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County of Monterey
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

SONIA MURILLO and CRISTINA
VARGAS,

Plaintiffs,

vs.

SMALL PROGRESS CO.; DARIO
ALCANTAR; PACIFIC RESERVE
NURSERY, LLC; PACIFIC RESERVE
NURSERY, INC.; ANDY D'AMICO; and
DOES 1 to 25, inclusive

Defendants.

) CASE NO.: 22CV000799

) **COMPLAINT FOR DAMAGES FOR:**

) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**

) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**

) **3) FAILURE TO PAY OVERTIME;**

) **4) FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**

) **5) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**

) **6) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**

) **7) FAILURE TO GIVE REST BREAKS;**

) **8) FAILURE TO GIVE MEAL BREAKS**

) **9) FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**

) **10) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**

) **11) HARASSMENT BASED ON SEXUAL**
) **ORIENTATION IN VIOLATION OF**
) **FEHA;**

) **12) DISCRIMINATION BASED ON**
) **SEXUAL ORIENTATION IN**
) **VIOLATION OF FEHA;**

) **13) FAILURE TO PREVENT**
) **HARASSMENT AND**
) **DISCRIMINATION;**

) **14) NEGLIGENT RETENTION AND**
) **SUPERVISION;**

) **15) RETALIATION IN VIOLATION OF**

1) **LABOR CODE SECTION 1102.5;**
2) **16) INTENTIONAL INFLICTION OF**
3) **EMOTIONAL DISTRESS;**
4) **17) NEGLIGENT INFLICTION OF**
5) **EMOTIONAL DISTRESS;**
6) **18) WRONGFUL TERMINATION IN**
7) **VIOLATION OF PUBLIC POLICY;**
8) **19) VIOLATION OF CALIFORNIA**
9) **BUSINESS AND PROFESSIONS**
10) **CODE SECTION 17200.**
11) **DEMAND FOR JURY TRIAL**

12 **COME NOW** Plaintiffs, SONIA MURILLO and CRISTINA VARGAS (hereinafter
13 “Plaintiffs”), and allege as follows:

14 **PARTIES, JURISDICTION, VENUE**

15 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
16 County of Monterey in this judicial district because Defendants SMALL PROGRESS CO.;
17 DARIO ALCANTAR; PACIFIC RESERVE NURSERY, LLC; PACIFIC RESERVE
18 NURSERY, INC., ANDY D’AMICO, and DOES 1 to 25, inclusive do business in the County
19 of Monterey and because Defendants’ obligations and liabilities arise therein, and because the
20 work that was performed by Plaintiffs in the County of Monterey is the subject of this action.
21 Moreover, Plaintiffs’ damages sought herein exceed \$25,000.

22 2. Plaintiffs SONIA MURILLO (“MURILLO”) and CRISTINA VARGAS (“VARGAS”)
23 are female residents of the County of Monterey, State of California.

24 3. Plaintiffs are informed and believe that at all times herein mentioned, Defendant
25 SMALL PROGRESS CO. is and was a California business, doing business in Monterey County,
26 and which employed Plaintiffs.

27 4. Plaintiffs are informed and believe that at all times herein mentioned, Defendant
28 DARIO ALCANTAR is a male resident of the County of Monterey, State of California, and the
owner, director, officer, and/or managing agent of SMALL PROGRESS CO. Plaintiffs are
informed and believe and thereon allege that DARIO ALCANTAR managed and was directly
involved in the day-to-day operations of SMALL PROGRESS CO. and is being included in this
lawsuit pursuant to Labor Code Section 558.1.

1 5. Plaintiffs are informed and believe that at all times herein mentioned, Defendant
2 PACIFIC RESERVE NURSERY, LLC is and was a California limited liability company, doing
3 business in Monterey County, and which employed Plaintiffs.

4 6. Plaintiffs are informed and believe that at all times herein mentioned, Defendant
5 PACIFIC RESERVE NURSERY, INC. is and was a California corporation, doing business in
6 Monterey County.

7 7. Plaintiffs are informed and believe that at all times herein mentioned, Defendant
8 ANDY D'AMICO is a male resident of the County of Monterey, State of California, and the
9 owner, director, officer, and/or managing agent of PACIFIC RESERVE NURSERY, LLC and
10 PACIFIC RESERVE NURSERY INC. Plaintiffs are informed and believe and thereon allege
11 that ANDY D'AMICO managed and was directly involved in the day-to-day operations of
12 PACIFIC RESERVE NURSERY, LLC and PACIFIC RESERVE NURSERY INC. and is being
13 included in this lawsuit pursuant to Labor Code Section 558.1.

14 8. Plaintiffs are informed and believe that at all times herein mentioned, SMALL
15 PROGRESS CO., PACIFIC RESERVE NURSERY, LLC, and PACIFIC RESERVE NURSEY,
16 INC. are "joint employers" in that they controlled the wages, hours, and working conditions of
17 Plaintiffs and the Aggrieved Employees (defined below). SMALL PROGRESS CO., DARIO
18 ALCANTAR, PACIFIC RESERVE NURSERY, LLC, PACIFIC RESERVE NURSERY, INC.,
19 and ANDY D'AMICO are hereinafter collectively referred to as "Defendants".

20 9. The "Aggrieved Employees" are all hourly, non-exempt employees who worked for
21 Defendants at any of their California locations.

22 10. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate, or
23 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiffs sue
24 them by these fictitious names. Plaintiffs are informed and believe that each of the DOE
25 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
26 for the conduct alleged herein. Upon discovering the true names and capacities of these
27 fictitiously named defendants, Plaintiffs will amend this complaint to show the true names and
28 capacities of these fictitiously named defendants.

11. Unless otherwise alleged in this complaint, Plaintiffs are informed, and on the basis of

1 that information and belief, allege that at all times herein mentioned, each of the remaining
2 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
3 under the authority of their agency, employment, or representative capacity, with the consent of
4 his/her codefendants.

5 **GENERAL ALLEGATIONS**

6 12. Plaintiff MURILLO first started working for Defendants in or around March of 2021.
7 Plaintiff MURILLO was wrongfully terminated on or around August 17, 2021.

8 13. Plaintiff VARGAS first started working for DEFENDANTS in or around July of 2020.
9 Plaintiff VARGAS was terminated on or around August 2, 2021.

10 14. Plaintiffs were apparently classified as an hourly, non-exempt employees and were
11 paid on a weekly basis.

12 15. It is Plaintiffs' position that Defendants have violated numerous Labor Code Sections
13 against Plaintiffs and other similarly situated Aggrieved Employees.

14 16. Defendants did not provide Plaintiffs and other similarly situated Aggrieved
15 Employees with the minimum wages to which they were entitled for all work performed and as
16 such did not compensate Plaintiffs and others for all hours worked at the minimum wage rate
17 pursuant to California Labor Code sections 1194, 1197 and 1197.1. This is so because the
18 company would not accurately record the number of hours worked by employees, including
19 Plaintiffs, especially because Plaintiffs would seemingly be paid by the pound of marijuana that
20 they collected and trimmed. Although the paystubs would have a figure of the number of hours
21 worked, they were not accurate in the least. Since it is our position that Plaintiffs were improperly
22 paid by piece-rate, Plaintiffs were not compensated for all hours worked. Moreover, the
23 Defendants would ask Plaintiffs and others to travel to Los Angeles to perform work there
24 but did not pay for the travel time or expenses.

25 17. Pursuant to California Industrial Welfare Commission (IWC) Order No. 14-2001 or the
26 applicable wage order, Section 9(B), "When tools or equipment are required by the Defendants
27 or are necessary to the performance of a job, such tools and equipment shall be provided and
28 maintained by the Defendants, except that an employee whose wages are at least two (2) times
the minimum wage provided herein may be required to provide and maintain hand tools and

1 equipment customarily required by the trade or craft.” The Defendants unequivocally required
2 their employees, including Plaintiffs, to provide their own hand tools to effectuate their job duties
3 as trimmers, including scissors. The latter was company policy. As such, Defendants violated
4 the aforementioned IWC Wage Order(s) in that Defendants required their employees, including
5 Plaintiffs, to provide and maintain hand tools and equipment customarily required by the trade
6 but did NOT compensate these employees at least two (2) times the minimum wage.

7 18. Additionally, even if Defendants were able to pay Plaintiffs on a piece-rate basis,
8 California Labor Code section 226.2, effective January 1, 2016, provides that employees shall
9 be compensated for rest and recovery periods and other non-productive time separate from any
10 piece-rate compensation. Section 226.2 further requires that employees must be compensated for
11 these time periods at a rate no less than the highest federal, state, or local minimum wage that is
12 applicable to the employment. Defendants did not fully and accurately compensate Plaintiffs and
13 all similarly situated Aggrieved Employees for rest and recovery periods and other non-
14 productive time separate from any piece-rate compensation.

15 19. Due to the above “off the clock” violations and due to the way in which Plaintiffs were
16 compensated by piece (or more accurately, by pound of marijuana), Defendants also violated
17 Labor Code §510 and Industrial Welfare Commission Wage Order 14 (for Defendants with more
18 than 25 employees) because it failed to pay our client and other similarly situated Aggrieved
19 Employees overtime, even though they worked more than 8.5 or 9 hours per day and/or 40/50
20 hours per week throughout their employment.

21 20. Defendants violated Labor Code § 226.7 and the applicable Industrial Welfare
22 Commission Wage Order no. 14 because it failed to provide Plaintiffs and other similarly
23 situated Aggrieved Employees 10-minute rest periods for every four hours of work, or majority
24 portion thereof, throughout their employment. Defendants did not completely relieve Plaintiffs
25 of all duty during said rest periods. Defendants did not pay to Plaintiffs one additional hour of
26 pay at Plaintiffs’ regular rate of compensation for each workday that one or more statutory rest
27 periods was not provided. It was not part of the company policy and culture for employees such
28 as Plaintiffs and others to take timely, uninterrupted rest breaks. As such, the culture and
environment at Defendants did not lend itself to the employees receiving statutory breaks

1 wherein they were relieved of all work duties. It was the normal practice and custom of
2 Defendants not to authorize, permit, and enforce timely, uninterrupted statutory rest periods.

3 21. Defendants violated Labor Code §§ 512 and 226.7 and the applicable Industrial
4 Welfare Commission Wage Order no. 14 because it failed to provide Plaintiffs and other
5 similarly situated Aggrieved Employees the requisite 30-minute, uninterrupted meal periods for
6 every five (5) hours of work (and before the fifth hour) throughout their employment, and
7 Plaintiffs did not validly waive said meal periods. Defendants did not completely relieve
8 Plaintiffs of all duties during said meal periods. Defendants did not pay to Plaintiffs one
9 additional hour of pay at Plaintiffs' regular rate of compensation for each workday that one or
10 more statutory meal periods was not provided. If Plaintiffs were able to get a meal period, it
11 would be late and after the 5th hour worked. Like the rest breaks, receiving a timely, thirty-
12 minute uninterrupted meal break was not part of the company culture and was not enforced by
13 Defendants. It was the normal practice and custom of Defendants not to authorize, permit, and
14 enforce timely statutory meal periods.

15 22. Furthermore, during the relevant time period, and due to the above labor code violations,
16 Defendants failed to pay Plaintiffs and other similarly situated Aggrieved Employees all wages
17 due to them within any time period specified by California Labor Code section 204. Defendants
18 was also in violation of California Labor Code section 226(a) by failing to include pertinent
19 information on the wage statements, including but not limited to, the correct hourly rate, all hours
20 worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned,
21 premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay
22 period, all employee identifying information, the correct name and address of the legal
23 Defendants, and reimbursement for business expenses, among others. In addition, the pay stubs
24 are devoid of any compensation for rest and recovery time pursuant to 226.2. As such,
25 Defendants did not provide Plaintiffs and other similarly situated Aggrieved Employees with
26 complete, accurate itemized wage statements.

27 23. Defendants violated Labor Code § 203 because they willfully failed to pay Plaintiffs
28 and other similarly situated Aggrieved Employees earned and due wages upon separation of
employment, either immediately upon involuntary termination, or within 72 hours of resignation.

1 These earned but unpaid wages include the unpaid minimum wages/compensation for all hours
2 worked, overtime, premium pay for missed meal and rest breaks, and business expense
3 reimbursement, among others.

4 24. During the relevant time period, Defendants also failed to keep accurate and
5 complete payroll records showing the correct wages paid to Plaintiffs and other Aggrieved
6 Employees pursuant to California Labor Code sections 1174(d).

7 25. Additionally, during the relevant time period, Plaintiffs and other Aggrieved Employees
8 incurred necessary, business-related expenses and costs that were not reimbursed by Defendants.
9 These costs include, but are not limited to, the purchase of hand tools to use in carrying out their
10 duties. Accordingly, Defendants was in violation of California Labor Code sections 2800 and
11 2802.

12 26. Furthermore, Defendants violated the applicable Industrial Welfare Commission
13 Wage Order (Wage Order 14-2001, Section 13) in that there was no proper suitable seating/break
14 area for employees. Moreover, Defendants failed to provide Worker's Compensation coverage
15 for Plaintiffs and other Aggrieved Employees in violation of Labor Code Section 3700.5 and
16 also failed to provide sick pay in violation of Labor Code Sections 232 and 246.

17 27. In addition, Plaintiff MURILLO has individual claims against Defendants for various
18 incidents that occurred at the workplace. Plaintiff MURILLO was consistently harassed by her
19 supervisor, Ricardo Garcia, regarding her sexual orientation. For example, on June 9, 2021, there
20 was an incident at the workplace during which Ricardo Garcia yelled demeaning and derogatory
21 curse words at Plaintiff MURILLO and charged towards her for not obeying his instructions.
22 Plaintiff MURILLO felt threatened and reported the incident to Human Resources and also
23 notified the police. Plaintiff MURILLO also complained to management about labor code
24 violations being committed by the Defendants, including the manner in which they were being
25 paid. It is not surprising that Plaintiff MURILLO was wrongfully terminated in violation of
26 public policy on or around August 17, 2021, and especially after complaints of illegal conduct
27 at the workplace, in contravention of Labor Code Section 1102.5.

28 28. Plaintiff MURILLO also has claims against Defendants for harassment and
discrimination based on sexual orientation since her supervisor, Mr. Ricardo Garcia, would

1 make inappropriate comments about the fact that Plaintiff MURILLO and Plaintiff VARGAS
2 were lesbians and were in a relationship together. There were several instances in which Ricardo
3 Garcia would make derogatory statements about Plaintiff MURILLO's sexuality.

4 29. Prior to filing this action, Plaintiff MURILLO timely exhausted administrative remedies
5 by timely filing an administrative complaint with the Department of Fair Employment and
6 Housing ("DFEH") and receiving a DFEH right to sue letter.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

9 **(California Industrial Welfare Commission Order 14-2001, California Code of**
10 **Regulations Title 8 Section 11140, and California Labor Code Section 1198)**
11 **(Plaintiff MURILLO against all named Defendants and all DOE Defendants)**

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

14 31. At all times relevant herein, Defendants were required to compensate their employees for
15 all hours worked upon reporting for work at the appointed time stated by the employer pursuant
16 to Industrial Welfare Commission Order 14-2001, California Code of Regulations, Title 8,
Section 11140.

17 32. For the three (3) years preceding filing of this action, Defendants failed to compensate
18 Plaintiff for all hours worked. This is so because Defendants would not accurately record the
19 number of hours worked by employees, including Plaintiff, especially because Plaintiff would
20 seemingly be paid by the pound of marijuana that she collected and trimmed. Although
21 Plaintiff's paystubs lists a figure of the number of hours worked, they were not accurate in the
22 least. Moreover, the Defendants would ask Plaintiff to travel to Los Angeles to perform work
23 there but did not pay for the travel time. Furthermore, Defendants did not fully and accurately
24 compensate Plaintiff for rest and recovery periods and other non-productive time separate from
25 any piece-rate compensation.

26 33. Under the aforementioned wage order and regulations, Plaintiff is to recover
27 compensation for all hours worked but not paid by Defendants for the three (3) years preceding
28 the filing of this Complaint.

34. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

35. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable attorney's fees and costs of suit.

36. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs which will equal an amount known to Plaintiff once she has obtained all of her payroll records from Defendants.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(California Labor Code Sections 1194, 1194.2, 1197)

(Plaintiff MURILLO against all named defendants and all DOE defendants)

37. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 36, inclusive, of this Complaint as though fully set forth herein.

38. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the minimum wage rate for all hours worked as required by the applicable Industrial Welfare Commission Wage Order No. 14-2001, codified at California Code of Regulations, Title 8, Section 11140, subdivision 4.

39. Pursuant to IWC Wage Order No. 14-2001, subdivision 2(G), at all relevant times, "hours worked" included "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so, and in the case of an employee who is required to reside on the employment premises, that time spent carrying out assigned duties shall be counted as hours worked..."

40. During her employment, Plaintiff was regularly required as a matter of uniform

1 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
 2 was paid less than the minimum wage rate by Defendants for hours worked in violation of
 3 California Labor Code Section 1197 and the applicable California Industrial Wage
 4 Commission wage order(s). Defendants would not accurately record the number of hours worked
 5 by Plaintiff, because Plaintiff would seemingly be paid by the pound of marijuana that she
 6 collected and trimmed.

7 41. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
 8 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
 9 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
 10 to believe that their acts or omissions were not contrary to California law.

11 42. For all hours worked by Plaintiff for which she was paid less than the minimum wage
 12 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
 13 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
 14 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
 15 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

16 43. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
 17 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
 18 trial.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PAY OVERTIME**

21 **(California Industrial Welfare Commission Order 14-2001, California Code of
 Regulations Title 8 Section 11140)**

22 **(Plaintiff MURILLO against all named defendants and all DOE defendants)**

23 44. Plaintiff re-alleges and incorporates by reference each and every allegation in
 24 paragraphs 1 through 43, inclusive, of this Complaint as though fully set forth herein.

25 45. Pursuant to Industrial Welfare Commission 14-2001, California Code of
 26 Regulations, Title 8, Section 11140 for the period of Plaintiff's employment, Defendants
 27 were required to compensate Plaintiff for all overtime, which is calculated at one and one-half
 28 (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40)

1 hours in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve
2 (12) hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day
3 in a week.

4 46. Plaintiff was a non-exempt employee entitled to the protections of the California
5 Industrial Welfare Commission Order No. 14-2001, California Code of Regulations,
6 Title 8, Section 11140.

7 47. Plaintiff worked more than eight (8) hours or twelve (12) hours in a single workday or
8 forty (40) hours in a single workweek on numerous occasions.

9 48. Plaintiff was entitled to the above overtime premiums.

10 49. Defendants did not pay Plaintiff premium wages of at least one and one-half times
11 Plaintiff's regular rate of pay for hours worked past eight (8) in a day and two-times Plaintiff's
12 regular rate of pay for hours worked past twelve (12) in a day.

13 50. Defendants did not pay Plaintiff premium wages of at least one and one-half times
14 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

15 51. Plaintiff worked at least one pay period in which she was not properly paid overtime
16 within the three (3) years prior to the initiation of this lawsuit.

17 52. Defendants know or should know the actual dates of overtime worked, the amount of
18 overtime worked, and the amount of unpaid overtime e due.

19 53. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
20 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
21 Court.

22 54. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
23 Regulations, Title 8, Sections 11140, Plaintiff is entitled to recover damages for the
24 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
25 reasonable attorney's fees and costs of suit.

26 55. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
27 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
28 trial.

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FOURTH CAUSE OF ACTION**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS****(California Labor Code Section 226)****(Plaintiff MURILLO against all named defendants and all DOE defendants)**

56. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 55, inclusive, of this Complaint as though fully set forth herein.

57. Pursuant to California Labor Code Section 226, every employer must furnish each employee an itemized statement of wages and deductions at the time of payment of wages.

58. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that accurately reflected all information required by Labor Code Section 226, including but not limited to, gross wages earned, including overtime, net wages earned, total hours worked by the employee, all deductions, and premium pay for missed meal breaks and rest breaks. In addition, the pay stubs are devoid of any compensation for rest and recovery time pursuant to 226.2. Therefore, Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in accordance with California Labor Code Section 226(a).

59. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to the 3-year period immediately preceding the date this lawsuit was filed.

60. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs and attorney's fees pursuant to statute.

61. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES OWED EVERY PAY PERIOD

(California Labor Code Section 204)

(Plaintiff MURILLO against all named defendants and all DOE defendants)

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

63. California Labor Code Section 204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

64. At all times relevant during the liability period, Defendants failed to pay Plaintiff the full amount of all owed wages when due as required by California Labor Code Section 204.

65. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is informed, believes, and thereon alleges, that all times relevant during the liability period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked, including overtime hours and premium pay for missed rest breaks and meal breaks.

66. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount, subject to proof, to the extent she was not paid all wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined directly from Defendants' records or indirectly based on information from Defendants' records.

67. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 202, 203)

(Plaintiff MURILLO against all named defendants and all DOE defendants)

68. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.

69. Pursuant to California Labor Code Section 201(a), an employer who discharges an employee must immediately pay for all compensation due and owing.

1 70. Pursuant to California Labor Code Section 202, when an employee resigns, the
2 employer must pay all compensation due and owing within 72 hours of resignation, or on the
3 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

4 71. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
5 without abatement or reduction, any wages of an employee whose employment ends, the wages
6 of the employee shall continue as a penalty from the due date at the same rate until paid or until
7 an action is commenced; however, the wages shall not continue for more than 30 days for
8 failure to pay an employee owed wages.

9 72. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
10 continue to refuse to pay her unpaid wages as required by Labor Code Section 203.

11 73. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
12 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
13 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
14 preceding the filing of this lawsuit.

15 74. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
16 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
17 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

18 75. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
19 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
20 trial.

21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO GIVE REST BREAKS**

23 **(Plaintiff MURILLO against all named defendants and all DOE defendants)**

24 76. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 75, inclusive, of this Complaint as though fully set forth herein.

26 77. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 27 a. Title 8 of the California Code of Regulations Sections 11140(12), which provides
28 that every employer shall authorize and permit all employees to take rest periods,
which insofar as practicable shall be in the middle of each work period. The

authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

- b. Title 8 of the California Code of Regulations sections 11140(18)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- c. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

78. Plaintiff alleges that she was not authorized and permitted to take a ten (10) minute rest break after every four (4) hours of work or major fraction thereof, as required by California law.

79. Under this cause of action, Plaintiff prays for wages due to her under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

80. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code section 218.6.

81. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

EIGHTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff MURILLO against all named defendants and all DOE defendants)

82. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 81, inclusive, of this Complaint as though fully set forth herein.

2 83. Plaintiff brings this cause of action under the following laws, for the following
3 reasons:

- 4 a. California Labor Code section 512(a), which requires that employees be given a 30-
5 minute uninterrupted meal break after five (5) hours of work, and a second
6 uninterrupted meal break after ten (10) hours of work;
- 7 b. California Labor Code section 226.7, which states that (a) no employer shall require
8 any employee to work during any meal period mandated by an applicable order of
9 the Industrial Welfare Commission, and (b) if any employer fails to provide an
10 employee a meal period in accordance with an applicable order of the Industrial
11 Welfare Commission, the employer shall pay the employee one (1) additional hour
12 of pay at the employee's regular rate of compensation for each workday that the
13 meal period is not provided;
- 14 c. California Industrial Welfare Commission Order No. 14 section 11(A), as codified
15 under Title 8 of the California Code of Regulations Section 11140, which states that
16 an employer may not employ an employee for a work period of more than five (5)
17 hours without providing the employee with a meal period of not less than 30
18 minutes, except that when a work period of not more than six (6) hours will
19 complete the day's work the meal period may be waived by mutual consent of
20 employer and employee.
- 21 d. California Industrial Welfare Commission Wage Order No. 14 Section 7(A)(3), as
22 codified under Title 8 of the California Code of Regulations Section 11140, which
23 requires an employer to maintain records documenting its employees' meal periods;
- 24 e. California Industrial Welfare Commission wage order No. 14 Section 18(A), as
25 codified under California Code of Regulations Section 11140, which penalizes the
26 employer \$50.00 for each initial violation, per employee, of any provision of the
27 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- 28 f. California Labor Code section 1171 and 1173, which have given the California
Labor Commission jurisdiction to enact Wage Orders (such as Wage Order No. 14)

1 as enforceable law.

2 84. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks
3 after five (5) hours of work (and before the fifth hour) and Defendants did not completely
4 relieve Plaintiffs of all duties during said meal periods. California Labor Code section 512(a)
5 and California Industrial Welfare Commission Order No. 14, as codified under California Code
6 of Regulations Section 11140 *et. seq.* requires that employees receive uninterrupted meal
7 periods every five (5) hours of consecutive work, and that the meal period be at least 30
8 minutes in length, wherein employee is relieved of all work duty. California Labor Code
9 section 226.7 provides that employers may not require their employees to work through their
10 meal periods. California Labor Code section 226.7 requires that if the employer fails to provide
11 the employee with an uninterrupted meal period, the employer must pay the employee one (1)
12 hour of pay for each work day that the meal period is not given.

13 85. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
14 regulations, and wage orders alleged in this cause of action along with any allowable interest,
15 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
16 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

17 86. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
18 fees as well as interest under Labor Code section 218.6.

19 87. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
20 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
21 trial.

22 **NINTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

24 **(Plaintiff MURILLO against all Defendants and DOE Defendants, and each of them)**

25 88. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 87, inclusive, of this Complaint as though fully set forth herein.

27 89. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
28 employee for all necessary expenditures or losses incurred by the employee in direct
consequence of the discharge of his or her duties."

90. Beginning at least 3 years prior to the filing of this complaint, in order to discharge their duties for Defendants, Plaintiff incurred reasonable and necessary expenses in the course of completing her job duties, which were not reimbursed by Defendants. These expenses include, but are not limited to, the purchase of hand tools (including scissors) to use in carrying out her duties, as well as travel expenses (including gas and mileage), when Defendants would ask Plaintiff to travel to Los Angeles to perform work.

91. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and attorney's fees and costs, under Labor Code section 2802.

TENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 232, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197.1, 1198, 2802, 3700.5)

(Plaintiffs MURILLO and VARGAS Against All Named Defendants and all DOE Defendants)

92. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 91, inclusive, of this Complaint as though fully set forth herein.

93. Pursuant to law, Plaintiffs provided the required written notice to the LWDA and DEFENDANTS of the specific violations of the California Labor Code that DEFENDANTS and DOE defendants have violated and continue to violate.

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

95. Plaintiffs therefore have exhausted all administrative remedies required of them under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for DEFENDANTS' violations of the Labor Code.

96. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code

1 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
2 on behalf of himself or herself and other current or former employees pursuant to the
3 procedures specified in California Labor Code section 2699.3.

4 97. Plaintiffs are “Aggrieved Employees” because Plaintiffs were employed by the alleged
5 violator and had one or more of the alleged violations committed against them, and therefore
6 are properly suited to represent the interests of other current and former employees, including
7 all current and former hourly, non-exempt employees who worked for Defendants in the
8 State of California during the applicable PAGA Period.

9 98. Based on the acts alleged above, Plaintiffs, on behalf of themselves and others, seek
10 penalties under California Labor Code sections 2698 and 2699 because of Defendants’
11 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

12 99. Plaintiffs therefore have exhausted all administrative remedies required of them under
13 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
14 cause of action and pursue penalties in a representative action for Defendants’ violations
15 of the Labor Code.

16 100. California Labor Code section 2699 et seq. imposes penalties upon culpable
17 defendants for violating the Labor Code.

18 101. Plaintiffs seek penalties for Defendants’ misconduct as alleged herein as
19 permitted by law, but only those penalties that are required to be shared with the LWDA as
20 Plaintiffs are not seeking individual/victim specific relief or underpaid wages for themselves
21 or other employees under this specific PAGA cause of action. Plaintiff MURILLO has separate
22 causes of action in this Complaint for individual wages but is not seeking wages through the
23 PAGA action.

24 102. Specifically, Plaintiffs seek penalties under California Labor Code section 2699, for
25 the following:

26 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210,
27 226, 226.3, 226.7, 232, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197.1, 1198, 2802,
28 3700.5 and any other Labor Codes/Industrial Welfare Commission Order (No. 14) violated
based on the facts alleged in this Complaint.

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

ELEVENTH CAUSE OF ACTION

HARASSMENT BASED ON SEXUAL ORIENTATION IN VIOLATION OF FEHA

Violation of FEHA, California Government Code Sections 12900 et seq.

(Plaintiff MURILLO against All Named Defendants and all DOE Defendants)

104. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 103 inclusive, of this Complaint as though fully set forth herein.

105. Defendants and DOES 1 to 25, inclusive, are covered employers under California's Fair Employment and Housing Act.

106. Plaintiff, a homosexual female qualified employee, was subjected to adverse employment action based upon her sexual orientation. These adverse employment acts were based on and substantially motivated in whole or in part by purposeful harassment based on sexual orientation, as prohibited by the laws of the State of California. This cause of action is brought pursuant to FEHA and the California Constitution Article 1, section 8.

107. In engaging in the aforementioned conduct, Defendants and DOES 1 to 25, inclusive, and each of them, aided, abetted, incited, compelled, and/or coerced unlawful employment practices in violation of the announced policy of this State against such practices. Furthermore, they failed to take immediate and appropriate corrective action to prevent this harassment.

108. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff suffered general and compensatory damages, including but not limited to, loss of income (past and future), loss of employment benefits (past and future), general and compensatory damages (past and future), mental pain, anguish, emotional distress, and post-traumatic stress disorder (past and future), and will continue to suffer in the future, in an amount to be proved at trial.

109. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,

1 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
 2 oppression and was authorized, ratified, and carried on with a conscious and willful disregard
 3 of their workers' right to work in an environment in which personnel decisions and company
 4 policies are made without regard to sexual orientation, so as to justify the imposition of
 5 punitive damages to punish and set an example of said Defendants.

6 110. As a proximate result of the foregoing conduct, which violated the provisions of
 7 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
 8 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

9 **TWELFTH CAUSE OF ACTION**

10 **DISCRIMINATION BASED ON SEXUAL ORIENTATION IN VIOLATION OF FEHA**

11 **Violation of FEHA, California Government Code Sections 12900 et seq.**

12 **(Plaintiff MURILLO against All Named Defendants and all DOE Defendants)**

13 111. Plaintiff re-alleges and incorporates by reference each and every allegation in
 14 paragraphs 1 through 110, inclusive, of this Complaint as though fully set forth herein.

15 112. Defendants and DOES 1 to 25, inclusive, are covered employers under
 16 California's Fair Employment and Housing Act.

17 113. At all times herein mentioned, FEHA, Government Code section 12940, et seq.,
 18 was in full force and effect and was binding on Defendants. This statute requires Defendants to
 19 refrain from discriminating against any employee on account of sexual orientation.

20 114. Plaintiff, a homosexual female qualified employee, was subjected to adverse
 21 employment action based upon her sexual orientation by being discriminated against, harassed,
 22 and not offered any protection due to her status as a homosexual female. These adverse
 23 employment actions were based on and substantially motivated in whole or in part by
 24 purposeful discrimination based on sexual orientation, as prohibited by the laws of the State of
 25 California. This cause of action is brought pursuant to FEHA and the California Constitution
 26 Article 1, section 8.

27 115. In engaging in the aforementioned conduct, Defendants and DOES 1 to 25,
 28 inclusive, and each of them, aided, abetted, incited, compelled, and/or coerced unlawful
 employment practices in violation of the announced policy of this State against such practices.

1 Furthermore, they failed to take immediate and appropriate corrective action to prevent this
2 discrimination.

3 116. As a proximate result of the conduct of the Defendants, Plaintiff has suffered
4 and will continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and
5 other pecuniary loss according to proof. Plaintiff has also suffered and will continue to suffer
6 physical and emotional injuries, including nervousness, humiliation, depression, anguish,
7 embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's
8 damages will be ascertained at trial.

9 117. In committing the foregoing acts, Defendants have been guilty of oppression,
10 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
11 punitive damages in a sum appropriate to punish and make an example out of the foregoing
12 Defendants.

13 118. The acts of oppression, fraud, and/or malice, were engaged in by employees of
14 the Defendants. Defendants had advance knowledge of the unfitness of each employee who
15 acted with oppression, fraud, and/or malice, and/or authorized or ratified the wrongful conduct
16 for which an award of punitive damages is sought, and/or was personally guilty of oppression,
17 fraud, and/or malice. The advance knowledge and conscious disregard, authorization,
18 ratification, or act of oppression, fraud, and/or malice was committed by or on part of an
19 officer, director, or managing agent of the Defendants, thereby entitling Plaintiff to punitive
20 and exemplary damages against the Defendants in accordance with California Civil Code
21 section 3294 in a sum appropriate to punish and make an example of the Defendants.

22 119. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
23 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
24 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
25 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
26 award of attorneys' fees and costs in an amount to be proven at trial.

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THIRTEENTH CAUSE OF ACTION

FAILURE TO PREVENT HARASSMENT AND DISCRIMINATION

(Plaintiff MURILLO Against All Named Defendants and all DOE Defendants)

120. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 119, inclusive, of this Complaint as though fully set forth herein.

121. FEHA requires employers to take “all reasonable steps necessary to prevent discrimination and harassment from occurring.” (Gov. Code section 12940, subd. (k)).

122. As alleged above, Plaintiff was subjected to unlawful discrimination and harassment.

123. Defendants, and each of them, failed to take all reasonable steps necessary to prevent discrimination and harassment. In addition, Defendants, and each of them, failed to remedy such discrimination and harassment when they realized and were informed that it was occurring. Defendants, and each of them, further failed to train, supervise, and monitor their employees and agents.

124. The failure of Defendants, and each of them, to prevent discrimination and harassment created and encouraged an environment where such harassment was condoned, encouraged, tolerated, sanctioned, and/or ratified.

125. As a direct and proximate result of the unlawful conduct of Defendants, and each of them, Plaintiff has been harmed and has suffered economic and general damages in an amount according to proof.

126. As a further direct and proximate result of the conduct of Defendants, and each of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish, and emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered such damages in an amount according to proof.

127. The above-recited actions of Defendants, and each of them, were done with malice, fraud, oppression, and in reckless disregard of Plaintiff’s rights under FEHA. Accordingly, Plaintiff is entitled to an award of punitive damages.

128. FEHA provides for an award of reasonable attorneys’ fees and costs incurred by a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will

1 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
2 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
3 award of attorneys' fees and costs in an amount to be proven at trial.

4 **FOURTEENTH CAUSE OF ACTION**

5 **NEGLIGENT RETENTION AND SUPERVISION**

6 **(Plaintiff MURILLO Against All Named Defendants and all DOE Defendants)**

7 129. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 128, inclusive, of this Complaint as though fully set forth herein.

9 130. At all times relevant herein, Defendants, by and through their principals, agents,
10 and employees, knew or reasonably should have known that the harassing conduct, acts and
11 omission of supervisor Ricardo Garcia, as described elsewhere in this Complaint and
12 incorporated by reference into this cause of action, violated Plaintiff's rights under state
13 statutes, and that said Defendants and employees of the Defendants engaged in the unlawful
14 behavior as described herein above.

15 131. At all times relevant herein, Defendants, by and through their principals, agents
16 and employees, had a duty to protect Plaintiff from employees who they knew or should have
17 known created a risk of injury to him. Defendants, and each of them, breached such duty by
18 continuing to employ and ratify the behaviors of its employee, Ricardo Garcia, and failing to
19 take reasonable steps to protect Plaintiff from Ricardo Garcia's obvious and known hostile and
20 demeaning harassment of Plaintiff.

21 132. At all times relevant herein, Defendants knew or should have known Ricardo
22 Garcia was unfit for his position because of his inappropriate behavior, harassment, and similar
23 conduct. The Defendants knew or should have known that Ricardo Garcia required
24 supervision, and/or discipline, including but not limited to termination of employment, in order
25 to curb his harassing behavior.

26 133. At all times relevant herein, Defendants, and each of them, knew, or in the
27 exercise of reasonable care should have known, that unless they intervened to protect Plaintiff,
28 and adequately supervised, prohibited, controlled, regulated, disciplined and/or otherwise
penalized the improper conduct, acts and omission of the offending employee as described in

1 this Complaint, Defendants' failure to so protect, supervise and intervene would have the effect
2 of encouraging, ratifying, condoning, exacerbating, worsening and continuing said conduct,
3 acts and failures to act, thereby subjecting Plaintiff to personal injury and emotional distress.

4 134. At all times relevant herein, Defendants, and each of them, had the power,
5 ability, authority, and duty to so intervene, supervise, prohibit, control, regulate, discipline
6 and/or penalize the conduct of offending employees. Despite said knowledge, power and duty,
7 Defendants, and each of them, negligently failed to act so as to prevent, supervise, prohibit,
8 control, regulate, discipline, and/or penalize the offending conduct described above, or to
9 otherwise protect Plaintiff from such conduct.

10 135. As a direct and proximate result of the negligent retention and supervision of
11 Ricardo Garcia, as described above, Plaintiff suffered general and compensatory damages,
12 including but not limited to, loss of income (past and future), loss of employment benefits (past
13 and future), general and compensatory damages (past and future), mental pain, anguish,
14 emotional distress, and will continue to suffer in the future, in an amount to be proved at trial.

15 **FIFTEENTH CAUSE OF ACTION**

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

17 **(Plaintiff MURILLO against All Named Defendants and all DOE Defendants)**

18 136. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 135, inclusive, of this Complaint as though fully set forth herein.

20 137. At all times material to this Complaint, California Labor Code § 1102.5 was in
21 effect and binding on Defendants. This section requires Defendants to refrain from retaliating
22 against an employee for disclosing information to a person with authority over the employee if
23 the employee has reasonable cause to believe that the information discloses a violation of state
24 or federal statute, or a violation of or noncompliance with a local, state, or federal rule or
25 regulation, regardless of whether disclosing the information is part of the employee's job
26 duties.

27 138. As discussed fully above, Plaintiff complained to Defendants about the
28 harassment that she was experiencing at the workplace as well as labor code violations being
committed by the Defendants, including the manner in Plaintiff and the others were being paid.

1 139. DEFENDANTS retaliated against Plaintiff for her complaints, as alleged above,
2 in violation of Labor Code § 1102.5.

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

8 141. Plaintiff requests all available relief under Labor Code § 1102.5 including
9 damages and the imposition of civil penalties of \$10,000 for each violation as well as
10 attorney's fees.

11 **SIXTEENTH CAUSE OF ACTION**

12 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

13 **(Plaintiff MURILLO Against All Named Defendants and all DOE Defendants)**

14 142. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 141, inclusive, of this Complaint as though fully set forth herein.

16 143. Defendants' discrimination, harassment, and retaliation against Plaintiff
17 constituted severe and outrageous misconduct and caused Plaintiff extreme emotional distress.

18 144. Defendants were aware that treating Plaintiff in the manner alleged above
19 would devastate Plaintiff and cause Plaintiff extreme hardship.

20 145. As a direct and proximate result of the aforementioned acts and omissions of
21 Defendants, Plaintiff has been caused to and did in fact suffer severe and extreme mental and
22 emotional distress, including but not limited to, anguish, humiliation, embarrassment, loss of
23 confidence, fright, depression, and anxiety, the exact nature and extent of which are not now
24 known to her, but in an amount to be proved at trial.

25 146. Defendant s' misconduct was done intentionally, in a malicious, fraudulent,
26 oppressive manner, entitling Plaintiff to punitive damages.

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SEVENTEENTH CAUSE OF ACTION

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

(Plaintiff MURILLO Against All Named Defendants and all DOE Defendants)

147. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 146, inclusive, of this Complaint as though fully set forth herein.

148. As an employee of Defendants, Plaintiff was owed a duty of care by Defendants, and each of them, to ensure that Plaintiff was not exposed to foreseeable harms.

149. Defendants, and each of them, knew, or should have known, that Plaintiff was being subjected to discrimination and harassment based on her sexual orientation, and that, the failure to exercise due care to prevent discriminatory and harassing conduct could and would cause Plaintiff to suffer severe emotional distress.

150. Defendants, and each of them, failed to exercise their duty of care to prevent their employees, managers, supervisors, and/or officers from harassing Plaintiff based on her sexual orientation.

151. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff has been caused to and did in fact suffer severe and extreme mental and emotional distress, including but not limited to, anguish, humiliation, embarrassment, loss of confidence, fright, depression, and anxiety, the exact nature and extent of which are not now known to him, but in an amount to be proved at trial.

152. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been directly and legally caused to suffer damages as alleged herein.

EIGHTEENTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Plaintiff MURILLO Against All Named Defendants and all DOE Defendants)

153. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 152, inclusive, of this Complaint as though fully set forth herein.

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

155. Plaintiff is informed and believes and thereon alleges that Defendants' decisions

1 to retaliate against her, as alleged herein, was motivated by Plaintiff's complaints regarding the
2 discrimination and harassment she experienced at the workplace as well as Plaintiff's complaints
3 regarding the labor code violations that were taking place. Plaintiff is further informed and
4 believes and thereon alleges that any other reasons proffered by Defendants were and are
5 pretextual in nature. Defendants intentionally created the aforementioned retaliation, thereby not
6 giving Plaintiff an opportunity to work in an environment free of discrimination, harassment,
7 and retaliation.

8 156. The employment of Plaintiff was wrongfully terminated on or around
9 August 17, 2021 in violation of the fundamental public policy of the State of California
10 with respect to retaliation against an employee for complaining about workplace discrimination,
11 harassment, and labor code violations. Plaintiff was forced to hire an attorney to assist her to end
12 these illegal activities. Said conduct violated statutory and constitutional expressions of public
13 policy including, but not limited to, California Government Code sections 12940 et seq., and the
14 California Constitution, Article 1 section 8.

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

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

26 159. The foregoing conduct engaged in by Defendants and each of their directors,
27 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
28 ratified, and carried on with a conscious and willful disregard of their workers' right to work in

an environment free of labor code violations, so as to justify the imposition of punitive damages to punish and set an example of said Defendants.

NINETEENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(California Business and Professions Code Section 17200)

(Plaintiff MURILLO against All Named Defendants and all DOE defendants)

160. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 159, inclusive, of this Complaint as though fully set forth herein.

161. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendant constitutes unfair and unlawful business practices under California Business and Professions Code Section 17200, et seq.

162. Defendant's violations of FEHA, California labor laws, and the Labor Code, as alleged above constitutes a business practice because it was done repeatedly over a significant period of time in a systematic manner that was detrimental to Plaintiff and other similarly situated Aggrieved Employees.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff SONIA MURILLO prays for Judgment against Defendants, and each of them, as follows:

1. For compensatory damages including lost past and future wages, regular wages, overtime, and all other sums of money, including employment benefits, together with interest on said amounts, and any other economic injury to Plaintiff, according to proof;
2. For general damages according to proof;
3. For an award of punitive damages against Defendants according to proof;
4. For special and consequential damages to Plaintiff in an amount subject to proof at

- 1 trial;
- 2 5. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
- 3 at trial;
- 4 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
- 5 subject to proof at trial;
- 6 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
- 7 proof at trial;
- 8 8. For restitution and disgorgement for all unfair business practices by Defendants against
- 9 Plaintiff in an amount subject to proof at trial;
- 10 9. For an order enjoining Defendants from further unfair and unlawful business
- 11 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 12 10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- 13 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 14 11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
- 15 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 16 12. For maximum civil penalties available under the Labor Code and applicable Wage
- 17 Order against Defendant as described more particularly in the Complaint and
- 18 Representative PAGA claim/action;
- 19 13. For all remedies available to Plaintiff under the applicable Wage Order and the
- 20 Labor Code including an award of attorney's fees, costs, interest, and penalties
- 21 according to proof to the extent permitted by law;
- 22 14. For restitution and/or damages for all amounts unlawfully withheld from the wages of
- 23 Plaintiff, as may be proven;
- 24 15. For the imposition of civil penalties and/or statutory penalties;
- 25 16. For all interest as allowed by law;
- 26 17. For all costs and disbursements incurred in this suit;
- 27 18. Reasonable attorney's fees where available by law, including but not limited to,
- 28 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section
- 1021.5, the California Labor Code; and/or other applicable laws; and

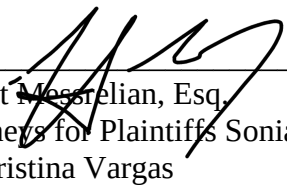
19. For such other and further relief as this Court may deem proper.

WHEREFORE, Plaintiff CRISTINA VARGAS prays for Judgment against Defendants, and each of them, as follows:

1. For the imposition of civil penalties;
2. For maximum civil penalties available under Labor Code Section 2699 against Defendants in a manner and amount authorized by that statute, as described more particularly in the Complaint and representative PAGA claims.
3. For all costs and disbursements incurred in this suit;
4. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and
5. For such other and further relief as this Court may deem proper.

DATED: March 22, 2022

MESSRELIAN LAW INC.

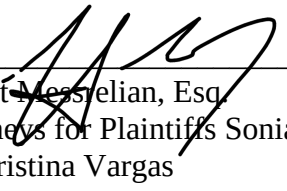
By 
Harout Messrelian, Esq.
Attorneys for Plaintiffs Sonia Murillo
and Cristina Vargas

DEMAND FOR JURY TRIAL

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

DATED: March 22, 2022

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiffs Sonia Murillo
and Cristina Vargas