

1 Marcia Guzmán, SBN 298859
2 Victoria Tokar, SBN 304308
3 Attorneys For Workers' Rights
4 340 South Lemon Avenue, Suite 1354
5 Walnut, CA 91789
6 Direct: (213) 347-4529
7 Facsimile: (213) 342-6329
8 Email: Marcia@attorneysforworkersrights.com
9 Attorneys for Plaintiff
10 NANCY ANNE TORRES
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SONOMA

SCV-270827

NANCY ANNE TORRES,

Case No:

Plaintiff,

COMPLAINT FOR:

vs.

AMY'S KITCHEN, INC., a California
corporation, ZAFAR ALAM, an individual, and
DOES 1 through 100, inclusive.

Defendants.

1. HARRASMENT BASED ON
SEX, GENDER IDENTITY, AND
GENDER EXPRESSION (CAL.
GOV. CODE §§ 12940 *et seq.*);
2. DISCRIMINATION BASED ON
SEX, GENDER IDENTITY, AND
GENDER EXPRESSION (CAL.
GOV. CODE §§ 12940 *et seq.*);
3. RETALIATION ON THE BASIS
OF SEX, GENDER IDENTITY,
AND GENDER EXPRESSION
(CAL. GOV. CODE §§ 12940 *et*
seq.);
4. HOSTILE WORK
ENVIRONMENT (CAL. GOV.
CODE §§ 12940 *et seq.*);
5. FAILURE TO TAKE ALL
REASONABLE STEPS TO
PREVENT HARASSMENT,
DISCRIMINATION AND
RETALIATION (CAL. GOV.
CODE §§ 12940 *et seq.*);
6. RETALIATION IN VIOLATION
OF CALIFORNIA LABOR CODE
§1102.5(b);
7. WRONGFUL TERMINATION
IN VIOLATION OF PUBLIC
POLICY (CAL. GOV. CODE §§
12940 *et seq.* and CAL. LAB.

- CODE §§ 204, 206, 216, 218.5, 218.6);
8. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (CAL. CIVIL CODE § 3294);
 9. FAILURE TO PAY OVERTIME (CAL. LAB. CODE §§ 510, 1194, 1198, and 2699);
 10. FAILURE TO PROVIDE REST PERIODS (CAL. LAB. CODE § 226.7);
 11. FAILURE TO PROVIDE MEAL PERIODS (CAL. LAB. CODE § 226.7);
 12. FAILURE TO PAY EARNED WAGES (CAL. LAB. CODE §§ 204, 206, 216, 218.5, 218.6);
 13. FAILURE TO FURNISH COMPLIANT WAGE STATEMENTS (CAL. LAB. CODE §§ 226 AND 226.3 *et seq.*);
 14. WAITING TIME PENALTIES (CAL. LAB. CODE §§ 201, 202 AND 203);
 15. UNFAIR/UNLAWFUL/FRAUDULENT BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §§ 17200 *et seq.*); and
 16. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (CAL. LAB. CODE § 2699 *et seq.*).

DEMAND FOR JURY TRIAL

Plaintiff NANCY ANNE TORRES (herein “PLAINTIFF”) hereby brings this action against Defendants AMY’S KITCHEN, INC., a California corporation (herein “DEFENDANT AKI”), ZAFAR ALAM, (herein “DEFENDANT ALAM”) an individual, and DOES 1 through 100 (herein collectively “DEFENDANTS”) for damages resulting from DEFENDANTS’ unlawful and tortious conduct and, as grounds therefore, alleges:

PARTIES

1 1. PLAINTIFF is a resident of the County of Sonoma in the State of
2 California.

3 2. PLAINTIFF is informed and believes and thereon alleges that
4 DEFENDANT AKI, a California corporation, is authorized to and did business in
5 Sonoma County, California.

6 3. PLAINTIFF is informed and believes and thereon alleges that
7 DEFENDANT ALAM, an individual, was an agent of DEFENDANT AKI and on its
8 behalf was authorized to and did business in County of Sonoma, State of California.

9 4. PLAINTIFF is informed and believes and thereon alleges that events
10 relevant to this complaint occurred in the County of Sonoma, State of California.
11 PLAINTIFF is further informed and believes that witnesses to the events described
12 herein were and are residents of the County of Sonoma, State of California.

13 5. PLAINTIFF is ignorant of the true names and capacities of
14 DEFENDANTS sued herein as Does 1 through 100, inclusive, and therefore, sues these
15 DEFENDANTS by such fictitious names. PLAINTIFF will amend this Complaint to
16 allege their true names and capacities when the same are ascertained. PLAINTIFF is
17 informed and believes and thereon alleges that each of the fictitiously named
18 DEFENDANTS are responsible in some manner for the occurrences and discriminatory
19 acts alleged herein, and that PLAINTIFF's damages alleged herein were proximately
20 caused by these DEFENDANTS. The term "DEFENDANTS" herein includes Doe
21 DEFENDANTS.

22 6. PLAINTIFF is informed and believes and thereon alleges that at all
23 relevant times herein, each of the DEFENDANTS were the agents, employees, and/or
24 joint venturers of, or working in concert with the other DEFENDANTS, and were acting
25 within the course and scope of such agency, employment, joint venture and/or concerted
26 activity. To the extent that said conduct and omissions were perpetrated by
27 DEFENDANTS and their agents, DEFENDANTS confirmed and ratified said conduct
28 and omissions.

7. At all times mentioned herein, DEFENDANTS, were the agents, servants, and alter-egos of each other, and as such, the acts of one defendant are considered the acts of all DEFENDANTS. PLAINTIFF is informed and believes, and thereon alleges that there is such unity of interests and ownership between these DEFENDANTS that separate status no longer exists, and further, observance of the fiction of separate existence among these DEFENDANTS would sanction fraud and promote injustice.

8. Whenever and wherever reference is made in this Complaint to any act by a DEFENDANT or DEFENDANTS, such allegations and reference shall also be deemed to mean the acts and failures to act of each defendant acting individually, jointly, and severally.

9. Whenever and wherever reference is made to individuals who are not named as PLAINTIFF or DEFENDANTS in this Complaint are alleged to be agents, employees and/or supervisors of DEFENDANTS, such individuals at all relevant times acted on behalf of DEFENDANTS within the scope of their employment.

FACTUAL ALLEGATIONS

10. **As to PLAINTIFF's employment:** PLAINTIFF was first employed by DEFENDANT AKI from on or around March 11, 2002, to December 23, 2020 as Mechanic.

11. PLAINTIFF is a woman who was subjected to a hostile work environment due to her gender. PLAINTIFF was one of a few female mechanics in a heavily male dominated environment.

12. **As to PLAINTIFF's job performance:** At all times throughout PLAINTIFF's employment, PLANTIFF performed her duties in an exemplary manner.

13. **As to PLAINTIFF's protected status:** PLAINTIFF was subjected to disability discrimination by her supervisor, DEFENDANT ALAM. Also, PLAINTIFF is a whistleblower and was retaliated against for her complaints.

14. **PLAINTIFF was subjected to harassment and discrimination based on her protected status.** DEFENDANT ALAM discriminated against PLAINTIFF on

1 the basis of her disability by harassing her and pushing her to work harder despite the
2 extra work negatively affecting PLAINTIFF's health.

3 15. **Factual allegations regarding DEFENDANTS' hostile work**
4 **environment towards injured and disabled workers:** PLAINTIFF was subjected to a
5 hostile work environment due to her disability, taking leave, and complaining to
6 DEFENDANT AKI's management about DEFENDANT AKI's disregard of
7 Occupational Safety and Health Administration ("OSHA") rules in violation of the
8 California Labor Code § 1102.5(b). Unfortunately, PLAINTIFF was singled out and
9 treated differently than the rest of her coworkers because of her concerns over workplace
10 safety at DEFENDANT AKI's place of business.

11 16. On August 5, 2020, PLAINTIFF sustained a work-related injury when she and
12 DEFENDANT ALAM lifted an 85-pound tray.

13 17. DEFENDANT ALAM was on medical restrictions at the time and was not
14 allowed to lift heavy items. DEFENDANT ALAM informed PLAINTIFF that she would
15 have to take the brunt of the lifting. PLAINTIFF requested help, but none was given. .
16 Further, DEFENDANT ALAM had PLAINTIFF use a different hand position than
17 normally used when she was trained. This further exasperated PLAINTIFF's injury.

18 18. While lifting the heavy tray, PLAINTIFF sustained a work-related injury.
19 PLAINTIFF advised DEFENDANT ALAM of her injury. Instead of DEFENDANT ALAM
20 referring PLAINTIFF to workers compensation or allowing her to go home to obtain rest
21 and seek medical care, he told her to continue working through the end of the shift.

22 19. On this same day, August 5, 2020, PLAINTIFF was required to finish out her
23 schedule due to DEFENDANT AKI being short staffed. A few hours after PLAINTIFF's
24 shift ended, she felt excruciating pain and she informed her supervisors. A few hours after
25 PLAINTIFF's shift ended, she felt excruciating pain and informed her supervisors
26 DEFENDANT ALAM and manager Oleg Smoliak (herein "Manager Smoliak").
27 DEFENDANT ALAM disregarded PLAINTIFF's injury and required her to come in the
28 following day as DEFENDANT AKI was short staffed.

1 20. Due to the short-staff situation, PLAINTIFF was forced to return to work
2 the next day on, August 6, 2020. PLAINTIFF was in horrific pain and needed medical
3 attention, but she returned to work out of fear of losing her job.

4 21. As soon as PLAINTIFF arrived at work, PLAINTIFF reiterated to both
5 DEFENDANT ALAM and Manager Smoliak, that she was still in extreme pain and
6 required medical assistance. Despite PLAINTIFF expressing her need for medical
7 assistance and DEFENDANT AKI being on notice that PLAINTIFF had become
8 disabled, as this work-related injury impaired her life activities, DEFENDANT ALAM
9 and Manager Smoliak forced her to continue working. Unfortunately, despite doing her
10 best, PLAINTIFF had to leave work early because of her work sustained injury.

11 22. On August 7, 2020, PLAINTIFF once again reported to work, even though
12 she was injured and had advised her supervisors of her injury. PLAINTIFF was forced to
13 work by DEFENDANT AKI despite it being noticed of her injury and need for
14 accommodations.

15 23. On August 7, 2020, PLAINTIFF was in so much pain that she was rushed
16 to the emergency room at *Concentra Urgent Care* by Safety Coordinator Jorge
17 Rodriguez.

18 24. PLAINTIFF was diagnosed by Jason E. Justin, PA with a “strain of
19 lumbar region” and “thoracic myofascial strain.” PA Justin provided PLAINTIFF with a
20 doctor’s note which she gave to DEFENDANT AKI.

21 25. The doctor’s note put DEFENDANTS on notice of PLAINTIFF’s physical
22 limitations. The note specified an “activity prescription” and listed several restrictions as
23 to PLAINTIFF’s physical capabilities: (1) May lift UP TO 10lbs; (2) May push/pull up
24 to 10lbs occasionally; (3) may bend OCCASSIONALLY; and (4) “NO HEAVY
25 LIFITING OR PUSHING OR PULLING ABOUT THE WASIT LEVEL. LIGHT
26 DUTY.

27 26. As the day progressed, PLAINTIFF’s injury was further exacerbated by
28 being forced to continue to work (including climbing ladders and other physically

1 demanding work) and she had increased pain, therefore, later that day PLAINTIFF went
2 to the emergency room at *St. Joseph's Health*. PLAINTIFF was seen by Physician
3 Deborah Colina and was given a doctor's note to be relieved from work from August 7,
4 2020, through August 13, 2020.

5 27. PLAINTIFF advised her managers of the new Doctor's note and did not
6 go to work. Due to her schedule, this would have required only three (3) days off from
7 her regular work shift.

8 28. Over the next few days PLAINTIFF reached out several times to Human
9 Resources manager Nancy Valencia, but PLAINTIFF could not get a hold of Ms.
10 Valencia- the calls would go directly to her voicemail, which was full and could not
11 accept new recordings. To complicate things, Ms. Valencia would email PLAINTIFF at
12 PLAINTIFF's work email, which PLAINTIFF did not have access to. Ms. Valencia did
13 this knowing full well that PLAINTIFF did not have access to her work email.

14 29. After PLAINTIFF was injured, DEFENDANT AKI failed to engage in the
15 interactive process as required by FEHA. PLAINTIFF complained on a frequent basis,
16 but DEFENDANT AKI ignored their duties under the law

17 30. On or about August 13, 2021, PLAINTIFF was called by Ms. Valencia, ,
18 and PLAINTIFF was informed that any doctor's notes that were not from "Concentra"
19 (who was the DEFENDANT AKI medical provider) were "not valid" and would not be
20 accepted by DEFENDANT AKI, and therefore PLAINTIFF was to return to work.

21 31. PLAINTIFF did return to work as told to, even though she had a proper
22 doctor's note placing her on medical leave.

23 32. PLAINTIFF continued to work in pain, and DEFENDANT ALAM
24 pressured PLAINTIFF to work harder and faster and told her she was being "too slow."
25 DEFENDANT ALAM continued this harassment even as PLAINTIFF continuously
26 advised him of her medical condition.

27 33. DEFENDANT ALAM continued this abuse until PLAINTIFF's unlawful
28 termination on December 23, 2021, for her lack of performance. She was unfairly

1 targeted for termination as she had multiple medical leaves due to her disability.

2 34. After PLAINTIFF's injury, DEFENDANT ALAM started to harass her by
3 calling her slow, nitpicking her work, calling her lazy, and forcing her to do more work
4 than PLAINTIFF's restrictions allowed, all the while looking for ways to push
5 PLAINTIFF out of employment.

6 35. Between August 25, 2020, and October 1, 2020, PLAINTIFF was
7 approved for leave for Family Medical Leave Act ("FMLA") by *Standard Insurance*
8 *Company* [The Standard]. PLAINTIFF was able to take that leave, but continued to
9 suffer from her work-related injuries, requiring more testing, including MRIs, due to her
10 severe pain.

11 36. On October 1, 2020, PLAINTIFF returned to work. PLAINTIFF was
12 tasked with cleaning tables due to her light duty. However, DEFENDANT ALAM
13 pushed PLAINTIFF to do more and more work, demanding her to work faster and faster.

14 37. PLAINTIFF was retaliated for taking FMLA as upon her return her hours
15 were cut from six (6) days to (5) days, reducing any chance of accumulating overtime
16 wages as she had before. When questioned about this, DEFENDANT ALAM told
17 PLAINTIFF that she was too slow for work despite his awareness of her medical
18 disability.

19 38. On October 14, 2020, PLAINTIFF woke up in significant pain.
20 PLAINTIFF called the required work line (707) 568-4739, but unfortunately the
21 voicemail was full. When PLAINTIFF was unable to leave a message, she sent texts to
22 Nancy Valencia, human resources for DEFENDANTS at (707) 867-2652. Further, she
23 contacted Manager Smoliak at (707) 975-6117.

24 39. PLAINTIFF advised she was in a lot of pain, could not walk, and that the
25 pain was so excruciating that she could not manage basic functions. DEFENDANT AKI
26 had full notice of PLAINTIFF's injuries.

27 40. On December 22, 2020, PLAINTIFF informed DEFENDANT AKI that
28 she had a virtual consultation with Dr. Bruce Heller, with Vera Whole Health.

1 41. The following day, on December 23, 2020, PLAINTIFF was unlawfully
2 terminated for “lack of performance” despite DEFENDANTS full awareness of
3 PLAINTIFF’s disability and medical restrictions.

4 42. On December 24, 2020, Dr. Heller made an exception to COVID-19
5 restrictions to do an in-person consultation to assist PLAINTIFF with her employment
6 termination. At this time, Dr. Heller stated that PLAINTIFF was still to be on light duty
7 until January 25, 2021. The same day at the consultation, Dr. Heller sent a note to
8 DEFENDANT AKI explaining the above situation, but nothing was done to remedy the
9 unlawful termination.

10 43. **DEFENDANT AKI Created a Hostile Work Environment.**
11 DEFENDANT ALAM was a supervisor for DEFENDANT AKI. DEFENDANT ALAM
12 was responsible for training, assigning work duties, and responding to urgent work
13 requests.

14 44. After PLAINTIFF’s injury, DEFENDANT ALAM started to harass her by
15 calling her slow, nitpicking at her work, stated that she was being lazy, and forced her to
16 do more work than PLAINTIFF’s restrictions allowed for, all the while looking for ways
17 to push PLAINTIFF out of employment.

18 45. PLAINTIFF would work in pain, and DEFENDANT ALAM would
19 pressure PLAINTIFF to work harder and faster and told her she was being “too slow”,
20 and he continued this harassment even as PLAINTIFF continuously advised of her
21 medical condition.

22 46. DEFENDANT ALAM kept the abuse ongoing until her unlawful
23 termination on December 23, 2021, for her lack of performance.

24 47. **As the result of the abuse she suffered,** PLAINTIFF felt shame,
25 embarrassment, harassment and continues to suffer from significant emotional distress.

26 48. PLAINTIFF continues to not sleep well, suffer from anxiety, experience
27 panic attacks and other forms of emotional distress.

28 49. DEFENDANT AKI required PLAINTIFF to attend work meetings from

1 5:00 p.m. to 6:00 p.m. and then return to work for her regular shift at 10:00 p.m. to 6:00
2 a.m. Thus, DEFENDANT AKI enacted a split shift schedule.

3 50. PLAINTIFF was not provided with proper meal and rest break premiums.

4 51. As a result of the improper meal and rest break premiums as well as the
5 improper time keeping by DEFENDANT AKI, PLAINTIFF is entitled to overtime.

6 52. PLAINTIFF has not been provided her proper overtime.

7 53. As a result, of not being paid premiums and overtime, PLAINTIFF is
8 owed unpaid wages, which should have been paid at the time owed by DEFENDANT
9 AKI.

10 54. Further, DEFENDANT AKI's wage and hour violations were systematic
11 in nature.

12 55. PLAINTIFF is also entitled to waiting time penalties for not receiving
13 properly earned wages on a timely basis.

14 56. Further, as a result of the said violations PLAINTIFF did not receive
15 properly compliant wage statements, subjecting DEFENDANT AKI to penalties.

16 57. Wage and hour violations were systematic, leading to PAGA Claims.
17 These wage and hour violations were committed against all similar situated employees.
18 PLAINTIFF filed PAGA claim with the LWDA.

19 58. Pursuant to the California Labor Code, California law, and applicable
20 Wage Orders, PLAINTIFF is entitled to all damages, unpaid wages, statutory penalties,
21 waiting time penalties, interest, and attorneys' fees for the illegal and wrongful acts and
22 omissions of DEFENDANTS, as alleged throughout this Complaint

23 **PAGA ALLEGATIONS**

24 59. Pursuant to the California Labor Code, California law and applicable
25 Wage Order, PLAINTIFF is entitled to various "civil penalties," where appropriate and
26 to the extent permitted by law and California Labor Code §§ 2698 and 2699 *et seq.*
27 (herein "PAGA.")

28 60. PLAINTIFF, as an aggrieved party, has notified California's Labor and

1 Workforce Development Agency (herein “LWDA”) of DEFENDANTS’ Labor Code and
2 other violations as alleged herein with intent to seek all civil penalties under PAGA.

3 61. PLAINTIFF and other similarly situated employees (“AGGRIEVED
4 EMPLOYEES”) suffered from systematic wage and hour claims.

5 62. DEFENDANT AKI failed to provide PLAINTIFF and other
6 AGGRIEVED EMPLOYEES with ten (10) minute rest periods for every four (4) hours
7 of work, or a majority portion thereof, throughout their employment. DEFENDANT AKI
8 did not completely relieve PLAINTIFF and other AGGRIEVED EMPLOYEES of all
9 duty during said rest periods. Further, Employers did not pay PLAINTIFF one additional
10 hour of pay at PLAINTIFF’s regular rate of compensation for each workday that one or
11 more statutory rest periods were not provided. Further, PLAINTIFF and AGGRIEVED
12 EMPLOYEES did not receive compensation for these missed rest breaks.

13 63. DEFENDANT AKI failed to provide PLAINTIFF and other
14 AGGRIEVED EMPLOYEES with thirty (30) minute meal periods for every five (5)
15 hours of work, and a second, uninterrupted thirty (30) minute meal period to employees
16 who work more than ten hours in a day, or a majority portion thereof, throughout their
17 employment. DEFENDANT AKI did not completely relieve PLAINTIFF, and other
18 AGGRIEVED EMPLOYEES, of all duty during said meal periods. Further, Employers
19 did not pay PLAINTIFF one additional hour of pay at PLAINTIFF’s regular rate of
20 compensation for each workday that one or more statutory meal periods were not
21 provided. Further, PLAINTIFF and AGGRIEVED EMPLOYEES did not receive
22 compensation for these missed meal breaks.

23 64. DEFENDANT AKI violated IWC Wage Order No. 4, § 2 because
24 DEFENDANT AKI forced PLAINTIFF and other AGGRIEVED EMPLOYEES to work
25 a schedule that was interrupted by a non-paid, non-working period established by the
26 employer, that was neither a rest nor meal period. PLAINTIFF and AGGRIEVED
27 EMPLOYEES did not receive compensation or a split shift premium.

28 65. DEFENDANT AKI failed to provide PLAINTIFF and other

1 AGGRIEVED EMPLOYEES with the wages earned and unpaid at the time of the
2 separation of employment, either immediately upon involuntary termination, or within 72
3 hours of resignation. PLAINTIFF was owed compensation for unpaid rest and meal
4 period premiums at the time of PLAINTIFF's termination.

5 66. DEFENDANT AKI willfully failed to pay PLAINTIFF and other
6 AGGRIEVED EMPLOYEES earned and due overtime wages upon separation of
7 employment, either immediately upon involuntary termination, or within 72 hours of
8 resignation. These earned but unpaid wages include overtime compensation.

9 67. PLAINTIFF and AGGRIEVED EMPLOYEES have not been paid
10 properly and are entitled to the "waiting-time penalty."

11 68. PLAINTIFF and AGGRIEVED EMPLOYEES are owed for penalties for
12 non-complaint wage statements.

13 69. DEFENDANT AKI retaliated against PLAINTIFF and other
14 AGGRIEVED EMPLOYEES for complaining to PLAINTIFF and other AGGRIEVED
15 EMPLOYEES' superiors about wage and hour violations. PLAINTIFF and other
16 AGGRIEVED EMPLOYEES superiors had the authority to investigate, discover, or
17 correct the violation or non-compliance, concerning actions taken by Employers which
18 PLAINTIFF and other AGGRIEVED EMPLOYEES reasonably believed violated local,
19 state, or federal rules or regulations.

20 70. PLAINTIFF filed a PAGA claim on September 20, 2021, LWDA Case
21 No.: LWDA- CM-845274-21.

22 71. PLAINTIFF pursuant to California Labor Code § 2699.3(a)(2)(C) and
23 PAGA sue to collect the civil penalties authorized therein if so permitted by the
24 LWDA to seek the civil penalties.

25 **FIRST CAUSE OF ACTION**

26 **HARRASMENT BASED ON SEX, GENDER IDENTITY,**
27 **AND GENDER EXPRESSION IN VIOLATION OF CALIFORNIA**
28 **GOVERNMENT CODE §§ 12940 *et seq.***

(Against All DEFENDANTS and DOES 1-100, Inclusive)

72. PLAINTIFF refers to and incorporates by reference each and every allegation contained in paragraphs 1 through 71, above, as though fully set forth at this place.

73. PLAINTIFF is female.

74. DEFENDANTS, and each of them, subjected PLAINTIFF to unwelcome harassment based on sex, gender identity, and gender expression as described in detail above.

75. The unwelcome harassment based on sex, gender identity, and gender expression was sufficiently severe or pervasive to alter the terms and conditions of PLAINTIFF's employment and/or create a hostile, intimidating or offensive environment.

76. PLAINTIFF found DEFENDANTS' harassment based on sex, gender identity, and gender expression outrageous, hostile, abrasive, and exploitative.

77. PLAINTIFF was subjected to unwanted harassing conduct in the form of comments made by DEFENDANT ALAM.

78. DEFENDANTS are liable for the harassment based on sex, gender identity, and gender expression by DEFENDANT ALAM at all relevant times, DEFENDANTS had actual and constructive knowledge of the harassment described herein and alleged herein. DEFENDANTS failed to take immediate and appropriate corrective action to stop the harassment. Thereby DEFENDANTS condoned, ratified and participated in the harassment by DEFENDANT ALAM and failed to protect PLAINTIFF from further harassment.

79. As a direct and proximate result of DEFENDANTS' and each of their acts alleged herein, PLAINTIFF was harmed. DEFENDANTS' above-alleged conduct was extreme and outrageous and has caused PLAINTIFF injury, damage, loss and harm including loss of income, medical expenses, humiliation, embarrassment, severe mental and emotional distress and discomfort based on the harassment experienced, and

1 DEFENDANTS' failure to take immediate and appropriate action in response thereto, all
2 which amount to PLAINTIFF's damage in excess of the minimum jurisdiction of this
3 court, the precise amount to be proven at trial.

4 80. DEFENDANTS', and each of their, conduct was malicious and
5 oppressive, in that it was conduct carried on by DEFENDANTS in a willful and
6 conscious disregard of PLAINTIFF's rights, subjecting PLAINTIFF to cruel and unjust
7 hardship. Thus, an award of exemplary and punitive damages is justified.

8 81. PLAINTIFF is thereby entitled to general and compensatory damages as
9 prayed herein. PLAINTIFF also requests an award of reasonable attorneys' fees, expert
10 witness fees and costs as allowed by law.

11 **SECOND CAUSE OF ACTION**

12 **DISCRIMINATION BASED ON SEX, GENDER IDENTITY,**
13 **AND GENDER EXPRESSION IN VIOLATION OF CALIFORNIA**
14 **GOVERNMENT CODE §§ 12940 *et seq.***

15 **(Against all DEFENDANTS and DOES 1-100, Inclusive)**

16 82. PLAINTIFF refers to and incorporates by reference each and every
17 allegation contained in paragraphs 1 through 81, above, as though fully set forth at this
18 place.

19 83. DEFENDANTS, through their agents and employees, engaged in a pattern
20 and practice of allowing discrimination based on sex, gender identity, and gender
21 expression in violation of FEHA, in connection with their treatment of PLAINTIFF and
22 the terms and conditions of his employment.

23 84. At all relevant times, DEFENDANTS had actual and constructive
24 knowledge of the discrimination based on sex, gender identity, and gender expression.
25 DEFENDANTS condoned, ratified, and participated in creating the hostile work
26 environment. DEFENDANTS' failure to protect PLAINTIFF from the hostile work has
27 caused PLAINTIFF damages.

28 85. At all relevant times, PLAINTIFF considered the work environment

1 hostile and abrasive, but PLAINTIFF remained at her employment in order to pay her
2 financial obligations and responsibilities.

3 86. As a direct and proximate result of the willful, knowing and intentional
4 hostile work environment to which PLAINTIFF was subjected and the failure to act by
5 DEFENDANTS, PLAINTIFF has suffered mental distress, anguish, indignation and loss
6 of income and employment benefits.

7 87. PLAINTIFF is thereby entitled to general and compensatory damages as
8 prayed herein. PLAINTIFF also requests an award of reasonable attorneys' fees, expert
9 witness fees and costs as allowed by law.

10 88. DEFENDANTS' acts alleged herein are malicious, oppressive, despicable,
11 and in conscious disregard of PLAINTIFF's rights. As such, punitive damages are
12 warranted against non-governmental entity DEFENDANTS in order to punish them and
13 to discourage such unlawful behavior.

14 **THIRD CAUSE OF ACTION**

15 **RETALIATION ON THE BASIS OF SEX, GENDER IDENTITY,**
16 **AND GENDER EXPRESSION IN VIOLATION OF CALIFORNIA**

17 **GOVERNMENT CODE §§ 12940 *et seq.***

18 **(Against All DEFENDANTS and DOES 1-100, Inclusive)**

19 89. PLAINTIFF refers to and incorporates by reference each and every
20 allegation contained in paragraphs 1 through 88, above, as though fully set forth at this
21 place.

22 90. At all relevant times, California Government Code §§ 12940 *et seq.* were
23 in effect and were binding on DEFENDANTS.

24 91. This statute prohibits DEFENDANT AKI from retaliating against any
25 employee, including PLAINTIFF, for raising complaints of illegality. PLAINTIFF
26 complained about harassment and discrimination in the workplace, and as a result,
27 DEFENDANTS terminated PLAINTIFF in retaliation on the basis of sex, gender
28 identity, and gender expression.

92. As a proximate result of DEFENDANTS' willful, knowing, and intentional violations of California Government Code §§ 12940 *et seq.*, PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to PLAINTIFF's damage in a sum according to proof.

93. As a result of DEFENDANTS' adverse employment actions against PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to proof.

94. DEFENDANTS' misconduct was committed intentionally, in a malicious, fraudulent, despicable, and oppressive manner, entitling PLAINTIFF to punitive damages against DEFENDANTS.

95. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees. Pursuant to California Code of Civil Procedure §§ 1021.5 and 1032, *et seq.*, PLAINTIFF is entitled to recover reasonable attorneys' fees and costs in an amount according to proof.

FOURTH CAUSE OF ACTION

HOSTILE WORK ENVIRONMENT IN VIOLATION OF CALIFORNIA

GOVERNMENT CODE §§ 12940 *et seq.*

(Against All DEFENDANTS and DOES 1-100, Inclusive)

96. PLAINTIFF refers to and incorporates by reference each and every allegation contained in paragraphs 1 through 95, above, as though fully set forth at this place.

97. PLAINTIFF was subjected to unwanted harassing conduct in the form of comments made by DEFENDANT ALAM.

98. DEFENDANTS, through their agents and employees, engaged in a pattern and practice of maintaining a hostile work environment in violation of FEHA, in connection with their treatment of PLAINTIFF and the terms and conditions of her employment.

99. At all relevant times, DEFENDANTS had actual and constructive

1 knowledge of the hostile work environment described and alleged herein.
2 DEFENDANTS condoned, ratified, and participated in creating the hostile work
3 environment. DEFENDANTS' failure to protect PLAINTIFF from the hostile work has
4 caused PLAINTIFF damages.

5 100. At all relevant times, PLAINTIFF considered the work environment
6 hostile and abrasive, but he stayed at her employment in order to pay her financial
7 obligations and responsibilities.

8 101. PLAINTIFF believes this work environment was hostile and that a
9 reasonable disabled individual in PLAINTIFF's position would likewise find the work
10 environment hostile.

11 102. As a direct and proximate result of the willful, knowing and intentional
12 hostile work environment to which PLAINTIFF was subjected and the failure to act by
13 DEFENDANTS, PLAINTIFF has suffered mental distress, anguish, indignation and loss
14 of income and employment benefits.

15 103. PLAINTIFF is thereby entitled to general and compensatory damages as
16 prayed herein. PLAINTIFF also requests an award of reasonable attorney's fees, expert
17 witness fees and costs as allowed by law.

18 104. DEFENDANTS' acts alleged herein are malicious, oppressive, despicable,
19 and in conscious disregard of PLAINTIFF's rights. As such, punitive damages are
20 warranted against non-governmental entity DEFENDANTS in order to punish them and
21 to discourage such unlawful behavior.

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO TAKE ALL REASONABLE STEPS TO PREVENT**
24 **HARASSMENT, DISCRIMINATION AND RETALIATION IN VIOLATION OF**
25 **CALIFORNIA GOVERNMENT CODE §§ 12940 *et seq.***

26 **(Against DEFENDANT AKI and DOES 1-100, Inclusive)**

27 105. PLAINTIFF refers to and incorporates by reference each and every
28 allegation contained in paragraphs 1 through 104, above, as though fully set forth at this

place.

106. FEHA requires DEFENDANTS to take all reasonable steps to prevent discrimination, harassment and retaliation based on sex.

107. DEFENDANTS failed to take all reasonable steps to prevent the discrimination, harassment and retaliation against PLAINTIFF as more fully described above. DEFENDANTS further failed to take all immediate and appropriate corrective actions to stop the harassment, discrimination and retaliation PLAINTIFF experienced.

108. As a direct and proximate result of DEFENDANTS' failure to prevent harassment, discrimination and retaliation against PLAINTIFF, PLAINTIFF was harmed. DEFENDANTS' above-alleged conduct was extreme and outrageous and has caused PLAINTIFF injury, damage, loss and harm including loss of income, medical expenses, humiliation, embarrassment, severe mental and emotional distress and discomfort. DEFENDANTS' failure to take immediate and appropriate action in response thereto, all which amount to PLAINTIFF's damage in excess of the minimum jurisdiction of this court.

109. PLAINTIFF is thereby entitled to general and compensatory damages as prayed herein. PLAINTIFF also requests an award of reasonable attorneys' fees, expert witness fees and costs as allowed by law.

DEFENDANTS' failure to take all reasonable steps necessary to prevent discrimination and harassment, was malicious and oppressive, in that it was conduct carried on by DEFENDANTS in a willful and conscious disregard of PLAINTIFF's rights and subjected her to cruel and unjust hardship. Thus, an award of exemplary and punitive damages is justified.

SIXTH CAUSE OF ACTION

RETALIATION IN VIOLATION OF CALIFORNIA LABOR CODE § 1102.5

(Against DEFENDANT AKI and DOES 1-100, Inclusive)

110. PLAINTIFF refers to and incorporates by reference each and every allegation contained in paragraphs 1 through 109, above, as though fully set forth at this

1 place.

2 111. At all relevant times, California Labor Code § 1102.5 was in effect and
3 was binding on DEFENDANTS. This statute prohibits DEFENDANT AKI from
4 retaliating against any employee, including PLAINTIFF, for raising complaints of
5 illegality. PLAINTIFF complained about discrimination and harassment in the
6 workplace, and as a result, DEFENDANTS terminated PLAINTIFF.

7 112. As a proximate result of DEFENDANTS' willful, knowing, and
8 intentional violations of California Labor Code § 1102.5, PLAINTIFF has suffered and
9 continues to suffer humiliation, emotional distress, and mental and physical pain and
10 anguish, all to PLAINTIFF's damage in a sum according to proof.

11 113. As a result of DEFENDANTS' adverse employment actions against
12 PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to
13 proof.

14 114. DEFENDANTS' misconduct was committed intentionally, in a malicious,
15 fraudulent, despicable, and oppressive manner, entitling PLAINTIFF to punitive
16 damages against DEFENDANTS.

17 115. PLAINTIFF has incurred and continues to incur legal expenses and
18 attorneys' fees. Pursuant to California Code of Civil Procedure §§ 1021.5 and 1032, et
19 seq., PLAINTIFF is entitled to recover reasonable attorneys' fees and costs in an amount
20 according to proof.

21 **SEVENTH CAUSE OF ACTION**

22 **WRONGFUL TERMINATION OF EMPLOYMENT IN**
23 **VIOLATION OF PUBLIC POLICY, CALIFORNIA GOVERNMENT**
24 **CODE §§ 12940 *et seq.*, AND CALIFORNIA LABOR CODE §§ 204, 206, 216,**
25 **218.5, 218.6**

26 **(Against DEFENDANT AKI and DOES 1-100, Inclusive)**

27 116. PLAINTIFF refers to and incorporates by reference each and every
28 allegation contained in paragraphs 1 through 115, above, as though fully set forth at this

1 place.

2 117. This cause of action arises under the public policies of the State of
3 California and of the United States. DEFENDANTS' retaliation against PLAINTIFF and
4 ultimate termination of her employment was in violation of such public policies,
5 including those set forth in statutes and regulations prohibiting discrimination,
6 harassment and retaliation or complaints about violations of the FEHA and/or California
7 Labor Code, including, but not limited to the Family Medical Leave Act, the California
8 Family Rights Act, statutes and regulations prohibiting gender-based and/or disabilities
9 arising from workplace injuries, discrimination/harassment/retaliation, and statutes and
10 regulations prohibiting employers from discriminating/harassing/retaliating employees
11 who seek a safe work environment, seek to be free from harassment in the workplace, to
12 time off to attend to criminal proceeding matters and to have complaints thereto properly
13 addressed by the employer.

14 118. As a direct and proximate result of DEFENDANTS' conduct as set forth
15 above, PLAINTIFF's emotional well-being has substantially suffered and will continue
16 to suffer; PLAINTIFF has experienced and continues to experience severe emotional
17 distress, in an amount to be proven at trial. PLAINTIFF alleges that she has and will
18 continue to suffer substantial losses in earnings, other employment opportunities,
19 employment benefits and other damages, the precise amounts to be proven at trial.

20 119. DEFENDANTS' conduct as described herein was malicious and
21 oppressive and done with a conscious disregard of PLAINTIFF's rights.
22 DEFENDANTS' acts were designed to humiliate and oppress PLAINTIFF; they had
23 that effect. DEFENDANTS condoned, ratified and encouraged the unlawful conduct.
24 Thus, PLAINTIFF is entitled to punitive damages against DEFENDANTS under
25 California Civil Code § 3294.

26 120. As a direct, foreseeable, and proximate result of DEFENDANTS' conduct
27 as alleged herein, PLAINTIFF has suffered and will continue to suffer actual damages,
28 including lost earnings and other employment benefits, in a sum in excess of the

jurisdictional limit of this Court, the exact amount of which is not yet known, which amount will be proved at the time of trial.

121. As a further direct, foreseeable, and proximate result of said wrongful acts and failures to act by DEFENDANTS, PLAINTIFF has suffered and will continue to suffer substantial emotional distress and will incur other incidental and consequential damages and losses, all in an amount to be proven at time of trial. PLAINTIFF claims such amounts as damages together with prejudgment interest pursuant to any provision of law providing for prejudgment interest.

122. As a further direct and proximate result of DEFENDANTS' retaliatory and wrongful actions against PLAINTIFF as alleged herein, PLAINTIFF suffered special damages that include, without limitation, the loss of wages, salary, benefits, and/or additional amounts of money he would have received but for DEFENDANTS' discriminatory and/ or retaliatory actions as alleged herein. PLAINTIFF also continues to suffer the intangible loss of such employment-related opportunities as, including without limitation, experience in the position he held and advancement opportunities.

123. As a further direct, foreseeable, and proximate result of said wrongful acts and failures to act by DEFENDANTS, PLAINTIFF has suffered and will continue to suffer humiliation, shame, despair, embarrassment, depression, and mental pain and anguish, all to PLAINTIFF's damage in an amount to be proven at time of trial.

124. The aforementioned acts were carried out by DEFENDANTS in a malicious, willful and oppressive manner with the intent to injure and damage PLAINTIFF, entitling PLAINTIFF to recover exemplary damages from DEFENDANTS under California Civil Code § 3294. DEFENDANTS' decision to terminate PLAINTIFF in violation of public policy was done with intent to injure PLAINTIFF and with the intent to prevent the exercise of her statutory rights and obligations. DEFENDANTS' officers, directors, and managerial and supervisory employees participated in the unlawful conduct as alleged above or had actual knowledge that the above-alleged conduct was unlawful and nevertheless authorized and/or ratified the practices with

conscious disregard of the rights and safety of PLAINTIFF.

EIGHTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IN

VIOLATION OF CALIFORNIA CIVIL CODE § 3294

(Against All DEFENDANTS and DOES 1-100, Inclusive)

125. PLAINTIFF refers to and incorporates by reference each and every allegation contained in paragraphs 1 through 124, above, as though fully set forth at this place.

126. DEFENDANTS engaged in retaliation against PLAINTIFF for her lawful activity and aided and abetted each other in engaging in illegal retaliation thereby subjecting PLAINTIFF to the intentional infliction of emotional distress caused by such retaliation.

127. The acts of DEFENDANTS as described herein were extreme and outrageous and an abuse of the authority and position of DEFENDANTS, individually and jointly. Such conduct was intended to cause severe emotional distress or was done with conscious disregard for the probability of causing such distress. Such conduct exceeded the inherent risks of employment and was not the sort of conduct normally expected to occur in the workplace. DEFENDANTS and its employees abused their positions of authority toward PLAINTIFF and engaged in conduct intended to humiliate PLAINTIFF and convey the message that he was powerless to defend her rights.

128. As a proximate result of the aforementioned acts, PLAINTIFF suffered embarrassment, anxiety, humiliation, serious mental anguish, and emotional and physical distress. PLAINTIFF will continue to suffer damages in a sum that exceeds the jurisdictional limits of this court but is yet to be ascertained. PLAINTIFF will either seek leave to amend this Complaint upon ascertaining such information or will prove the same at the time of trial.

129. As more fully set forth above, the acts of DEFENDANTS were intentional, malicious, wanton, oppressive, and fraudulent, with conscious disregard for

1 PLAINTIFF's rights and with the intent to vex, injure, punish, and annoy PLAINTIFF so
2 as to cause the injuries sustained by PLAINTIFF, within the meaning of California Civil
3 Code § 3294. PLAINTIFF is therefore entitled to punitive or exemplary damages in an
4 amount sufficient to punish and make an example out of DEFENDANTS.

5 **NINETH CAUSE OF ACTION**

6 **FAILURE TO PAY OVERTIME IN VIOLATION OF**
7 **CALIFORNIA LABOR CODE §§ 510, 1194, 1198, and 2699**
8 **(Against DEFENDANT AKI and DOES 1-100, Inclusive)**

9 130. PLAINTIFF refers to and incorporates the allegations in paragraphs 1
10 through 129, above, as though fully set forth here.

11 131. As PLAINTIFF was required to be at work fifteen (15) minutes early for
12 every shift, he is entitled to that overtime pay.

13 132. At all times herein relevant, the Wage Order applicable to PLAINTIFF's
14 employment by DEFENDANTS provides that such employees employed for more than
15 eight (8) hours in a workday or more than forty (40) hours in a workweek are entitled to
16 payment at the rate of time and one half for all hours so worked. Employees who work
17 more than twelve (12) hours in a workday or more than eight (8) hours on a seventh
18 workday are entitled to overtime compensation at a rate of two times their regular rates
19 of pay. The right to overtime compensation at one- and one-half times the regular rate for
20 hours worked in excess of eight (8) hours in a workday or forty (40) hours in a work
21 week or on a seventh workday in a work week has been codified in California Labor
22 Code § 510. DEFENDANTS have failed to pay PLAINTIFF the overtime compensation
23 owed to her.

24 133. DEFENDANTS' failure to pay PLAINTIFF the overtime compensation
25 due to her, as required by the applicable Wage Order and the California Labor Code,
26 violates the provisions of California Labor Code §§ 1194, 1198, 510, and 2699 and was
27 unlawful.

28 134. Therefore, PLAINTIFF is entitled to recover from DEFENDANTS the

unpaid wages, plus interest on that amount, liquidated damages, penalties, reasonable attorneys' fees, and costs of this suit pursuant to California Labor Code §§ 1194 and 1194.2.

TENTH CAUSE OF ACTION

**FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF
CALIFORNIA LABOR CODE § 226.7**

(Against All DEFENDANTS and DOES 1-100, Inclusive)

135. PLAINTIFF refers to and incorporates by reference each and every allegation contained in paragraphs 1 through 134, above, as though fully set forth at this place.

136. DEFENDANTS routinely failed to provide PLAINTIFF duty-free rest periods and/or to pay PLAINTIFF one additional hour of pay for each duty-free rest period that was not provided in accordance with California Labor Code § 226.7.

137. DEFENDANTS' conduct violated the provisions of California Labor Code § 226.7 in that DEFENDANTS did not provide PLAINTIFF rest periods or pay to PLAINTIFF one hour of wages as compensation for each duty-free rest period not provided as required by law. PLAINTIFF is entitled to recover the unpaid wages that DEFENDANTS owe her, plus interest on that amount at the rate of ten percent per annum, reasonable attorneys' fees under California Labor Code § 2699, and costs of suit.

138. As a proximate result of the aforementioned violations, PLAINTIFF has been damaged in an amount according to proof at the time of trial, but not in an amount in excess of the jurisdiction of this Court.

ELEVENTH CAUSE OF ACTION

**FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF
CALIFORNIA LABOR CODE § 226.7**

(Against All DEFENDANTS and DOES 1-50, Inclusive)

139. PLAINTIFF refers to and incorporates by reference each and every allegation contained in paragraphs 1 through 138, above, as though fully set forth at this

1 place.

2 140. DEFENDANTS routinely failed to provide PLAINTIFF duty-free meal
3 periods and/or to pay PLAINTIFF one additional hour of pay for each duty-free meal
4 period that was not provided in accordance with California Labor Code § 226.7.

5 141. DEFENDANTS' conduct violated the provisions of California Labor
6 Code § 226.7 in that DEFENDANTS did not provide PLAINTIFF meal periods or pay to
7 PLAINTIFF one hour of wages as compensation for each duty-free rest period not
8 provided as required by law. PLAINTIFF is entitled to recover the unpaid wages that
9 DEFENDANTS owe her, plus interest on that amount at the rate of ten percent per
10 annum, and reasonable attorneys' fees under California Labor Code § 2699.

11 142. As a proximate result of the aforementioned violations, PLAINTIFF has
12 been damaged in an amount according to proof at the time of trial, but not in an amount
13 in excess of the jurisdiction of this Court.

14 **TWELFTH CAUSE OF ACTION**

15 **FAILURE TO PAY EARNED WAGES IN VIOLATION OF CALIFORNIA**

16 **LABOR CODE §§ 204, 206, 216, 218.5, 218.6**

17 **(Against DEFENDANT AKI and DOES 1-100, Inclusive)**

18 143. PLAINTIFF refers to and incorporates by reference each and every
19 allegation contained in paragraphs 1 through 142, above, as though fully set forth at this
20 place.

21 144. DEFENDANT failed to pay all wages due to PLAINTIFF in violation of
22 California Labor Code §§ 204, 206, 216, 218.5, 218.6.

23 145. DEFENDANTS' failure to pay wages as alleged herein was willful as
24 DEFENDANTS knew that PLAINTIFF did not receive all earned pay based on at least
25 the following: (1) DEFENDANTS willfully refused to pay PLAINTIFF for all hours she
26 worked; and (2) such records would reflect that PLAINTIFF was not paid overtime or an
27 hour of wages for each duty-free rest or meal period that was not provided as required by
28 California Labor Code and the applicable Wage Orders.

1 **THIRTEENTH CAUSE OF ACTION**

2 **FAILURE TO FURNISH COMPLIANT WAGE STATEMENTS IN**
3 **VIOLATION OF CALIFORNIA LABOR CODE §§ 226 *et seq.***

4 **(Against DEFENDANT AKI and DOES 1-100, Inclusive)**

5 146. PLAINTIFF refers to and incorporates by reference each and every
6 allegation contained in paragraphs 1 through 145, above, as though fully set forth at this
7 place.

8 147. Pursuant to California Labor Code § 226(a), on a semi-monthly basis or at
9 the time of the payment of wages, DEFENDANTS were required to furnish each of their
10 employees with an accurate itemized statement in writing showing, *inter alia*, the gross
11 and net wages earned.

12 148. During all pertinent times, DEFENDANTS intentionally failed to furnish
13 PLAINTIFF with properly itemized statements. DEFENDANTS also failed to provide
14 PLAINTIFF duty-free rest periods or pay PLAINTIFF one hour of wages as
15 compensation for each duty-free rest period not provided in accordance with California
16 Labor Code. DEFENDANTS failed to furnish PLAINTIFF with an itemized statement in
17 writing showing that PLAINTIFF had earned one additional hour of pay for meal and/or
18 rest periods not provided and showing the overtime hours worked by PLAINTIFF.
19 DEFENDANTS failed to provide overtime wages worked by PLAINTIFF.

20 149. Pursuant to California Labor Code § 226(e), employees (such as
21 PLAINTIFF) who suffer injury as a result of a knowing and intentional failure by an
22 employer to comply with the provisions of California Labor Code § 226(a) are entitled to
23 recover the greater of all actual damages or fifty dollars for the initial pay period in
24 which a violation occurs and one hundred dollars per employee for each violation in a
25 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
26 (\$4,000), and are entitled to costs and reasonable attorneys' fees.

27 150. DEFENDANTS knowingly and intentionally failed to provide to
28 PLAINTIFF accurate itemized statements in compliance with California Labor Code §§

1 226(a) and 2699 and did so in order to conceal their liability from PLAINTIFF.

2 **FOURTEENTH CAUSE OF ACTION**

3 **WAITING TIME PENALTIES FOR VIOLATION OF CALIFORNIA**

4 **LABOR CODE §§ 201, 202 AND 203**

5 **(Against DEFENDANT AKI and DOES 1-100, Inclusive)**

6 151. PLAINTIFF refers to and incorporates by reference each and every
7 allegation contained in paragraphs 1 through 150, above, as though fully set forth at this
8 place.

9 152. California Labor Code § 201 provides in relevant part: “[i]f an employer
10 discharges an employee, the wages earned and unpaid at the time of discharge are due
11 and payable immediately.”

12 153. As alleged herein, DEFENDANTS failed to pay wages of PLAINTIFF at
13 the time the wages became due and payable. Thus, DEFENDANTS violated California
14 Labor Code §§ 201, 202, and 2699.

15 154. DEFENDANTS’ failure to pay wages as alleged herein was willful as
16 DEFENDANTS knew that PLAINTIFF did not receive all earned pay based on at least
17 the following: (1) DEFENDANTS willfully refused to pay PLAINTIFF for all hours she
18 worked; and (2) such records would reflect that PLAINTIFF was not paid overtime or an
19 hour of wages for each duty-free rest or meal period that was not provided as required by
20 California Labor Code and the applicable Wage Orders.

21 155. As a result of DEFENDANTS’ unlawful acts, PLAINTIFF is entitled to
22 recover, pursuant to California Labor Code § 203, continuing wages as a penalty from
23 the due date thereof at the same rate until paid or this action was commenced, up to thirty
24 days, and penalties under California Labor Code § 2699.

25 **FIFTEENTH CAUSE OF ACTION**

26 **UNFAIR/UNLAWFUL/FRAUDULENT BUSINESS PRACTICES IN**

27 **VIOLATION OF CALIFORNIA BUSINESS**

28 **AND PROFESSIONS CODE §§ 17200 et seq**

(Against DEFENDANT AKI and DOES 1-100, Inclusive)

156. PLAINTIFF refers to and incorporates by reference each and every allegation contained in paragraphs 1 through 155, above, as though fully set forth at this place.

157. California Business and Professions Code §§ 17200 *et seq.* (herein “UCL”) prohibits unfair competition, including but not limited to any unlawful, unfair or fraudulent business practices.

158. California Labor Code § 90.5(a) provides that it is the public policy of the State of California to vigorously enforce labor standards in order to ensure that employees are not required to work under substandard unlawful conditions, and to protect employers who comply with the law from those, such as DEFENDANTS, who attempt to gain a competitive advantage at the expense of their employees by failing to comply with minimum labor standards.

159. DEFENDANTS’ policies and practices of failing to pay the legally required wages, provide accurate itemized statements, to timely pay all wages owed, and to provide duty-free meal and/or rest periods, as set forth above, violates the UCL in that:

- a. It constitutes an unlawful business practice by definition and, thus, violates the UCL;
- b. DEFENDANTS’ practices are unethical, unscrupulous, and substantially injurious to consumers. The harm to PLAINTIFF, all others similarly situated, and to members of the general public, outweighs the utility, if any, of DEFENDANTS’ policy and practice; and
- c. DEFENDANTS’ practices have misled PLAINTIFF and members of the general public.

160. The unlawful, unfair, and fraudulent business practices by DEFENDANTS, as described above, present a continuing threat to the public in that consumers throughout California have suffered and continue to suffer an injury in fact and lost money as a result of DEFENDANTS’ unlawful, unfair, and fraudulent acts or

1 practices. In addition, DEFENDANTS have been unjustly enriched as a result of their
2 conduct. PLAINTIFF and members of the general public have no other adequate remedy
3 of law in that absent equitable relief from the court, DEFENDANTS are likely to
4 continue to injure consumers, reap unjust enrichment, and harm the public interest, thus
5 engendering a multiplicity of judicial proceedings.

6 161. PLAINTIFF is entitled to restitution of monies due to her as a result of
7 said DEFENDANTS' unlawful, unfair, and fraudulent conduct, and seeks injunctive
8 relief.

9 162. PLAINTIFF is entitled to restitution of the unpaid amounts, as an
10 equitable remedy, and interest at the rate of ten percent per annum, costs of suit, and
11 reasonable attorneys' fees pursuant to the underlying claims as alleged herein above.

12 163. Pursuant to California Business and Professions Code § 17203, this court
13 may order paid the full amounts wrongfully retained by DEFENDANTS to PLAINTIFF,
14 who was not fully compensated for DEFENDANTS' failure to provide duty-free rest
15 periods for the statutory period. PLAINTIFF will, upon leave of court, amend this
16 Complaint to state the amount of such wrongfully retained amounts when they are
17 ascertained.

18 164. Injunctive relief is necessary and appropriate to prevent DEFENDANTS
19 from repeating the wrongful business practices alleged herein.

20 165. PLAINTIFF's success in this action will enforce important rights affecting
21 the public interest and in that regard, PLAINTIFF sues on behalf of the public as well as
22 herself. PLAINTIFF seeks and is entitled to money owing and unpaid, an injunction, an
23 equitable accounting, and all other equitable relief required to remedy DEFENDANTS'
24 failure to pay the required money.

25 **SIXTEENTH CAUSE OF ACTION**

26 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

27 **CALIFORNIA LABOR CODE § 2699 *et seq.***

28 **(Against All DEFENDANTS and DOES 1-100, Inclusive)**

166. PLAINTIFF refers to and incorporates by reference each and every allegation contained in paragraphs 1 through 165, above, as though fully set forth at this place.

167. PLAINTIFF is an “aggrieved employee” pursuant to the Private Attorneys General Act (“PAGA”), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory period and suffered each of the California Labor Code violations set forth herein. Accordingly, PLAINTIFF seeks to recover on behalf of PLAINTIFF’s self, and all other current and former aggrieved employees of DEFENDANTS, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

168. PLAINTIFF seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in Arias v. Superior Court (2009) 46 Cal. 4th 969. Therefore, class certification of these PAGA claims is not required.

169. PLAINTIFF seeks civil penalties pursuant to PAGA for violations of the following California Labor Code provisions:

- a. California Labor Code § 512: Failure to Provide Compliant Meal Periods
- b. California Labor Code § 510: Failure to Pay Work-Off-the-Clock Wages
- c. California Labor Code §§ 1194: Failure to Pay Balance of Wages Owed
- d. California Labor Code § 226: Non-Compliant Wage Statements
- e. California Labor Code § 203: Waiting-Time Penalties

170. With respect to violations of California Labor Code Section 226(a), California Labor Code § 226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250.00) per aggrieved employee for the first violation, and one thousand dollars (\$1,000.00) per aggrieved employee for each subsequent violation of California Labor Code § 226(a).

171. California Labor Code §§ 2699 *et seq.* imposes a civil penalty of one hundred dollars (\$100.00) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200.00) pay period, per aggrieved employee for subsequent

violations for all Labor Code provisions for which a civil penalty is not specifically provided, including without limitation California Labor Code § 1174.

172. The above-referenced civil penalties shall include the recovery of amounts specified in the applicable sections of the California Labor Code, and if not specifically provided, those under California Labor Code § 2699(f), and shall include those amounts sufficient to recover underpaid wages due and owed to PLAINTIFF and other aggrieved employees pursuant to the California Labor Code.

173. PLAINTIFF reserves PLAINTIFF's rights to allege any additional and all other violations of the California Labor Code and applicable IWC Wage Order(s) as may be disclosed in discovery and as a result of additional investigation that may be pursued in this action.

174. PLAINTIFF was compelled to retain the services of counsel to file this court action to protect PLAINTIFF's interests and those of other aggrieved employees, and to assess and collect the civil penalties owed by DEFENDANTS. PLAINTIFF has thereby incurred attorneys' fees and costs, which PLAINTIFF is entitled to recover pursuant to California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF hereby prays that the Court enter judgment in his favor and against DEFENDANTS and Does 1 through 100, inclusive, collectively DEFENDANTS, and each of them, as follows:

- a. For compensatory damages and other costs incurred by PLAINTIFF according to proof, but believed to exceed \$25,000;
- b. For payment of earned wages, meal and rest period compensation, waiting time compensation and other damages according to proof in an amount to be ascertained at trial, and in excess of the jurisdictional limit of this Court;
- c. For emotional distress damages;

- 1 d. For payment of all statutory obligations and penalties as required
2 by law;
3 e. For civil penalties to the extent permitted by law and California Labor
4 Code §§ 2698 and 2699 *et seq.*
5 f. For an accounting, under administration of PLAINTIFF and subject to
6 Court review;
7 g. For injunctive relief compelling production of PLAINTIFF employment
8 file and/or wage records;
9 h. A declaration of the rights and interests of the parties;
10 i. For prejudgment interest at the legal rate;
11 j. For attorney's fees and costs;
12 k. For costs of suit incurred herein;
13 l. For restitution and disgorgement of ill-gotten profits;
14 m. For punitive damages in an amount sufficient to punish DEFENDANTS
15 for the wrongful conduct alleged herein and to deter such conduct in the
16 future; and,
17 n. For such further relief as the Court may deem appropriate.
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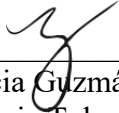
21 ADDITIONALLY, PLAINTIFF NANCY ANNE TORRES, demands trial of this
22 matter by jury. The amount demanded exceeds \$25,000.00. (California Government
23 Code § 72055).
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26 ///

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28 ///

1 Dated: April 8, 2022

ATTORNEYS FOR WORKERS' RIGHTS

2 By: 

3 Marcia Guzmán, Esq.

4 Victoria Tokar, Esq.

Attorneys for Plaintiff

NANCY ANNE TORRES