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ALEJANDRA BENITEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ALEJANDRA BENITEZ, an individual,

Plaintiff,

v.

SM PIER HOLDINGS, LLC, a Florida
corporation; MARCO HERNANDEZ, an
individual; LUIZ RUIZ, an individual; and
DOES 1 through 20, inclusive,

Defendants.

Case No. **21STCV42368**

COMPLAINT FOR DAMAGES FOR:

- 1. DISCRIMINATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
- 2. HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
- 3. RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
- 4. FAILURE TO PREVENT DISCRIMINATION, HARASSMENT AND RETALIATION IN VIOLATION OF GOV'T CODE §12940(k);**
- 5. RETALIATION (LAB. CODE §98.6);**
- 6. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 7. FAILURE TO PAY WAGES (CAL. LAB. CODE §§201, 1182.12, 1194, 1194.2, 1197, 558);**
- 8. FAILURE TO PROVIDE MEAL PERIODS (CAL. LABOR CODE §§226.7, 512);**
- 9. FAILURE TO PROVIDE REST PERIODS (CAL. LABOR CODE §§226.7, 558);**

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**10. FAILURE TO PROVIDE ITEMIZED
WAGE AND HOUR STATEMENTS (CAL.
LABOR CODE §§226, ET SEQ.; IWC
WAGE ORDER NO. 5-2001, § 7);**

**11. WAITING TIME PENALTIES (CAL.
LABOR CODE §§201-203);**

**12. PRIVATE ATTORNEY GENERAL ACT
(CAL. LABOR CODE §2699, ET SEQ);
AND**

**13. UNFAIR COMPETITION (BUS. &
PROF. CODE §17200 ET SEQ.).**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

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COMES NOW PLAINTIFF, ALEJANDRA BENITEZ, and for causes of action against
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Defendants and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Los Angeles County, because Defendants' obligations and liability arise therein, because Defendants maintain offices and transact business within Los Angeles County, and because the work that is the subject of this action was performed by Plaintiff in Los Angeles County.

THE PARTIES

2. Plaintiff, ALEJANDRA BENITEZ (hereinafter referred to as "Plaintiff"), is and at all times relevant hereto was a resident of Los Angeles County, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant, SM PIER HOLDINGS, LLC (hereinafter referred to as "Defendants") was and is a Florida corporation, doing business in Los Angeles County, State of California.

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1 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
2 hereto, Defendant MARCO HERNANDEZ (hereinafter referred to as “HERNANDEZ” or
3 “INDIVIDUAL DEFENDANT”) was and is an individual resident of the County of Los Angeles, State
4 of California.

5 5. HERNANDEZ was EMPLOYER DEFENDANT’S manager, corporate agent, supervisor,
6 and/or employee.

7 6. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
8 hereto, Defendant LUIZ RUIZ (hereinafter referred to as “RUIZ” or “INDIVIDUAL DEFENDANT”)
9 was and is an individual resident of the County of Los Angeles, State of California.

10 7. RUIZ was EMPLOYER DEFENDANT’S manager, corporate agent, supervisor, and/or
11 employee.

12 8. The true names and capacities, whether individual, corporate, associate, or otherwise, of
13 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
14 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
15 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
16 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
17 Defendants is responsible for the wrongful acts alleged herein and is therefore liable to Plaintiff as alleged
18 hereinafter.

19 9. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
20 hereto, Defendants own and operate a restaurant.

21 10. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
22 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
23 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
24 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
25 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
26 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

27 11. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
28 of them, including those defendants named as DOES 1-20 and the Individual Defendants, acted in concert

1 with one another to commit the wrongful acts alleged herein, and aided, abetted, incited, compelled
2 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so, including
3 pursuant to Government Code §12940(i). Plaintiff is further informed and believes, and based thereupon
4 alleges, that Defendants, and each of them, including those defendants named as DOES 1-20 and the
5 Individual Defendants, and each of them, formed and executed a conspiracy or common plan pursuant to
6 which they would commit the unlawful acts alleged herein, with all such acts alleged herein done as part
7 of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff harm.

8 12. Whenever and wherever reference is made in this complaint to any act or failure to act by
9 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
10 and/or failures to act by each Defendant acting individually, jointly and severally.

11 13. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to prevent
12 discrimination or retaliation, and wrongful termination under Government Code §§12940, et seq., the
13 California Fair Employment and Housing Act ("FEHA") with the California Department of Fair
14 Employment and Housing ("DFEH"), and has satisfied Plaintiff's administrative prerequisites with
15 respect to these and all related filings.

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17 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

18 14. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
19 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
20 defendants have ceased to exist.

21 15. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
22 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same as Defendants,
23 including, but not limited to because:

24 a. Employers are completely dominated and controlled by one another and DOES 1-
25 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
26 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
27 accomplish some other wrongful or inequitable purpose.

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1 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
2 through one another's unlawful conduct, and by using one another as the funding source for their own
3 personal expenditures.

4 c. Employers and DOES 1-20, while really one and the same, were segregated to
5 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
6 accomplishing some other wrongful or inequitable purpose.

7 d. Employers do not comply with all requisite corporate formalities to maintain a
8 legal and separate corporate existence.

9 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
10 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
11 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and
12 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and
13 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
14 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from
15 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
16 existence of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice
17 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

18 16. Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the
19 fiction of their separate corporate existence must be disregarded.

20 17. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
21 thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
22 enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services
23 for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants
24 shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which
25 Defendants' business was and is conducted.

26 18. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
27 between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of
28 assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other

1 Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts
2 to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere
3 continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for
4 the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES
5 1-20 are the successors of one or more of the other Defendants and are liable on that basis.

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7 **FACTUAL ALLEGATIONS**

8 19. In or around August 2020, Plaintiff was hired by Defendants as a waitress. At all relevant
9 times, Plaintiff is a full-time, non-exempt employee, who performs all of her job duties satisfactorily
10 before she was wrongfully terminated on or about April 8, 2021.

11 20. While employed, RUIZ, the Floor Manager, and HERNANDEZ, a co-worker, began
12 sexually harassing Plaintiff at work. RUIZ began to subject Plaintiff to sexual harassment as early as the
13 interview when he told her that she looked like an ex-girlfriend, that Plaintiff was beautiful, and instructed
14 her to take her face mask off.

15 21. Once employed, RUIZ would send text messages to Plaintiff expressing his desire to
16 marry her and take care of her. This was in spite of the fact that Plaintiff made clear she was in a
17 relationship with another man. In fact, RUIZ instructed Plaintiff to leave her boyfriend so that he could
18 buy her whatever she desired.

19 22. RUIZ would also refer to Plaintiff as "his baby" to other employees.

20 23. Plaintiff brought her discomfort and unease as to the inappropriate behavior to the general
21 manager, JOSE AGUILAR, but did nothing but laugh off the complaints.

22 24. Encouraged by the inaction, HERNANDEZ also engaged in inappropriate behavior by
23 forcibly hugging and pressing his body on Plaintiff, commenting on her appearance, and telling her to
24 meet outside of work.

25 25. Plaintiff also reported her discomfort by HERNANDEZ's inappropriate behavior to JOSE
26 AGUILAR to no avail.

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1 26. In or around March 2021, Plaintiff report to JOSE AGUILAR that HERNANDEZ
2 followed her to her car after and forcibly grabbed her hand to the point where she had to fight him off in
3 order for him to let go of her hand that JOSE AGUILAR took action and spoke to HERNANDEZ.

4 27. HERNANDEZ initially remained undeterred although he expressed his disappointment
5 that Plaintiff reported him. When Plaintiff continued to reject his advances, HERNANDEZ sabotaged
6 her food orders and refused to assist her in any capacity.

7 28. All the while, RUIZ continued to pursue Plaintiff by texting her that he wanted to marry
8 her.

9 29. After it became clear that Plaintiff would continue to be subjected to sexual harassment if
10 she continued working, Plaintiff stopped going to work on or about April 8, 2020.

11 30. Defendants discriminated and subjected Plaintiff to harassment by failing to protect her
12 from sexual harassment at work.

13 31. Plaintiff's constructive termination was substantially motivated by Plaintiff's gender, sex,
14 and/or engagement in protected activities. Defendants' discriminatory animus is evidenced by the
15 previously mentioned facts.

16 32. Plaintiff is covered under one or more IWC Wage Orders and/or the California Labor
17 Code provisions relating to wage-and-hour laws, and other applicable wage orders, regulations, and
18 statutes, which imposed an obligation on the part of Defendants, among other things, to provide overtime
19 pay, uninterrupted rest periods, to pay wages for all hours worked, and to provide accurate wage
20 statements.

21 33. During her employment, Plaintiff worked five days per week for approximately 8 hours
22 per day.

23 34. Throughout Plaintiff's employment, she does not receive uninterrupted statutory 30-
24 minute meal periods for days on which Plaintiff works at least 5 hours, which is each day Plaintiff works.
25 One or more of Plaintiff's 30-minute meal periods are not provided and/or interrupted approximately 5
26 times per week, and/or taken at or after the 5th hour.

27 35. Further, throughout Plaintiff's employment, Plaintiff is not permitted to, and not advised
28 of her right to take statutory 10-minute rest breaks for every four hours worked or substantial portion

1 thereof. Defendants have no policy, procedure, or practice for Plaintiff to report missed rest breaks or
2 recover lost wages, and Defendants have no policy, procedure, or practice to provide one hour of
3 additional wages for each workday that the rest break is not provided.

4 36. Throughout Plaintiff's employment, for each pay period, Plaintiff receives inaccurate
5 paystubs that do not comply with Labor Code § 226, because they fail to show the correct amount of
6 overtime hours Plaintiff works, fails to show pay for missed meal and rest periods, fails to show the
7 amount of wages earned and owed to Plaintiff.

8 37. Plaintiff complained to Defendants multiple times throughout her employment about not
9 being provided uninterrupted meal periods, and not being provided rest breaks. Plaintiff was reprimanded
10 for taking any meal breaks or rest periods.

11 38. As a direct result and proximate result of the unlawful actions of Defendants, Plaintiff has
12 suffered, and continues to suffer, from loss of earnings in amounts as yet unascertained, but subject to
13 proof at trial, and within the jurisdiction of this Court.

14 39. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
15 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
16 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
17 counseling and treatment, and past and future lost wages and benefits.

18 40. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
19 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard
20 of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages
21 be levied against Defendants and each of them, in sums in excess of the jurisdictional minimum of this
22 Court.

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24 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

25 41. At all relevant times, PAGA was applicable to Plaintiff and her employment with
26 Defendants. PAGA provides for a civil penalty to be assessed and collected by the Labor and Workforce
27 Development Agency ("LWDA").

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1 42. Plaintiff and other employees of Defendants are “aggrieved employees” as defined by
2 PAGA, because they are all current or former employees of Defendants, and one or more of the alleged
3 violations were committed against them.

4 43. On or about August 10, 2021, Plaintiff gave written notice of Defendants’ violations of
5 various provisions of the California Labor Code and the applicable IWC Wage Order to (a) the LWDA
6 by filing with the LWDA through the LWDA website and (b) to Defendants by certified mail.

7 44. The LWDA did not provide notice of its intention to investigate Defendants’ violations
8 within 65 calendar days of the August 10, 2021 notice.

9 45. In doing so, Plaintiff has satisfied the administrative prerequisites under PAGA to recover
10 civil penalties against Defendants, in addition to the other remedies, for violations of California Labor
11 Code §§ 226 (inaccurate itemized wage statements), 226.7 (rest break violations), 512 (meal breaks),
12 98.6 (retaliation) as well as IWC Wage Order No. 5-2001.

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14 **FIRST CAUSE OF ACTION**
15 **FOR DISCRIMINATION IN VIOLATION OF GOV’T CODE §§12940 ET SEQ.**
16 **AGAINST EMPLOYER DEFENDANT AND DOES 1-20**

17 46. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
18 though set forth in full herein.

19 47. At all times hereto, the FEHA was in full force and effect and was binding upon
20 Defendants and each of them.

21 48. As such term is used under FEHA, “on the bases enumerated in this part” means or refers
22 to discrimination on the bases of one or more of the protected characteristics under FEHA.

23 49. FEHA requires Defendants to refrain from discriminating against an employee on the
24 basis of gender, sex, and engagement in protected activities from occurring.

25 50. Plaintiff was a member of multiple protected classes as a result of Plaintiff’s gender and
26 sex.

27 51. At all times relevant hereto, Plaintiff was performing competently in the position Plaintiff
28 held with Defendants.

1 52. Plaintiff suffered the adverse employment actions of unlawful harassment, discrimination,
2 failure to investigate, remedy, and/or prevent discrimination, failure to reinstate and/or return to work,
3 and termination, and was harmed thereby.

4 53. Plaintiff is informed and believes that Plaintiff's gender, sex, and/or some combination of
5 these protected characteristics under Government Code §12926(j) were motivating reasons and/or factors
6 in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

7 54. Said conduct violates the FEHA, and such violations were a proximate cause in Plaintiff's
8 damage as stated below.

9 55. The foregoing conduct of Defendants individually, or by and through their officers,
10 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
11 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
12 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
13 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
14 punitive damages in an amount appropriate to punish or make an example of Defendants.

15 56. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
16 attorneys' fees and costs, including expert fees pursuant to the FEHA.

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18 **SECOND CAUSE OF ACTION**
19 **FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
20 **AGAINST ALL DEFENDANTS**

21 57. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
22 though set forth in full herein.

23 58. At all times hereto, the FEHA was in full force and effect and was binding upon
24 Defendants and each of them.

25 59. As such term is used under FEHA, "on the bases enumerated in this part" means or refers
26 to harassment on the bases of one or more of the protected characteristics under FEHA.

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1 60. These laws set forth in the preceding paragraph require Defendants to refrain from
2 harassing, or creating, or maintaining a hostile work environment against an employee based upon the
3 employee's gender, sex, and engagement in protected activities, as set forth hereinabove.

4 61. Defendants' harassing conduct was severe or pervasive, was unwelcome by Plaintiff, and
5 a reasonable person in Plaintiff's circumstances would have considered the work environment to be
6 hostile or abusive.

7 62. Defendants violated the FEHA and the public policy of the State of California which is
8 embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of
9 Plaintiff's gender, sex, engagement in protected activities, and/or some combination of these protected
10 characteristics, as set forth hereinabove.

11 63. The above said acts were perpetrated upon Plaintiff by a supervisor, and/or Defendants
12 knew or should have known of the conduct but failed to take immediate and appropriate corrective action.

13 64. The above said acts of Defendants constitute violations of the FEHA and violations of the
14 public policy of the State of California. Such violations were a proximate cause in Plaintiff's damage as
15 stated below.

16 65. The foregoing conduct of Defendants individually, or by and through their officers,
17 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
18 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
19 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
20 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
21 punitive damages in an amount appropriate to punish or make an example of Defendants.

22 66. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
23 attorneys' fees and costs, including expert fees pursuant to the FEHA.

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THIRD CAUSE OF ACTION
FOR RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST EMPLOYER DEFENDANT AND DOES 1-20

67. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as though set forth in full herein.

68. At all times hereto, the FEHA was in full force and effect and was binding upon Defendants and each of them.

69. These laws set forth in the preceding paragraph require Defendants to refrain from retaliating against an employee for engaging in protected activity.

70. Plaintiff engaged in the protected activities of complaining about and protesting Defendants' discriminatory and harassing conduct towards Plaintiff based upon Plaintiff's gender and sex.

71. Plaintiff suffered the adverse employment actions of unlawful harassment, discrimination, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate and/or return to work, and termination, and was harmed thereby.

72. Plaintiff is informed and believes that Plaintiff's complaining about and protesting about Defendants' discriminatory and harassing conduct were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

73. Defendants violated the FEHA by retaliating against Plaintiff and terminating Plaintiff for attempting to exercise Plaintiff's protected rights, as set forth hereinabove. Plaintiff's engagement in such protected activities were a substantial factor in Defendants' decision to subject Plaintiff to the aforementioned adverse employment actions.

74. Plaintiff is informed and believes, and based thereon alleges, that the above acts of retaliation committed by Defendants were done with the knowledge, consent, and/or ratification of, or at the direction of, each other Defendant and the other Managers.

75. The above said acts of Defendants constitute violations of the FEHA, and were a proximate cause in Plaintiff's damage as stated below.

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1 76. The foregoing conduct of Defendants individually, or by and through their officers,
2 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
3 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
4 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
5 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
6 punitive damages in an amount appropriate to punish or make an example of Defendants.

7 77. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
8 attorneys' fees and costs, including expert fees pursuant to the FEHA.

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10 **FOURTH CAUSE OF ACTION**
11 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION**
12 **IN VIOLATION OF GOV'T CODE §12940(k)**
13 **AGAINST EMPLOYER DEFENDANT AND DOES 1-20**

14 78. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
15 though set forth in full herein.

16 79. At all times hereto, the FEHA, including in particular Government Code §12940(k), was
17 in full force and effect and was binding upon Defendants. This subsection imposes a duty on Defendants
18 to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation from
19 occurring. As alleged above, Defendants violated this subsection and breached their duty by failing to
20 take all reasonable steps necessary to prevent discrimination, harassment and retaliation from occurring.

21 80. The above said acts of Defendants constitute violations of the FEHA, and were a
22 proximate cause in Plaintiff's damage as stated below.

23 81. The foregoing conduct of Defendants individually, or by and through their officers,
24 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
25 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
26 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
27 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
28 punitive damages in an amount appropriate to punish or make an example of Defendants.

1 82. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
2 attorneys' fees and costs, including expert fees pursuant to the FEHA.

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4 **FIFTH CAUSE OF ACTION**

5 **RETALIATION**

6 **LABOR CODE §98.6**

7 **AGAINST ALL DEFENDANTS**

8 83. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
9 though set forth in full herein.

10 84. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against an
11 employee for political activities; for complaining that he or she is owed unpaid wages, for
12 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
13 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's
14 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
15 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private
16 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code. Thus,
17 Section 98.6 prohibits an employer from discharging or in any manner discriminating or retaliating
18 against an employee who, among other things, has exercised her or her rights under that Chapter,
19 including the right to take meal breaks, and/or made a written or oral complaint that he or she is owed
20 unpaid wages. An employee who has been discharged or retaliated against in violation of Labor Code
21 §98.6 is entitled to recovery of a civil penalty against the employer in an amount not exceeding ten
22 thousand dollars (\$10,000.00) for each violation of that section.

23 85. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was
24 terminated from Plaintiff's employment with Defendants as a result of Plaintiff's complaints about not
25 being paid all wages due, not receiving meal and/or rest breaks, exercising Plaintiff's right to take meal
26 and/or rest breaks. Defendants' retaliatory animus is evidenced by, among other things, the reprimands
27 for taking her requisite breaks and the termination of Plaintiff.

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1 86. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
2 Defendants, and Defendants' officers and/or managing agents, including, and those identified herein as
3 DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create policy for
4 Defendants. The aforementioned conduct of said managing agents and individuals was therefore
5 undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions and
6 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
7 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
8 and designated herein as DOES 1-20, inclusive.

9 87. As a result of Defendants' actions, Plaintiffs are each entitled to a civil penalty not to
10 exceed \$10,000.00 for Defendants' violations of Labor Code §§ 98.6 and/or 1102.

11 88. Because the acts taken toward Plaintiff were carried out by managerial employees acting
12 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiffs' rights and
13 in order to injure and damage them, Plaintiffs requests that punitive damages be levied against Defendants
14 and each of them, in sums in excess of the jurisdictional minimum of this court.

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16 **SIXTH CAUSE OF ACTION**
17 **FOR WRONGFUL TERMINATION**
18 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
19 **AGAINST ALL DEFENDANTS**

20 89. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
21 though set forth in full herein.

22 90. At all relevant times mentioned in this complaint, the FEHA was in full force and effect
23 and was binding on Defendants. This law requires Defendants to refrain, among other things, from
24 discriminating against any employee on the basis of gender and sex, and from retaliating against any
25 employee who engages in protected activity. At all times mentioned in this complaint, Article I, Section
26 8 of the California Constitution was in full force and effect and binding on Defendants. This law requires
27 Defendants to refrain from disqualifying a person from pursuing employment on the basis of race, color,
28 national origin, or sex. At all relevant times mentioned in this complaint, Labor Code §98.6 was in full

1 force and effect and was binding upon Defendants and each of them. This law prohibits retaliation against
2 employees who complain about unpaid wages and/or attempt to exercise the rights under the Labor Code.
3 Labor Code §98.6 reflects the State's broad public policy interest in protecting the rights of individual
4 employees and job applicants who could not otherwise afford to protect themselves from violations of
5 the Labor Code.

6 91. Plaintiff believes and thereon alleges that Plaintiff's gender, sex, engagement in protected
7 activity with respect to these protected classes, and/or some combination thereof, were factors in
8 Defendants' conduct as alleged hereinabove.

9 92. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
10 employment on the basis of gender, sex, Plaintiff's complaining of harassment and discrimination due to
11 these protected classes, Plaintiff's engagement in protected activity, and/or some combination of these
12 factors, were a proximate cause in Plaintiff's damages as stated below.

13 93. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's
14 engagement in protected activities under Labor Code §§ 98.6 and/or 1102.5 was a proximate cause in
15 Plaintiff's damages as stated below.

16 94. At all times mentioned in this complaint, it was a fundamental policy of the State of
17 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of
18 gender, sex, and/or engagement in protected activity.

19 95. The above said acts of Defendants constitute violations of the Government Code and the
20 public policy of the State of California embodied therein as set forth above. Defendants violated these
21 laws by discriminating and retaliating against Plaintiff and terminating Plaintiff's employment in
22 retaliation for exercise of protected rights.

23 96. The foregoing conduct of Defendants individually, or by and through their officers,
24 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
25 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
26 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
27 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
28 punitive damages in an amount appropriate to punish or make an example of Defendants.

1 110. Defendants failed and refused to provide Plaintiff with rest periods, and failed to
2 compensate Plaintiff for missed rest periods, as required by Labor Code §§226.7 and the applicable 8
3 Code of Regulations section, and Industrial Welfare Commission Order No. 5-2001.

4 111. As alleged herein, Plaintiff is not exempt from the rest period requirements of the
5 applicable 8 Code of Regulations section, and Industrial Welfare Commission Order No. 5-2001.
6 Consequently, Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite
7 minimum wage, whichever is greater, for each day that Plaintiff was denied such rest periods.

8 A. From approximately August 2020 until April 2021, Defendants failed to provide
9 Plaintiff with the statutory timely rest breaks on approximately 164 days. Consequently, for this period
10 Plaintiff is owed one hour of pay at her average hourly rate of approximately \$15.00 for each of these
11 separate days or approximately \$2,460.00, plus interest thereon.

12 112. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for rest periods
13 as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

14 113. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
15 such amounts pursuant to Labor Code §226.7(b), plus interest thereon and costs of suit.

16
17 **TENTH CAUSE OF ACTION**
18 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
19 **(CAL. LABOR CODE §§226, ET SEQ.)**
20 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

21 114. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
22 set forth in full herein.

23 115. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
24 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
25 total deductions and net wages earned. An employer who violates these code sections is liable to its
26 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the
27 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
28 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is

1 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
2 at all.

3 116. In addition, thereto, pursuant to Labor Code §226.3, an employer who willfully violates
4 Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation
5 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

6 117. At all relevant times, Defendants fails to provide the Plaintiff with timely and accurate
7 wage and hour statements showing gross wages earned, total hours worked, overall deductions made, net
8 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
9 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
10 by Plaintiff.

11 118. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

12 119. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
13 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
14 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
15 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
16 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
17 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
18 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
19 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

20 120. Plaintiff was paid on a bi-monthly basis, and therefore Defendants violated Labor Code
21 §226 approximately 364 times during the last four years that Plaintiff worked for Defendants.

22 121. Consequently, Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties
23 in the statutory maximum amount of \$4,000.00, whichever is greater.

24 122. In addition, thereto, for Defendants' 164 violations, Defendants are penalized \$250.00 for
25 the first violation, and the remainder of which Defendants are penalized \$1,000.00 each.

26 123. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
27 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
28 applicable provisions, as well as attorneys' fees and costs.

1 **ELEVENTH CAUSE OF ACTION**

2 **FOR WAITING TIME PENALTIES LABOR CODE §§201-203**

3 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

4 124. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
5 set forth in full herein.

6 125. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
7 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
8 total deductions and net wages earned. An employer who violates these code sections is liable to its
9 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the
10 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
11 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
12 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
13 at all.

14 126. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates
15 Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation
16 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

17 127. At all relevant times, Defendants fail to provide the Plaintiff with timely and accurate
18 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
19 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
20 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
21 by Plaintiff. Not one of the paystubs that Plaintiff received complied with Labor Code §226, and
22 contained almost none of the required information, including overtime hours actually worked.

23 128. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

24 129. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
25 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
26 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
27 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
28 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting

1 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
2 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
3 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

4 130. Defendants knowingly and intentionally fail to furnish Plaintiff with timely, itemized
5 statements as required by California Labor Code § 226(a) and IWC Wage Order 16, § 7(B). As a result,
6 Plaintiff has been damaged in an amount according to proof at trial, and seek all wages earned and due,
7 plus interest thereon. Additionally, Plaintiff is entitled to all available statutory penalties, including but
8 not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an
9 award of costs, expenses, and reasonable attorneys' fees, as well as other available remedies. Pursuant
10 to California Labor Code § 1194.5, Plaintiff is also entitled to preliminary and permanent injunctive relief
11 against further violations of these laws and wage orders.

12
13 **TWELFTH CAUSE OF ACTION**
14 **FOR PRIVATE ATTORNEY GENERAL ACT**
15 **(CAL. LABOR CODE §2699, ET SEQ)**
16 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

17 131. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
18 set forth in full herein.

19 132. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against
20 Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties
21 for Defendants' violations of the California Labor Code.

22 133. Plaintiff is an aggrieved employee within the meaning of Labor Code §§2699(c) and
23 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as
24 previously pleaded in this Complaint.

25 134. On August 10, 2021, more than 65 calendar days before filing this Complaint, Plaintiff
26 provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail
27 to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
28

1 satisfying the requirements of Labor Code §2699.3(a). These violations included the above-stated Labor
2 Code sections, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

3 135. As of the filing of this Complaint, Plaintiff has not received any response from the Labor
4 and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently,
5 Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

6 136. As a direct and proximate result of Defendants' California Labor Code violations as set
7 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per
8 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
9 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
10 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
11 provide for a penalty, §§226.3, 226.7, and 512.

12 137. Plaintiff may also seek these same penalties on behalf of all other aggrieved employees.

13 138. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered
14 civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

15
16 **THIRTEENTH CAUSE OF ACTION**

17 **UNFAIR AND UNLAWFUL BUSINESS PRACTICES**

18 **CAL. BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.**

19 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

20 139. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
21 forth fully herein.

22 140. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be
23 predicated on the violation of any state or federal law. Defendants' policies, activities, and actions as
24 alleged herein, are violations of California law and constitute unlawful business acts and practices in
25 violation of California Business and Professions Code §§ 17200, *et seq.* Defendants have engaged and
26 continue to engage in unfair and unlawful business practices in California by practicing, employing, and
27 utilizing the employment practices outlined above, including failing to pay reporting time pay, and failing
28 to provide rest breaks in violation of the applicable IWC Wage Order and California Labor Code.

141. Defendants' violations of California wage and hour laws constitute a business practice because Defendants' aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiff.

142. Defendants have avoided payment of wages, rest break premium payments, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Order. Furthermore, Defendants have failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations.

143. Defendants' unfair and unlawful business practices, as alleged in this Complaint, have allowed Defendants to reap in unfair and illegal profits at the expense of Plaintiff, and members of the public. Defendants should be made to disgorge their ill-gotten gains and restore them to Plaintiff. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of the California Code of Civil Procedure § 1021.5.

144. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff is entitled to restitution of the wages withheld and retained by Defendants; an award of attorneys' fees pursuant to California Labor Code § 1194; and California Code of Civil Procedure § 1021.5; interest; and an award of costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for an award and judgment against Defendants jointly and severally, as follows:

1. For a money judgment representing compensatory damages including lost wages, earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money, together with interest on these amounts; for other special damages; and for general damages for mental pain and anguish and emotional distress and loss of earning capacity;

2. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512, in the amount of no less than \$4,920.00;

3. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;

- 1 4. For statutory penalties or damages pursuant to Labor Code §226.3;
- 2 5. For waiting time penalties pursuant to Labor Code §§ 201-203;
- 3 6. For statutory penalties pursuant to Labor Code §2699(f), on Plaintiff's own behalf, and similar
- 4 amounts on behalf of all of Defendants' aggrieved employees;
- 5 7. For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful
- 6 conduct,
- 7 failure to pay minimum wages, failure to pay meal and rest period wages and other compensation in
- 8 accordance with the law;
- 9 8. For punitive damages, pursuant to Civil Code §3294 in amounts sufficient to punish
- 10 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future
- 11 9. For preliminary and permanent injunctive relief enjoining Defendants from violating the
- 12 relevant provisions of the California Labor Code and IWC Wage Order No. 5-2001 and from engaging
- 13 in the unlawful business practices complained of herein;
- 14 10. For prejudgment interest on each of the foregoing at the legal rate from the date the
- 15 obligation became due through the date of judgment in this matter.
- 16 11. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, Labor
- 17 Code and/or any other basis;
- 18 12. For post-judgment interest; and
- 19 13. For an order appointing Plaintiff as class representative and Plaintiff's counsel as class
- 20 counsel; and
- 21 14. For any other relief that is just and proper.

22

23 DATED: November 17, 2021

THE DOMINGUEZ FIRM, LLP

24

25 By: 

26 Jace H. Kim, Esq.
27 Carlos Andres Perez, Esq.
28 Javier Ramirez, Esq.
Attorneys for Plaintiff,
ALEJANDRA BENITEZ

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DATED: November 17, 2021

By:

