past and future, and suffering emotion and mental distress, all in a sum to be proven and determined at trial.

97. Defendants' conduct described herein in was intended to cause injury to Plaintiff to send a message to other employees that they too would be terminated for complaining and

1 voicing concern about Defendants' various legal violations. Defendants' conduct was willful and
2 consciously disregarded Plaintiff's rights and subjected her to unjust hardship so as to constitute
3 malice, oppression or fraud under California Civil Code Section 3294, thereby entitling Plaintiff
4 to punitive and exemplary damages in an amount appropriate to punish or set an example of
5 Defendants.

6 **TENTH CAUSE OF ACTION**

7 **(Retaliation – Labor Code Section 1102.5)**

8 **(Plaintiff Against Defendants)**

9 98. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
10 though fully set forth herein.

11 99. During her tenure of being employed by Defendants, Plaintiff reported to a person
12 with authority over her at least the following information, where she had reasonable cause that
13 such information disclosed legal violations: (a) that Plaintiff and other employees were not getting
14 compensated for all work performed; (b) that Defendants were not accurately logging employees'
15 time or hours or meal breaks and rest breaks; (c) that verbally abusive tirades Plaintiff was being
16 subjected to was creating a hostile work environment.

17 100. As a result of Plaintiff disclosing such information, and because Defendants
18 believed Plaintiff would cooperate with any investigation by the LWDA triggered by Janet
19 Caddel's own PAGA Notice, Defendants retaliated against her and subjected her to adverse
20 employment actions such as stalking her, cajoling her to not support former employee Janet
21 Caddel, harassing her, and finally constructively discharging her.

22 101. As a direct and proximate result of the unlawful conduct of Defendants, Plaintiff
23 suffered a loss of earning and benefits and Plaintiff has also suffered emotional distress as a result
24 of Defendants' actions.

25 102. Plaintiff is entitled to recover \$10,000 in statutory penalties per violation under
26 Section 1102.5 (f).

27 103. Defendants' conduct described herein in was intended to cause injury to Plaintiff
28 to send a message to other employees that they too would be terminated for complaining and

1 voicing concern about Defendants' illegal and unethical business practices. Defendants' conduct
2 was willful and consciously disregarded Plaintiff's rights and subjected her to unjust hardship so
3 as to constitute malice, oppression or fraud under California Civil Code Section 3294, thereby
4 entitling Plaintiff to punitive and exemplary damages in an amount appropriate to punish or set
5 an example of Defendants.

6 **ELEVENTH CAUSE OF ACTION**

7 **(Retaliation – Labor Code Section 98.6)**

8 **(Plaintiff Against Defendants)**

9 104. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
10 though fully set forth herein.

11 105. At all relevant times, Labor Code Section 98.6 was in effect and binding upon
12 Defendants. Labor Code Section 98.6 prohibits any person from retaliating, discriminating, or
13 taking any adverse action against an employee for, among other activities, making a written or
14 oral complaint that he or she is owed back wages, or exercising other rights under the Labor
15 Code, or supporting the Labor Code rights for others. It also prohibits Employers from punishing
16 employees for participating in lawful conduct occurring off work hours away from work
17 premises under Section 96(k).

18 106. At all relevant times, Defendants engaged in prohibited and illegal practices that
19 affected Plaintiff's employment. Defendants failed to pay overtime for work over eight hours a
20 day, and failed to provide compliant meal and rest breaks, failed to maintain accurate time and
21 payroll records, and would verbally abuse Plaintiff and other employees if their production was
22 not to Defendants' liking and whim.

23 107. When Plaintiff complained to Defendants about such abusive and illegal
24 employment practices, and learned she was socializing and supporting former employee Janet
25 Cadell who had filed a PAGA Notice against Defendants, they began harassing and stalking her.

26 108. As a result of Defendants' discrimination and retaliation and harassment, Plaintiff
27 has suffered, and continues to suffer economic damages, including past and continuing loss of
28

1 wages, and non-economic damages, including pain and suffering and emotional and mental
2 distress, in a sum to be determined at trial.

3 109. Plaintiff is also entitled to recover statutory civil penalties of \$10,000 per violation
4 in accordance with Labor Code Section 98.6. Plaintiff is also entitled to be reinstated and to go
5 back to work for Defendants.

6 110. Defendants' conduct described herein was intended to cause injury to Plaintiff to
7 send a message to other employees that they would be terminated and harassed for complaining
8 and voicing concern about Defendants' illegal and unethical business practices. Defendants'
9 conduct was willful and consciously disregarded Plaintiff's rights and subjected her to unjust
10 hardship so as to constitute malice, oppression or fraud under California Civil Code Section
11 3294, thereby entitling Plaintiff to punitive and exemplary damages in an amount appropriate to
12 punish or set an example of Defendants.

13 **TWELFTH CAUSE OF ACTION**

14 **(Constructive Discharge In Violation Of Public Policy)**

15 **(Plaintiff Against Defendants)**

16 111. Plaintiff hereby incorporates by reference the allegations in the above paragraphs
17 of this Complaint as though fully set forth herein.

18 112. Defendants employed Plaintiff at all relevant times.

19 113. Defendants required Plaintiff to work under conditions that violated public policy
20 such as working as an misclassified independent contractor instead of an employee with full
21 access and rights and protections under the Labor Code, including the right to be paid for any
22 and all work including overtime; working under conditions of harassment and hostile working
23 environment in violation of the Fair Employment and Housing Act ("FEHA") where she was
24 cajoled, harassed and stalked for supporting and socializing former employee Janet Caddel who
25 had filed her own PAGA Notice against Defendants; and Defendants' intrusion into Plaintiff's
26 constitutional right to privacy and to associate outside of work with whomever she wanted to,
27 including Janet Caddel, without fearing harassment and retaliation at work. These requirements
28

1 were so intolerable that a reasonable person in Plaintiff's position would have had no reasonable
2 alternative than to resign.

3 114. Plaintiff did resign as a result of Defendants' behavior and such was a substantial
4 factor in causing Plaintiff economic damages and lost wages, both past and future, and suffering
5 emotion and mental distress, all in a sum to be proven and determined at trial.

6 115. Defendants' conduct described herein in was intended to cause injury to Plaintiff
7 to send a message to other employees that they too would be terminated for complaining and
8 voicing concern about Defendants' illegal and unethical business practices. Defendants' conduct
9 was willful and consciously disregarded Plaintiff's rights and subjected her to unjust hardship so
10 as to constitute malice, oppression or fraud under California Civil Code Section 3294, thereby
11 entitling Plaintiff to punitive and exemplary damages in an amount appropriate to punish or set
12 an example of Defendants.

13 **THIRTEENTH CAUSE OF ACTION**

14 **(Violation Labor Code Section 2698, *et seq.* California Private Attorneys General Act –**
15 **("PAGA")**
16 **(Against all Defendants)**

17 116. Plaintiff hereby incorporates by reference the allegations in the above paragraphs
18 of this Complaint as though fully set forth herein.

19 117. PAGA permits an "aggrieved employee" to bring a civil action on behalf of him or
20 herself and on behalf of all other aggrieved employees to recover civil penalties for an employer's
21 violation of sections enumerated in Labor Code Section 2699.5 and 2699.3. An "aggrieved
22 employee" is defined in Labor Code Section 2699, subdivision (c), as "any person who was
23 employed by the alleged violator and against whom one or more of the alleged violations was
24 committed."

25 118. Plaintiff and other aggrieved employees are "aggrieved employees" as defined by
26 California Labor Code Section 2699, subdivision (c) because they are all current or former
27 employees of Defendants and were subject to Defendants' violations of various labor code
28 sections.

1 119. Plaintiff satisfied the requirements of Labor Code Section 2699.3 (a)(1)(A) and
2 (a)(1)(B). Additionally, the LWDA provided no notice it was investigating the violations within
3 65 days of the postmark date of the notice provided in Section 2699.3 (a)(1)(A).

4 120. Plaintiff and other aggrieved employees were subject to violations of the following
5 Labor Code Sections, entitling them to penalties under PAGA: Labor Code Sections 207, 208, 219,
6 246, 248.5, 432.5, 3550, 3551, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, 6407. In particular,
7 Defendants' unlawful policies, practice, and procedures comprising the violations include:

8 a. Defendants' requiring Plaintiff and aggrieved employees to sign invalid
9 independent contractor agreements to attempt to avoid paying full wages in violation of
10 Labor Code Sections 219 and 432.5;

11 b. Defendants' failure to conspicuously post the dates and location of pay for
12 Plaintiff and aggrieved employees in violation of Labor Code Section 207;

13 c. Defendants' failure to pay final pay Plaintiff and aggrieved employees at
14 the proper location and time in violation of Labor Code Section 208;

15 d. Defendants' failure to provide Plaintiff and aggrieved employees with paid
16 sick leave and provide notice of same in violation of Labor Code Section 246 and 248.5;

17 e. Defendants' failure to post and provide Plaintiff and aggrieved employees
18 with workers' compensation information in violation of Labor Code Section 3550 and
19 3551;

20 f. Defendants' failure to provide Plaintiff and aggrieved employees a safe and
21 healthful working environment for failure to implement and maintain a written COVID-19
22 Prevention Program in violation of Labor Code Sections 6400, 6402, 6404, and 6407;

23 g. Defendants' failure to provide Plaintiff and aggrieved employees proper
24 safety equipment and protect employee health care for failure to implement and maintain a
25 written COVID-19 Prevention Program in violation of Labor Code Sections 6401, 6403,
26 and 6406;

27 h. Defendants' failure to maintain and implement injury prevention programs
28 for Plaintiff and aggrieved employees.

1 121. Accordingly, Plaintiff and the aggrieved employees are entitled to penalties against
2 Defendants under Labor Code Section 2699 (f) as well as attorneys' fees and costs pursuant to
3 Labor Code Section 2699 (g) and Code of Civil Procedure Section 1021.5.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as
6 follows:

- 7 1. For general and special damages according to proof but not less than \$500,000;
- 8 2. For pre-judgment interest as permitted by law;
- 9 3. For all penalties and liquidated damages permitted under the California Labor
10 Code, including but not limited to Sections 203, 210, 226, 226.3, 226.8, 1174.5,
11 1194.2 and 1197.1, 1102.5, 98.6, and 2699 (f);
- 12 4. For exemplary, and punitive damages;
- 13 5. For attorney's fees under at least the following statutes: Labor Code Sections 218.5,
14 226, 1174, 1174.5, 1198.5, 1194, 226.7, 1102.5, 2699 (g), and Code of Civil
15 Procedure Section 1021.5;
- 16 6. For an order piercing the corporate and/or limited liability veil;
- 17 7. For the costs of the suite herein;
- 18 8. Reinstatement of Plaintiff's employment; and
- 19 9. For such other and further relief as this Court may deem just and proper.

20
21 DATED: July 19, 2021

SHALCHI BURCH LLP

22
23 By: 

Travis J. Burch, Esq.

Attorneys for Plaintiff Jessica Gutierrez