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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANI NAZARIAN,

Plaintiff,

vs.

ABE MALKIN MD INC. dba
CONCIERGE MD LA; ABRAHAM
MALKIN; and DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: **21STCV31425**

) **COMPLAINT FOR DAMAGES FOR:**

-) 1) **PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) 2) **RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 98.6;**
) 3) **RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 1102.5;**
) 4) **WRONGFUL CONSTRUCTIVE**
) **DISCHARGE IN VIOLATION OF**
) **PUBLIC POLICY;**
) 5) **VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

) **DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, ANI NAZARIAN (hereinafter "Plaintiff"), and alleges:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants ABE MALKIN MD INC. dba CONCIERGE MD LA; ABRAHAM MALKIN; and DOES 1 to 25, inclusive, do business in the County of Los Angeles, and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant ABE MALKIN MD INC. dba CONCIERGE MD LA was and is a domestic California corporation organized and operating in the County of Los Angeles, State of California, and which employed Plaintiff.

4. Defendant ABRAHAM MALKIN is a citizen of California based on Plaintiff's information and belief.

5. In relevant part, Labor Code section 558.1 states:

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

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

6. Plaintiff is informed and believes and thereon alleges that ABRAHAM MALKIN is a natural person and an owner, director, officer, and/or managing agent of Defendant ABE MALKIN MD INC. dba CONCIERGE MD LA, who directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Plaintiff and the Aggrieved Employees (as defined below). Therefore, he is liable to Plaintiff and the Aggrieved Employees for his violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, and the Wage Order (no. 4) pursuant to Labor Code section 558.1. ABE

1 MALKIN MD INC. dba CONCIERGE MD LA and ABRAHAM MALKIN are hereinafter
2 collectively referred to as "MALKIN."

3 7. The "Aggrieved Employees" are all current and former non-exempt or hourly
4 paid California employees who worked for MALKIN during the relevant time period pursuant
5 to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act
6 of 2004 ("PAGA").

7 8. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
8 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
9 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
10 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
11 for the conduct alleged herein. Upon discovering the true names and capacities of these
12 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
13 capacities of these fictitiously named defendants.

14 9. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
15 that information and belief, alleges that at all times herein mentioned, each of the remaining
16 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
17 under the authority of their agency, employment, or representative capacity, with the consent of
18 his/her codefendants.

18 GENERAL ALLEGATIONS

19 10. Plaintiff started working for MALKIN on or around November 2020 as a Licensed
20 Vocational Nurse (LVN). Upon hiring and up through April 2021, Plaintiff was classified as an
21 independent contractor. Plaintiff's rate of pay was \$40 per hour. Plaintiff and the other Aggrieved
22 Employees were paid on a bi-weekly basis. Plaintiff's job duties included traveling to different
23 destinations (including driving in her personal vehicle) and conducting covid-19 testing on
24 individuals. Prior to the covid-19 outbreak, MALKIN had the same business model for LVNs
25 traveling to different appointments, except instead of covid-19 testing, it would be drip hydration
26 services.

27 11. Defendants misclassified Plaintiff and other Aggrieved Employees as independent
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1 contractors. In reality, Plaintiff and other Aggrieved Employees are employees working for
2 Defendants and were misclassified as independent contractors.

3 12. At all relevant times, Defendants directed and controlled Plaintiff and the Aggrieved
4 Employees in all aspects of their work performance. Defendants provided Plaintiff and the
5 Aggrieved Employees with "FIGS" scrubs to wear while working. Defendants provided training
6 to Plaintiff and the other Aggrieved Employees wherein they would train with other nurses and
7 do a "quick run" by them when available. Defendants provided Plaintiff and the other Aggrieved
8 Employees with an email address as part of the team. Defendants set the prices for the various
9 concierge medical services they provided. Defendants emailed Plaintiff and the others their work
10 assignments with the client's name, location, time of appointment, and directions on what to do.
11 Plaintiff and the other Aggrieved Employees had no discretion in changing such appointment
12 times. Defendants also required that Plaintiff and the other Aggrieved Employees report to
13 management.

14 13. Furthermore, Defendants operate as a concierge medical service and the work Plaintiff
15 and the Aggrieved Employees performed was wholly within Defendants' usual course of
16 business of being a concierge medical service, including conducting covid-19 testing.
17 Defendants retained Plaintiff and the Aggrieved Employees to perform medical services for
18 Defendants' customers. Defendants knew or should have known their actions of misclassifying
19 employees as independent contractors violated California law.

20 14. It is Plaintiff's position that MALKIN has committed numerous labor code violations
21 against Plaintiff and the Aggrieved Employees, who include all non-exempt, hourly employees
22 and all employees who were supposed to be classified as hourly, non-exempt employees (but
23 who were misclassified as 1099 independent contractors), who worked for MALKIN during
24 the relevant PAGA period.

25 15. MALKIN violated Labor Code section 226.8. Pursuant to Labor Code section
26 226.8(a)(1), it is unlawful for any person or employer to willfully misclassify an individual as
27 an independent contractor. "Willful misclassification means avoiding employee status for an
28 individual by voluntarily and knowingly misclassifying that individual as an independent
contractor." Cal. Lab. Code Section 226.8(i)(4). If a person or employer has willfully

1 misclassified an individual as an independent contractor, the person or employer shall be subject
2 to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen
3 thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted
4 by law. Cal. Lab. Code Section 226.8(b). If the person or employer has engaged in or is engaging
5 in a pattern or practice of willfully misclassifying individuals as independent contractors, the
6 person or employer shall be subject to a civil penalty of not less than ten thousand dollars
7 (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in
8 addition to any other penalties or fines permitted by law. Cal. Lab. Code Section 226.8(c).

9 16. Labor Code § 2753 provides for joint and several liability for a person who “knowingly
10 advises an employer to treat an individual as an independent contractor to avoid employee status
11 for that individual.” Plaintiff is informed and believes that ABRAHAM MALKIN is and was, at
12 relevant times, an owner, director, officer, or managing agent of Defendants and violated or
13 caused to be violated the provisions regulating the misclassification of employees as independent
14 contractors. Therefore, ABRAHAM MALKIN is individually liable.

15 17. Defendants engaged, suffered, and permitted Plaintiff and the Aggrieved Employees to
16 work. Defendants were clearly aware that Plaintiff and the other Aggrieved Employees worked
17 for them and had the power to prevent Plaintiff and the Aggrieved Employees from working.
18 Defendants also exercised control over Plaintiff and the other Aggrieved Employees’ wages,
19 hours, and working conditions. Further, Defendants had the right to control and exercised such
20 control over the manner in which Plaintiff and the other Aggrieved Employees performed their
21 work for Defendants. Plaintiff and the Aggrieved Employees worked at Defendants’ direction,
22 and their opportunity for profit or loss did not depend in any way upon their skills. The services
23 Plaintiff and the others rendered were at all times an integral part of Defendants’ business. The
24 relationship between Plaintiff and the other Aggrieved Employees, on one hand, and Defendants,
25 on the other, was terminable at will without cause. Despite these circumstances, Defendants
26 willfully misclassified Plaintiff and the other Aggrieved Employees as independent contractors.
27 Defendants knew or should have known their actions of misclassifying employees as
28 independent contractors violated California law.

18. Defendants misclassified Plaintiff and the Aggrieved Employees as independent

1 contractors and engaged in a pattern and/or practice of so doing. Through their misclassification
2 of Plaintiff and the other Aggrieved Employees, Defendants have engaged in a pattern and
3 practice of willful misclassification of their employees as independent contractors for their own
4 financial benefit. Each person or entity referenced above collectively as Defendants advised the
5 other to treat Plaintiff and the Aggrieved Employees at issue in this case as independent
6 contractors.

7 19. MALKIN did not provide Plaintiff and other similarly situated Aggrieved Employees
8 with the minimum wages to which they were entitled for all work performed and did not
9 compensate her and others for all hours worked pursuant to California Labor Code sections
10 1194, 1197 and 1197.1. This is so because the company did not have a formal clock-in/clock-
11 out system and, as such, employee hours were rounded down and to the detriment of the
12 employees.

13 20. Due to Plaintiff being misclassified as an independent contractor, MALKIN also violated
14 Labor Code §510 because it failed to pay Plaintiff and other Aggrieved Employees overtime
15 compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40
16 hours per week throughout their employment. Plaintiff's and other Aggrieved Employees' actual
17 work hours entitled them to overtime compensation, however, MALKIN did not compensate its
18 employees for overtime hours worked. Due to the fact that the employees were misclassified,
19 overtime was not part of the company policy. As such, Plaintiff and the others did not receive
20 one-and-a-half times her regular rate of \$40.00 per hour for hours worked over eight hours in a
21 day and did not receive double time for working over twelve hours in a day. It is important to
22 note that Plaintiff and others routinely worked 50-60 hours per week. Furthermore, even after
23 Plaintiff and others were placed on payroll as W-2 employees, the company policy was not to
24 pay any overtime. As such, Plaintiff and the other Aggrieved Employees would be advised to
25 take the hours from one week (if it were above 40 hours in the week) and to transfer it over to
26 "lighter" work weeks to balance it out.

27 21. MALKIN also violated Labor Code § 226.7 and the appropriate Industrial Welfare
28 Commission because it failed to provide Plaintiff and the other Aggrieved Employees with 10-
minute rest periods for every four hours of work, or majority portion thereof, throughout their

1 employment. MALKIN did not completely relieve Plaintiff and others of all duty during said
2 rest periods. MALKIN did not pay to Plaintiff and others one additional hour of pay at their
3 regular rate of compensation for each workday that one or more statutory rest periods was not
4 provided. It was not part of the company policy for employees such as Plaintiff to take rest
5 breaks. Due to the fast-paced nature of the job and the fact that Plaintiff and others were rushing
6 from appointment to appointment, which were booked back-to-back, the work environment and
7 the culture at MALKIN did not lend itself to the employees receiving statutory rest breaks
8 wherein they were relieved of all work duties. The environment at MALKIN was not conducive
9 to receiving statutory rest breaks under California law and timely, statutory rest breaks were not
10 authorized or enforced, especially because Plaintiff and others were misclassified as independent
11 contractors.

12 22. MALKIN violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
13 Commission Wage Order (no. 4) because it failed to provide hourly, non-exempt employees,
14 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five
15 (5) hours of work throughout their employment. MALKIN did not completely relieve Plaintiff
16 and the other Aggrieved Employees of all duty during said meal periods. MALKIN did not pay
17 to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate
18 of compensation for each workday that one or more statutory meal periods was not provided.
19 Due to the nature of their work in traveling to different sites and conducting covid-19 testing
20 with pre-booked appointments, wherein Plaintiff and others had to beat traffic, Plaintiff and
21 others would not have the ability or opportunity to take uninterrupted, timely, and complete meal
22 breaks wherein they were relieved of all work duties. As soon as Plaintiff was done with one
23 appointment, she had to travel to a new appointment and did not have the time or the opportunity
24 to take a 30-minute, uninterrupted meal period wherein she was relieved of all work duties.
25 Consequently, the environment at MALKIN was not conducive to receiving statutory meal
26 breaks under California law. Like the rest breaks, receiving a thirty-minute uninterrupted and
27 timely meal break was not part of the company culture and was not enforced by MALKIN.
28 Consequently, it was the normal practice and custom of MALKIN not to authorize, permit, and
enforce timely statutory meal periods.

1 23. Furthermore, during the relevant time period and due to the labor code violations as
2 discussed above, MALKIN failed to pay Plaintiff and other similarly situated Aggrieved
3 Employees all wages due to them within any time period specified by California Labor Code
4 section 204.

5 24. MALKIN was also in violation of California Labor Code section 226(a), by failing to
6 include pertinent information on the wage statements, including but not limited to, the full and
7 correct name of the legal employer along with the employer's correct legal address (including
8 the "doing business as" name of Concierge MD LA, all hours worked, including overtime, all
9 applicable hourly rates in effect, the correct identifying information for each employee, gross
10 wages earned, net wages earned, premium pay for the missed meal and rest breaks, the correct
11 start and end of the pay period, all deductions, and business expense reimbursement, among
12 others. As such, MALKIN did not provide Plaintiff and other similarly situated Aggrieved
13 Employees with complete, accurate itemized wage statements. In fact, due to misclassifying
14 Plaintiff and others as 1099 employees, MALKIN did not provide Plaintiff and others with any
15 actual paystubs.

16 25. During the relevant time period, MALKIN also failed to keep accurate and complete
17 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
18 others pursuant to California Labor Code sections 1174(d).

19 26. MALKIN violated Labor Code § 203 because it willfully failed to pay Plaintiff and other
20 similarly situated Aggrieved Employees earned and due wages upon separation of employment,
21 either immediately upon involuntary termination, or within 72 hours of resignation. These earned
22 but unpaid wages include compensation for all hours worked, minimum wages, overtime
23 compensation, premium pay for missed meal and rest breaks, and business expense
24 reimbursement.

25 27. Also, during the relevant time period, Plaintiff and other Aggrieved Employees incurred
26 necessary, business-related expenses and costs that were not reimbursed by MALKIN. These
27 costs include, but are not limited to, the use of personal cell phones for work purposes in that
28 Plaintiff and the others were required to download a "timesheets" and "Slack" application in
order to log their hours. Moreover, Plaintiff and the others would have to use their personal cell

1 phone when communicating with MALKIN management regarding work-related issues. In
2 addition, and although Plaintiff and others traveled to each appointment in their personal
3 vehicles, Plaintiff and others were not actually reimbursed for their mileage or wear and tear on
4 their personal vehicles. Accordingly, MALKIN was in violation of California Labor Code
5 sections 2800 and 2802.

6 28. Moreover, due to the misclassification, MALKIN failed to provide sick pay pursuant to
7 Labor Code section 246 and also failed to provide Worker's Compensation coverage for
8 Plaintiff and other aggrieved employees in violation of Labor Code Section 3700.5.

9 29. Plaintiff was retaliated against for complaining to MALKIN about wage and hour
10 violations that were being committed against her in that she was misclassified as an independent
11 contractor. Not surprisingly, after Plaintiff's complaints to management and Plaintiff's May 7,
12 2021 notice to the Labor and Workforce Development Agency ("LWDA") regarding
13 Defendants' violations of the Labor Code, Defendants stopped giving Plaintiff work
14 assignments. There were clients that were specifically requesting Plaintiff's services, however,
15 as of June 2021, Plaintiff's manager stopped assigning work to Plaintiff. Defendants continued
16 to schedule assignments for the other nurses. Due to the egregious labor code violations in
17 misclassifying Plaintiff and not assigning Plaintiff any work, Plaintiff was forced to quit her job.
18 As such, Plaintiff was constructively terminated in violation of public policy.

19 **FIRST CAUSE OF ACTION**

20 **PRIVATE ATTORNEYS GENERAL ACT**

21 **Individual and Representative Claim for PAGA penalties under California Labor Code**
22 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 226.8, 232, 246, 510, 512,**
23 **558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2753, 2802, 3700.5)**

24 **(Plaintiff Against all Named Defendants and all DOE Defendants)**

25 30. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 29, inclusive, of this Complaint as though fully set forth herein.

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

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

3 33. Plaintiff therefore has exhausted all administrative remedies required of her under
4 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
5 cause of action and pursue penalties in a representative action for Defendants' violations of the
6 Labor Code.

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

14 35. Plaintiff is an "Aggrieved Employee" because Plaintiff was employed by the alleged
15 violator and had one or more of the alleged violations committed against her, and therefore is
16 properly suited to represent the interests of other current and former hourly, non-exempt
17 employees who worked for MALKIN during the relevant PAGA Period.

18 36. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
19 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
20 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

21 37. Plaintiff therefore has exhausted all administrative remedies required of her under
22 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
23 cause of action and pursue penalties in a representative action for Defendants' violations of the
24 Labor Code.

25 38. California Labor Code section 2699 et seq. imposes penalties upon culpable
26 Defendants for violating the Labor Code.

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

8 40. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
9 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
10 seeking individual/victim specific relief or underpaid wages for Plaintiff or other Aggrieved
11 Employees in this specific cause of action under the Private Attorneys General Act.

12 41. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
13 the following:

14 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
15 226.3, 226.7, 226.8, 232, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2753,
16 2802, 3700.5 via 2698 and 2699 and any other Labor Codes and Industrial Welfare
17 Commission Wage Order Provisions violated based on the facts alleged in this
18 Complaint.

19 42. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
20 costs, and civil penalties on behalf of Plaintiff and other current and former Aggrieved
21 Employees as alleged herein in an amount to be shown according to proof at trial and within the
22 jurisdictional limits of this Court.

23 **SECOND CAUSE OF ACTION**

24 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6**

25 **(California Labor Code section 98.6)**

26 **(Plaintiff against all Named Defendants except ABRAHAM MALKIN, and against all**
27 **DOE Defendants, and each of them)**
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1 43. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 42, inclusive, of this Complaint as though fully set forth herein.

3 44. California Labor Code section 98.6 provides, in pertinent part, as follows:

4 "A person shall not discharge an employee or in any manner discriminate, retaliate, or
5 take any adverse action against any employee or applicant for employment because the
6 employee or applicant engaged in any conduct delineated in this chapter...or because
7 the employee or applicant...made a written or oral complaint that he or she is owed
8 unpaid wages...

9 45. In doing the things herein alleged, ABE MALKIN MD INC. violated Labor Code section
10 98.6 in that it retaliated against Plaintiff for complaining to management and sending notice to
11 the LWDA about the labor code violations that were being committed by Defendants.

12 46. As a direct and proximate result of the aforementioned acts and omissions of
13 Defendants, Plaintiff suffered general and compensatory damages, including but not
14 limited to, loss of income (past and future), loss of employment benefits (past and future),
15 general and compensatory damages (past and future), mental pain and anguish and emotional
16 distress (past and future), and will continue to suffer in the future, in an amount to be proved at
17 trial. Moreover, pursuant to Labor Code section 98.6, an employer who violates this section is
18 liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each
19 violation of this section.

20 47. The foregoing conduct engaged in by Defendants and each of its directors, officers
21 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
22 and carried on with a conscious and willful disregard of their workers' right to work in an
23 environment free of retaliation, so as to justify the imposition of punitive damages to punish
24 and set an example of said Defendants.

25 **THIRD CAUSE OF ACTION**

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

27 **(Plaintiff against All Named Defendants except ABRAHAM MALKIN, and against all**
28 **DOE Defendants, and each of them)**

1 48. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 47, inclusive, of this Complaint as though fully set forth herein.

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

13 50. As discussed fully above, Plaintiff complained to Defendants and sent notice to the
14 LWDA about the company's illegal conduct and the labor code violations being committed
15 against Plaintiff and the other Aggrieved Employees.

16 51. ABE MALKIN MD INC. retaliated against Plaintiff for her whistleblowing, as alleged
17 above, all in violation of Labor Code § 1102.5.

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

23 53. Plaintiff requests all available relief under Labor Code § 1102.5 including damages
24 and the imposition of civil penalties of \$10,000 for each violation as well as attorney's fees.
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FOURTH CAUSE OF ACTION

WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY

(Against All Named Defendants except ABRAHAM MALKIN, and against all DOE Defendants)

54. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 53, inclusive, of this Complaint as though fully set forth herein.

55. At all times during her employment with MALKIN, Plaintiff performed her duties with the utmost diligence and competence.

56. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and actions to treat her differently and not give her any work assignments in an effort to get Plaintiff to quit her employment as alleged herein, was motivated by Plaintiff's whistleblowing and complaints about the wage and hour violations being committed against Plaintiff. Defendants intentionally created the aforementioned retaliation, thereby not giving Plaintiff an opportunity to work in an environment free of retaliation. This situation became intolerable for Plaintiff and Plaintiff had no alternative but to quit.

57. The employment of Plaintiff was constructively wrongfully terminated in or around June 2021 in violation of the fundamental public policy of the State of California with respect to retaliating against an employee on account of her whistleblowing. Moreover, Plaintiff was forced to hire an attorney to assist her to end these illegal activities. Said conduct violated statutory and constitutional expressions of public policy including, the California Labor Code and the California Constitution, Article 1 section 8.

58. As set forth above, said actions by Defendants were wrongful and in violation of the fundamental principles of the public policy of the State of California as reflected in its laws, objectives and policies. Said statutes and constitutional expressions of public policy include, but are not limited to, California Labor Code and the California Constitution, Article 1 section 8. These laws inure to the benefit of the public at large, and not just the private interests of the employers and employees whom they govern or protect.

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

6 60. The foregoing conduct engaged in by Defendants and each of their directors, officers
7 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
8 and carried on with a conscious and willful disregard of their workers' right to work in an
9 environment free of retaliation due to whistleblowing, so as to justify the imposition of
10 punitive damages to punish and set an example of said Defendants.

12 **FIFTH CAUSE OF ACTION**

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

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

15 **(Plaintiff against All Named Defendants except ABRAHAM MALKIN, and against all**
16 **DOE defendants)**

17 61. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 60, inclusive, of this Complaint as though fully set forth herein.

19 62. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
20 constitutes unfair and unlawful business practices under California Business and Professions
21 Code Section 17200, et seq.

22 63. Defendant's violations of California labor laws and the Labor Code constitutes a
23 business practice because it was done repeatedly over a significant period of time in a
24 systematic manner that was detrimental to Plaintiff and others.

25 64. For the four years preceding the filing of this action, Plaintiff has suffered damages
26 and request damages and/or restitution of all monies and profits to be disgorged from
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1 Defendant ABE MALKIN MD INC. in an amount according to proof at time of trial, but in
2 excess of the jurisdiction of this Court.

3 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
4 follows:

- 5 1. For compensatory damages including lost past and future wages, regular wages,
6 overtime, and all other sums of money, including employment benefits, together
7 with interest on said amounts, and any other economic injury to Plaintiff, according to
8 proof;
- 9 2. For general damages according to proof;
- 10 3. For special and consequential damages to the extent allowed by law;
- 11 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
12 at trial;
- 13 5. For an award of punitive damages against Defendant ABE MALKIN MD
14 INC. according to proof;
- 15 6. For restitution and disgorgement for all unfair business practices by Defendant ABE
16 MALKIN MD INC. against Plaintiff in an amount subject to proof at trial;
- 17 7. For an order enjoining Defendant ABE MALKIN MD INC. from further unfair and
18 unlawful business practices in violation of Business and Professions Code Sections
19 17200, et seq.;
- 20 8. For maximum civil penalties available under the Labor Code and applicable Wage
21 Order against Defendants as described more particularly in the Complaint and
22 representative PAGA claim;
- 23 9. For all remedies available to Plaintiff under the applicable Wage Order and the
24 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
25 liquidated damages, damages, penalties, and waiting time penalties according to proof
26 to the extent permitted by law via PAGA;
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28

- 1 10. For the imposition of civil penalties and/or statutory penalties;
2 11. For all interest as allowed by law;
3 12. For all costs and disbursements incurred in this suit;
4 13. Reasonable attorney's fees where available by law, including but not limited to,
5 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
6 Labor Code section 1102.5, and/or other applicable laws; and
7 14. For such other and further relief as this Court may deem proper.
8

9 **DATED:** August 25, 2021

MESSRELIAN LAW INC.

10
11 By 
12 Harout Messrelian, Esq.
13 Attorneys for Plaintiff Ani Nazarian

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
16

17
18 **DATED:** August 25, 2021

MESSRELIAN LAW INC.

19
20 By 
21 Harout Messrelian, Esq.
22 Attorneys for Plaintiff Ani Nazarian
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