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JETOSHIA LIN JEFFERSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR SAN FRANCISCO COUNTY

JETOSHIA LIN JEFFERSON, an individual,

Plaintiff,

vs.

SHIFT OPERATIONS LLC, a Delaware
limited liability company; HARRY TAM, an
individual; JAKE ROS, an individual;
KEVIN DELION, an individual;
CHRISTOPHER YEE, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES

1. **HARASSMENT IN VIOLATION OF THE
FEHA – CAL. GOVT. CODE § 12940 ET
SEQ.;**
2. **DISCRIMINATION IN VIOLATION OF THE
FEHA – GOVT. CODE § 12940 ET SEQ.;**
3. **RETALIATION IN VIOLATION OF THE
FEHA – GOVT. CODE § 12940 ET SEQ.;**
4. **FAILURE TO PREVENT HARASSMENT,
DISCRIMINATION & RETALIATION IN
VIOLATION OF THE FEHA – GOVT. CODE
§ 12940 ET SEQ.;**
5. **FAILURE TO ENGAGE IN THE INTERACTIVE
PROCESS IN VIOLATION OF THE FEHA –
GOVT. CODE § 12940 ET SEQ.;**
6. **WRONGFUL TERMINATION IN VIOLATION
OF PUBLIC POLICY;**

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- 7. VIOLATION OF THE CFRA – GOVT. CODE § 12945.2;**
- 8. FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE § 226.7;**
- 9. FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF LABOR CODE § 226.7;**
- 10. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE § 1197.1;**
- 11. FAILURE TO PAY EARNED WAGES IN VIOLATION OF LABOR CODE §§ 201, 202;**
- 12. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE § 510;**
- 13. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS IN VIOLATION OF LABOR CODE § 226;**
- 14. PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**

[DEMAND FOR JURY TRIAL]

1 Plaintiff Jetoshia Lin Jefferson (“Plaintiff”) alleges as follows on knowledge as to herself and her
2 respective known acts, and on information and belief as to all other matters:

3 **I.**

4 **PARTIES**

5 1. At the relevant times mentioned herein, Plaintiff was employed by Defendant Shift
6 Operations, LLC (“Defendant” or the “Company”). Plaintiff performed work for the Company at 394
7 South Maple Avenue, South San Francisco, California 94080. The unlawful conduct alleged herein
8 occurred in San Francisco County. Plaintiff is and, at the relevant times mentioned herein, was a resident
9 of San Francisco County.

10 2. At the relevant times mentioned herein, the Company was a Delaware corporation
11 conducting its business in San Francisco County.

12 3. At the relevant times mentioned herein, the Company was the “employer” of Plaintiff, as
13 such term is defined under the California Fair Employment and Housing Act (the “FEHA”).

14 4. Plaintiff is informed and believes that Defendant Harry Tam (“Tam”) is, and at all relevant
15 times was, an individual residing in San Francisco County, California. Plaintiff is informed and believes
16 that Tam is, and at all relevant times mentioned herein was, employed by the Company as one of the
17 managers at its office located at 394 South Maple Avenue, South San Francisco, California 94080.

18 5. Plaintiff is informed and believes that Defendant Jake Ros (“Ros”) is, and at all relevant
19 times was, an individual residing in San Francisco County, California. Plaintiff is informed and believes
20 that Ros is, and at all relevant times mentioned herein was, employed by the Company as an assistant
21 team lead (“ATL”) at its office located at 394 South Maple Avenue, South San Francisco, California
22 94080.

23 6. Plaintiff is informed and believes that Defendant Kevin DeLion (“DeLion”) is, and at all
24 relevant times was, an individual residing in San Francisco County, California. Plaintiff is informed and
25 believes that DeLion is, and at all relevant times mentioned herein was, employed by the Company as a
26 team manager at its office located at 394 South Maple Avenue, South San Francisco, California 94080.

7. Plaintiff is informed and believes that Defendant Christopher Yee (“Yee”) is, and at all relevant times was, an individual residing in San Francisco County, California. Plaintiff is informed and believes that Yee is, and at all relevant times mentioned herein was, employed by the Company as an ATL at its office located at 394 South Maple Avenue, South San Francisco, California 94080.

8. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 50, inclusive, and therefore sued these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of said Defendants when the same has been ascertained. Each of the fictitiously named Defendants is responsible in some manner for the acts complained of herein. Unless otherwise stated, all references to named Defendants shall include DOE Defendants as well.

II.

JURISDICTION AND VENUE

9. Jurisdiction and venue are proper in this Court because all of the claims alleged herein arose in San Francisco County and all of the defendants are doing or did business in San Francisco County, and/or their principal place of business is in San Francisco County, in each case, at the times relevant herein. *See* Govt. Code § 12965(b) (stating venue is appropriate in, inter alia, any county in the state in which the unlawful practice is alleged to have been committed).

10. The amount in controversy in this matter exceeds the sum of \$25,000.00, exclusive of interest and costs.

III.

FACTUAL ALLEGATIONS

11. The Company maintains an online platform that allows customers to shop for used cars online, apply for financing, and schedule test drives. It also purchases used cars directly from owners. The Company has offices all across the country.

12. On or about April 10, 2021, Plaintiff started working for the Company as a concierge making \$20.00 per hour in its South San Francisco, California office. Plaintiff primarily reported to MeShon Bartlow (“Bartlow”), a team manager at the Company in charge of the office; however, Plaintiff

1 was also supervised by about ten assistant team leads (“ATLs”). Plaintiff’s responsibilities included,
2 among other things, going to potential sellers to test drive and assess the cars they wanted to sell and, if
3 the sale was finalized, driving the purchased car to the Company’s lot; bringing cars for test drives to
4 potential buyers; and picking up cars that clients did not want to keep and driving them back to the
5 Company lot.

6 13. Just a few days after Plaintiff began her employment with the Company, on or about April
7 16, 2021, Plaintiff began experiencing chest pains. When the pain did not subside, and after speaking
8 with her father who himself had a stent placed in his heart about a week prior, Plaintiff went to the
9 emergency room at John Muir Health hospital in Concord, California. Plaintiff, who had been suffering
10 from depression, anxiety, and severe post-traumatic stress disorder (“PTSD”), and who has a family
11 history of heart health issues and diabetes, was concerned her symptoms were indicative of potential
12 heart problems. After spending hours in the emergency room, Plaintiff was discharged and instructed to
13 rest for several days. She sent a message to Bartlow via Slack, the Company’s internal messaging app,
14 at 6:39 a.m. informing her of what had happened. Bartlow responded within a couple of hours with well
15 wishes for Plaintiff’s recovery. Bartlow also instructed Plaintiff to email callout-sf@shift.com the next
16 time that Plaintiff needed to take time off.

17 14. A few days later, Plaintiff received a flu shot and began to experience negative side
18 effects. Even though Plaintiff thought she signed up to get a COVID-19 vaccine, she did not realize she
19 ended up getting a flu shot. On or about April 21, 2021, Plaintiff sent a message to Bartlow via Slack
20 informing her that she was feeling sick after being administered a shot. Bartlow did not say anything
21 about the fact that Plaintiff had to take time off to address her health issues.

22 15. On or about April 28, 2021, Bartlow and Tam, one of the managers, pulled Plaintiff aside
23 to talk to her about her attendance. Plaintiff was surprised that there were any issues with her attendance
24 since she had had several health problems that she needed to address and she would explain that to the
25 Company and inform her supervisors when she needed time off. At the time, Plaintiff did not realize
26 that, as she later found out, this conversation was actually a “verbal warning” regarding her attendance.
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1 16. Almost from the beginning of her employment, health issues were not the only challenges
2 that Plaintiff, an African American woman, had to deal with. In the office, Plaintiff's supervisors, as well
3 as some of her peers, made jokes about Plaintiff's race and skin tone, and also body-shamed her. For
4 example, in or around May-June 2021, Plaintiff's supervisors and ATLs Delion and Yee would watch
5 Plaintiff go to the refrigerator and ask her, "so, Jetoshia, how many pieces are you gonna have today?
6 Two or three?" Plaintiff was being body-shamed and attacked because of her size and weight, which did
7 not conform to traditional standards of female beauty.

8 17. In or around May 2021, Plaintiff was talking to ATLs Sylvia, Oscar and David and
9 showed them a picture of her father, with whom Plaintiff is close. They commented on how dark-skinned
10 Plaintiff's father looked and how light-skinned Plaintiff was and joked that Plaintiff was adopted. After
11 that incident, this became a common "joke." Due to her supervisors' comments and habit of ridiculing
12 Plaintiff, she developed a negative psychological complex in connection with her skin color that she did
13 not have prior. The same and similar comments regarding Plaintiff's race and skin tone continued on
14 many other occasions in the following months.

15 18. Upon completion of her training, in or around early-May 2021, Plaintiff was assigned to
16 work a 2:00 p.m. to 10:30 p.m. shift. She informed the Company that she could not work the assigned
17 hours because she had to take public transportation to and from the office via the Bay Area Rapid Transit
18 ("BART") and that the BART would not be running by the time her regular shift ended. Accordingly,
19 the Company changed Plaintiff's work schedule to 10:00 a.m. to 6:30 p.m.

20 19. From in or around early-May 2021 until Plaintiff's wrongful termination, she was
21 consistently denied meal period breaks and rest period breaks while often working 12- to 16-hour days.
22 The Company did not compensate Plaintiff for missed meal period breaks and rest breaks. On the
23 frequent occasions that Plaintiff was forced to shorten and/or skip rest periods, Plaintiff was not provided
24 the penalty mandated under Labor Code section 226.7. Additionally, employees working for the
25 Company were (and are) routinely forced to work without uninterrupted meal periods of not less than 30
26 minutes for work periods exceeding five hours, and without a second 30-minute meal break for work
27 exceeding ten hours a day. These meal periods were either not provided at all or were interrupted.
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1 Further, the Company regularly forced Plaintiff and other aggrieved employees to clock out for their
2 meal periods regardless of whether the meal period occurred at all, lasted for the full requisite 30-minute
3 period, or was interrupted. Because employees were forced to work off the clock and/or through their
4 rest and meal periods, they further were not paid minimum wages for all hours worked, overtime wages
5 for all overtime hours worked, and were not provided with accurate itemized wage statements.

6 20. On or about May 7, 2021, Bartlow issued a “final warning” to Plaintiff regarding her
7 attendance and met with her to discuss the issues Bartlow noted. Plaintiff got very emotional during the
8 meeting as she felt like she was being attacked, having to deal with her health issues, racial remarks from
9 her supervisors and peers, and negative comments about her weight and eating habits.

10 21. In the meantime, the racial discrimination towards Plaintiff continued. On or about May
11 12, 2021, Plaintiff learned of a communication that two of her supervisors were having via the
12 Company’s Slack. Almost everyone in the office often left their iPads unlocked and viewable to others.
13 In this communication, one of the ATLS, Ros, sent a message to Tam regarding some new hires in the
14 office and compared them to Plaintiff. Ros said in his message: “kinda like Jetoshia lol but not as ghetto.”
15 Plaintiff was immediately offended by this, because “ghetto” is a slang term that is often used to
16 derogatorily refer to members of a minority group such as African Americans. Tam then asked: “You
17 think this lady is gonna last?” Ros said: “NO[.] Don’t quit!! Jetoshia I think might though[.] [S]he’s too
18 ghetto to care[.]” Tam said: “I hope she does[.] But shes always like ‘I need this job[.]’ Ros: “she’s
19 willow 2.0 in the kitchen[.] [L]ike hurricane Harvey came in[.]” Having learned that her supervisors
20 were referring to her as “ghetto” and comparing her to “hurricane Harvey,” Plaintiff began to experience
21 additional psychological and emotional challenges.

22 22. On or about May 18, 2021, Bartlow emailed Plaintiff with a subject “Final Written Recap
23 – Jetoshia Jefferson.” Bartlow stated that the email attachment was a “memo” documenting a “final
24 warning issued on May 7th, 2021, regarding continued attendance issues.” Bartlow also stressed that the
25 memo was in addition to the verbal warning that Plaintiff received on April 28, 2021.

26 23. As Plaintiff was continuing to deal with her anxiety, depression and PTSD, which were
27 made significantly worse by her supervisors’ comments about her race and weight, on or about June 18,
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2021, Plaintiff's therapist Ryan Fuimaono ("Fuimaono"), a licensed clinical social worker with Mission Mental Health, gave her a doctor's note excusing her from work for two days. She immediately informed the Company of the leave. Plaintiff had been seeing Fuimaono every week and Pilar Abascal, M.D. ("Dr. Abascal"), her psychiatrist, every month and a half. At no time did the Company engage in the interactive process with or endeavor to further accommodate Plaintiff after receiving this note.

24. On or about June 27, 2021, staff from a hospital in Utah contacted Plaintiff informing her that her mother was in the hospital in a critical condition from losing too much blood after sustaining injuries to her leg. The mother's treating physicians and family were concerned that she would not survive the injuries. Plaintiff immediately informed the Company and asked for time off from on or about June 29, 2021 through on or about July 2, 2021 to go visit her mother. Plaintiff had previously shared with Jonathon Benitez ("Benitez"), her team lead, that her mother had a drug addiction. As Plaintiff later learned, while she was visiting her mother, her supervisors and peers were rumoring that Plaintiff's mother was in the hospital in critical condition because of a drug overdose.

25. While in Utah, Plaintiff spent significant time with her sister. As Plaintiff was leaving Utah, her sister found out she had contracted COVID-19 and informed Plaintiff. As a result, upon returning home from her trip, Plaintiff contacted her physician who directed her to get tested for COVID-19 and quarantine. Plaintiff notified the Company.

26. After her quarantine, Plaintiff came into the office. She spoke with Sam Campbell ("Campbell"), a regional manager and Bartlow's superior, who was in the canopy tent next to the office entrance. Plaintiff informed Campbell of the treatment she had been receiving from the ATLs, and the comments they were making about her skin tone and her weight. Plaintiff got emotional and cried. Campbell instructed Plaintiff to take the rest of the day off and suggested that she contacted Human Resources to inform them of what was happening.

27. Plaintiff, who was already in a fragile emotional state from the discrimination and harassment she had experienced in the workplace, and now overwhelmed by the emotions of potentially losing her mother and having her sister be diagnosed with COVID-19, was struggling with her depression that had gotten significantly worse. Therefore, on or about July 29, 2021, Fuimaono submitted a request

1 on Plaintiff's behalf for three weeks off from work to address Plaintiff's worsening health condition.
2 Fuimaono filled out an "Accommodation Medical Certification" form, which Plaintiff sent to the
3 Company. In this certification, Fuimaono stated that Plaintiff had a physical or mental impairment; that
4 she was "in treatment for a mental condition which moderately impairs her functioning"; and that
5 Plaintiff's "condition negatively impacts the stability of her mood which impairs her ability to perform
6 essential functions of the position." Fuimaono further wrote that Plaintiff was "requesting time off from
7 her position in order to take care of her mental health"; and that the requested three weeks off "[would]
8 allow Ms. Jefferson to recover her mental health so that she can return to work and perform at previous
9 levels."

10 28. On or about July 28, 2021, Plaintiff submitted a formal complaint about the
11 discrimination and harassment she had experienced from her supervisors and peers in the office. She
12 wrote:

13 Hi[.] [T]his is a formal complaint based on the fact that since I've been [working at Shift]
14 since April I've experienced racism[,] comments about my weight[,] my personal
business spread without any regard to my emotional and mental health.

15 The assistant team leads (ATL[s]) have made several comments about my skin tone ,
16 (racist) about my father being of darker skin complexion and me being of lighter skin
17 complexion how could that [he] be my father if he's dark and [I'm] light[,] I must be
18 adopted[.] [W]hy is he so dark and you[r]e so light (jetoshia which is me)[.] [A]nd
19 when I walk in The office the AT[L]s like to make jokes about me[:] ["How many pizzas
20 are you gonna eat today[?] 1 or 2 or 3[?"] [T]hey would pretty much body shame me and
21 that made me feel so terrible[!] Just because they are above me does not make them above
22 me[.] They abused their power while I was there And Tameka Bar[t]low [w]as very
23 passive aggressive with me[.] [S]he constantly had attitudes[,] [] she constantly had
24 something to say without being direct at that company [] and I can no longer be quiet[,]
25 my mental health is very important [] to me[,] and they have [taken] an advantage of that
26 I loved working for shift but now I don't know what to believe[.] I've never dealt with so
27 much injustice at a company in my life[.] People need to be held accountable whether
28 they're the team leads or the boss or Concierge or a driver. I believe that everybody makes
mistakes but when you are in a position of power though simple mistakes should not be
made[.] I also had recordings of the team leads and they had a lot to say about me although
those recordings will not be used is due to the fact that I'm protecting people's privacy.
But I was very in shock to truly learn how some of the people in power which is [] the
team leads had to say about me[.] [I]t was very hurtful and very judgmental[.] [W]hile I
was there[,] I received nothing but disrespect[,] constant abuse of power[.] And I feel like
all parties involved need to be held accountable for their actions and due to the fact that
nothing has been done about this injustice I've decided to write a formal complaint! If
nothing is done about this then we will go from there!!

1 29. The next day, on or about July 29, 2021, Carlos Tapia (“Tapia”), People Business Partner
2 based in Houston, Texas, replied thanking Plaintiff for “documenting their conversation from the other
3 day” and asking her to provide additional details regarding issues that Plaintiff reported so he could
4 “proceed with our internal investigation.”

5 30. Several days later, on or about August 7, 2021, Plaintiff emailed Tapia:

6 Hi Carlos so let’s start with Tameka [MeShon] Bar[t]low so with her passive aggressive
7 behavior towards Me[.] [] [On] April 28th [] [she] and Harry pulled me aside they never
8 Stated it was a verbal warning[.] All we did was talk about my attendance[.] When they
9 gave me the final [] [write] up was may 7th I never knew my attendance was an issue[.]
10 I contacted Tameka on slack April 21st [l]et[ting] her know I wasn’t feeling good due to
11 the vaccine[.] Tameka said and I quote a 100% good take as much time as you need I sent
12 her my hospital band April 16th so 17 and 18th I stayed home I had underl[y]ing issues I
13 told her I would see her on Monday which is the 19th so 17 18 she knew I would be off
14 she told me use call out sf which I tried [but it] didn’t work[.] then the 21st she knew I
15 would be out she still proceeded to give the final write up when she gave me my final
16 write up I was very upset she had her and Justin there she took sick pleasure in giving me
17 the final write up I was upset [I’m] not going to lie I was confused because she said I
18 never contacted anybody but I was contacting her keeping in touch so how was I no call
19 no show[] i feel like she didn’t care to hear the fact tht she messed up by saying []
20 because it wasn’t factual []. The way she gave me my final write up was very
21 unprofessional she told me everything I did wrong then told me good things I did right
22 very (passive/aggressive) the way she handled the final write up was not the right way
23 after telling me everything [I’m] doing wrong she was like I see myself in you a lot at
24 that point I was upset so I started yelling a little bit but I never Threatened anybody or
25 was aggressive I was upset on how things went down she made it about her after that
26 things were awkward I spoke to her because she was my boss I respect her but she doesn’t
27 respect me the same level of energy towards Me is phoney.

19 Next the racist comments and weight comments and Kevin DeLeon Christopher yee
20 watched me go to the Refrigerator and would sit there and make jokes about the amount
21 of food I’m intaking because one day I would eat 2 small pizzas and a salad or water and
22 some juice or a soda it was several accasions in many a couple of times and June in the
23 afternoon when this took place I cant remember exact dates but times in the afternoon
24 going into evening I would let those comments go due to the fact I didn’t want to make a
25 bid deal I didn’t know there was such thing as weight harassment in the work place but
26 there is. Then I showed Oscar and david and Sylvia a picture of my dad because my dads
27 my best friend they said are you adopted why is he so dark and your so light your skin
28 tone is completely different then his I thought to myself I have a mom too.

25 Then I left to Utah June 28th to July 2nd which is Tuesday until Friday im off Wednesday
26 Thursday so 2 days I had to go see my mother she was in critical condition I told my team
27 lead Jonathon Benitez about my mom and while I was gone apparently they was Saying
28 the reason my mom is in critical condition is because of drugs I told my team lead about
my mother’s drug addiction I never said that’s why she was in critical condition he
apparently was telling people how did people know about her personal life . He talks to

1 much you're a team lead not concierge there's no reason your spreading my business like
2 a wild fire also me and one of my coworkers Mitchell Rubencheck were not cool before
3 I left while I was gone June 29th David Christophe yee and Christopher A Oscar,
4 Jonathon asked where's your best friend why didn't you go with her to Utah wasn't you
5 guys suppose to leave together what's wrong is there a problem Mitchell would say is
6 none of your business they would proceed to say come on mitch that's your best friend
7 yall are buddy buddy ... why did the ATLS NEED TO MAKE MORE DRAMA
8 KNOWING WE WERENT COOL AT THE TIME. NEXT UP RECORDING THAT
9 MITCHELL RUBENCHECK INQUIRED HE WAS VERY UPSET ABOUT THE
10 FACT THAT I THOUGHT HE WAS THE ONE TALKING BAD ABOUT MY MOM
11 SO HE HAS CONVERSATIONS WITH OSCAR DAVID JONATHON TO GET TO
12 THE BOTTOM OF THE SITUATION TO CLEAR HIS NAME I GAVE HIM
13 PERMISSION TO RECORD USING MY NAME. HE RECORDED THEM
14 LAUGHING AT THE SITUATION AND JONATHON SAYING AND I QUOTE
15 NOBODY REALLY KNOWS ME LIKE THAT SO NOBODY CARES ABOUT ME .
16 THE RECORDING WILL BE GIVIN TO SAM AND CARLOS he can pass them along
17 to you . I don't appreciate them saying anything about me especially Jonathon he's my
18 team lead and we have had a couple of one on ones I've shared very personal information
19 with him so to hear that Is very disheartening.

12 31. Plaintiff followed up her earlier emotional and heartfelt email with another email within
13 an hour. Plaintiff wrote:

14 To s[u]m[] up this chapter I felt very judged and upset about people that are suppose[d]
15 to be leaders [who are actually] [] bullies[.] [T]hey did things without any regard[] to how
16 [I] felt or how I took it. I would never be mean and nasty to anyone for no reason and I
17 would be a leader and do my job[.] I suffer from bad depression and anxiety and they
18 didn't realize that making those jokes [and] comments really affected me[:] [] someday
19 I was [so] depressed I couldn't get out of bed those comments really made me
20 uncomfortable and upset. [As a result] [I] was continually in touch with my therapist a
21 lot and [I] requested 3 weeks off to get myself together before I come back. My therapist
22 agreed because those things that took place [were not] right. Sylvia and chazz and some
23 people from recon were drinking it was Angel's last day, Mitchell Rubencheck asked
24 Sylvia and she said yeah we had a couple of beers and they smelled like weed doing this
25 in the back by the tesla so there's a lot going on that isn't right and people are definitely
26 abusing their power. I love working at Shift but some things need to change and it has to
27 start somewhere that you in advance for looking into this and investigating these [unjust][
28] events that have [taken] [] place [][.] I feel like the [persons] [] involved have a lot of
growing to do and I hope through this investigation they will self reflect and think long
and hard about what comes out [of] [their] [] mouth and about the change that needs to
take place. Thank you have a bless[ed] day[.]

25 32. On or about August 20, 2021, Tapia sent Plaintiff an email stating:

26 Dear Jetoshia,

27 Thank you for taking the time to talk to me today, to summarize our conversation SHIFT
28 is committed to maintaining an environment that is safe for our clients, customers and

1 staff. Consistent with that commitment, all complaints of inappropriate behavior are
2 investigated and swift corrective action is taken when necessary.

3 This letter summarizes the results of our investigation into your allegations that various
4 members of management at the SF Hub including Team Managers, and Assistant Team
5 Leads acted inappropriately and violated company policy regarding workplace bullying,
6 and acts of discrimination.

7 At the outcome of this investigation we were able to substantiate 1 of the 5 claims raised.

8 Although privacy considerations limit our ability to share confidential information with
9 you about other employees, I can tell you that the appropriate action has been taken to
10 ensure that such conduct does not repeat itself. Should you experience any further
11 problems, please feel free to let me know or to speak with another trusted member of
12 management. Any future misconduct, including any retaliation, will be dealt with swiftly
13 and severely as the circumstances dictate.

14 Please do not hesitate to ask questions or speak up about matters that concern you. If you
15 feel any form of retaliation occurs, report it immediately, so it can be addressed quickly.

16 Thank you for bringing this matter to our attention.

17 33. Plaintiff learned that the Company terminated Ros as a result of the internal investigation.
18 However, Tam, who took an active part in the exchange that was filled with racial derogatory remarks
19 towards Plaintiff, but who occupied a higher position than Ros, did not get terminated and continued to
20 work in the same office with Plaintiff, supervising her. As Plaintiff heard, Tam did not get fired because
21 of his higher standing at the Company.

22 34. When Plaintiff came back to work on or about August 21, 2021, she felt that the harassing
23 and discriminatory environment in the office did not change, and her supervisors actually started to
24 retaliate against her for making the complaint. Every time Plaintiff would come into the office, ATLs
25 would make a snorting sound imitating a pig; they would start laughing or making discriminatory
26 comments while looking in Plaintiff's direction; and they would alienate Plaintiff and not speak with
27 her. Only one ATL, Sylvia, still talked to Plaintiff. Finding it difficult to be in the workplace where she
28 felt harassed, discriminated against and judged, Plaintiff started asking to be sent on assignments farther
away so she would spend less time in the office.

35. On or about August 25, 2021, Plaintiff was assigned to retrieve a vehicle from an elderly
couple who had previously bought the car from the Company and who wanted to return the car due to
its poor condition. When Plaintiff arrived at the customers' home and assessed the condition of the
vehicle, she determined the car was not safe to drive and informed one of the Company's ATLs that she

1 required a tow truck to deliver the vehicle to the Company's lot. An ATL told Plaintiff that she needed
2 to drive the car herself, instead. Plaintiff explained again that the car was not safe to drive and insisted
3 that she needed a tow truck. It was only after Plaintiff had repeatedly insisted that she did not feel safe
4 was she allowed to call the tow truck. Plaintiff felt that she was sent on this assignment with an unsafe
5 car on purpose in a retaliation for her making the complaint to Human Resources.

6 36. Just a few days later, on or about August 28, 2021, Plaintiff was assigned to drive an
7 electric vehicle from the Company's lot to a customer in Stockton, California, which was approximately
8 91 miles from the Company's office. Even though the ATLs were supposed to ensure the car was charged
9 overnight and ready for delivery, the car had only 123 miles charge time on it. Since Plaintiff had no
10 reason to suspect that the car would not hold the charge properly, she determined it would be sufficient
11 to get her to the destination. However, as miles began to drop rapidly, the vehicle stopped running while
12 Plaintiff was en route to the customer's home. Plaintiff learned that day the Company had previously
13 attempted to deliver the same vehicle to the same customer, but that the delivery driver experienced the
14 same problems that Plaintiff experienced as to the vehicle's defects; nevertheless, Plaintiff was not
15 informed of this. Plaintiff was unable to deliver the vehicle to the customer and, as she was stranded on
16 the side of the roadway, she began experiencing symptoms of a dehydration, anxiety, and a panic attack.
17 Benitez offered to send someone from the Sacramento office to pick up Plaintiff. However, Plaintiff
18 indicated that she was in need of immediate medical attention as her condition worsened and—since it
19 would have taken approximately 45 minutes for someone to have Plaintiff picked up given the
20 destination from the office—Plaintiff hung up the phone and dialed 911.

21 37. Plaintiff was taken to the hospital by an ambulance. She was diagnosed with extreme
22 dehydration, was unable to produce saliva, and had low potassium and iron levels. Plaintiff's coworker
23 from the Sacramento office picked her up from the hospital and drove her back to the San Francisco
24 office. The next day, Plaintiff received a phone call from the police informing her that the vehicle that
25 Plaintiff had left overnight on the freeway exit was vandalized. Upon information and belief, the
26 Company set in motion a series of events and circumstances (including the foregoing) that were designed
27 to cause Plaintiff to fail in her specific job duties with the intent to terminate her on pretextual grounds.
28

1 In fact, the Company did terminate Plaintiff on or about August 31, 2021, falsely accusing her of: 1)
2 violating the Company attendance policy; 2) violating the Company standard of conduct policy (hostile
3 and aggressive behavior and profanity); 3) violating the Company policy/improper and negligent
4 behavior that resulted in damage to the not properly working car that Plaintiff had to leave on the side
5 of the road when the car died.

6 38. Plaintiff is informed and believes that the Company's pattern of harassment,
7 discrimination and retaliation that resulted in her wrongful termination were because of Plaintiff's race,
8 disability and/or perceived disability, her request for time off to address her health condition and to visit
9 her mother in the hospital; and because of retaliation for her engagement in protected activities.

10 **Managing Agents**

11 39. MeShon Bartlow, Harry Tam, Carlos Tapia, Jake Ros, Kevin DeLion, Christopher Yee,
12 Sylvia (last name unknown), Oscar (last name unknown), David (last name unknown) were managing
13 agents of the Company in that they exercised substantial independent authority and judgment in their
14 corporate decision-making such that their decisions ultimately determined corporate policy.

15 **IV.**

16 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17 40. Prior to the initiation of this lawsuit, Plaintiff filed a complaint against each named
18 Defendant with the California Department of Fair Employment and Housing ("DFEH") pursuant to
19 section 12900 et seq. of the California Government Code, alleging the claims described in this
20 Complaint. On January 20, 2022, the DFEH issued a "right to sue" letter. True and correct copies of the
21 administrative complaint and the "right to sue" letter are attached hereto collectively as **Exhibit A**. All
22 conditions precedent to the institution of this lawsuit have been fulfilled. This action is filed within one
23 year of the date that the DFEH issued its right to sue letter.

24 41. Prior to the initiation of this lawsuit, on October 14, 2021, Plaintiff filed a notice online
25 with the California Labor and Workforce Development Agency ("LWDA") pursuant to the Private
26 Attorneys General Act ("PAGA"), as well as a filing fee of \$75, alleging the claims described in this
27 Complaint. The LWDA did not notify Plaintiff with notice as to whether it intended to investigate the
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1 alleged violations within 60 calendar days of the postmark date of the PAGA notice, nor was notice
2 provided within 65 calendar days of the postmark date of the PAGA notice. As such, Plaintiff may
3 commence a civil action pursuant to Labor Code section 2699. *See* Lab. Code § 2699.3(2)(A). On
4 October 14, 2021, Plaintiff sent a copy of the PAGA notice via certified mail to the Company. True and
5 correct copies of the PAGA notice and proof of mailing by certified mail are attached hereto collectively
6 as **Exhibit B**. All conditions precedent to the institution of this lawsuit have been fulfilled.

7 **V.**

8 **FIRST CAUSE OF ACTION**

9 **(Harassment in Violation of the FEHA)**

10 **(On Behalf of Plaintiff Against All Defendants)**

11 42. Plaintiff realleges and incorporates by reference paragraphs 1-41, inclusive, of this
12 Complaint as though fully set forth herein.

13 43. California Government Code section 12940(j)(1) makes it illegal for an employer or any
14 person to harass an employee because of her actual or perceived race, color, national origin, ancestry,
15 physical disability, mental disability, sex and/or gender. Govt. Code § 12940(j)(1).

16 44. As described in greater detail above, during the course of Plaintiff's employment,
17 Defendants engaged in a pattern of continuous and pervasive harassment of Plaintiff based on her race,
18 color, actual or perceived disability; taking disability leave; and engaging in a protected activity.

19 45. As a proximate result of Defendants' conduct, Plaintiff suffered and continues to suffer
20 damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary loss according to proof.
21 Plaintiff has also suffered and will continue to suffer physical and emotional injuries, including
22 nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue,
23 and anxiety. The amount of Plaintiff's damages will be ascertained at trial.

24 46. In engaging in the foregoing conduct, Defendants acted with malice, oppression, and/or
25 fraud. The malice, oppression, and/or fraud was conduct of one or more officers, directors, or managing
26 agents of the Company, who acted on behalf of the Company. Further, an officer, director, or managing
27 agent of the Company had advance knowledge of the unfitness of such persons and employed them with
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1 a knowing disregard of the rights or safety of others. Further, the conduct constituting malice, oppression,
2 or fraud was authorized by one or more officers, directors, or managing agents of the Company. Further,
3 one or more officers, directors, or managing agents of the Company knew of the conduct constituting
4 malice, oppression, and/or fraud and adopted or approved that conduct after it occurred. Defendants'
5 conduct constituted malice in that they acted with an intent to cause injury, or their conduct was
6 despicable and was done with a willful and knowing disregard of the rights or safety of another.
7 Defendants' conduct constituted oppression in that their conduct was despicable and subjected Plaintiff
8 to cruel and unjust hardship in knowing disregard of her rights. Defendants' conduct constituted fraud
9 in that they intentionally misrepresented or concealed a material fact and did so intending to harm
10 Plaintiff.

11 47. Pursuant to Government Code section 12965, "In civil actions brought under this section,
12 the court, in its discretion, may award to the prevailing party, including the department, reasonable
13 attorney's fees and costs, including expert witness fees." Govt. Code § 12965(b). Accordingly, Plaintiff
14 is entitled to an award of attorneys' fees and costs.

15 48. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this
16 Court.

17 VI.

18 SECOND CAUSE OF ACTION

19 (Discrimination in Violation of the FEHA)

20 (On Behalf of Plaintiff Against the Company)

21 49. Plaintiff realleges and incorporates by reference paragraphs 1-48, inclusive, of this
22 Complaint as though fully set forth herein.

23 50. Pursuant to Government Code section 12940, it is an unlawful employment practice for
24 an employer, because of the actual or perceived race, color, national origin, ancestry, physical disability,
25 mental disability, sex and/or gender of any person, "to discriminate against the person in compensation
26 or in terms, conditions, or privileges of employment." Govt. Code § 12940(a).

1 51. At all relevant times herein, Plaintiff was a female employee of the Company,
2 Black/African American, and disabled by, or perceived as disabled by, depression, anxiety, PTSD, and
3 related conditions and symptoms.

4 52. As explained in greater detail above, the Company discriminated against Plaintiff on the
5 basis of her actual or perceived race, color, national origin, ancestry, physical disability, and/or mental
6 disability in violation of the FEHA through numerous illegal acts including, without limitation, failing
7 to engage in the interactive process, creating a hostile work environment that collectively constituted “a
8 series of subtle, yet damaging, injuries” (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal. 4th 1028, 1055),
9 and terminating Plaintiff’s employment.

10 53. As a proximate result of the Company’s conduct, Plaintiff suffered and continues to suffer
11 damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary loss according to proof.
12 Plaintiff has also suffered and will continue to suffer physical and emotional injuries, including
13 nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue,
14 and anxiety. The amount of Plaintiff’s damages will be ascertained at trial.

15 54. In engaging in the foregoing conduct, the Company acted with malice, oppression, and/or
16 fraud. The malice, oppression, and/or fraud was conduct of one or more officers, directors, or managing
17 agents of the Company, who acted on behalf of the Company. Further, an officer, director, or managing
18 agent of the Company had advance knowledge of the unfitness of such persons and employed them with
19 a knowing disregard of the rights or safety of others. Further, the conduct constituting malice, oppression,
20 or fraud was authorized by one or more officers, directors, or managing agents of the Company. Further,
21 one or more officers, directors, or managing agents of the Company knew of the conduct constituting
22 malice, oppression, and/or fraud and adopted or approved that conduct after it occurred. Defendant’s
23 conduct constituted malice in that it acted with an intent to cause injury, or its conduct was despicable
24 and was done with a willful and knowing disregard of the rights or safety of another. Defendant’s conduct
25 constituted oppression in that its conduct was despicable and subjected Plaintiff to cruel and unjust
26 hardship in knowing disregard of his rights. Defendant’s conduct constituted fraud in that it intentionally
27 misrepresented or concealed a material fact and did so intending to harm Plaintiff.

55. Pursuant to Government Code section 12965, “In civil actions brought under this section, the court, in its discretion, may award to the prevailing party, including the department, reasonable attorney's fees and costs, including expert witness fees.” Govt. Code § 12965(b). Accordingly, Plaintiff is entitled to an award of attorneys’ fees and costs.

56. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this Court.

VII.

THIRD CAUSE OF ACTION

(Retaliation in Violation of the FEHA)

(On Behalf of Plaintiff Against the Company)

57. Plaintiff realleges and incorporates by reference paragraphs 1-56, inclusive, of this Complaint as though fully set forth herein.

58. California Government Code section 12940(h) makes it an unlawful employment practice for an employer to “discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under [the FEHA] or because the person has filed a complaint, testified, or assisted in any proceeding under [the FEHA].”

59. California Government Code section 12940(m)(1) makes it an unlawful employment practice for an employer “to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee.”

60. California Government Code section 12940(m)(2) makes it an unlawful employment practice for an employer to “retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.” Govt. Code § 12940(m)(2).

61. As explained in greater detail above, the Company retaliated against Plaintiff on the basis of her opposing practices forbidden under the FEHA, and on the basis of her requests for accommodation in violation of the FEHA through numerous illegal acts including, without limitation, failing to engage in the interactive process, creating a hostile work environment that collectively constituted “a series of

1 subtle, yet damaging, injuries” (*Yanowitz v. L’Oreal USA, Inc.* (2005) 36 Cal. 4th 1028, 1055), and
2 terminating Plaintiff’s employment.

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

8 63. In engaging in the foregoing conduct, the Company acted with malice, oppression, and/or
9 fraud. The malice, oppression, and/or fraud was conduct of one or more officers, directors, or managing
10 agents of the Company, who acted on behalf of the Company. Further, an officer, director, or managing
11 agent of the Company had advance knowledge of the unfitness of such persons and employed them with
12 a knowing disregard of the rights or safety of others. Further, the conduct constituting malice, oppression,
13 or fraud was authorized by one or more officers, directors, or managing agents of the Company. Further,
14 one or more officers, directors, or managing agents of the Company knew of the conduct constituting
15 malice, oppression, and/or fraud and adopted or approved that conduct after it occurred. Defendant’s
16 conduct constituted malice in that it acted with an intent to cause injury, or its conduct was despicable
17 and was done with a willful and knowing disregard of the rights or safety of another. Defendant’s conduct
18 constituted oppression in that its conduct was despicable and subjected Plaintiff to cruel and unjust
19 hardship in knowing disregard of his rights. Defendant’s conduct constituted fraud in that it intentionally
20 misrepresented or concealed a material fact and did so intending to harm Plaintiff.

21 64. Pursuant to Government Code section 12965, “In civil actions brought under this section,
22 the court, in its discretion, may award to the prevailing party, including the department, reasonable
23 attorney's fees and costs, including expert witness fees.” Govt. Code § 12965(b). Accordingly, Plaintiff
24 is entitled to an award of attorneys’ fees and costs.

25 65. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this
26 Court.

VIII.

FOURTH CAUSE OF ACTION

(Failure to Prevent Harassment, Discrimination and/or Retaliation in Violation of the FEHA)

(On Behalf of Plaintiff Against the Company)

66. Plaintiff realleges and incorporates by reference paragraphs 1-65, inclusive, of this Complaint as though fully set forth herein.

67. California Government Code section 12940(k) makes it an unlawful employment practice for an employer to “fail to take all reasonable steps to prevent discrimination and harassment [and retaliation] from occurring.” This provision also makes it unlawful for an employer to fail to prevent retaliation. *See, e.g., Ortiz v. Georgia Pacific*, 973 F. Supp. 2d 1162, 1184 (E.D. Cal. 2013) (citing *Taylor v. City of Los Angeles Dep’t of Water & Power*, 144 Cal. App. 4th 1216, 1240 (2006)). The Company violated this provision by failing to prevent harassment, discrimination and retaliation against Plaintiff as described in greater detail above. Additionally, the Company knew or should have known of the harassment, discrimination and retaliation against Plaintiff, yet failed to prevent such conduct or take any prompt or adequate remedial action.

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

69. In engaging in the foregoing conduct, the Company acted with malice, oppression, and/or fraud. The malice, oppression, and/or fraud was conduct of one or more officers, directors, or managing agents of the Company, who acted on behalf of the Company. Further, an officer, director, or managing agent of the Company had advance knowledge of the unfitness of such persons and employed them with a knowing disregard of the rights or safety of others. Further, the conduct constituting malice, oppression, or fraud was authorized by one or more officers, directors, or managing agents of the Company. Further, one or more officers, directors, or managing agents of the Company knew of the conduct constituting

malice, oppression, and/or fraud and adopted or approved that conduct after it occurred. Defendant's conduct constituted malice in that it acted with an intent to cause injury, or its conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. Defendant's conduct constituted oppression in that its conduct was despicable and subjected Plaintiff to cruel and unjust hardship in knowing disregard of his rights. Defendant's conduct constituted fraud in that it intentionally misrepresented or concealed a material fact and did so intending to harm Plaintiff.

70. Pursuant to Government Code section 12965, "In civil actions brought under this section, the court, in its discretion, may award to the prevailing party, including the department, reasonable attorney's fees and costs, including expert witness fees." Govt. Code § 12965(b). Accordingly, Plaintiff is entitled to an award of attorneys' fees and costs.

71. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this Court.

IX.

FIFTH CAUSE OF ACTION

(Failure to Engage in the Interactive Process)

(On Behalf of Plaintiff Against the Company)

72. Plaintiff realleges and incorporates by reference paragraphs 1-71, inclusive, of this Complaint as though fully set forth herein.

73. California Government Code section 12940(n) makes it unlawful "[f]or an employer or other entity covered by this part to fail to engage in a timely, good faith interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition." Govt. Code § 12940(n). And as California Government Code section 12926.1(e) provides, "The Legislature affirms the importance of the interactive practice between the applicant or employee and the employer in determining a reasonable accommodation, as the requirement has been articulated by the Equal Employment Opportunity Commission in its interpretive guidance of the Americans with Disabilities Act." *Id.* § 12926.1(e).

1 74. The California Code of Regulations provide, “When needed to identify or implement an
2 effective, reasonable accommodation for an employee or applicant with a disability, the FEHA requires
3 a timely, good faith, interactive process between an employer or other covered entity and an applicant,
4 employee, or the individual’s representative, with a known physical or mental disability or medical
5 condition.” Cal. Code Regs. tit. 2, § 11069.

6 75. At all relevant times herein, Plaintiff was an employee of the Company disabled by, or
7 perceived as disabled by, depression, anxiety, PTSD, and related conditions and symptoms.

8 76. As set forth above, Plaintiff informed the Company of her disabilities. The Company
9 failed to engage in the interactive process, and ultimately terminated Plaintiff’s employment.

10 77. Had the Company engaged in a timely good faith interactive process, reasonable
11 accommodations were available that would have accommodated Plaintiff’s disabilities.

12 78. As a proximate result of the Company’s conduct, Plaintiff has suffered and will continue
13 to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary loss according
14 to proof. Plaintiff has also suffered and will continue to suffer physical and emotional injuries, including
15 nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue,
16 and anxiety. The amount of Plaintiff’s damages will be ascertained at trial.

17 79. In engaging in the foregoing conduct, the Company acted with malice, oppression, and/or
18 fraud. The malice, oppression, and/or fraud was conduct of one or more officers, directors, or managing
19 agents of the Company, who acted on behalf of the Company. Further, an officer, director, or managing
20 agent of the Company had advance knowledge of the unfitness of such persons and employed them with
21 a knowing disregard of the rights or safety of others. Further, the conduct constituting malice, oppression,
22 or fraud was authorized by one or more officers, directors, or managing agents of the Company. Further,
23 one or more officers, directors, or managing agents of the Company knew of the conduct constituting
24 malice, oppression, and/or fraud and adopted or approved that conduct after it occurred. Defendant’s
25 conduct constituted malice in that it acted with an intent to cause injury, or its conduct was despicable
26 and was done with a willful and knowing disregard of the rights or safety of another. Defendant’s conduct
27 constituted oppression in that its conduct was despicable and subjected Plaintiff to cruel and unjust
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1 hardship in knowing disregard of his rights. Defendant's conduct constituted fraud in that it intentionally
2 misrepresented or concealed a material fact and did so intending to harm Plaintiff.

3 80. Pursuant to Government Code section 12965, "In civil actions brought under this section,
4 the court, in its discretion, may award to the prevailing party, including the department, reasonable
5 attorney's fees and costs, including expert witness fees." Govt. Code § 12965(b). Accordingly, Plaintiff
6 is entitled to an award of attorneys' fees and costs.

7 81. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this
8 Court.

9 **X.**

10 **SIXTH CAUSE OF ACTION**

11 **(Wrongful Termination in Violation of Public Policy)**

12 **(On Behalf of Plaintiff Against the Company)**

13 82. Plaintiff realleges and incorporates by reference paragraphs 1-81, inclusive, of this
14 Complaint as though fully set forth herein.

15 83. Plaintiff was employed by the Company.

16 84. The Company wrongfully discharged Plaintiff.

17 85. The Company's harassment, discrimination, retaliation, failure to accommodate, failure
18 to engage in the interactive process, and violation of the CFRA were a substantial motivating reason for
19 Plaintiff's discharge.

20 86. Plaintiff was harmed. As a proximate result of the Company's conduct, Plaintiff has
21 suffered and will continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other
22 pecuniary loss according to proof. Plaintiff has also suffered and will continue to suffer physical and
23 emotional injuries, including nervousness, humiliation, depression, anguish, embarrassment, fright,
24 shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's damages will be ascertained at
25 trial.

26 87. The discharge was a substantial factor in causing Plaintiff's harm.

88. In engaging in the foregoing conduct, the Company acted with malice, oppression, and/or fraud. The malice, oppression, and/or fraud was conduct of one or more officers, directors, or managing agents of the Company, who acted on behalf of the Company. Further, an officer, director, or managing agent of the Company had advance knowledge of the unfitness of such persons and employed them with a knowing disregard of the rights or safety of others. Further, the conduct constituting malice, oppression, or fraud was authorized by one or more officers, directors, or managing agents of the Company. Further, one or more officers, directors, or managing agents of the Company knew of the conduct constituting malice, oppression, and/or fraud and adopted or approved that conduct after it occurred. Defendant's conduct constituted malice in that it acted with an intent to cause injury, or its conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. Defendant's conduct constituted oppression in that its conduct was despicable and subjected Plaintiff to cruel and unjust hardship in knowing disregard of his rights. Defendant's conduct constituted fraud in that it intentionally misrepresented or concealed a material fact and did so intending to harm Plaintiff.

89. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this Court.

XI.

SEVENTH CAUSE OF ACTION

(Violation of the CFRA, Govt. Code § 12945.2)

(By Plaintiff Against the Company)

90. Plaintiff realleges and incorporates by reference paragraphs 1-89, inclusive, of this Complaint as though fully set forth herein.

91. Pursuant to Government Code section 12945.2, “It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.” Cal. Govt. Code § 12945.2(t).

92. Pursuant to California Code of Regulations section 11094, “CFRA’s prohibition against ‘interference’ prohibits an employer from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise CFRA rights . . . [E]mployers cannot

1 use the taking of CFRA leave as a negative factor in employment actions, such as hiring, promotions or
2 disciplinary actions; nor can CFRA leave be counted against an employee under an employer's
3 attendance policies." Cal. Code. Reg. § 11094(b). Additionally, "All individuals, and not merely
4 employees who are CFRA-qualified, are protected from retaliation for opposing (e.g., filing a complaint
5 about) any practice that is unlawful under CFRA. They are similarly protected if they oppose any practice
6 that they reasonably believe to be a violation of CFRA or its implementing regulations." *Id.* § 11094(d).

7 93. The Company interfered with, restrained, or denied the exercise of, or the attempt to
8 exercise, Plaintiff's rights under the CFRA. Specifically, the Company denied Plaintiff an opportunity
9 to take the time off to address her health issues and counted those days as absences, ultimately
10 terminating Plaintiff's employment.

11 94. As a result of the Company's conduct, Plaintiff has suffered and will continue to suffer
12 damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary loss according to proof.
13 Plaintiff has also suffered and will continue to suffer physical and emotional injuries, including
14 nightmares, nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain,
15 discomfort, fatigue, and anxiety. The amount of Plaintiff's damages will be ascertained at trial.

16 95. In engaging in the foregoing conduct, the Company acted with malice, oppression, and/or
17 fraud. The malice, oppression, and/or fraud was conduct of one or more officers, directors, or managing
18 agents of the Company, who acted on behalf of the Company. Further, an officer, director, or managing
19 agent of the Company had advance knowledge of the unfitness of such persons and employed them with
20 a knowing disregard of the rights or safety of others. Further, the conduct constituting malice, oppression,
21 or fraud was authorized by one or more officers, directors, or managing agents of the Company. Further,
22 one or more officers, directors, or managing agents of the Company knew of the conduct constituting
23 malice, oppression, and/or fraud and adopted or approved that conduct after it occurred. Respondent's
24 conduct constituted malice in that it acted with an intent to cause injury, or its conduct was despicable
25 and was done with a willful and knowing disregard of the rights or safety of another. Respondent's
26 conduct constituted oppression in that its conduct was despicable and subjected Plaintiff to cruel and
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1 unjust hardship in knowing disregard of his rights. Respondent's conduct constituted fraud in that it
2 intentionally misrepresented or concealed a material fact and did so intending to harm Plaintiff.

3 96. Pursuant to Government Code section 12965, "In civil actions brought under this section,
4 the court, in its discretion, may award to the prevailing party, including the department, reasonable
5 attorney's fees and costs, including expert witness fees." Govt. Code § 12965(b). Accordingly, Plaintiff
6 is entitled to an award of attorneys' fees and costs.

7 97. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this
8 Court.

9 **XII.**

10 **EIGHTH CAUSE OF ACTION**

11 **(Failure to Provide Meal Periods in Violation of Labor Code § 226.7)**

12 **(By Plaintiff Against the Company)**

13 98. Plaintiff realleges and incorporates by reference paragraphs 1-97, inclusive, of this
14 Complaint as though fully set forth herein.

15 99. California Labor Code section 512 provides, "An employer shall not employ an employee
16 for a work period of more than five hours per day without providing the employee with a meal period of
17 not less than 30 minutes." Lab. Code § 512(a).

18 100. Industrial Welfare Commission Wage Order No. 4, section 11, provides: (A) No employer
19 shall employ any person for a work period of more than five (5) hours without a meal period of not less
20 than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's
21 work the meal period may be waived by mutual consent of the employer and the employee. . . . (C) Unless
22 the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered
23 an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only
24 when the nature of the work prevents an employee from being relieved of all duty and when by written
25 agreement between the parties and on-the-job paid meal period is agreed to. . . . (D) If an employer fails
26 to provide an employee a meal period in accordance with the applicable provisions of this order, the
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1 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for
2 each workday that the meal period is not provided."

3 101. California Labor Code section 226.7 provides: "If an employer fails to provide an
4 employee a meal period or rest or recovery period in accordance with a state law, including, but not
5 limited to, an applicable order of the Industrial Welfare Commission, the Occupational Safety and Health
6 Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the
7 employee one additional hour of pay at the employer's regular rate of compensation for each work day
8 that the meal or rest or recovery period is not provided." Lab. Code § 226.7.

9 102. As set forth above, during the course of her employment with the Company, Plaintiff was
10 consistently not provided with meal periods for every five-plus hours worked and was not compensated
11 therefor.

12 103. Plaintiff is owed compensation in the amount of one additional hour's worth of pay for
13 each workday in which he missed a meal period.

14 104. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this
15 Court.

16 **XIII.**

17 **NINTH CAUSE OF ACTION**

18 **(Failure to Provide Rest Periods in Violation of Labor Code § 226.7)**

19 **(On Behalf of Plaintiff Against the Company)**

20 105. Plaintiff realleges and incorporates by reference paragraphs 1-104, inclusive, of this
21 Complaint as though fully set forth herein.

22 106. Industrial Welfare Commission Wage Order No. 4, section 12, provides: "(A) Every
23 employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall
24 be in the middle of each work period. The authorized rest period shall be based on the total hours worked
25 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. . . . (B) If
26 an employer fails to provide an employee a rest period in accordance with the applicable provisions of
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1 this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
2 compensation for each work day that the rest period is not provided."

3 107. California Labor Code section 226.7 provides: "If an employer fails to provide an
4 employee a meal period or rest or recovery period in accordance with a state law, including, but not
5 limited to, an applicable order of the Industrial Welfare Commission, the Occupational Safety and Health
6 Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the
7 employee one additional hour of pay at the employer's regular rate of compensation for each work day
8 that the meal or rest or recovery period is not provided." Lab. Code § 226.7.

9 108. As set forth above, during the course of her employment with the Company, Plaintiff was
10 not provided with rest periods for every four hours worked and was not compensated therefor.

11 109. Plaintiff is owed compensation in the amount of one additional hour's worth of pay for
12 each workday in which he missed a rest period.

13 110. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this
14 Court.

15 **XIV.**

16 **TENTH CAUSE OF ACTION**

17 **(Failure to Pay Minimum Wages in Violation of Labor Code § 1197.1)**

18 **(On Behalf of Plaintiff Against the Company)**

19 111. Plaintiff realleges and incorporates by reference paragraphs 1-110, inclusive, of this
20 Complaint as though fully set forth herein.

21 112. As set forth in greater detail above, the Company failed to pay Plaintiff minimum wages
22 due, as a result of which he was not paid for all hours worked. Because the Company failed to pay
23 Plaintiff for all the hours he worked, it paid Plaintiff "a wage less than the minimum fixed by an
24 applicable state or local law." Lab. Code § 1197.1(a).

25 113. Pursuant to Labor Code section 1197.1:

26 Any employer or other person acting either individually or as an officer, agent, or
27 employee of another person, who pays or causes to be paid to any employee a wage less
28 than the minimum fixed by an applicable state or local law, or by an order of the
commission, shall be subject to a civil penalty, restitution of wages, liquidated damages

payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

Lab. Code § 1197.1(a). Accordingly, Plaintiff may seek penalties under Labor Code section 1197.1, wages, liquidated damages, and penalties under Labor Code section 203. *See id.*

114. Pursuant to Labor Code section 1194.2, “In any action under Section . . . 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.” Lab. Code § 1194.2(a). Accordingly, Plaintiff may seek liquidated damages and interest. *See id.*

115. Plaintiff is entitled to reasonable attorneys’ fees and costs. *See* Lab. Code § 218.5(a).

116. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this Court.

XV.

ELEVENTH CAUSE OF ACTION

(Failure to Pay Earned Wages in Violation of Labor Code §§ 201, 202)

(On Behalf of Plaintiff Against the Company)

117. Plaintiff realleges and incorporates by reference paragraphs 1-116, inclusive, of this Complaint as though fully set forth herein.

1 118. Pursuant to California Labor Code section 201, “If an employer discharges an employee,
2 the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code
3 § 201(a).

4 119. Pursuant to California Labor Code section 202, “If an employee not having a written
5 contract for a definite period quits his or her employment, his or her wages shall become due and payable
6 not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her
7 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Cal.
8 Lab. Code § 202(a).

9 120. Pursuant to California Labor Code section 218, “Nothing in this article shall limit the
10 right of any wage Plaintiff to sue directly or through an assignee for any wages or penalty due him under
11 this article.” Cal. Lab. Code § 218.

12 121. Pursuant to California Labor Code section 203, “If an employer willfully fails to pay,
13 without abatement or reduction, in accordance with Sections 201 [and] 202 . . . any wages of an employee
14 who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date
15 thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not
16 continue for more than 30 days.” Cal. Lab. Code § 203(a).

17 122. As set forth in greater detail above, the Company failed to pay Plaintiff wages for all time
18 worked during his employment, and has failed to do so through the present date. The willful failure of
19 the Company to timely pay Plaintiff such amounts entitles him to: (a) the wages earned and unpaid at
20 the time of discharge or quitting pursuant to California Labor Code sections 201 and/or 202, and (b)
21 waiting time penalties pursuant to California Labor Code section 203 in the amount of his daily wages
22 for each day unpaid, up to 30 days.

23 123. Plaintiff is entitled to reasonable attorneys’ fees and costs. *See* Lab. Code §§ 218.5(a),
24 1194(a).

25 124. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this
26 Court.

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XVI.

TWELFTH CAUSE OF ACTION

(Failure to Pay Overtime in Violation of Labor Code § 510)

(By Plaintiff Against the Company)

125. Plaintiff realleges and incorporates by reference paragraphs 1-124, inclusive, of this Complaint as though fully set forth herein.

126. Pursuant to California Labor Code section 510, “Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.” Lab. Code § 510(a).

127. Pursuant to California Labor Code section 1194, “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.” Lab. Code § 1194(a).

128. As set forth above, during the course of her employment with Defendants, Plaintiff worked outside of her scheduled work time and as a result was consistently not paid overtime for hours worked in excess of eight hours in one workday and 40 hours in one workweek.

129. Plaintiff is entitled to reasonable attorneys' fees and costs. *See* Cal. Lab. Code § 1194(a).

130. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this Court.

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XVII.

THIRTEENTH CAUSE OF ACTION

(Failure to Provide Accurate Itemized Wage Statements in Violation of Labor Code § 226)

(On Behalf of Plaintiff Against the Company)

131. Plaintiff realleges and incorporates by reference paragraphs 1-130, inclusive, of this Complaint as though fully set forth herein.

132. Employers are required by California Labor Code section 226(a) to furnish accurate itemized wage statements semimonthly, or at the time of each payment of wages, which show “(1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

133. Pursuant to California Labor Code section 226(e), “[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

134. The Company knowingly and intentionally failed to furnish accurate itemized wage statements to Plaintiff in accordance with Labor Code section 226(a). Accordingly, Plaintiff is entitled to the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation

1 occurred and one hundred dollars (\$100) for each violation in a subsequent pay period, not to exceed an
2 aggregate penalty of four thousand dollars (\$4,000). *See* Lab. Code § 226(e)(1).

3 135. Plaintiff is entitled to reasonable attorneys' fees and costs. *See* Lab. Code § 226(e)(1).

4 136. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this
5 Court.

6 XVIII.

7 **FOURTEENTH CAUSE OF ACTION**

8 **(Penalties Pursuant to the Private Attorneys General Act)**

9 **(On Behalf of Plaintiff and Other Aggrieved Employees Against the Company)**

10 137. Plaintiffs reallege and incorporate by reference paragraphs 1-136, inclusive, of this
11 Complaint as though fully set forth herein.

12 138. Pursuant to Labor Code section 2699(a), "Notwithstanding any other provision of law,
13 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and
14 Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or
15 employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought
16 by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant
17 to the procedures specified in Section 2699.3." Cal. Lab. Code § 2699(a).

18 139. Pursuant to Labor Code section 2699(f), "For all provisions of this code except those for
19 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
20 provisions, as follows: (1) If, at the time of the alleged violation, the person does not employ one or more
21 employees, the civil penalty is five hundred dollars (\$500). (2) If, at the time of the alleged violation, the
22 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
23 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
24 aggrieved employee per pay period for each subsequent violation." Cal. Lab. Code § 2699(f)(1)-(2).

25 140. Plaintiffs and other aggrieved employees are entitled to penalties for the following
26 violations:

VIOLATION	STATUTORY AUTHORITY	APPLICABLE PENALTY
Failure to Provide Rest Periods	Labor Code § 226.7	\$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation. <i>See</i> Cal. Lab. Code § 2699(f)(2).
Failure to Provide Meal Periods	Labor Code §§ 226.7, 512	\$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation. <i>See</i> Cal. Lab. Code § 2699(f)(2).
Failure to Pay Minimum Wages	Labor Code §§ 1194, 1197, 1197.1	\$100 for each underpaid employee for each pay period for which the employee is underpaid, and \$250 for each underpaid employee for each pay period for which the employee is underpaid. <i>See</i> Cal. Lab. Code § 1197.1(a)(1)-(2).
Failure to Pay Overtime Wages	Labor Code §§ 510, 1194	\$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation. <i>See</i> Cal. Lab. Code § 2699(f)(2).
Failure to Pay Earned Wages	Labor Code §§ 201, 202, 203	\$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation. <i>See</i> Cal. Lab. Code § 2699(f)(2).
Failure to Provide Accurate Itemized Wage Statements	Labor Code § 226	\$250 per employee per violation in an initial citation, and \$1,000 per employee for each violation in a subsequent citation. <i>See</i> Cal. Lab. Code § 226.3.

141. Plaintiffs are entitled to reasonable attorneys' fees and costs. *See* Cal. Lab. Code § 2699(g)(1).

XIX.

PRAYER FOR RELIEF

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

As to All Causes of Action:

1. For general damages, including emotional distress damages, according to proof on each cause of action for which such damages are available.

2. For special damages, according to proof on each cause of action for which such damages are available.

3. For compensatory damages, including emotional distress damages, according to proof on each cause of action for which such damages are available.

4. For punitive damages, according to proof on each cause of action for which such damages are available.

5. For declaratory and injunctive relief, as appropriate.

6. For prejudgment interest and post-judgment interest according to law.

7. For reasonable attorneys' fees incurred in this action pursuant to Government Code section 12965(b), and Labor Code sections 218.5(a), 226(e)(1), 1194(a), 2699(g)(1).

8. For costs of suit incurred in this action.

9. For such other and further relief and the Court deems proper and just.

As to Eighth Cause of Action:

10. For one additional hour of pay at Plaintiff's regular rate of compensation for each work day that the meal or rest or recovery period was not provided pursuant to Labor Code section 226.7.

As to Ninth Cause of Action:

11. For one additional hour of pay at Plaintiff's regular rate of compensation for each work day that the meal or rest or recovery period was not provided pursuant to Labor Code section 226.7.

As to Tenth Cause of Action:

12. For civil penalties, restitution of wages, and liquidated damages pursuant to Labor Code section 1197.1(a).

13. For interest pursuant to California Labor Code section 1194.2(a).

14. For reasonable attorneys' fees incurred in this action pursuant to California Labor Code section 218.5(a) and 1194(a).

15. For costs of suit incurred in this action pursuant to California Labor Code section 218.5(a) and 1194(a).

As to Eleventh Cause of Action:

16. For wages earned and unpaid at the time of discharge pursuant to California Labor Code sections 201 and 202.

17. For waiting time penalties pursuant to California Labor Code section 203(a).

18. For reasonable attorneys' fees incurred in this action pursuant to California Labor Code section 218.5(a).

19. For costs of suit incurred in this action pursuant to California Labor Code section 218.5(a).

As to Twelfth Cause of Action:

20. For the unpaid balance of the full amount of Plaintiff's overtime compensation, including interest thereon, pursuant to Labor Code section 1194(a).

21. For reasonable attorneys' fees incurred in this action pursuant to California Labor Code section 1194(a).

22. For costs of suit incurred in this action pursuant to California Labor Code section 1194(a).

As to Thirteenth Cause of Action:

23. For penalties pursuant to California Labor Code section 226(e)(1).

24. For reasonable attorneys' fees incurred in this action pursuant to California Labor Code section 226(e)(1).

1 25. For costs of suit incurred in this action pursuant to California Labor Code section
2 226(e)(1).

3 **As to Fourteenth Cause of Action:**

4 26. For penalties pursuant to California Labor Code section 2699(f)(2).

5 27. For reasonable attorneys' fees incurred in this action pursuant to California Labor Code
6 section 2699(g)(1).

7 28. For costs of suit incurred in this action pursuant to California Labor Code section
8 2699(g)(1).

9
10 Dated: January 31, 2022

CADRY LAW GROUP, PC
MOSER LEGAL, PC

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12
13 By: 
14 RYAN S. CADRY
 JANA M. MOSER

15 Attorneys for Plaintiff
16 JETOSHIA LIN JEFFERSON
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Dated: January 31, 2022

By: 
 RYAN S. CADRY
 JANA M. MOSER

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EXHIBIT A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

Jana Moser
555 West Fifth Street, 35th Floor
Los Angeles, CA 90013

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202201-15905120
Right to Sue: Jefferson / Shift Technologies LLC et al.

Dear Jana Moser:

Attached is a copy of your **amended** complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You or your client must serve the complaint.

The amended complaint is deemed to have the same filing date of the original complaint. This is not a new Right to Sue letter. The original Notice of Case Closure and Right to Sue issued in this case remains the only such notice provided by the DFEH. (Cal. Code Regs., tit. 2, § 10022.)

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing

COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)

In the Matter of the Complaint of

Jetoshia Jefferson

DFEH No. 202201-15905120

Complainant,

vs.

Shift Technologies LLC
5841 Uplander Way, Suite A
Culver City, CA 90230

Harry Tam

,

Jake Ros

,

Kevin Delion

,

Christopher Yee

,

Sylvia Unknown

,

Oscar Unknown

,

David Unknown

,

Respondents

1. Respondent **Shift Technologies LLC** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **Harry Tam** individual as Co-Respondent(s).

-1-

Complaint – DFEH No. 202201-15905120

Date Filed: January 20, 2022
Date Amended: January 20, 2022

Form OT_157EAC345513 (Revised 12/21)

DFEH-ENF 80 RS

Complainant is naming **Jake Ros** individual as Co-Respondent(s).
Complainant is naming **Kevin Delion** individual as Co-Respondent(s).
Complainant is naming **Christopher Yee** individual as Co-Respondent(s).
Complainant is naming **Sylvia Unknown** individual as Co-Respondent(s).
Complainant is naming **Oscar Unknown** individual as Co-Respondent(s).
Complainant is naming **David Unknown** individual as Co-Respondent(s).

3. Complainant **Jetoshia Jefferson**, resides in the City of , State of .

4. Complainant alleges that on or about **August 31, 2021**, respondent took the following adverse actions:

Complainant was harassed because of complainant's race, ancestry, national origin (includes language restrictions), color, sex/gender, disability (physical or mental), sexual harassment- hostile environment, family care or medical leave (cfra).

Complainant was discriminated against because of complainant's race, ancestry, national origin (includes language restrictions), color, sex/gender, disability (physical or mental), sexual harassment- hostile environment, family care or medical leave (cfra) and as a result of the discrimination was terminated, reprimanded, denied any employment benefit or privilege, denied reasonable accommodation for a disability, other, denied work opportunities or assignments, denied family care or medical leave (cfra).

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment, participated as a witness in a discrimination or harassment complaint and as a result was terminated, reprimanded, denied any employment benefit or privilege, denied reasonable accommodation for a disability, other, denied work opportunities or assignments.

Additional Complaint Details: The Company maintains an online platform that allows customers to shop for used cars online, apply for financing, and schedule test drives. It also purchases used cars directly from owners. The Company has offices all across the country. On or about April 10, 2021, Plaintiff started working for the Company as a concierge making \$20.00 per hour in its South San Francisco, California office. Plaintiff primarily reported to MeShon Bartlow ("Bartlow"), a team manager at the Company in charge of the office; however, Plaintiff was also supervised by about ten assistant team leads ("ATLs"). Plaintiff's responsibilities included, among other things, going to potential sellers to test drive and assess the cars they wanted to sell and, if the sale was finalized, driving the purchased car to the Company's lot; bringing cars for test drives to potential buyers; and picking up cars that clients did not want to keep and driving them back to the Company lot. Just a few days after Plaintiff began her employment with the Company, on or about April 16, 2021, Plaintiff began experiencing chest pains. When the pain did not subside, and after speaking with her father who himself had a stent placed in his heart about a week prior, Plaintiff went to the emergency room at John Muir Health hospital in Concord, California.

1 Plaintiff, who had been suffering from depression, anxiety, and severe post-traumatic stress
2 disorder ("PTSD"), and who has a family history of heart health issues and diabetes, was
3 concerned her symptoms were indicative of potential heart problems. After spending hours
4 in the emergency room, Plaintiff was discharged and instructed to rest for several days. She
5 sent a message to Bartlow via Slack, the Company's internal messaging app, at 6:39 a.m.
6 informing her of what had happened. Bartlow responded within a couple of hours with well
7 wishes for Plaintiff's recovery. Bartlow also instructed Plaintiff to email callout-sf@shift.com
8 the next time that Plaintiff needed to take time off.

9 A few days later, Plaintiff received a flu shot and began to experience negative side effects.
10 Even though Plaintiff thought she signed up to get a COVID-19 vaccine, she did not realize
11 she ended up getting a flu shot. On or about April 21, 2021, Plaintiff sent a message to
12 Bartlow via Slack informing her that she was feeling sick after being administered a shot.
13 Bartlow did not say anything about the fact that Plaintiff had to take time off to address her
14 health issues.

15 On or about April 28, 2021, Bartlow and Tam, one of the managers, pulled Plaintiff aside to
16 talk to her about her attendance. Plaintiff was surprised that there were any issues with her
17 attendance since she had had several health problems that she needed to address and she
18 would explain that to the Company and inform her supervisors when she needed time off. At
19 the time, Plaintiff did not realize that, as she later found out, this conversation was actually a
20 "verbal warning" regarding her attendance.

21 Almost from the beginning of her employment, health issues were not the only challenges
22 that Plaintiff, an African American woman, had to deal with. In the office, Plaintiff's
23 supervisors, as well as some of her peers, made jokes about Plaintiff's race and skin tone,
24 and also body-shamed her. For example, in or around May-June 2021, Plaintiff's
25 supervisors and ATLS Delion and Yee would watch Plaintiff go to the refrigerator and ask
26 her, "so, Jetoshia, how many pieces are you gonna have today? Two or three?" Plaintiff was
27 being body-shamed and attacked because of her size and weight, which did not conform to
28 traditional standards of female beauty.

29 In or around May 2021, Plaintiff was talking to ATLS Sylvia, Oscar and David and showed
30 them a picture of her father, with whom Plaintiff is close. They commented on how dark-
31 skinned Plaintiff's father looked and how light-skinned Plaintiff was and joked that Plaintiff
32 was adopted. After that incident, this became a common "joke." Due to her supervisors'
33 comments and habit of ridiculing Plaintiff, she developed a negative psychological complex
34 in connection with her skin color that she did not have prior. The same and similar
35 comments regarding Plaintiff's race and skin tone continued on many other occasions in the
36 following months.

37 Upon completion of her training, in or around early-May 2021, Plaintiff was assigned to work
38 a 2:00 p.m. to 10:30 p.m. shift. She informed the Company that she could not work the
39 assigned hours because she had to take public transportation to and from the office via the
40 Bay Area Rapid Transit ("BART") and that the BART would not be running by the time her
41 regular shift ended. Accordingly, the Company changed Plaintiff's work schedule to 10:00
42 a.m. to 6:30 p.m.

43 From in or around early-May 2021 until Plaintiff's wrongful termination, she was consistently
44 denied meal period breaks and rest period breaks while often working 12- to 16-hour days.
45 The Company did not compensate Plaintiff for missed meal period breaks and rest breaks.
46 On the frequent occasions that Plaintiff was forced to shorten and/or skip rest periods,

1 Plaintiff was not provided the penalty mandated under Labor Code section 226.7.
2 Additionally, employees working for the Company were (and are) routinely forced to work
3 without uninterrupted meal periods of not less than 30 minutes for work periods exceeding
4 five hours, and without a second 30-minute meal break for work exceeding ten hours a day.
5 These meal periods were either not provided at all or were interrupted. Further, the
6 Company regularly forced Plaintiff and other aggrieved employees to clock out for their meal
7 periods regardless of whether the meal period occurred at all, lasted for the full requisite 30-
8 minute period, or was interrupted. Because employees were forced to work off the clock
9 and/or through their rest and meal periods, they further were not paid minimum wages for all
10 hours worked, overtime wages for all overtime hours worked, and were not provided with
11 accurate itemized wage statements.

12 On or about May 7, 2021, Bartlow issued a "final warning" to Plaintiff regarding her
13 attendance and met with her to discuss the issues Bartlow noted. Plaintiff got very emotional
14 during the meeting as she felt like she was being attacked, having to deal with her health
15 issues, racial remarks from her supervisors and peers, and negative comments about her
16 weight and eating habits.

17 In the meantime, the racial discrimination towards Plaintiff continued. On or about May 12,
18 2021, Plaintiff learned of a communication that two of her supervisors were having via the
19 Company's Slack. Almost everyone in the office often left their iPads unlocked and viewable
20 to others. In this communication, one of the ATLS, Ros, sent a message to Tam regarding
21 some new hires in the office and compared them to Plaintiff. Ros said in his message:
22 "kinda like jetoshia lol but not as ghetto." Plaintiff was immediately offended by this, because
23 "ghetto" is a slang term that is often used to derogatorily refer to members of a minority
24 group such as African Americans. Tam then asked: "You think this lady is gonna last?" Ros
25 said: "NO[.] Don't quit!! Jetoshia I think might though[.] [S]he's too ghetto to care[.]" Tam
26 said: "I hope she does[.] But shes always like 'I need this job[.]' Ros: "she's willow 2.0 in the
27 kitchen[.] [L]ike hurricane Harvey came in[.]" Having learned that her supervisors were
28 referring to her as "ghetto" and comparing her to "hurricane Harvey," Plaintiff began to
29 experience additional psychological and emotional challenges.

30 On or about May 18, 2021, Bartlow emailed Plaintiff with a subject "Final Written Recap –
31 Jetoshia Jefferson." Bartlow stated that the email attachment was a "memo" documenting a
32 "final warning issued on May 7th, 2021, regarding continued attendance issues." Bartlow
33 also stressed that the memo was in addition to the verbal warning that Plaintiff received on
34 April 28, 2021.

35 As Plaintiff was continuing to deal with her anxiety, depression and PTSD, which were made
36 significantly worse by her supervisors' comments about her race and weight, on or about
37 June 18, 2021, Plaintiff's therapist Ryan Fuimaono ("Fuimaono"), a licensed clinical social
38 worker with Mission Mental Health, gave her a doctor's note excusing her from work for two
39 days. She immediately informed the Company of the leave. Plaintiff had been seeing
40 Fuimaono every week and Pilar Abascal, M.D. ("Dr. Abascal"), her psychiatrist, every month
41 and a half. At no time did the Company engage in the interactive process with or endeavor
42 to further accommodate Plaintiff after receiving this note.

43 On or about June 27, 2021, staff from a hospital in Utah contacted Plaintiff informing her that
44 her mother was in the hospital in a critical condition from losing too much blood after
45 sustaining injuries to her leg. The mother's treating physicians and family were concerned
46 that she would not survive the injuries. Plaintiff immediately informed the Company and

1 asked for time off from on or about June 29, 2021 through on or about July 2, 2021 to go
2 visit her mother. Plaintiff had previously shared with Jonathon Benitez ("Benitez"), her team
3 lead, that her mother had a drug addiction. As Plaintiff later learned, while she was visiting
4 her mother, her supervisors and peers were rumoring that Plaintiff's mother was in the
5 hospital in critical condition because of a drug overdose.
6 While in Utah, Plaintiff spent significant time with her sister. As Plaintiff was leaving Utah,
7 her sister found out she had contracted COVID-19 and informed Plaintiff. As a result, upon
8 returning home from her trip, Plaintiff contacted her physician who directed her to get tested
9 for COVID-19 and quarantine. Plaintiff notified the Company.
10 After her quarantine, Plaintiff came into the office. She spoke with Sam Campbell
11 ("Campbell"), a regional manager and Bartlow's superior, who was in the canopy tent next to
12 the office entrance. Plaintiff informed Campbell of the treatment she had been receiving
13 from the ATLS, and the comments they were making about her skin tone and her weight.
14 Plaintiff got emotional and cried. Campbell instructed Plaintiff to take the rest of the day off
15 and suggested that she contacted Human Resources to inform them of what was
16 happening.
17 Plaintiff, who was already in a fragile emotional state from the discrimination and
18 harassment she had experienced in the workplace, and now overwhelmed by the emotions
19 of potentially losing her mother and having her sister be diagnosed with COVID-19, was
20 struggling with her depression that had gotten significantly worse. Therefore, on or about
21 July 29, 2021, Fuimaono submitted a request on Plaintiff's behalf for three weeks off from
22 work to address Plaintiff's worsening health condition. Fuimaono filled out an
23 "Accommodation Medical Certification" form, which Plaintiff sent to the Company. In this
24 certification, Fuimaono stated that Plaintiff had a physical or mental impairment; that she
25 was "in treatment for a mental condition which moderately impairs her functioning"; and that
26 Plaintiff's "condition negatively impacts the stability of her mood which impairs her ability to
27 perform essential functions of the position." Fuimaono further wrote that Plaintiff was
28 "requesting time off from her position in order to take care of her mental health"; and that the
29 requested three weeks off "[would] allow Ms. Jefferson to recover her mental health so that
30 she can return to work and perform at previous levels."
31 On or about July 28, 2021, Plaintiff submitted a formal complaint about the discrimination
32 and harassment she had experienced from her supervisors and peers in the office. The next
33 day, on or about July 29, 2021, Carlos Tapia ("Tapia"), People Business Partner based in
34 Houston, Texas, replied thanking Plaintiff for "documenting their conversation from the other
35 day" and asking her to provide additional details regarding issues that Plaintiff reported so
36 he could "proceed with our internal investigation." 36. Plaintiff learned that the
37 Company terminated Ros as a result of the internal investigation. However, Tam, who took
38 an active part in the exchange that was filled with racial derogatory remarks towards
39 Plaintiff, but who occupied a higher position than Ros, did not get terminated and continued
40 to work in the same office with Plaintiff, supervising her. As Plaintiff heard, Tam did not get
41 fired because of his higher standing at the Company.
42 When Plaintiff came back to work on or about August 21, 2021, she felt that the harassing
43 and discriminatory environment in the office did not change, and her supervisors actually
44 started to retaliate against her for making the complaint. Every time Plaintiff would come into
45 the office, ATLS would make a snorting sound imitating a pig; they would start laughing or
46 making discriminatory comments while looking in Plaintiff's direction; and they would

1 alienate Plaintiff and not speak with her. Only one ATL, Sylvia, still talked to Plaintiff. Finding
2 it difficult to be in the workplace where she felt harassed, discriminated against and judged,
3 Plaintiff started asking to be sent on assignments farther away so she would spend less time
4 in the office.

5 On or about August 25, 2021, Plaintiff was assigned to retrieve a vehicle from an elderly
6 couple who had previously bought the car from the Company and who wanted to return the
7 car due to its poor condition. When Plaintiff arrived at the customers' home and assessed
8 the condition of the vehicle, she determined the car was not safe to drive and informed one
9 of the Company's ATLs that she required a tow truck to deliver the vehicle to the Company's
10 lot. An ATL told Plaintiff that she needed to drive the car herself, instead. Plaintiff explained
11 again that the car was not safe to drive and insisted that she needed a tow truck. It was only
12 after Plaintiff had repeatedly insisted that she did not feel safe was she allowed to call the
13 tow truck. Plaintiff felt that she was sent on this assignment with an unsafe car on purpose in
14 a retaliation for her making the complaint to Human Resources. Just a few days later,
15 on or about August 28, 2021, Plaintiff was assigned to drive an electric vehicle from the
16 Company's lot to a customer in Stockton, California, which was approximately 91 miles from
17 the Company's office. Even though the ATLs were supposed to ensure the car was charged
18 overnight and ready for delivery, the car had only 123 miles charge time on it. Since Plaintiff
19 had no reason to suspect that the car would not hold the charge properly, she determined it
20 would be sufficient to get her to the destination. However, as miles began to drop rapidly,
21 the vehicle stopped running while Plaintiff was en route to the customer's home. Plaintiff
22 learned that day the Company had previously attempted to deliver the same vehicle to the
23 same customer, but that the delivery driver experienced the same problems that Plaintiff
24 experienced as to the vehicle's defects; nevertheless, Plaintiff was not informed of this.
25 Plaintiff was unable to deliver the vehicle to the customer and, as she was stranded on the
26 side of the roadway, she began experiencing symptoms of a dehydration, anxiety, and a
27 panic attack. Benitez offered to send someone from the Sacramento office to pick up
28 Plaintiff. However, Plaintiff indicated that she was in need of immediate medical attention as
her condition worsened and—since it would have taken approximately 45 minutes for
someone to have Plaintiff picked up given the destination from the office—Plaintiff hung up
the phone and dialed 911.

Plaintiff was taken to the hospital by an ambulance. She was diagnosed with extreme
dehydration, was unable to produce saliva, and had low potassium and iron levels. Plaintiff's
coworker from the Sacramento office picked her up from the hospital and drove her back to
the San Francisco office. The next day, Plaintiff received a phone call from the police
informing her that the vehicle that Plaintiff had left overnight on the freeway exit was
vandalized. Upon information and belief, the Company set in motion a series of events and
circumstances (including the foregoing) that were designed to cause Plaintiff to fail in her
specific job duties with the intent to terminate her on pretextual grounds. In fact, the
Company did terminate Plaintiff on or about August 31, 2021, falsely accusing her of: 1)
violating the Company attendance policy; 2) violating the Company standard of conduct
policy (hostile and aggressive behavior and profanity); 3) violating the Company
policy/improper and negligent behavior that resulted in damage to the not properly working
car that Plaintiff had to leave on the side of the road when the car died.

Plaintiff is informed and believes that the Company's pattern of harassment, discrimination
and retaliation that resulted in her wrongful termination were because of Plaintiff's race,

1 disability and/or perceived disability, her request for time off to address her health condition
2 and to visit her mother in the hospital; and because of retaliation for her engagement in
3 protected activities.
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1 VERIFICATION

2 I, **Jana M. Moser**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On January 20, 2022, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Los Angeles, California**
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EXHIBIT B



October 14, 2021

FILED ONLINE

California Labor and Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

SENT VIA CERTIFIED MAIL

SHIFT Technologies Inc.
2525 16th Street #316
San Francisco, CA 94103

Re: Jetoshia Jefferson's Notice of Intent to File Lawsuit Seeking Penalties Under the Private Attorneys General Act, Labor Code section 2698 et seq.

Dear Sir or Madam:

Jetoshia Jefferson ("Plaintiff") has retained my firm and Moser Legal, PC in connection with her potential lawsuit against her former employer, SHIFT Technologies Inc. ("SHIFT"). Plaintiff intends to seek penalties for violations of the California Labor Code, which are recoverable under the Labor Code Private Attorneys General Act of 2004 (the "PAGA"), California Labor Code section 2698 et seq. Plaintiff will be seeking penalties on behalf of herself and other aggrieved or similarly situated employees that worked for SHIFT in the State of California. Pursuant to California Labor Code section 2699.3(a), this letter constitutes notice of the specific provisions of the Labor Code alleged to have been violated and the facts and theories to support the alleged violations.

SHIFT serves as an online platform for people to buy and sell used cars online. To potential sellers, SHIFT offers inspection, assessment, and an option to sell the car for a given price. SHIFT repairs and details purchased cars and then offers them for test drives and purchases to potential buyers. SHIFT currently offers its services in the following cities in California: San Francisco, Los Angeles, Oakland, San Jose, Sacramento, Riverside, Orange County, and San Diego, as well as, in several other states. Plaintiff and other aggrieved employees performed work for SHIFT at the San Francisco location at 290 Division Street, Suite 400, San Francisco, California 94103, as well as other offices throughout California and in Oregon.

Employees working for SHIFT were (and continue to be) routinely forced to work without ten-minute rest periods for every four hours worked or major fraction thereof. These rest periods were either not provided at all or were interrupted. Additionally, employees working for SHIFT were (and are) routinely forced to work without uninterrupted meal periods of not less than 30 minutes for work periods exceeding five hours, and without a second 30-minute meal break for work exceeding ten hours a day. These meal periods were either not provided at all or were interrupted. Further, SHIFT regularly forced Plaintiff and other aggrieved employees to clock out for their meal periods regardless of whether

the meal period occurred at all, lasted for the full requisite 30-minute period, or was interrupted. Because employees were forced to work off the clock and/or through their rest and meal periods, they further were not paid minimum wages for all hours worked, overtime wages for all overtime hours worked, and were not provided with accurate itemized wage statements.

The foregoing constitutes a violation of a number of state laws and regulations including, but not limited to, the following:

A. Failure to Provide Rest Periods in Violation of Labor Code § 226.7

Industrial Welfare Commission Wage Order No. 4, section 12, provides: “(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. . . . (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.”

California Labor Code section 226.7 provides: “If an employer fails to provide an employee a meal period or rest or recovery period in accordance with a state law, including, but not limited to, an applicable order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employer’s regular rate of compensation for each work day that the meal or rest or recovery period is not provided.” Lab. Code § 226.7.

As set forth in greater detail above, during the course of their employment with SHIFT, Plaintiff and other aggrieved employees were not provided with rest periods for every four hours worked and were not compensated therefor.

B. Failure to Provide Meal Periods in Violation of Labor Code §§ 226.7, 512

Industrial Welfare Commission Wage Order No. 4, section 11, provides: (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. . . . (C) Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties and on-the-job paid meal period is agreed to. . . . (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

California Labor Code section 512 provides, “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without

providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.” Lab. Code § 512(a).

California Labor Code section 226.7 provides: “If an employer fails to provide an employee a meal period or rest or recovery period in accordance with a state law, including, but not limited to, an applicable order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employer’s regular rate of compensation for each work day that the meal or rest or recovery period is not provided.” Lab. Code § 226.7.

As set forth in greater detail above, during the course of their employment with SHIFT, Plaintiff and other aggrieved employees were not provided with uninterrupted meal periods of not less than 30 minutes for every work period of more than five hours per day and were not provided with a second meal period of not less than 30 minutes for every work period of more than ten hours per day.

C. Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194, 1197, 1197.1

Labor Code § 1194 provides, “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage . . . , including interest thereon, reasonable attorney’s fees, and costs of suit.” Lab. Code § 1194(a).

Labor Code § 1197 provides, “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.” Lab. Code § 1197.

Labor Code § 1197.1 provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.00) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee

is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

Lab. Code § 1197.1(a)(1)-(3).

As set forth in greater detail above, during the course of their employment with SHIFT, Plaintiff and other aggrieved employees were not paid minimum wages for all hours worked. This is because SHIFT (a) forced Plaintiff and other aggrieved employees to work through their ten-minute rest periods, and (b) forced Plaintiff and other aggrieved employees to clock out for meal periods even when those meal periods were interrupted, shortened, or did not occur at all.

D. Failure to Pay Overtime Wages in Violation of Labor Code §§ 510, 1194

Labor Code section 510 provides, “Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.” Lab. Code § 510(a).

Pursuant to California Labor Code section 1194, “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than . . . the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this . . . overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.” Lab. Code § 1194(a).

As set forth in greater detail above, during the course of their employment with SHIFT, Plaintiff and other aggrieved employees were not paid overtime wages for all overtime hours worked. This is because SHIFT (a) forced Plaintiff and other aggrieved employees to work through their ten-minute rest periods, and (b) forced Plaintiff and other aggrieved employees to clock out for meal periods even when those meal periods were interrupted, shortened, or did not occur at all.

E. Failure to Provide Accurate Itemized Wage Statements in Violation of Labor Code § 226

Employers are required by California Labor Code section 226(a) to furnish accurate itemized wage statements semimonthly, or at the time of each payment of wages, which show:

(1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the

employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Lab. Code § 226(a).

As set forth in greater detail above, during the course of their employment with SHIFT, Plaintiff and other aggrieved employees were not provided with accurate itemized wage statements setting forth their gross wages earned, total hours worked by the employee, net wages earned, and the applicable hourly rates in effect during the pay period with the corresponding number of hours worked at each hourly rate. This is because SHIFT (a) forced Plaintiff and other aggrieved employees to work through their ten-minute rest periods, and (b) forced Plaintiff and other aggrieved employees to clock out for meal periods even when those meal periods were interrupted, shortened, or did not occur at all.

F. Failure to Pay Earned Wages in Violation of Labor Code §§ 201, 202, 203

Pursuant to California Labor Code section 201, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code § 201(a).

Pursuant to California Labor Code section 202, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Cal. Lab. Code § 202(a).

Pursuant to California Labor Code section 203, “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201 [and] 202 . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Cal. Lab. Code § 203(a).

As set forth in greater detail above, during the course of their employment with SHIFT, Plaintiff and other aggrieved employees were not paid minimum wages for all hours worked, nor overtime wages for all overtime hours worked. To the extent the aggrieved employees resigned or were terminated during the relevant period, SHIFT is further liable for violation of Labor Code sections 201, 202, and 203.

* * *

Plaintiff is sending this communication to ensure compliance with the exhaustion reporting requirements of Labor Code section 2699.3. Please advise this office within the 60-day statutory period if your office will be investigating these matters. Please do not hesitate to contact me with any questions or concerns.

SHIFT may be contacted at the following address:

SHIFT Technologies Inc.
2525 16th Street #316
San Francisco, CA 94103

The contact information for myself and Moser Legal, PC is:

Ryan S. Cadry
Cadry Law Group, PC
16501 Ventura Blvd., Suite 610
Encino, CA 91436
(818) 849-5962

Jana M. Moser
Moser Legal, PC
555 West Fifth Street, 35th Floor
Los Angeles, CA 90013
(310) 295-0142

Thank you for your attention to this matter.

Sincerely,



Ryan S. Cadry
Cadry Law Group, PC

cc: Jana M. Moser

Ryan Cadry

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Thursday, October 14, 2021 12:25 PM
To: Ryan Cadry
Subject: Thank you for submission of your PAGA Case.

10/14/2021

LWDA Case No. LWDA-CM-848582-21
Law Firm : Cadry Law Group, PC
Plaintiff Name : Jetoshia Jefferson
Employer: SHIFT Technologies Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

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10/14/21

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Jefferson)

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SHIFT Tech

Street and Apt. No., or PO Box No.

2525 16th St #316

City, State, Zip+4[®]

DF 94103

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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