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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

DANILO ANG, an individual, and REBECCA
HOLLMAN, an individual, on behalf of
themselves and other aggrieved employees,

Plaintiffs,

vs.

INFINITY LABORATORIES, INC., Colorado
corporation; SOPHIA SUECK, an individual;
JOANNE STARKEY, an individual, and DOES
1-20, inclusive.

Defendants.

CASE NO.: 37-2021-00025757-CU-WT-CTL

SECOND AMENDED COMPLAINT FOR:

- 1) DISCRIMINATION AND
RETALIATION ON THE BASIS OF
RACE;**
- 2) DISCRIMINATION ON THE BASIS OF
RACE-PLUS-SEX;**
- 3) DISCRIMINATION ON THE BASIS OF
AGE;**
- 4) HARASSMENT ON THE BASIS OF
RACE;**
- 5) HARASSMENT ON THE BASIS OF
RACE-PLUS-SEX;**
- 6) RETALIATION FOR ENGAGING IN
PROTECTED CONDUCT;**
- 7) FAILURE TO PREVENT
DISCRIMINATION, HARASSMENT,
AND RETALIATION;**
- 8) AIDING-AND-ABETTING;**
- 9) VIOLATION OF CALIFORNIA'S
WHISTLEBLOWER PROTECTION
LAW;**
- 10) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**
- 11) NEGLIGENT HIRING AND
SUPERVISION;**
- 12) FAILURE TO PAY OVERTIME
WAGES;**
- 13) FAILURE TO PROVIDE MEAL/REST
BREAKS**
- 14) FAILURE TO PAY ALL WAGES
OWED AT DISCHARGE;**
- 15) FAILURE TO PROVIDE ACCURATE**

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WAGE STATEMENTS;
16) PLAINTIFF ANG’S
REPRESENTATIVE ACTION FOR
CIVIL PENALTIES;
17) PLAINTIFF HOLLMAN’S
REPRESENTATIVE ACTION FOR
CIVIL PENALTIES.

THE PARTIES

3. Plaintiffs are residents of the State of California and were employed by Defendants. Ang worked as an Operator and, later, an Account Manager. Hollman worked as a Technician and sole Trainer.

4. Defendant Infinity Laboratories, Inc., a Colorado corporation, was a corporation, association, partnership, joint venture, or other business entity, organized and existing under the laws of the State of Colorado and at all times herein mentioned conducted business in the State of California, and throughout the County of San Diego, including at the location 5940 Pacific Mesa Ct #209, San Diego, CA 92121; which is the location where the unlawful employment decisions were made and/or where the records relating to the unlawful employment decisions at issue in this lawsuit were and are maintained.

5. Plaintiffs are informed and believe, and based thereon, allege that Defendant Sophia Sueck ("Sueck") is and at all times mentioned herein, a resident of the State of California and a Site Director at Defendant Infinity. Sueck took all actions alleged herein in the course and scope of her employment with Infinity; or, alternatively, in her individual capacity.

6. Plaintiffs are informed and believe, and based thereon, allege that Defendant Joanne Starkey ("Starkey") is and at all times mentioned herein, a resident of the State of Colorado. From October 2019 to November 2020, Starkey was Director of Operations at Defendant Infinity; and she has served as Vice President of Operations at Defendant Infinity since November 2020. Starkey took all actions alleged herein in the course and scope of her employment with Infinity; or, alternatively, in her individual capacity.

7. Plaintiffs are unaware of the true names and capacities of the Defendants fictitiously designated as "DOES" 1 through 20, and therefore sues those Defendants by these fictitious names. Plaintiffs will amend this Complaint when the true names and capacities of these factiously designated Defendants have been ascertained. Plaintiffs are informed and believe, and thereon allege, that "DOES" 1 through 20, are legally responsible in some manner for the events and happenings referenced that caused the injuries to Plaintiffs for which Plaintiffs now seek damages.

1 8. Plaintiffs are informed and believe, and thereon allege, that Defendants were the
2 agents, servants, employees of the other Defendants, and were acting within the scope, course and
3 authority of their agency and or employment. Plaintiffs are further informed, believe, and thereon
4 allege that each of the Defendants consented to, ratified, participated in, or authorized the acts of
5 the remaining Defendants.

6 9. Plaintiffs are informed and believe, and thereon allege, that all Defendants
7 compelled, coerced, aided, and/or abetted the discrimination, retaliation, and harassment alleged in
8 this Complaint; conduct that is prohibited under California Government Code § 1240(i).

9 **JURISDICTION, VENUE, AND EXHAUSTION OF REMEDIES**

10 10. Jurisdiction is proper in the Superior Court for the County of San Diego because it
11 has general subject matter jurisdiction and no statutory exceptions to jurisdiction exist.

12 11. This Court has jurisdiction over Defendant Infinity because it is an association,
13 corporation, or business entity based in, authorized, registered to conduct, or in fact conducts
14 substantial business in the State of California, County of San Diego.

15 12. This Court has jurisdiction over Defendant Sueck as she is a citizen of the State of
16 California.

17 13. Venue is proper in the County of San Diego as a substantial part of the events and
18 omissions giving rise to the claims occurred in this County.

19 14. Plaintiffs have filed charges of discrimination with, and received right to sue letters
20 from, the California Department of Fair Housing and Employment. Ang has also given written
21 notice by certified mail to the California Labor and Workforce Development Agency (“LWDA”)
22 and Defendant Infinity of the specific provisions of the Labor Code he alleged to have been
23 violated, including the facts and theories to support the alleged violations; and the LWDA gave no
24 notice that it intended to investigate the alleged violations. Plaintiffs have thus exhausted their
25 administrative remedies.

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1 **INFINITY LABS TRANSFERS SUECK TO SAN DIEGO AFTER A FAILED CAREER IN**
2 **COLORADO.**

3 19. Though it had acquired a pool of extraordinarily talented and experienced
4 employees, Infinity opted to give control of the Ang’s worksite to Sueck—a non-Asian employee
5 whose inability to work with those at Infinity’s Colorado location was astoundingly rewarded with
6 a transfer into her new role in San Diego as Site Director.

7 20. Sueck lacked a basic working knowledge of common scientific terms, and was
8 completely unqualified for the role. She also could not perform even the most basic tasks. Clients
9 often Sueck could not even send an e-mail correctly; as she often ended up sending information to
10 the wrong companies. Did Infinity punish her incompetence? Of course not! Sueck is not Asian.
11 So it resolved the issue by instead changing her role to limit client interaction.

12 21. As this treatment and Joanne Starkey’s disgusting Facebook post proves, Infinity is
13 a bastion of anti-Asian animus. It is within that environment that Sueck thrived, while Ang and
14 Hollman languished.

15 **SUECK MOCKS HOLLMAN’S ASIAN HERITAGE AND DUBS HOLLMAN A “GOSSIP”**
16 **FOR COMPLAINING ABOUT PAY DISPARITIES.**

17 22. During a weekly video-conference with senior-level managers in Colorado,
18 Sueck—obviously wanting to endear herself to the C-Suite executives at Infinity that share
19 Starkey’s abhorrent views—decides it would be *hilarious* to mock Hollman because she is Asian.

20 23. Hollman sat attentively throughout the meeting, and was thus extremely surprised
21 when, afterwards, Sueck accuses her of sleeping during the meeting.

22 24. When Hollman explains that was not the case, Sueck claims the other executives on
23 the videoconference—including Starkey—also accuse her of sleeping because it looked like
24 Hollman was closing her eyes. Sueck’s and Starkey’s implied solution? Hollman should open up
25 her eyes more.

26 25. Sadly, with no support and facing a Company that was clearly hostile against the
27 Asian community, Hollman tried to comply, painstakingly opening her eyes wider during these
28 meetings to avoid another baseless, racist attack.

1 26. As time wears on, Sueck goes to great lengths to sabotage Hollman’s reputation by
2 engaging in negative stereotyping of Hollman as meek and lacking confidence—two other
3 negative stereotype often pinned on Asian-American women—for allowing team-members to
4 “overstep into her responsibilities.” Indeed, as one study found, Asian women commonly deal
5 with employers and managers who see them “as incapable of being or becoming leaders” and
6 “consider [them] submissive/passive/ quiet” at work.² Sueck then continues attacking Hollman’s
7 reputation by falsely characterizing Hollman as a “gossip” after Hollman began asking others at
8 the San Diego site about obvious pay disparities. And to ensure she adequately derails Hollman’s
9 career, Sueck puts all of these sexist, racist attacks into Hollman’s performance reviews.

10 **SUECK PASSES OVER HOLLMAN FOR A PROMOTION, INSTEAD GIVING THE**
11 **ROLE TO SOMEONE WHO IS NOT ASIAN AND YOUNGER, AND THEN DEMOTES**
12 **HOLLMAN INSTEAD.**

13 27. Infinity eventually tasks Sueck with hiring a new Microbiologist Laboratory
14 Manager for the San Diego site. A perfect role for Hollman, given she is a qualified
15 Microbiologist Technologist with years of relevant experience working in lab environments,
16 including at the very San Diego site she would manage. But being over 40 and of Asian heritage
17 are two deal breakers for a racist, ageist manager like Sueck.

18 28. Instead, Sueck finds a trusted defender of her incompetence in Arash Mahmoudi,
19 hiring him for the role instead. Mahmoudi is just an inexperienced and unqualified as Sueck, and
20 expectedly flounders in his new job. Yet Sueck decides she is not going to correct her mistake and
21 give the role to Hollman; the most deserving candidate. After all, Mahmoudi is significantly
22 younger than Hollman. And he is not Asian. That is why Sueck chose Mahmoudi over Hollman
23 in the first place.

24 29. Instead, she decides to force Hollman to become the sole “Trainer” for the entire
25 San Diego office. Hollman thus becomes responsible for training Mahmoudi *for the very role for*
26 *which she applied!* Worse yet, Sueck demands Hollman do all of this work without *any* type of

27 ² American Psychological Association, *From Exotic to Beautiful*, ABA JOURNALS ARTICLE
28 SPOTLIGHT (Jul. 26, 2018) (available at: <https://www.apa.org/pubs/highlights/spotlight/issue-119>).

1 pay increase. But Sueck wants to keep Mahmoudi as, together, they can proceed to torment and
2 torture others—including Ang and Hollman—because of their race.

3 **MAHMOUDI NITPICKS AND DIGS INTO HOLLMAN’S WORK AND, ONCE HE**
4 **GROWS BORED, CONSPIRES WITH SUECK AND STARKEY TO GET HOLLMAN**
5 **FIRE.**

6 30. Mahmoudi, the unqualified laboratory manager Sueck hires over Hollman, happily
7 joins in making Hollman’s life as difficult as possible.

8 31. For example, when Hollman attempts to explain the severe repercussions that could
9 result from Mahmoudi’s repeated flouting of the lab’s sanitary and safety protocol—as well as
10 FDA guidelines (*see* Code of Federal Regulations, Title 21, Part 211, Subpart I)—he dismisses her
11 outright, showing he is just as unwilling to listen to her just as Sueck. Hollman raises the issue to
12 Sueck several times. Rather than deal with the problem and ensure Infinity continued to meet
13 FDA regulations, Sueck told Hollman to stop complaining, that “it would be handled as
14 management felt appropriate,” and then punished Hollman for her complaints by putting a
15 negative performance review in her file specifically noting that Hollman had been consistently
16 telling Sueck there was a problem.

17 32. Sueck and Mahmoudi then went a step further after attending a meeting with
18 Starkey. Starkey, who (like Sueck) hated Asian people, became Sueck’s go-to executive when
19 trying to concoct reasons to punish Asian employees. Starkey encouraged Sueck to not just put
20 something in Hollman’s file, but to also place her on an unwarranted probationary period. Their
21 message was clear—speak out again and we will fire you.

22 33. But that was not enough for the racist trio of Starkey, Sueck, and Mahmoudi. The
23 three conspire to create scenarios wherein they can continue to berate, discredit, and harass
24 Hollman because she is Asian—such as requiring Hollman attend weekly performance
25 improvement meetings as well, where they could continue to mete out their usual harassment and
26 *solely* point out her mistakes.

27 34. Not a single, non-Asian employee at Infinity was treated with such disdain. And it
28 became so bad that, in or around June of 2020, Hollman had to seek treatment for stress and

1 anxiety. Then, once Sueck and Mahmoudi grew bored of harassing and bullying Hollman, they
2 conspired together to get her fired. Rather than speak with Hollman, or try to understand why her
3 supervisors were setting her up to fail, Infinity fires Hollman.

4 35. Hollman was a dedicated employee, and wanted nothing more than to work. She
5 did not deserve the terrible treatment meted out by Infinity, Sueck, and Mahmoudi. She did not
6 deserve to have her reputation dragged through the mud. She certainly did not deserve to suffer at
7 the hands of Infinity's racist, sexist, ageist managers.

8 **SUECK AND MAHMOUDI HARASS AND TORMENT ANG BECAUSE HE IS ASIAN**
9 **AND SPOKE-UP ON BEHALF OF INFINITY'S CUSTOMERS BEFORE ULTIMATELY**
10 **TERMINATING HIM.**

11 36. Ang is an Asian man. That is why Defendants did not see Ang as passionate. Or
12 business savvy. Or willing to stand-up for what is right. Their hatred instead led them to view
13 Ang through the lens of the "Yellow Peril"—a lens that distorts all "Asian men as dangerous
14 foreigners or martial artists"³—and label him as dangerous, aggressive, and ready to attack
15 whenever he had the audacity to ask a question or offer to help.

16 37. Indeed, Sueck's and Mahmoudi's incompetence and lack of qualifications makes it
17 extraordinarily difficult for Ang (and others) to perform their jobs, and has a clearly negative
18 impact on the working environment. Ang tries to help them but, rather than listen to this feedback
19 and correct their mistakes, both instead punish Ang.

20 38. Sueck openly treats Ang (who, like Hollman, is also Asian-American) with the
21 same level of vitriol and disrespect Hollman suffered anytime he dares question her decisions. For
22 example, soon after starting at Infinity, Sueck randomly refuses to continue performing gas line
23 point of use testing for a long-time customer for no articulable reason other than her own gross
24 incompetence. When Ang rightfully questions Sueck because he understood the importance of
25 such testing—testing on which pharmaceutical companies relied to ensure (1) compliance with the
26 FDA' regulation of gases as "finished pharmaceuticals" and (2) the safety of consumers and final
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28 ³ Rhoda J. Yen, *Racial Stereotyping of Asians and Asian Americans and Its Effect on Criminal Justice: A Reflection on the Wayne Lo Case*, 7 ASIAN L.J. 1, 13 (2000).

1 products (*see* Code of Federal Regulations, Title 21, Part 211, § 211.22; 21 U.S.C. § 351)—she
2 and Mahmoudi badgers and abuses Ang for simply doing his job.

3 39. Though Sueck accuses Ang of attacking her, he is merely attempting to explain that
4 Infinity could accommodate the customer’s request, as it had before. But neither Sueck nor
5 Mahmoudi would hear of it. Ang is only vindicated after going out of his way to prove Infinity
6 could accommodate the customer—a fact he knew all along, and something about which both
7 Sueck and Mahmoudi should have been aware.

8 40. Nevertheless—likely to excuse their prior failure and incompetence—they
9 unilaterally impose a new policy requiring Ang to automatically reject any request from customers
10 that did not include a PO number or for “uncommon” testing.

11 41. Ang was unwilling to compromise his integrity and dedication to the lab’s customers,
12 or to jeopardize the well-being of others. He thus refuses. And, once again, Sueck goes on a
13 tirade, wrongfully accusing him of “being aggressive”—the same unfounded sexist, racist
14 accusation she spread behind Ang’s back after he previously questioned her decision-making.
15 Again, Ang is not being aggressive. Sueck just dislikes him because he is Asian, and has the
16 audacity to stand up for Infinity’s customers. Customers who, notably, rely on Infinity’s testing to
17 help address health, environmental, and safety issues they face.

18 42. Sueck is, of course, just a symptom of the rotten, vitriolic working environment that
19 Infinity cultivates. Sueck instructs Anna Carr—the Sales and Customer Service Manager—to, for
20 example, criticize Ang for the grammar and punctuation he uses in his e-mails because Sueck
21 erroneously perceives him (an Asian man) as a foreigner with limited English proficient. Yet,
22 when Sueck (a white employee) makes those *same* mistakes, Carr has nothing to say.

23 43. Additionally, *many* employees had lodged complaints against Sueck for “being
24 aggressive” and mistreating workers—*i.e.* the same behavior for which Sueck attempts to penalize
25 Ang. Of course, Infinity does nothing to address those issues because Sueck is not Asian. Ang is.
26 So Sueck, Starkey, and Ana continue to foster and grow their racist, sexist narrative of Ang as
27 “aggressive,” despite there being no objectively provable facts to support such claims. And as a
28 result, every time Ang lodges a complaint or sends a misconduct report to the company—

1 including to the CEO—they are summarily dismissed, and instead he is again labelled as
2 aggressive. As Infinity makes clear, it would only punish its non-white staff, as Ang would soon
3 discover.

4 44. Ang attempts to smooth things over with Sueck. He goes to Sueck's office and
5 tries explaining himself, and the possible cause for their miscommunication. But Sueck explodes
6 in rage and demands he go back to his office. While heading back to his office, Sueck goes on a
7 tirade, calling several senior level managers to ensure her false version of events is the first they
8 would hear. Starkey calls Ang, asking him to leave the lab and not come back until next Monday.
9 The Vice-President of Sales Gary Doucette ("Doucette") also reaches out immediately after
10 Starkey, though he hopes to schedule a meeting for the following Tuesday, January 21, 2020;
11 assuring Ang that they "don't condone that type of behavior;" and allowing Ang to finish some
12 quotes for Infinity's clients.

13 45. As Ang has since discovered, Sueck's hatred of Asian men led to her conspiring
14 with Mahmoudi to create a falsified incident report. A report she clearly hoped would help her in
15 her ongoing campaign to paint Ang as the stereotypical "aggressive" and "dangerous" Asian-man
16 whom everyone at work needed to avoid and watch out for. When Sueck and Mahmoudi were
17 done creating their false incident report, they sent it over to Starkey for her approval.

18 46. Starkey, like Sueck, hated Asian people—as her Facebook post proves. She clearly
19 bought into the same racist, "yellow peril" stereotypes motivating Sueck's ongoing harassment of
20 Ang. Starkey thus gleefully gave Sueck and Mahmoudi advice as to how to strengthen the false
21 incident report and ensure anyone at Infinity who read would too believe their racist lies about
22 Ang. Once finalized, Starkey sends the report over to Doucette and convinces him to adopt their
23 racist account, rather than investigate the matter.

24 47. However, Ang had already begun to (rightly) suspect all of Sueck's prior behavior
25 was motivated by her dislike of people with Asian heritage. He informs Infinity of his suspicions
26 on January 17, 2020. But as a precursor to what is to come, Infinity refuses to hear the report, or
27 take any of the documents he had prepared in support of it. Indeed, Infinity has *still* never
28 conducted any investigation into Ang's claims.

1 48. Instead, Infinity suddenly and surprisingly moves the location of the January 21st
2 meeting to the Spring Hill Suites. When Ang arrives, prepared to discuss the miscommunication
3 and explore ways to move forward, he is met by private security Infinity hires to intimidate and
4 threaten Ang. When he tries to explain himself, he is met with scorn and derision. Instead of
5 addressing any of Ang's concerns, Infinity terminates Ang on January 21, 2020, bans him from the
6 premises, and forbades him from returning.

7 49. Clearly, Infinity **does** tolerate that type of behavior—just not from its Asian
8 employees. And it is willing to wrongfully terminate one of their best workers for standing up for
9 the rights of the customers he spent nearly a decade assisting.

10 50. Ang's work performance was exemplary. *All* of the negative feedback he received
11 from Infinity was issued within the seven days leading up to his termination. His customers
12 adored him. Sueck, however, clearly harbored a deep-seated animosity towards Ang, those who
13 looked like him, and people who challenged her ability to act in dereliction of state and federal
14 law. She attempted to tarnish his reputation, and ultimately forced his termination.

15 **STARKEY AND SUECK ALSO CONSPIRE TO TERMINATE ALL OLDER WORKERS**
16 **(A.K.A “LEGACY STAFF”) FROM INFINITY’S SAN DIEGO SITE**

17 51. Unbeknownst to Ang or Hollman, Starkey and Sueck were also busy conspiring as
18 to how best cull all of the older workers—a.k.a. “legacy staff”—from Infinity's San Diego site.
19 They discussed their plans, and how to handle “legacy staffing issues,” openly via e-mail to one
20 another. These e-mails, as well as Sueck's preferential treatment and promotion of the younger
21 Mahmoudi, show that Infinity was also actively discriminating against Ang and Hollman (both of
22 whom were over 40 while employed at Infinity) on the basis of their age, as well as their race and
23 sex.

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1 **INFINITY ATTEMPTS TO BLOCK ANG FROM MAKING A LIVING BY**
2 **CONTACTING HIS SUBSEQUENT EMPLOYER AND THREATENING TO ENFORCE**
3 **AN ILLEGAL CONTRACT.**

4 52. Infinity’s harassment and abuse did not end when Ang left. Instead, they try to
5 keep *anyone* from hiring Ang under the guise of enforcing an unlawful Confidentiality,
6 Noncompetition, and Nonsolicitation Agreement (the “Agreement”) he signed in November 2019.

7 53. The Agreement defines “Confidential Information” to include “information,
8 observations or data” Ang acquired through his employment that even tangentially relates to
9 Infinity’s business practices, including its customer lists, employee lists and evaluations, and
10 “know-how.” And it bars Ang from *ever* using or disclosing this information.

11 54. This Agreement also defines “Product” as “any product or service which is or may
12 in the future be sold, designed, developed, manufactured, considered by or of interest to
13 INFINITY;” including “all services relating to the operation of . . . any INFINITY client.” And it
14 bars Ang from “engag[ing] directly or indirectly in any activity which relates to the sale of
15 Product” for an entire year after his employment ends.⁴

16 55. A former Infinity client hired Ang in or around June 2020. Shortly thereafter,
17 Doucette e-mails Ang’s new employer to ask if they had hired Ang, and to check whether he was
18 violating the unlawful Agreement Infinity previously forced on Ang. Clearly, Infinity was not
19 satisfied by just terminating Ang—it wanted to ensure *no one* would hire him again.

20 **INFINITY MISCLASSIFIES HOLLMAN AND ANG AS EXEMPT FROM OVERTIME**

21 56. Infinity did not just mete out racist, sexist, and ageist abuse—it also willfully
22 misclassified both Ang and Hollman.

23 57. Ang’s success at Infinity led to a promotion to Account Manager on December 5,
24 2019. However, despite classifying the role as “exempt,” Infinity treats Account Managers as a
25 little more than glorified middlemen who shepherd information between Infinity and its customers.
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28 ⁴ While Infinity instructed Ang to cross-out a portion of the agreement’s “Noncompetition”
provision, it did not cross-out this prohibition.

1 58. Indeed, Infinity primarily requires Account Managers serve as a primary contact
2 for, and report lab results to, its customers; manage customer accounts; and track whether Infinity
3 is meeting all agreed-upon timelines, budgets, and quality assurances.

4 59. Ang's promotion is also, in reality, a demotion. He works as an Operator before
5 moving into the Account Manager role. Infinity classifies Operators as non-exempt from
6 overtime, due to the nature of their duties. But Infinity requires Ang continue performing the same
7 jobs he had to fill while an Operator *in addition to* his allegedly "exempt" tasks as an Account
8 Manager.

9 60. Infinity also bars Ang from exercising *any* discretion or independent judgment
10 while performing those duties. For example, whenever Ang tries to complete anything on behalf of
11 his customers, Sueck tells him he was overstepping his authority. He could not even schedule a
12 meeting with customers, or speak to technicians, without Sueck reprimanding him for
13 overstepping.

14 61. Infinity similarly misclassified Hollman as exempt from overtime. She worked
15 predominately as a Technician, which involved the routine processing of samples submitted by
16 customers. This did not require any independent discretion or judgment. Indeed, when she
17 attempted to rely on her own experience, skills, memory, and notes—rather than the rote
18 instructions Infinity provided—the Company reprimanded her.

19 **FIRST CAUSE OF ACTION**

20 **DISCRIMINATION AND RETALIATION ON THE BASIS OF RACE**

21 **(Against Entity Defendants)**

22 62. Plaintiffs restate and incorporate by reference each and every allegation in all
23 preceding paragraphs as though fully set forth herein.

24 63. Defendants are employers as defined by applicable law.

25 64. FEHA makes it unlawful for an employer to discriminate or retaliate against an
26 employee on the basis of his or her race.

27 65. Plaintiffs are members of a protected group based on their race (Asian).
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1 66. In violation of FEHA, Defendants discriminated against Plaintiff Ang because of
2 his race.

3 67. In violation of FEHA, Defendants discriminated and/or retaliated against Plaintiff
4 Hollman because of her race.

5 68. As a direct and proximate result of the acts of Defendants, and each of them, as
6 alleged above, Plaintiffs have incurred compensatory damages, including lost earnings and other
7 economic damages; suffered emotional distress; and have generally been damaged in an amount to
8 be ascertained at trial.

9 69. Defendants' discrimination (and, for Hollman, Defendants' discrimination *and*
10 retaliation) was done intentionally, in a malicious, fraudulent, and oppressive manner, entitling
11 Plaintiffs to punitive damages.

12 70. Plaintiffs have incurred and continues to incur legal expenses and attorneys' fees,
13 which they are entitled to recover in an amount according to proof under applicable law.

14 **SECOND CAUSE OF ACTION**

15 **DISCRIMINATION ON THE BASIS OF RACE-PLUS-SEX**

16 **(Against Entity Defendants)**

17 71. Plaintiffs restate and incorporate by reference each and every allegation in all
18 preceding paragraphs as though fully set forth herein.

19 72. FEHA makes it unlawful for an employer to discriminate against an employee on
20 the basis of his or her race *and* sex.

21 73. In violation of FEHA, Defendants discriminated against Ang (who is an Asian
22 man) on the basis of his race-plus-sex; including, but not limited to, by calling him "dangerous"
23 and "aggressive," issuing an incident report claiming he had "anger" in his voice when he spoke to
24 Mahmoudi, and then using these unfounded allegations—all of which are rooted in the "yellow
25 peril stereotype" of "Asian men as dangerous foreigners or martial artists," which has long been a
26 source of injustice⁵—to justify Defendant's unlawful termination of him.

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⁵ See *supra* note 3.

74. In violation of FEHA, Defendants discriminated against Hollman (who is an Asian woman) on the basis of her race-plus-sex; including, but not limited to, by calling her “meek” and claiming she “lacked confidence” in her performance reviews—two stereotypes associated with Asian women, who commonly deal with employers and managers who see them “as incapable of being or becoming leaders” and “consider[] [them] submissive/passive/ quiet” at work⁶—that Defendants then used to justify their unlawful termination of her.

75. As a direct and proximate result of the acts of Defendants, and each of them, as alleged above, Plaintiffs have incurred compensatory damages, including lost earnings and other economic damages; suffered emotional distress; and have generally been damaged in an amount to be ascertained at trial.

76. Defendants' discrimination was done intentionally, in a malicious, fraudulent, and oppressive manner, entitling Plaintiffs to punitive damages.

77. Plaintiffs have incurred and continues to incur legal expenses and attorneys' fees, which they are entitled to recover in an amount according to proof under applicable law.

THIRD CAUSE OF ACTION

DISCRIMINATION ON THE BASIS OF AGE

(Against Entity Defendants)

78. Plaintiffs restate and incorporate by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

79. FEHA makes it unlawful for an employer to discriminate against an employee on the basis of his or her age.

80. In violation of FEHA, Defendants discriminated against Ang (who was over the age of 40 at the time he worked for Defendants) on the basis of his age, as evinced by the fact he was part of the cull of older workers—a.k.a. “legacy staff”—whom Starkey and Sueck openly discussed firing via e-mail.

⁶ See *supra* note 2.

81. In violation of FEHA, Defendants discriminated against Hollman (who was over the age of 40 at the time she worked for Defendants) on the basis of her age as evinced by the facts that (1) she was part of the cull of older workers—a.k.a. “legacy staff”—whom Starkey and Sueck openly discussed firing via e-mail; *and* (2) Sueck refused to promote her to the role of Microbiologist Laboratory Manager, instead giving it to Mahmoudi who (while unqualified) was significantly younger than Hollman.

82. As a direct and proximate result of the acts of Defendants, and each of them, as alleged above, Plaintiffs have incurred compensatory damages, including lost earnings and other economic damages; suffered emotional distress; and have generally been damaged in an amount to be ascertained at trial.

83. Defendants' discrimination was done intentionally, in a malicious, fraudulent, and oppressive manner, entitling Plaintiffs to punitive damages.

84. Plaintiffs have incurred and continues to incur legal expenses and attorneys' fees, which they are entitled to recover in an amount according to proof under applicable law.

FOURTH CAUSE OF ACTION

HARASSMENT ON THE BASIS OF RACE

(Against Entity Defendants And

Individual Defendants Sueck And Starkey)

85. Plaintiff Hollman restates and incorporates by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

86. Defendants are employers as defined by FEHA or, alternatively, individually liable under FEHA.

87. FEHA makes it unlawful for an employer to harass against an employee on the basis of his or her race.

88. Even “[a] single incident of harassing conduct is sufficient to create” a hostile and harassing work environment.⁷

⁷ Cal. Gov't Code § 12923(b)

1 89. Hollman is a member of a protected group based on her race (Asian).

2 90. In violation of FEHA, Defendants harassed Hollman because of her race; including,
3 but not limited to, mocking Hollman for being Asian by claiming her eyes made it look like she
4 was sleeping and directing her to open up her eyes more.

5 91. As a direct and proximate result of the acts of Defendants, and each of them, as
6 alleged above, Hollman has incurred compensatory damages, including lost earnings and other
7 economic damages; suffered emotional distress; and have generally been damaged in an amount to
8 be ascertained at trial.

9 92. Defendants' harassment of Hollman was done intentionally, in a malicious,
10 fraudulent, and oppressive manner, entitling her to punitive damages.

11 93. Hollman has incurred and continues to incur legal expenses and attorneys' fees,
12 which she is entitled to recover in an amount according to proof under applicable law

13 **FIFTH CAUSE OF ACTION**

14 **HARASSMENT ON THE BASIS OF RACE-PLUS-SEX**

15 **(Against Entity Defendants And Defendant Sueck)**

16 94. Plaintiffs restate and incorporate by reference each and every allegation in all
17 preceding paragraphs as though fully set forth herein.

18 95. FEHA makes it unlawful for an employer to harass an employee on the basis of his
19 or her race *and* sex.

20 96. In violation of FEHA, Defendants harassed Ang (who is an Asian man) on the basis
21 of his race-plus-sex; including, but not limited to, by repeatedly telling him and others at the
22 workplace that Ang was "dangerous" and "aggressive"—racist/sexist claims rooted in the "yellow
23 peril stereotype" of "Asian men as dangerous foreigners or martial artists."⁸

24 97. In violation of FEHA, Defendants discriminated against Hollman (who is an Asian
25 woman) on the basis of her race-plus-sex; including, but not limited to, by calling her "meek" and
26 claiming she "lacked confidence" in her performance reviews—two stereotypes associated with
27

28 ⁸ See *supra* note 3.

1 Asian women, who commonly deal with employers and managers who see them “as incapable of
2 being or becoming leaders” and “consider[] [them] submissive/passive/ quiet” at work.⁹

3 98. As a direct and proximate result of the acts of Defendants, and each of them, as
4 alleged above, Plaintiffs have incurred compensatory damages, including lost earnings and other
5 economic damages; suffered emotional distress; and have generally been damaged in an amount to
6 be ascertained at trial.

7 99. Defendants’ harassment was done intentionally, in a malicious, fraudulent, and
8 oppressive manner, entitling Plaintiffs to punitive damages.

9 100. Plaintiffs have incurred and continues to incur legal expenses and attorneys’ fees,
10 which they are entitled to recover in an amount according to proof under applicable law.

11 **SIXTH CAUSE OF ACTION**

12 **RETALIATION FOR ENGAGING IN PROTECTED CONDUCT**

13 **(Against Entity Defendants)**

14 101. Plaintiffs restate and incorporate by reference each and every allegation in all
15 preceding paragraphs as though fully set forth herein.

16 102. FEHA makes it unlawful for an employer to retaliate against an employee for
17 engaging in protected conduct.

18 103. In violation of FEHA, Defendants retaliated against Ang for filing a complaint
19 linking Defendant Sueck’s horrid treatment of Ang to her racism by firing him rather than
20 proceeding with a previously scheduled meeting to address an incident involving both.

21 104. In violation of FEHA, Defendants retaliated against Hollman by labelling her a
22 “gossip” for discussing pay disparities with fellow employees and placing a note with that
23 unfounded claim in her performance reviews, which Defendants then used to justify their unlawful
24 termination of Hollman.

25 105. As a direct and proximate result of the acts of Defendants, and each of them, as
26 alleged above, Plaintiffs have incurred compensatory damages, including lost earnings and other
27

28 ⁹ See *supra* note 2.

1 economic damages; suffered emotional distress; and have generally been damaged in an amount to
2 be ascertained at trial.

3 106. Defendants' retaliation was done intentionally, in a malicious, fraudulent, and
4 oppressive manner, entitling Plaintiffs to punitive damages.

5 107. Plaintiffs have incurred and continues to incur legal expenses and attorneys' fees,
6 which they are entitled to recover in an amount according to proof under applicable law.

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND**
9 **RETALIATION IN VIOLATION OF FEHA**

10 **(Against Entity Defendants)**

11 108. Plaintiffs restate and incorporate by reference each and every allegation in all
12 preceding paragraphs as though fully set forth herein.

13 109. Under FEHA, Defendants have a duty to prevent the unlawful discrimination,
14 harassment, and retaliation discussed in the preceding paragraphs.

15 110. Defendants knew or should have known about the discrimination, harassment, and
16 retaliation either because (1) the unlawful acts were taken managing agents and supervisors within
17 the company, or (2) based on the protected complaints of Plaintiffs as set forth above.

18 111. During the course of Plaintiffs employment, Defendants failed to prevent
19 employees from engaging in intentional actions that resulted in Plaintiffs being treated less
20 favorably because of the protected statuses as set forth above.

21 112. During the course of Plaintiffs employment, Defendants failed to prevent their
22 employees from engaging in unjustified employment practices against Plaintiffs because of their
23 protected statuses as set forth above.

24 113. During the course of Plaintiffs' employment, Defendants failed to prevent a pattern
25 and practice by their employees of intentional discrimination and harassment on the bases of
26 Plaintiffs protected statuses as set forth above.

114. Plaintiffs believe, and on that basis, allege, that their protected statuses and/or protected activities were substantial motivating factors in Defendants' discrimination, harassment, and retaliation against them.

115. As a direct and proximate result of the acts of Defendants, and each of them, as alleged above, Plaintiffs have incurred compensatory damages, including lost earnings and other economic damages; suffered emotional distress; and has generally been damaged in an amount to be ascertained at trial.

116. Defendants' acts were done intentionally, in a malicious, fraudulent, and oppressive manner, entitling Plaintiffs to punitive damages.

117. Plaintiffs have incurred and continues to incur legal expenses and attorneys' fees, which they are entitled to recover in an amount according to proof under applicable law.

EIGHTH CAUSE OF ACTION

AIDING-AND-ABETTING IN VIOLATION OF FEHA

(Against Defendant Starkey)

118. Plaintiffs restate and incorporate by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

119. FEHA makes it unlawful for any person to aid, abet, incite, compel, or coerce harassment prohibited by FEHA

120. In violation of FEHA, Defendant Starkey aided, abetted, incited, compelled, or coerced Defendant Sueck's ongoing harassment of Ang based on his race-plus-sex by (1) encouraging her to strengthen a false incident report Sueck hoped to use in her ongoing campaign to paint Ang as the stereotypical "aggressive" and "dangerous" Asian-man whom everyone at work needed to avoid and watch out for; and (2) offering her substantial assistance and advice as to how best craft the racist incident report so as to meet that goal.

121. In violation of FEHA, Defendant Starkey aided, abetted, incited, compelled, or coerced Defendant Sueck's ongoing harassment of Hollman based on her race, and or race-plus-sex, by advising and encouraging her to hold regular meetings with Hollman at which Sueck could continue to discredit and mock Hollman, her work, and her appearance.

122. Under FEHA, Defendant Starkey is individually liable for aiding-and-abetting Defendant Sueck's ongoing harassment of Plaintiffs. *Fiol v. Doellstedt*, 50 Cal. App. 4th 1318, 1331 (1996) ("If a supervisor aids and abets" the "harassment of an employee, the supervisor is personally liable for money damages").

123. As a direct and proximate result of the acts of Defendant Starkey, as alleged above, Plaintiffs have incurred compensatory damages, including lost earnings and other economic damages; suffered emotional distress; and has generally been damaged in an amount to be ascertained at trial.

124. Defendant Starkey's acts were done intentionally, in a malicious, fraudulent, and oppressive manner, entitling Plaintiffs to punitive damages.

125. Plaintiffs have incurred and continues to incur legal expenses and attorneys' fees, which they are entitled to recover in an amount according to proof under applicable law.

NINTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S WHISTLEBLOWER PROTECTION LAW

(Against Entity Defendants)

126. Plaintiffs restates and incorporates by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

127. California Labor Code § 1102.5 makes it unlawful for Defendants—as an employer and/or agent acting on behalf of an employer—to prevent an employee from, or retaliate against an employee for, providing information to a person with authority over the employee that the employee has reasonable cause to believe discloses a violation of a statute or federal statute; or constituted a violation or noncompliance with a local, state, or federal rule or regulation.

128. Plaintiff Ang had reasonable cause to believe Defendants' refusal to work with longtime customers—customers who relied on Infinity's testing to help address health, environmental, and safety issues they faced—jeopardized the well-being of others and violated federal law and regulations (including, but not limited to, 21 U.S.C. § 351 and 21 C.F.R. § 211.22) given his prior experience in this industry, understanding that the FA regulates gases as “finished

1 pharmaceuticals,” and knowledge that refusing to conduct these tests could harm the safety of
2 consumers and final products.

3 129. Plaintiff Hollman had reasonable cause to believe Mahmoudi’s constant flouting of
4 sanitation and sterilization protocols by eating food in the lab violated federal law and regulations
5 (including, but not limited to, the laboratory controls established 21 C.F.R., 211(I)) given her
6 training, prior experience in this industry, and understanding that Mahmoudi’s food was a
7 potential contaminant.

8 130. Plaintiffs’ acts of providing this information to Sueck, who had supervisory
9 authority over them, was a contributing factor in Defendants’ decision to punish and/or discharge
10 Plaintiffs.

11 131. As a direct and proximate result of the acts of Defendants, and each of them, as
12 alleged above, Plaintiffs have incurred compensatory damages, including lost earnings and other
13 economic damages; suffered emotional distress; and has generally been damaged in an amount to
14 be ascertained at trial.

15 132. Defendants acts were done intentionally, in a malicious, fraudulent, and oppressive
16 manner, entitling Plaintiffs to punitive damages.

17 133. Plaintiffs have incurred and continues to incur legal expenses and attorneys’ fees,
18 which he is entitled to recover in an amount according to proof under applicable law.

19 **TENTH CAUSE OF ACTION**

20 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

21 **(Against Entity Defendants)**

22 134. Plaintiffs restate and incorporate by reference each and every allegation in all
23 preceding paragraphs as though fully set forth herein.

24 135. The above-described conduct of Defendants, and each of them, was against the
25 public policy of the State of California as evinced by its enactment of FEHA and the Labor Code.

26 136. By terminating Plaintiffs because of their race, sex, age, and/or good faith
27 complaints, the Defendants, and each of them, terminated Plaintiffs in violation of public policy.
28

1 137. Additionally, California Labor Code § 232.5 makes it unlawful for Infinity to
2 “[d]ischarge, formally discipline, or otherwise discriminate against an employee who discloses
3 information about the employer’s working conditions.” Yet that is precisely what Defendants did
4 by disciplining, and (according to Defendants) ultimately discharging Plaintiffs for, complaining
5 to management about their incompetence negatively impacting working conditions at their
6 worksite.

7 138. As a direct and proximate result of the acts of Defendants, and each of them, as
8 alleged above, Plaintiffs have incurred compensatory damages, including lost earnings and other
9 economic damages; suffered emotional distress; and has generally been damaged in an amount to
10 be ascertained at trial.

11 139. Defendants’ discrimination was done intentionally, in a malicious, fraudulent, and
12 oppressive manner, entitling Plaintiffs to punitive damages.

13 140. Plaintiffs have incurred and continues to incur legal expenses and attorneys’ fees,
14 which he is entitled to recover in an amount according to proof under applicable law.

15 **ELEVENTH CAUSE OF ACTION**

16 **NEGLIGENT HIRING AND SUPERVISION**

17 **(Against Entity Defendants)**

18 141. Plaintiffs restate and incorporate by reference each and every allegation in all
19 preceding paragraphs as though fully set forth herein.

20 142. Defendants owed a duty of care to Plaintiffs to appoint, hire, retain, and supervise
21 persons who would not engage in retaliatory, harassing, or discriminatory conduct.

22 143. Defendants owed a duty of care to Plaintiffs not to retain managers or employees
23 who would discriminate against, harass, or retaliate against employees for engaging in protected
24 activities.

25 144. Defendants owed a duty of care to Plaintiffs to supervise their managers and
26 employees closely to ensure that they would refrain from harassing and retaliating against
27 plaintiffs.
28

145. Defendants breached these duties. As a direct and proximate result Defendants, and each of them, as alleged above, Plaintiffs have incurred compensatory damages, including lost earnings and other economic damages; suffered emotional distress; and has generally been damaged in an amount to be ascertained at trial.

146. Plaintiffs have incurred and continues to incur legal expenses and attorneys' fees, which she is entitled to recover in an amount according to proof under applicable law.

TWELFTH CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(Against Entity Defendants)

147. Plaintiffs restate and incorporate by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

148. Defendants willfully misclassified Plaintiffs as exempt from overtime in order to avoid their obligations under California Labor Code §§ 510, 1194, and the applicable wage order. Plaintiffs did not “customarily and regularly exercised discretion an independent judgment in the performance of [their] duties” as required to qualify as exempt from those laws.

149. Thus, Defendants violated the Labor Code by failing to compensate Plaintiffs for all overtime, calculated at one and one-half times the regular rate of pay for all hours worked in excess of 8 hours per day and/or 40 hours per week, and for the first 8 hours on the seventh consecutive workday, with double time for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of 8 hours on the seventh consecutive day of work in any workweek.

150. Defendants' violation of California law was knowing and willful. As a proximate result, Plaintiffs have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligations under state law, all to their respective damages in amounts according to proof at time of trial, and within the jurisdiction of this Court. Plaintiffs are also entitled to recover the unpaid balance of wages owed to them by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

1 **THIRTEENTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL/REST BREAKS**

3 **(Against Entity Defendants)**

4 151. Plaintiffs restate and incorporate by reference each and every allegation in all
5 preceding paragraphs as though fully set forth herein.

6 152. Defendants willfully misclassified Plaintiffs as exempt from California's meal and
7 rest break laws in order to avoid their obligations under California Labor Code §§ 226.7, 516, and
8 the applicable wage order. Plaintiffs did not "customarily and regularly exercised discretion an
9 independent judgment in the performance of [their] duties" as required to qualify as exempt from
10 those laws.

11 153. Plaintiffs worked over four hours per shift and/or over five hours per shift, and
12 were entitled to a duty-free paid rest period of not less than ten minutes for every four hours
13 worked, or major fraction thereof; as well as to a duty-free meal period of not less than thirty
14 minutes for every five hours worked, or major fraction thereof.

15 154. Defendants failed to provide legally compliant rest and meal periods during the
16 relevant time period and, as such, violated California law.

17 155. As a result of the unlawful acts of Defendants, Plaintiffs have been deprived of
18 legally compliant rest breaks and meal periods, and are thus entitled to recover damages in the
19 amount of one additional hour of compensation at their regular rate of pay for each day a paid rest
20 break was not provided; and one additional hour of compensation at their regular rate of pay for
21 each day a meal period was not provided.

22 156. Plaintiffs seek recovery of pre-judgment interest on all amounts recovered herein,
23 in addition to any damages and penalties otherwise owed.

24 **FOURTEENTH CAUSE OF ACTION**

25 **FAILURE TO PAY WAGES OWED AT DISCHARGE**

26 **(Against Entity Defendants)**

27 157. Plaintiffs restate and incorporate by reference each and every allegation in all
28 preceding paragraphs as though fully set forth herein.

158. Pursuant to Labor Code §§ 201–204, Defendants are required to pay all earned and unpaid wages to an employee who is discharged. Labor Code § 201 mandates that if an employer discharges an employee, the employee’s wages earned and unpaid at the time of discharge are due and payable immediately.

159. Furthermore, pursuant to Labor Code § 202, Defendants are required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or wages at the time of quitting.

160. Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 workdays.

161. Defendants' misclassification of Plaintiffs as exempt, and ensuing failure to pay overtime, has meant it willfully failed to pay accrued wages and other compensation to Plaintiffs in accordance with Labor Code §§ 201 and 202.

162. As a result, Plaintiffs are entitled to all available statutory penalties, including the waiting time penalties provided in Labor Code §§ 203 and 204, together with interest thereon, as well as other available remedies.

FIFTEENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Against Entity Defendants)

163. Plaintiffs restate and incorporate by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

164. California Labor Code § 226(a) requires Defendants “semimonthly or at the time of each payment of wages . . . to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units

1 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
2 deductions, provided that all deductions made on written orders of the employee may be
3 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
4 which the employee is paid, (7) the name of the employee and only the last four digits of his or her
5 social security number or an employee identification number other than a social security number,
6 (8) the name and address of the legal entity that is the employer and, if the employer is a farm
7 labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal
8 entity that secured the services of the employer, and (9) all applicable hourly rates in effect during
9 the pay period and the corresponding number of hours worked at each hourly rate by the
10 employee.”

11 165. Labor Code § 226(e) provides that an employee is entitled to recover the greater of
12 all actual damages or \$50 for the initial pay period in which a violation of § 226 occurs and \$100
13 for each subsequent pay period, not to exceed an aggregate penalty of \$4,000, as well as an award
14 of costs and reasonable attorneys’ fees, for all pay periods in which the employer knowingly and
15 intentionally failed to provide timely and accurate itemized wage statements to the employees.

16 166. At all material times, Defendants knowingly and intentionally failed to provide
17 Plaintiff Hollman with wage statements reflecting the correct gross and net wages earned, or the
18 applicable hourly rates at the corresponding hours worked.

19 167. At all material times, Defendants also knowingly and intentionally failed to provide
20 Plaintiff Hollman with wage statements that included “the name and address of the legal entity that
21 is the employer” or “the last four digits of [her] social security number or an employee
22 identification number other than a social security number.”

23 168. Such a pattern, practice, and uniform administration of corporate policy as
24 described herein is unlawful and creates an entitlement to recovery by Plaintiff Hollman, in a civil
25 action, for all damages or penalties pursuant to Labor Code §226(a), including interest thereon,
26 injunctive relief pursuant to Labor Code § 226(h), attorneys’ fees, and costs of suit according to
27 the mandate of California Labor Code §226.

28 ///

1 **SIXTEENTH CAUSE OF ACTION**

2 **PLAINTIFF ANG'S REPRESENTATIVE ACTION FOR CIVIL PENALTIES**

3 **(Against Entity Defendants)**

4 169. Plaintiff Ang restates and incorporates by reference each and every allegation in all
5 preceding paragraphs as though fully set forth herein.

6 170. California Labor Code § 232 makes it unlawful for Defendants to (a) "Require, as a
7 condition of employment, that an employee refrain from disclosing the amount of his or her
8 wages; (b) "Require an employee to sign a waiver or other document that purports to deny the
9 employee the right to disclose the amount of his or her wages;" or (c) "Discharge, formally
10 discipline, or otherwise discriminate against an employee who discloses the amount of his or her
11 wages."

12 171. California Labor Code § 232.5 makes it unlawful for Defendants to (a) "Require, as
13 a condition of employment, that an employee refrain from disclosing information about the
14 employer's working conditions;" (b) "Require an employee to sign a waiver or other document
15 that purports to deny the employee the right to disclose information about the employer's working
16 conditions;" or (c) "Discharge, formally discipline, or otherwise discriminate against an employee
17 who discloses information about the employer's working conditions."

18 172. California Labor Code § 432.5 bars any "employer, or agent, manager,
19 superintendent, or officer thereof," from requiring "any employee or applicant for employment to
20 agree, in writing, to any term or condition which is known by such employer, or agent, manager,
21 superintendent, or officer thereof to be prohibited by law."

22 173. Defendants violated Labor Code §§ 232, 232.5, and 432.5 by requiring Plaintiff
23 Ang, as a condition of employment, sign the Agreement, which purportedly bars him from ever
24 disclosing "details of contracts" (*i.e.* his contractual salary) and "employee lists and evaluations"
25 (*i.e.* Ang's working conditions).

26 174. Defendants also violated California Labor Code § 432.5 by requiring Plaintiff Ang,
27 as a condition of Employment, to sign the Agreement, which unlawfully restrains trade by
28 prohibiting the use of information that is not confidential as a matter of law. For example, it

1 purports prevent employees from using or disclosing general skills and knowledge obtained at
2 Infinity; information regarding Infinity’s general business practices; and customer information that
3 is readily available to competitors through normal competitive means. These provisions violate
4 California Business & Professions Code §§ 17200 *et seq.* through application of California
5 Business & Professions Code § 16600 and the Cartwright Act.

6 175. Defendants knew or should have known those provisions were unlawful. Yet in or
7 around June 2020, Defendant Infinity tried to block Ang from finding subsequent employment
8 when Doucette—its VP of Sales—e-mailed Ang’s subsequent employer, claiming he wanted to
9 ensure Ang was not violating the Agreement. Infinity’s attempted enforcement of an invalid
10 contract brings this action within the one-year statute of limitations applicable to claims brought
11 under the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698-
12 2699.5.

13 176. Plaintiff Ang is thus an “aggrieved employee” within the meaning of Labor Code §
14 2699(c), and a proper representative to bring a civil action on behalf of himself and other current
15 and former employees of Defendant Infinity pursuant to the procedures specified in Labor Code §
16 2699.3.

17 177. Ang thus seeks to recover civil penalties, including but not limited to penalties
18 under Labor Code § 2699 from Defendant Infinity in a representative action for the violation of the
19 California Labor Code set forth above. Ang is also entitled to an award of reasonable attorneys’
20 fees and costs pursuant to Labor Code § 2699(g)(l).

21 178. Ang has complied with all of the requirements set forth in Labor Code § 2699.3 to
22 commence a representative action under PAGA.

23 **SEVENTEENTH CAUSE OF ACTION**

24 **PLAINTIFF HOLLMAN’S REPRESENTATIVE ACTION FOR CIVIL PENALTIES**
25 **(Against Entity Defendants)**

26 179. Plaintiff Hollman restates and incorporates by reference each and every allegation
27 in all preceding paragraphs as though fully set forth herein.
28

180. California Labor Code §§2698-2699, the Labor Code Private Attorney General Act of 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code, may be recovered through a civil action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other current or former employees.

181. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions to assess a civil penalty.

182. Plaintiff Hollman is an “aggrieved employee” as defined by Labor Code § 2699 as she was employed by Defendants; misclassified as exempt from California’s overtime and meal/rest period laws; was not paid all wages owed at discharge; and was issued inaccurate wage statements. She is thus a proper representative to bring a civil action on behalf of herself and all other current and former employees of Defendants in California pursuant to the procedures specified in Labor Code § 2699.3.

183. Plaintiff Hollman seeks to recover civil penalties, including but not limited to penalties under Labor Code § 2699 from Defendants in a representative action for the violation of the California Labor Code set forth above. She is also entitled to an award of reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

184. Plaintiff Hollman has complied with all of the requirements set forth in Labor Code § 2699.3 to commence a representative action under PAGA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. For nominal, actual, and compensatory damages;
2. For special and/or non-economic damages in an amount according to proof;
3. For punitive and/or exemplary damages in an amount according to proof;

- 1 4. For liquidated damages in an additional amount equal to the entire award of other
2 damages;
3 5. For statutory and civil penalties according to proof, including but not limited to all
4 penalties authorized by the Labor Code §§ 226(f) and 2699;
5 6. For attorneys' fees pursuant to applicable laws;
6 7. For costs of suit incurred herein;
7 8. For pre-judgment interest to the extent allowed by law;
8 9. For post-judgment interest to the extent allowed by law;
9 10. For declaratory relief declaring that Defendants committed the unlawful practices
10 alleged herein;
11 11. For injunctive relief restraining Defendants from committing any similar future
12 unlawful employment practices and implementing practices to deter or discourage similar future
13 unlawful practices; and
14 12. For such other and further relief as the Court deems just and proper.

15
16
17 DATED: June 24, 2022

MOUTON LAW
STACEY Y. MOUTON

18
19 By: /s/ Stacey Y. Mouton
20 STACEY MOUTON
21 2150 Comstock #710754
22 San Diego, California 92111
23 Telephone: (760) 927-0647

24 Attorney for Plaintiffs
25 DANILO ANG and REBECCA HOLLMAN
26
27
28

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs Danilo Ang and Rebecca Hollman each demand a trial by jury of all issues so
3 triable in this action.

4
5 DATED: June 24, 2022

MOUTON LAW
STACEY Y. MOUTON

6
7
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