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

HUBERTO TOLEDO PINEDA, an individual,

Plaintiff,

v.

FOAM MOLDERS, a California corporation;
 MIGUEL MENDOZA, an individual;
 GUADALUPE GARCIA, an individual; and
 DOES 1 through 20, inclusive,

Defendants.

Case No. **22STCV07477**

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. **NEGLIGENT SUPERVISION AND RETENTION;**
6. **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
7. **FOR DECLARATORY JUDGMENT;**
8. **FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);**
9. **FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**

10. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);
11. FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS (CAL. LABOR CODE §§226 *et seq.*, 1198.5);
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]

COMES NOW PLAINTIFF, HUBERTO TOLEDO PINEDA, and for causes of action against the 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, HUBERTO TOLEDO PINEDA, is and at all times relevant hereto was a resident of the County of Orange, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant FOAM MOLDERS (hereinafter referred to as "FOAM" and "Employer") was and is a California corporation doing business at 20004 State Road, Cerritos, California 90703, in the County of Los Angeles, State of California.

4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Employers owned and operated a private company offering engineering, molding, and fabrication of flexible and rigid foam.

1 5. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint
2 employers and/or special employers within the meaning of Government Code §§12926, subdivision (d),
3 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more
4 persons and are therefore subject to the jurisdiction of this Court.

5 6. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint
6 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
7 Commission Order No. 8-2001, and are each an "employer or other person acting on behalf of an
8 employer" as such term is used in Labor Code sections 558, 558.1, and/or 1197.1 and liable to Plaintiff
9 on that basis.

10 7. Plaintiff is informed and believes, and thereon alleges that at all times relevant to this
11 action, INDIVIDUAL DEFENDANTS were managers and/or supervisors of FOAM; INDIVIDUAL
12 DEFENDANTS were acting within the course and scope of their employment and on behalf of FOAM
13 such that their acts or omissions are imputed to FOAM under the doctrine of *respondeat superior*; or,
14 alternatively, at all times relevant to this action, FOAM cloaked INDIVIDUAL DEFENDANTS with the
15 appearance of actual authority, such that Plaintiff was justified in relying thereon, and therefore her acts
16 or omissions are imputed to FOAM under the doctrine of *respondeat superior*.

17 8. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
18 hereto, Defendants MIGUEL MENDOZA, and GUADALUPE GARCIA, were and are individual
19 residents of the County of Los Angeles, State of California, and are hereinafter individually referred to
20 by last name and collectively referred to as the "INDIVIDUAL DEFENDANTS." The INDIVIDUAL
21 DEFENDANTS were Employers' managers, corporate agents, supervisors, and/or employees.

22 9. The true names and capacities, whether individual, corporate, associate, or otherwise, of
23 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
24 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
25 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
26 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
27 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as
28 alleged hereinafter.

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

7 11. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
8 of them, including those defendants named as DOES 1-20 and the INDIVIDUAL DEFENDANTS, acted
9 in concert with one another to commit the wrongful acts alleged herein, and aided, abetted, incited,
10 compelled and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so,
11 including pursuant to Government Code §12940(i). Plaintiff is further informed and believes, and based
12 thereupon alleges, that Defendants, and each of them, including those defendants named as DOES 1-20
13 and the INDIVIDUAL DEFENDANTS, and each of them, formed and executed a conspiracy or common
14 plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged
15 herein done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff
16 harm.

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

20 13. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to prevent
21 discrimination or retaliation, failure to accommodate, failure to engage in the interactive process, and
22 wrongful termination under Government Code §§12940, et seq., the California Fair Employment and
23 Housing Act (“FEHA”) with the California Department of Fair Employment and Housing (“DFEH”),
24 and has satisfied Plaintiff’s administrative prerequisites with respect to these and all related filings.

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

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

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

8 a. Employers are completely dominated and controlled by one another and DOES 1-
9 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
10 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
11 accomplish some other wrongful or inequitable purpose.

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

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

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

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

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

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

18. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

FACTUAL ALLEGATIONS

19. On or about March 1994, Employers hired Plaintiff, a gay male, to work in the molding department. At the time of Plaintiff's hire, it was not readily apparent that Plaintiff was gay.

20. Plaintiff was a full-time, non-exempt employee, and performed all of Plaintiff's job duties satisfactorily before Plaintiff was wrongfully terminated on or about April 30, 2020.

WAGE AND HOUR ALLEGATIONS

21. At all relevant times, Plaintiff worked approximately five (5) days per week.

22. From approximately November 23, 2017 to June 30, 2018, Defendants promised to pay Plaintiff \$12.00 per hour; from approximately July 1, 2018 to June 30, 2019, Defendants Defendants promised to pay Plaintiff \$13.25 per hour; from approximately July 1, 2019 to December 31, 2019,

1 Defendants promised to pay Plaintiff \$14.25 per hour; and, from approximately January 1, 2020 to April
2 30, 2020, Defendants promised to pay Plaintiff \$15.00 per hour,

3 23. Throughout Plaintiff's employment, Plaintiff was not permitted to, and not advised of
4 Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial portion
5 thereof.

6 24. Throughout Plaintiff's employment, Plaintiff did not receive uninterrupted statutory 30-
7 minute meal periods for days on which Plaintiff worked at least 5 hours, which was each day Plaintiff
8 worked. Employer required all employees to return to work 5 minutes before the end of their lunch break,
9 thereby interrupting their 30-minute break every single day Plaintiff worked.

10 25. Throughout Plaintiff's employment, EMPLOYERS violated Labor Code § 221 by
11 collecting and/or receiving from Plaintiff, and other aggrieved employees, part of their wages paid by
12 Defendants to said employees.

13 26. Although Plaintiff was entitled to and did accrue sick time for which he was never paid,
14 Defendants violated Labor Code §§ 233, 245, and 246 because Defendants failed to provide Plaintiff with
15 paid sick leave.

16 27. Defendants violated Labor Code §§ 204 and 223 because Defendants failed to pay wages
17 for all hours worked paid at least twice during each calendar month to employees as required "by
18 contract" under Labor Code section 223, as well as an improper collection of wages paid to an employee
19 under Labor Code section 221. *Gonzales v. Downtown LA Motors*, 215 Cal. App. 4th 36 (2d App. Dist.
20 Mar. 6, 2013).

21 28. Throughout Plaintiff's employment, Plaintiff was not provided with paystubs that
22 complied with Labor Code § 226, as EMPLOYERS consistently provided incorrect and inaccurate
23 paystubs.

24 29. Plaintiff is informed and believes, and thereon alleges, that himself and other employees
25 were subject to the same violations and, therefore, are aggrieved employees within the meaning of
26 California Labor Code § 2699. Thus, Plaintiff, as an aggrieved employee, reserves his right to bring an
27 action against DEFENDANTS, on behalf of himself and other current and former employees.

1 30. *Additionally, pursuant to Huff v. Securitas Security Services USA, Inc.* (2018) 23
2 Cal.App.5th 745, as an aggrieved employee, Plaintiff may investigate and pursue claims and penalties on
3 behalf of other aggrieved employees for other violations that he was not personally “aggrieved” by.

4 **FEHA FACTUAL ALLEGATIONS**

5 31. Throughout Plaintiff’s employment, GARCIA said degrading comments to Plaintiff
6 regarding his sexual orientation, such as announcing that the room smelled like a “maricon” (the Spanish
7 derogatory translation of the word “faggot”) when Plaintiff walked in the room.

8 32. GARCIA would also warn new male employees about Plaintiff’s sexual orientation and
9 against being alone with Plaintiff. Plaintiff’s co-workers would laugh at GARCIA’S comments causing
10 Plaintiff great humiliation and embarrassment.

11 33. Plaintiff repeatedly complained about GARCIA’S behavior to his supervisor
12 MENDOZA. MENDOZA would tell Plaintiff that they were going to look into it, but MENDOZA never
13 did, as GARCIA continued his aggressive and hostile comments and behavior towards Plaintiff.

14 34. Due to Plaintiff’s constant resistance to GARCIA’S discriminatory and harassing
15 behavior, in a retaliatory fashion, on or about April 30, 2020, Employer used the COVID-19 pandemic
16 to terminate Plaintiff.

17 35. Plaintiff, however, was one of three employees to be laid off, all were approximately the
18 same age and had worked there for approximately the same amount of time.

19 36. Younger individuals, who were paid less than Plaintiff remained in their positions.

20 37. Furthermore, some of the individuals terminated along with Plaintiff were called back to
21 work, but Defendants did not call Plaintiff back to work due to his age, sex, gender, sexual orientation,
22 and because Plaintiff resisted the harassing conduct.

23 38. On information and belief, INDIVIDUAL DEFENDANTS harassed Plaintiff for personal
24 gratification, intentional meanness, bigotry, and/or for other personal motives.

25 39. At the time of Plaintiff’s termination, Plaintiff was fifty-two (52) years of age.

26 40. Defendants discriminated, retaliated against, and wrongfully terminated Plaintiff based
27 upon his age, gender, sex, sexual orientation, and/or engagement in protected activities.

1 41. Defendants also subjected the Plaintiff to harassment by consistently making hurtful
2 comments toward Plaintiff about his sex, gender, and sexual orientation.

3 42. Plaintiff's termination was substantially motivated by Plaintiff's age, gender, sex, sexual
4 orientation, and/or engagement in protected activities. Defendants' discriminatory animus is evidenced
5 by the previously mentioned facts.

6 43. Defendants' conduct described herein was undertaken, authorized, and/or ratified
7 Defendants' officers, directors and/or managing agents, including, but not limited to MENDOZA,
8 GARCIA, and those identified herein as DOES 1 through 20, who were authorized and empowered to
9 make decisions that reflect and/or create policy for Defendants. The aforementioned conduct of said
10 managing agents and individuals was therefore undertaken on behalf of Defendants who further had
11 advanced knowledge of the actions and conduct of said individuals whose actions and conduct were
12 ratified, authorized, and approved by managing agents whose precise identities are unknown to Plaintiff
13 at this time and are therefore identified and designated herein as DOES 1 through 20, inclusive.

14 44. 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 45. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
19 commissions, benefits and loss or diminution of earning capacity.

20 46. Plaintiff claims general damages for emotional and mental distress and aggravation in a
21 sum in excess of the jurisdictional minimum of this Court.

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

FIRST CAUSE OF ACTION
FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

48. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as though set forth in full herein.

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

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

51. FEHA requires Defendants to refrain from discriminating against an employee on the basis of age, gender, sex, sexual orientation, and/or engagement in protected activities from occurring.

52. Plaintiff was a member of multiple protected classes as a result of Plaintiff's age, gender, sex, sexual orientation, and/or engagement in protected activities.

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

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

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

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

57. The damage allegations of Paragraphs 44 through 47, inclusive, are herein incorporated by reference.

58. The foregoing conduct of Defendants individually, or by and through their officers, directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or

1 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
2 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
3 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
4 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

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

7
8 **SECOND CAUSE OF ACTION**

9 **FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**

10 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

11 60. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as
12 though set forth in full herein.

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

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

17 63. These laws set forth in the preceding paragraph require Defendants to refrain from
18 harassing, or creating, or maintaining a hostile work environment against an employee based upon the
19 employee's age, gender, sex, sexual orientation, and/or engagement in protected activities, as set forth
20 hereinabove.

21 64. Defendants' harassing conduct was severe or pervasive, was unwelcome by Plaintiff,
22 and a reasonable person in Plaintiff's circumstances would have considered the work environment to
23 be hostile or abusive.

24 65. Defendants violated the FEHA and the public policy of the State of California which is
25 embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of
26 Plaintiff's age, gender, sex, sexual orientation, and/or engagement in protected activities, and/or some
27 combination of these protected characteristics, as set forth hereinabove.

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

4 67. The above said acts of Defendants constitute violations of the FEHA and violations of
5 the public policy of the State of California. Such violations were a proximate cause in Plaintiff's
6 damage as stated below.

7 68. The damage allegations of Paragraphs 44 through 47, inclusive, are herein incorporated
8 by reference.

9 69. 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
11 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
12 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
13 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
14 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

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

17
18 **THIRD CAUSE OF ACTION**

19 **FOR RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**

20 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

21 71. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as
22 though set forth in full herein.

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

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

1 74. Plaintiff engaged in the protected activities of complaining about and protesting
2 Defendants' discriminatory and harassing conduct towards Plaintiff based upon Plaintiff's age, gender,
3 sex, and/or sexual orientation.

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

7 76. Plaintiff is informed and believes that Plaintiff's conduct of protesting about
8 Defendants' discriminatory and harassing conduct, and/or some combination of these factors, were
9 motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse
10 employment actions.

11 77. Defendants violated the FEHA by retaliating against Plaintiff and terminating Plaintiff
12 for attempting to exercise Plaintiff's protected rights, as set forth hereinabove.

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

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

18 80. The damage allegations of Paragraphs 44 through 47, inclusive, are herein incorporated
19 by reference.

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

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

FOURTH CAUSE OF ACTION
FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION
IN VIOLATION OF GOV'T CODE §12940(k)
AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

83. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as though set forth in full herein.

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

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

86. The damage allegations of Paragraphs 44 through 47, inclusive, are herein incorporated by reference.

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

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

FIFTH CAUSE OF ACTION
FOR COMMON LAW NEGLIGENT SUPERVISION AND RETENTION
AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

89. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as though set forth in full herein.

90. An employer is liable for negligent supervision or retention of an employee if the employer knew or should have known that the employee created a particular risk to others; that the employee harmed the plaintiff, and that the employer's negligence in supervising or retaining the employee was a substantial factor in causing the plaintiff's harm.

91. Employers owed Plaintiff a duty of reasonable care to supervise their employees and to take reasonable steps to prevent them from harassing, threatening or injuring Plaintiff.

92. Employers further owed Plaintiff a duty of reasonable care to discharge from employment employees who had harassed, threatened or injured or were reasonably likely to harass, threaten or injure others with whom they came into contact at work, including Plaintiff.

93. Employers had reason to know that the INDIVIDUAL DEFENDANTS created a risk or threat of injury to Plaintiff, as alleged herein, due to Plaintiff's complaints of INDIVIDUAL DEFENDANTS' behavior, including but not limited to INDIVIDUAL DEFENDANTS' harassment of Plaintiff, and ratification by Employers.

94. Employers breached its duties by failing to properly supervise or control INDIVIDUAL DEFENDANTS; and by failing to terminate the employment of the INDIVIDUAL DEFENDANTS so that Plaintiff could work in a reasonably safe environment free from discrimination, hostility, intimidation, and harassment.

95. The damage allegations of Paragraphs 44 through 47, inclusive, are herein incorporated by reference.

96. Pursuant to this Court's statutory authority, Plaintiff requests an award of punitive damages, in addition to general and special damages, and other relief the court deems proper.

1 97. Pursuant to this Court's statutory authority, Plaintiff requests an award of attorneys'
2 fees, and costs in prosecuting this action, including expert fees and any other relief the court deems
3 proper.

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

10
11 **SIXTH CAUSE OF ACTION**
12 **FOR WRONGFUL TERMINATION**
13 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
14 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

15 99. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as
16 though set forth in full herein.

17 100. At all relevant times mentioned in this complaint, the FEHA was in full force and effect
18 and was binding on Defendants. This law requires Defendants to refrain, among other things, from
19 discriminating against any employee on the basis of age, gender, sex, sexual orientation, and from
20 retaliating against any employee who engages in protected activity. At all times mentioned in this
21 complaint, Article I, Section 8 of the California Constitution was in full force and effect and binding
22 on Defendants. This law requires Defendants to refrain from disqualifying a person from pursuing
23 employment on the basis of race, color, national origin, or sex.

24 101. At all times mentioned in this complaint, it was a fundamental policy of the State of
25 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of
26 age, gender, sex, sexual orientation, and/or engagement in protected activities.

1 102. Plaintiff believes and thereon alleges that Plaintiff's age, gender, sex, sexual orientation,
2 and/or engagement in protected activities with respect to these protected classes, and/or some
3 combination thereof, were factors in Defendants' conduct as alleged hereinabove.

4 103. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
5 employment on the basis of age, gender, sex, sexual orientation, Plaintiff's complaining of harassment
6 and discrimination due to these protected classes, Plaintiff's engagement in protected activity, and/or
7 some combination of these factors, were a proximate cause in Plaintiff's damages as stated below.

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

12 105. The damage allegations of Paragraphs 44 through 47, inclusive, are herein incorporated
13 by reference.

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

20
21 **SEVENTH CAUSE OF ACTION**
22 **FOR DECLARATORY JUDGMENT**
23 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

24 107. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 106, inclusive, as
25 though set forth in full herein.

26 108. Government Code §12920 sets forth the public policy of the State of California as
27 follows:

28 It is hereby declared as the public policy of this state that it is necessary to
 protect and safeguard the right and opportunity of all persons to seek,

1 obtain, and hold employment without discrimination or abridgment on
2 account of race, religious creed, color, national origin, ancestry, physical
3 disability, mental disability, medical condition, genetic information,
4 marital status, sex, gender, gender identity, gender expression, age, or
5 sexual orientation.

6 It is recognized that the practice of denying employment opportunity and
7 discriminating in the terms of employment for these reasons foments
8 domestic strife and unrest, deprives the state of the fullest utilization of its
9 capacities for development and advancement, and substantially and
10 adversely affects the interests of employees, employers, and the public in
11 general.

12 Further, the practice of discrimination because of race, color, religion,
13 sex, gender, gender identity, gender expression, sexual orientation,
14 marital status, national origin, ancestry, familial status, source of income,
15 disability, or genetic information in housing accommodations is declared
16 to be against public policy.

17 It is the purpose of this part to provide effective remedies that will
18 eliminate these discriminatory practices.

19 This part shall be deemed an exercise of the police power of the state for
20 the protection of the welfare, health, and peace of the people of this state.

21 109. Government Code §12920.5 embodies the intent of the California legislature and states:

22 In order to eliminate discrimination, it is necessary to provide effective
23 remedies that will both prevent and deter unlawful employment practices
24 and redress the adverse effects of those practices on aggrieved persons.
25 To that end, this part shall be deemed an exercise of the Legislature's
26 authority pursuant to Section 1 of Article XIV of the California
27 Constitution.

28 110. Moreover, Government Code §12921, subdivision (a) says in pertinent part:

The opportunity to seek, obtain, and hold employment without
discrimination because of race, religious creed, color, national origin,
ancestry, physical disability, mental disability, medical condition, genetic
information, marital status, sex, gender, gender identity, gender
expression, age, or sexual orientation is hereby recognized as and
declared to be a civil right.

111. An actual controversy has arisen and now exists between Plaintiff and Defendants
concerning their respective rights and duties as it is believed that Defendants may allege that they did
not discriminate and retaliate against Plaintiff; that Plaintiff was not terminated as a result of Plaintiff's
age, gender, sex, sexual orientation, and/or engagement in protected activities, and/or some
combination of these protected characteristics. Plaintiff contends that Defendants did discriminate and

1 retaliate against Plaintiff on the basis of Plaintiff's age, gender, sex, sexual orientation, and/or
2 engagement in protected activities, and/or some combination of these protected characteristics; and that
3 Plaintiff was retaliated against and, ultimately wrongfully terminated as a result of Plaintiff's age,
4 gender, sex, sexual orientation, and/or engagement in protected activities, and/or some combination of
5 these protected characteristics. Plaintiff is informed and believes, and on that basis alleges, that
6 Defendants shall dispute Plaintiff's contentions.

7 112. Pursuant to Code of Civil Procedure §1060, Plaintiff desires a judicial determination of
8 Plaintiff's rights and duties, and a declaration that Defendants harassed Plaintiff on the basis of
9 Plaintiff's age, gender, sex, sexual orientation, and/or engagement in protected activities, and/or some
10 combination of these protected characteristics

11 113. Pursuant to Code of Civil Procedure §1060, Plaintiff seeks a judicial determination of
12 Plaintiff's rights and duties, and a declaration that Plaintiff's age, gender, sex, sexual orientation, and/or
13 engagement in protected activities, and/or some combination of these protected characteristics was a
14 substantial motivating factor in the decision to subject Plaintiff to the aforementioned adverse
15 employment actions.

16 114. A judicial declaration is necessary and appropriate at this time under the circumstances
17 in order that Plaintiff, for Plaintiff and on behalf of employees in the State of California and in
18 conformity with the public policy of the State, obtain a judicial declaration of the wrongdoing of
19 Defendants and to condemn such discriminatory employment policies or practices prospectively.
20 *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203.

21 115. A judicial declaration is necessary and appropriate at this time such that Defendants
22 may also be aware of their obligations under the law to not engage in discriminatory practices and to
23 not violate the law in the future.

24 116. Government Code §12965(b) provides that an aggrieved party, such as the Plaintiff
25 herein, may be awarded reasonable attorney's fees and costs: "In civil actions brought under this
26 section, the court, in its discretion, may award to the prevailing party, including the department,
27 reasonable attorney's fees and costs, including expert witness fees." Such fees and costs expended by
28

1 an aggrieved party may be awarded for the purpose of redressing, preventing, or deterring
2 discrimination and harassment.

3
4 **EIGHTH CAUSE OF ACTION**
5 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
6 **LABOR CODE §§226.7, 512**
7 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

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

10 118. Labor Code §512 requires employers to provide every employee with an uninterrupted
11 meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

12 119. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted
13 rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion
14 thereof.

15 120. In the four years last past, Plaintiff regularly worked in excess of five hours per day, and
16 was thereby entitled to take uninterrupted 30-minute meal periods and two 10-minute rest periods on each
17 day of work.

18 121. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
19 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the
20 applicable sections of 8 Code of Regulations §11080 and Industrial Welfare Commission Order No. 8-
21 2001, as follows:

22 a. From approximately November 23, 2017 to June 30, 2018, Plaintiff's statutory 30-
23 minute meal periods were missed, interrupted or cut short approximately 5 times per week for 31 weeks,
24 or on approximately 155 days. During this same time period, Plaintiff was deprived of one or more of
25 Plaintiff's statutory 10-minute rest periods on approximately 155 days.

26 b. From approximately July 1, 2018 to June 30, 2019, Plaintiff's statutory 30-minute
27 meal periods were missed, interrupted or cut short approximately 5 times per week for 52 weeks, or on
28

1 approximately 260 days. During this same time period, Plaintiff was deprived of one or more of Plaintiff's
2 statutory 10-minute rest periods on approximately 260 days.

3 c. From approximately July 1, 2019 to December 31, 2019, Plaintiff's statutory 30-
4 minute meal periods were missed, interrupted or cut short approximately 5 times per week for 26 weeks,
5 or on approximately 130 days. During this same time period, Plaintiff was deprived of one or more of
6 Plaintiff's statutory 10-minute rest periods on approximately 130 days

7 d. From approximately January 1, 2020 to April 30, 2020, Plaintiff's statutory 30-
8 minute meal periods were missed, interrupted or cut short approximately 5 times per week for 17 weeks,
9 or on approximately 85 days. During this same time period, Plaintiff was deprived of one or more of
10 Plaintiff's statutory 10-minute rest periods on approximately 85 days

11 122. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
12 Code of Regulations §11080 and Industrial Welfare Commission Order No. 8-2001. Consequently,
13 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
14 whichever is greater, for each day that Plaintiff was denied such meal periods, and is owed one hour of
15 pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each day
16 that Plaintiff was denied such rest periods, estimated as follows:

17 a. From approximately November 23, 2017 to June 30, 2018, Defendants failed to
18 provide Plaintiff with an uninterrupted statutory meal period on approximately 155 separate days.
19 Consequently, Plaintiff is owed one hour of pay at \$12.00 for each day, or \$1,860.00, plus interest
20 thereon, for unpaid missed or interrupted meal periods. During this same time period, Defendants failed
21 to provide Plaintiff with the statutory rest period on approximately 155 separate days. Consequently,
22 Plaintiff is owed one hour of pay at \$12.00 for each day, or \$1,860.00, plus interest thereon, for unpaid
23 rest periods. Thus, Plaintiff is owed a total of at least \$3,720.00, plus interest thereon, for unpaid meal
24 and rest periods for this time period;

25 b. From approximately July 1, 2018 to June 30, 2019, Defendants failed to provide
26 Plaintiff with an uninterrupted statutory meal period on approximately 260 separate days. Consequently,
27 Plaintiff is owed one hour of pay at \$13.25 for each day, or \$3,445.00, plus interest thereon, for unpaid
28 missed or interrupted meal periods. During this same time period, Defendants failed to provide Plaintiff

1 with the statutory rest period on approximately 260 separate days. Consequently, Plaintiff is owed one
2 hour of pay at \$13.25 for each day, or \$3,445.00, plus interest thereon, for unpaid rest periods. Thus,
3 Plaintiff is owed a total of at least \$4,800.00, plus interest thereon, for unpaid meal and rest periods for
4 this time period;

5 c. From approximately July 1, 2019 to December 31, 2019, Defendants failed to
6 provide Plaintiff with an uninterrupted statutory meal period on approximately 130 separate days.
7 Consequently, Plaintiff is owed one hour of pay at \$14.25 for each day, or \$1,852.50, plus interest
8 thereon, for unpaid missed or interrupted meal periods. During this same time period, Defendants failed
9 to provide Plaintiff with the statutory rest period on approximately 130 separate days. Consequently,
10 Plaintiff is owed one hour of pay at \$14.25 for each day, or \$1,852.50, plus interest thereon, for unpaid
11 rest periods. Thus, Plaintiff is owed a total of at least \$3,705.00, plus interest thereon, for unpaid meal
12 and rest periods for this time period; and

13 d. From approximately January 1, 2020 to April 30, 2020, Defendants failed to
14 provide Plaintiff with an uninterrupted statutory meal period on approximately 85 separate days.
15 Consequently, Plaintiff is owed one hour of pay at \$15.00 for each day, or \$1,275.00, plus interest
16 thereon, for unpaid missed or interrupted meal periods. During this same time period, Defendants failed
17 to provide Plaintiff with the statutory rest period on approximately 85 separate days. Consequently,
18 Plaintiff is owed one hour of pay at \$15.00 for each day, or \$1,275.00, plus interest thereon, for unpaid
19 rest periods. Thus, Plaintiff is owed a total of at least \$2,550.00, plus interest thereon, for unpaid meal
20 and rest periods for this time period.

21 123. Thus, the total missed meal and rest period compensation owing Plaintiff for this time
22 period is at a minimum \$14,775.00.

23 124. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal and rest
24 breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

25 125. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
26 such amounts in the combined amount of at least \$14,775.00, pursuant to Labor Code §226.7(b), plus
27 interest thereon and costs of suit.
28

NINTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS
LABOR CODE §§226 ET SEQ.
AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

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

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

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

129. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate wage and hour statements showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and rates in effect during each pay period and the corresponding number of hours worked at each hourly rate by Plaintiff. Not one of the paystubs that Plaintiff received complied with Labor Code §226, as the paystubs were inaccurate.

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

131. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage, and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating

1 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
2 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
3 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
4 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

5 132. Plaintiff was paid on a weekly basis, and therefore Defendants violated Labor Code §226
6 approximately 52 times during the one year preceding the filing of this complaint. Consequently,
7 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
8 amount of \$4,000.00, whichever is greater.

9 133. In addition thereto, for Defendant's 52 violations, Defendants are penalized \$50.00 for the
10 first violation, and the remainder of which Defendants are penalized \$100.00 each, for a total due in Labor
11 Code §226.3 penalties of \$5,150.00.

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

15
16 **TENTH CAUSE OF ACTION**
17 **FOR WAITING TIME PENALTIES**
18 **LABOR CODE §§201-203**

19 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

20 135. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
21 though set forth in full herein.

22 136. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
23 other compensation due immediately upon termination or within 72 hours of resignation, as required.
24 These wages refer to, at a minimum, meal and rest period compensation that Defendants should have
25 paid, but did not pay to Plaintiff during the term of Plaintiff's employment and which were, at the latest,
26 due within the time restraints of Labor Code §§201-203.

27 137. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
28 203.

138. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and more than \$4,275.00 in wait time penalties, calculated based on 30 days of Plaintiff's daily wage rate of \$142.50, inclusive of overtime.

139. Based on Defendants' conduct as alleged herein, Defendants are liable for \$4,275.00 in statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys' fees and costs.

ELEVENTH CAUSE OF ACTION

FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS

LABOR CODE §§226, 1198.5

AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

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

141. Labor Code §1198.5 requires an employer, within thirty (30) days of a written request thereof, to inspect or receive a copy of an employee's personnel and payroll records. An employer's failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

142. Labor Code §226 requires an employer, within twenty-one (21) days of a written request thereof, to allow inspection or to provide a copy of an employee's personnel and payroll records. An employer's failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

143. On May 11, 2021, Plaintiff made a written request to inspect or receive a copy of Plaintiff's personnel and payroll records from Defendants, which Defendants received.

144. Defendants failed and refused to permit Plaintiff's inspection of Plaintiff's personnel and payroll records, and failed to provide a copy of Plaintiff's personnel and payroll records to Plaintiff within the time required by Labor Code §1198.5, or ever.

145. As a result of Defendants' failure and refusal to comply with Labor Code §1198.5, Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00.

1 146. As a result of Defendants' failure and refusal to comply with Labor Code §226(f), Plaintiff
2 is entitled to recover from Defendants a civil penalty of \$750.00.

3 147. Pursuant to Labor Code §§1198.5(l) and 226(h), Plaintiff requests a reasonable award of
4 attorneys' fees and costs.

5
6 **TWELFTH CAUSE OF ACTION**
7 **FOR PRIVATE ATTORNEY GENERAL ACT**
8 **LABOR CODE §2699**

9 **AGAINST ALL DEFENDANTS AND DOES 1 THROUGH 20, INCLUSIVE**

10 148. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 147, inclusive, as
11 though set forth in full herein.

12 149. Under Labor Code section 2699, Plaintiff, as an aggrieved employee, may bring an action
13 against Defendants, on behalf of herself and other current or former employees, seeking statutory civil
14 penalties for Defendants' violations of the California Labor Code.

15 150. Plaintiff was an aggrieved employee within the meaning of Labor Code sections 2699,
16 subdivision (c) and 2699.3, subdivision (a), as Defendants have committed multiple California Labor
17 Code violations against Plaintiff, as previously pleaded in this Complaint.

18 151. On August 2, 2021, more than 65 calendar days before filing this Complaint, Plaintiff
19 provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail
20 to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
21 satisfying the requirements of Labor Code section 2699.3, subdivision (a) by citing the specific provisions
22 of the Labor Code alleged to have been violated, including the facts and theories sufficient to support the
23 alleged violations.

24 152. Here, Plaintiff's civil action alleges violations of provisions listed in Labor Code §2699.5
25 and violations of provisions other than those listed in Labor Code §2699.5. As such, Labor Code
26 §2699.3(a) and §2699.3(c) apply to this action.

27 153. Further, as of the filing of this Complaint, Plaintiffs have not received from Defendants
28 written notice by certified mail that the alleged violations have been cured, including a description of the

1 actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given
2 authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor
3 Code §2699.

4 **PENALTIES**

5 154. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code
6 that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
7 Agency (“LWDA”) (or any of its departments, divisions, commissions, board agency or employees), such
8 civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved
9 employee on behalf of himself or herself and other current or former employees) and Labor Code
10 §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which
11 a civil penalty is specifically provided), the aggrieved employees seek recovery of all applicable civil
12 penalties, as follows:

13 a. As applicable, civil penalties under Labor Code §2699(f), for all violations of the
14 Labor Code except for those for which a civil penalty is specifically provided, in the amount of one
15 hundred dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two
16 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation; and

17 b. As applicable, civil penalties under Labor Code §558 (in addition to and entirely
18 independent and apart from any other penalty provided for in the Labor Code), for violations of Labor
19 Code §§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the
20 aggrieved employee was underpaid, and \$100 for each subsequent violation for each underpaid employee
21 for each pay period for which the employee was underpaid, with all wages recovered pursuant to Labor
22 Code §557 paid to the aggrieved employees;

23 c. As applicable, Labor Code §204 (in addition to an entirely independent and apart
24 from any other penalty provided in the Labor Code), for any aggrieved employee who Defendants failed
25 to pay all earned wages during employment, in the amount of a civil penalty of \$100 for the initial
26 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation plus 25
27 percent of the amount unlawfully withheld;

1 d. As applicable, civil penalties under Labor Code §203 (in addition to and entirely
2 independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee
3 who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor
4 Code §§201, 201.1, 201.5, 202, and 205, in the amount of a civil penalty of one day of pay, at the same
5 rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty
6 (30) days;

7 e. As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely
8 independent and apart from any other civil penalty provided in the Labor Code), for each violation of
9 Labor Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each
10 violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

11 f. As applicable, Labor Code §226.7 (in addition to an entirely independent and apart
12 from any other penalty provided in the Labor Code), for any aggrieved employee who Defendants failed
13 to pay all earned wages during employment, in the amount of a civil penalty of \$100 for the initial
14 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

15 g. As applicable, Labor Code §512 (in addition to an entirely independent and apart
16 from any other penalty provided in the Labor Code), for any aggrieved employee who Defendants failed
17 to pay all earned wages during employment, in the amount of a civil penalty of \$100 for the initial
18 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation plus 25;

19 h. As applicable, Labor Code §227.3(in addition to and entirely independent and
20 apart from any other penalty provided in the Labor Code), for any aggrieved employee who did not
21 receive unused vested vacation in their final check, in the amount of a civil penalty not exceeding
22 \$10,000 for each aggrieved employee;

23 i. As applicable, Labor Code §246 (in addition to an entirely independent and apart
24 from any other penalty provided in the Labor Code), for any aggrieved employee who Defendants failed
25 to provide paid sick leave, in the amount of a civil penalty of \$100 for the initial violation, and \$200
26 for each aggrieved employee per pay period for each subsequent violation plus 25 percent of the amount
27 unlawfully withheld;
28

1 j. As applicable, any and all additional applicable civil penalties and sums as
2 provided by the Labor Code and/or other relevant statutes.

3 155. As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor
4 Code except for those for which a civil penalty is specifically provided, in the amount of one hundred
5 dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two hundred dollars
6 (\$200.00) for each aggrieved employee per pay period for each subsequent violation; and

7 156. In addition, Plaintiffs seek and are entitled to seventy-five percent (75%) of all penalties
8 obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and
9 employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%)
10 to the aggrieved employees.

11 157. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek
12 recovery of pre-judgment interest on all amounts recovered herein.

13 158. As a direct and proximate result of Defendants' California Labor Code violations as set
14 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per
15 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
16 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
17 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
18 provide for a penalty, §§203, 210, 225.5, 226.3, 226.7, 510, 512, and 558.

19 159. Further, Plaintiffs are entitled; to recover reasonable attorneys' fees and costs pursuant to
20 Labor Code §§2699(g)(1) and any other applicable statute.

21
22 **THIRTEENTH CAUSE OF ACTION**

23 **FOR UNFAIR COMPETITION**

24 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

25 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

26 160. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
27 though set forth in full herein.
28

1 161. The court has jurisdiction over this action pursuant to Business and Professions Code
2 section 17200 et seq., specifically Business and Professions Code section 17203, which provides that any
3 person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any
4 court of competent jurisdiction; and the court may make such orders or judgments, including the
5 appointment of a receiver, as may be necessary to prevent the use or employment by any person of any
6 practice which constitutes unfair competition, or as may be necessary to restore to any person in interest
7 any money or property, real or personal, which may have been acquired by means of such unfair
8 competition; and Business and Professions Code Section 17204, which provides for actions for any relief
9 pursuant to the Unfair Competition Law to be prosecuted exclusively in a court of competent jurisdiction
10 by any board, officer, person, corporation or association or by any person acting for the interests of itself,
11 or its members and that has suffered an injury in fact and lost money or property as a result of Defendants'
12 conduct.

13 162. Defendants' violations of 8 Code of Regulations §11080, Industrial Welfare Commission
14 Order No. 8-2001, Labor Code §§201-203, 226, 226.7, 512, 1198.5, and other applicable provisions, as
15 alleged herein, including Defendants' failure and refusal to provide meal and rest breaks, Defendants'
16 failure to provide timely and accurate wage and hour statements, Defendants' failure to pay compensation
17 due in a timely manner upon termination or resignation, and Defendants' failure to maintain complete
18 and accurate payroll records for the Plaintiff, constitute unfair business practices in violation of Business
19 & Professions Code §§17200, et seq.

20 163. As a result of Defendants' unfair business practices, Defendants have reaped unfair
21 benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be
22 made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

23 164. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent
24 injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore
25 to the Plaintiff the monies and benefits unlawfully withheld from Plaintiff.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff seeks judgment against Defendants and each of them, in an amount
3 according to proof but estimated to be no less than \$1,000,000 as follows:

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

8 2. For statutory penalties or damages pursuant to Labor Code §558 in the amount of no less
9 than \$5,150.00;

10 3. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512,
11 in the amount of no less than \$14,775.00;

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

13 5. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
14 less than \$5,150.00;

15 6. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
16 than \$4,275.00;

17 7. For statutory penalties pursuant to Labor Code §§226, 1198.5 in the amount of no less
18 than \$750.00 per violation, totaling \$1,500.00;

19 8. For prejudgment interest on each of the foregoing at the legal rate from the date the
20 obligation became due through the date of judgment in this matter.

21 **WHEREFORE**, Plaintiff further seeks judgment against Defendants, and each of them, in an
22 amount according to proof, as follows:

23 9. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
24 condemning Defendants' discriminatory practices;

25 10. For injunctive relief barring Defendants' discriminatory employment policies and
26 practices in the future, and restoring Plaintiff to Plaintiff's former position with Defendants;

27 11. For punitive damages, pursuant to Civil Code §§3294 in amounts sufficient to punish
28 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

1 12. For injunctive relief compelling Defendants to report to federal and state authorities wages
2 earned by Plaintiff, and other employees, and pay all state and federal taxes owing, employer matching
3 funds, unemployment premiums, social security, Medicare, and workers' compensation premiums, all
4 this in an amount according to the proof;

5 13. For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful
6 conduct, misclassification of Plaintiff as an independent contractor, and failure to pay wages and other
7 compensation in accordance with the law;

8 14. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, Labor
9 Code and/or any other basis;

10 15. For post-judgment interest; and

11 16. For any other relief that is just and proper.

12 DATED: February 23, 2022

GUERRA & CASILLAS LLP

13
14 By: 

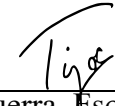
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17 **JURY TRIAL DEMANDED**

18 Plaintiff demands trial of all issues by jury.
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20 DATED: February 23, 2022

GUERRA & CASILLAS LLP

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22 By: 

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