

MESSRELIAN LAW INC.
Harout Messrelia, Esq., SB# 272020
500 N. Central Ave., Suite 840
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983
Email: hm@messrelia.com

Attorneys for Plaintiff Carmen Villavicencio

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 3/2/2022
By /s/ Una Finau
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

CARMEN VILLAVICENCIO,

Plaintiff,

vs.

BO-MIC, INC. dba SERVICEMASTER
BUILDING MAINTENANCE; SHARON
BOYD; and DOES 1 to 25, inclusive,

Defendants.

CASE NO.: 22-CIV-00917

COMPLAINT FOR DAMAGES FOR:

- 1) **FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) **FAILURE TO PAY MINIMUM WAGES;**
- 3) **FAILURE TO PAY OVERTIME;**
- 4) **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 6) **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 7) **VIOLATION OF LABOR CODE SECTION 558;**
- 8) **FAILURE TO MAINTAIN ACCURATE RECORDS;**
- 9) **FAILURE TO GIVE REST BREAKS;**
- 10) **FAILURE TO GIVE MEAL BREAKS**
- 11) **PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**
- 12) **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES;**
- 13) **DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY IN VIOLATION OF FAIR EMPLOYMENT AND HOUSING ACT ("FEHA");**
- 14) **FAILURE TO ACCOMMODATE PHYSICAL DISABILITY IN VIOLATION OF FEHA;**
- 15) **FAILURE TO ENGAGE IN**

**INTERACTIVE PROCESS TO
DETERMINE REASONABLE
ACCOMMODATION IN
VIOLATION OF FEHA;**

**16) RETALIATION IN VIOLATION OF
FEHA;**

**17) FAILURE TO PREVENT
DISCRIMINATION AND
RETALIATION IN VIOLATION OF
FEHA;**

**18) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**

**19) FAILURE TO PROVIDE
PERSONNEL RECORDS;**

**20) FAILURE TO PROVIDE PAY
RECORDS;**

**21) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE SECTION 17200.**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, CARMEN VILLAVICENCIO (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of San Mateo in this judicial district because Defendants BO-MIC, INC. dba SERVICEMASTER BUILDING MAINTENANCE, SHARON BOYD, and DOES 1 to 25, inclusive, do business in the County of San Mateo and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of San Mateo is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the County of San Mateo, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant BO-MIC, INC. dba SERVICEMASTER BUILDING MAINTENANCE is and was a California corporation, doing business in San Mateo County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant SHARON

1 BOYD is a female resident of the County of San Mateo, State of California, and the owner, or
2 corporate officer, or managing agent/director of BO-MIC, INC. dba SERVICEMASTER
3 BUILDING MAINTENANCE. Plaintiff is informed and believes and thereon alleges that
4 SHARON BOYD managed, was directly involved in the day-to-day operations of BO-MIC,
5 INC. dba SERVICEMASTER BUILDING MAINTENANCE and personally controlled the
6 hours, wages, and/or working conditions of the employees, including Plaintiff and other similarly
7 situated aggrieved employees. As such, SHARON BOYD is being included in this lawsuit
8 pursuant to Labor Code Section 558.1. BO-MIC, INC. dba SERVICEMASTER BUILDING
9 MAINTENANCE and SHARON BOYD are hereinafter collectively referred to as
10 “Defendants”, “or “SERVICEMASTER”.

11 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
12 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
13 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
14 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
15 for the conduct alleged herein. Upon discovering the true names and capacities of these
16 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
17 capacities of these fictitiously named defendants.

18 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
19 that information and belief, alleges that at all times herein mentioned, each of the remaining
20 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
21 under the authority of their agency, employment, or representative capacity, with the consent of
22 his/her codefendants.

23 **GENERAL ALLEGATIONS**

24 7. Plaintiff started working for SERVICEMASTER on or around 2019 or 2020 as a Janitor.

25 8. Plaintiff’s employment ended on or around October 24, 2021, when she was wrongfully
26 terminated.

27 9. During her tenure, Plaintiff was classified as an hourly, non-exempt employee and her
28 latest rate of pay was \$15 per hour.

10. It is Plaintiff’s position that SERVICEMASTER has violated numerous California Labor

1 Code Sections against Plaintiff and other similarly situated aggrieved employees, including all
2 hourly, non-exempt employees who worked for SERVICEMASTER at any of their California
3 locations.

4 11. SERVICEMASTER did not provide Plaintiff and other similarly situated aggrieved
5 employees with compensation for all hours worked and did not pay Plaintiff and the others the
6 minimum wages to which they were entitled for work performed “off the clock” pursuant to
7 California Labor Code sections 1194, 1197 and 1197.1. This is so because the company had a
8 policy of rounding down employee hours to the detriment of the employees, which resulted in
9 employees such as Plaintiff not being paid for all hours worked, including the minimum wage.
10 In fact, the company did not have a digital clock-in and clock-out system and would attempt to
11 manually keep track of hours. In addition, Plaintiff and others would be asked to work “off the
12 clock” after their shifts had already ended. Since the company itself manually kept track of
13 hours, this resulted in Plaintiff and others simply working for free and not getting compensated
14 for all hours worked. In addition, Plaintiff and others were not fully compensated for all travel
15 time. Moreover, and to the extent employees worked through their meal periods while “off the
16 clock” and were not compensated for that time, SERVICEMASTER would have also violated
17 California’s minimum wage laws.

18 12. In addition, due to the “off the clock” violations, including the time shaving/rounding,
19 SERVICEMASTER also violated Labor Code §510 because it failed to pay Plaintiff and other
20 similarly situated aggrieved employees the correct amount of overtime, even though they worked
21 more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their
22 employment. Furthermore, SERVICEMASTER did not include bonuses and other forms of
23 additional compensation, including incentive pay, in calculating the correct regular rate of pay
24 for purposes of then calculating the correct overtime rate of pay.

25 13. SERVICEMASTER violated Labor Code § 226.7 and the applicable Industrial Welfare
26 Commission Wage Order (no. 4) because it failed to provide Plaintiff and other similarly situated
27 aggrieved employees 10-minute rest periods for every four hours of work, or majority portion
28 thereof, throughout their employment. SERVICEMASTER did not completely relieve Plaintiff
of all duty during said rest periods. SERVICEMASTER did not pay to Plaintiff one additional

1 hour of pay at Plaintiff's regular rate of compensation for each workday that one or more
2 statutory rest periods was not provided. It was not part of the company policy and culture for
3 employees such as Plaintiff and others to take timely, statutory rest breaks. Rest periods were
4 simply not part of the company policy and were not enforced whatsoever.

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

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

27 16. SERVICEMASTER violated Labor Code § 203 because it willfully failed to pay Plaintiff
28 and other similarly situated aggrieved employees earned and due wages upon separation of
employment, either immediately upon involuntary termination, or within 72 hours of resignation.

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

4 17. During the relevant time period, SERVICEMASTER also failed to keep accurate and
5 complete payroll records showing the correct wages paid to Plaintiff (along with the times that
6 Plaintiff and others took statutory breaks) and other aggrieved employees pursuant to California
7 Labor Code sections 1174(d).

8 18. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
9 business-related expenses and costs that were not reimbursed by SERVICEMASTER. These
10 costs include, but are not limited to, cleaning supplies which Plaintiff and others had to purchase
11 since the company would not purchase specific cleaning items needed by Plaintiff and others to
12 effectuate their job duties. In addition, Plaintiff was not fully compensated for her mileage
13 reimbursement at the appropriate IRS rate per mile. Accordingly, SERVICEMASTER was in
14 violation of California Labor Code sections 2800 and 2802.

15 19. Furthermore, SERVICEMASTER violated the applicable Industrial Welfare
16 Commission Wage Order (Wage Order 4, Section 14(b)) in that there was no proper suitable
17 seating/break area for employees. Moreover, SERVICEMASTER failed to provide Worker's
18 Compensation coverage for Plaintiff and other aggrieved employees in violation of Labor Code
19 Section 3700.5 and also failed to provide sick pay in violation of Labor Code Sections 232 and
20 246.

21 20. In or around October of 2021, Plaintiff tested positive for Covid-19 and informed
22 SERVICEMASTER of her positive test result. Thereafter, SERVICEMASTER terminated
23 Plaintiff's employment. SERVICEMASTER terminated Plaintiff's employment based on her
24 physical disability in having contracted COVID-19.

25 21. Plaintiff has exhausted her administrative remedies. Prior to filing this complaint,
26 Plaintiff filed a complaint with the Department of Fair Employment and Housing ("DFEH"),
27 alleging claims in this complaint. The DFEH immediately issued to Plaintiff a right to sue letter.

28 ///

///

1 **FIRST CAUSE OF ACTION**

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

3 **(California Industrial Welfare Commission Order 4-2001, California Code of**
4 **Regulations Title 8 Section 11040, and California Labor Code Section 1198)**

5 **(Plaintiff against all named defendants and all DOE defendants)**

6 22. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 21, inclusive, of this Complaint as though fully set forth herein.

8 23. At all times relevant herein, Defendants were required to compensate their employees
9 for all hours worked upon reporting for work at the appointed time stated by the employer
10 pursuant to Industrial Welfare Commission Order 4-2001, California Code of Regulations,
11 Title 8, Section 11040.

12 24. For the three (3) years preceding filing of this action, Defendants failed to compensate
13 Plaintiff for all hours worked.

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

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

20 27. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
21 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
22 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
23 reasonable attorney's fees and costs of suit.

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

28 ///

///

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **(California Labor Code Sections 1194, 1194.2, 1197)**

4 **(Plaintiff against all named defendants and all DOE defendants)**

5 29. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 28, inclusive, of this Complaint as though fully set forth herein.

7 30. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
8 to suffer or permit a California employee to work without paying wages at the minimum wage
9 rate for all hours worked as required by the applicable Industrial Welfare Commission
10 (hereinafter "IWC") Wage Order No. 4-2001, codified at California Code of
11 Regulations, Title 8, Section 11040, subdivision 4.

12 31. Pursuant to IWC Wage Order no. 4-2001, subdivision 2(K), at all relevant
13 times, "hours worked" included "the time during which an employee is subject to the control of
14 an employer, and includes all the time the employee is suffered or permitted to work, whether
15 or not required to do so..."

16 32. During her employment, Plaintiff was regularly required as a matter of uniform
17 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
18 was paid less than the minimum wage rate by Defendants for hours worked in violation of
19 California Labor Code Section 1197 and the applicable California Industrial Wage
20 Commission wage order(s).

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

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

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

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME**

6 **(California Industrial Welfare Commission Order 4-2001, California Code of**
7 **Regulations Title 8 Section 11040; California Labor Code Section 510)**

8 **(Plaintiff against all named defendants and all DOE defendants)**

9 36. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 35, inclusive, of this Complaint as though fully set forth herein.

11 37. Pursuant to Industrial Welfare Commission Order No. 4-2001, Cal. Code of
12 Regs., Title 8, Section 11040, for the period of Plaintiff's employment, Defendants were
13 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
14 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
15 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
16 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
17 week.

18 38. Plaintiff was a non-exempt employee entitled to the protections of the California
19 Industrial Welfare Commission Order No. 4-2001, California Code of Regulations,
20 Title 8, Section 11040.

21 39. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a
22 single workday or forty (40) hours in a single workweek on numerous occasions.

23 40. Plaintiff was entitled to the above overtime premiums.

24 41. Defendants did not pay Plaintiff premium wages of at least one and one-half times
25 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
26 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
27 twelve (12) in a day.

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

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

3 44. Defendants know or should know the actual dates of overtime worked, the amount of
4 overtime worked, and the amount of unpaid overtime due.

5 45. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
6 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
7 Court.

8 46. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
9 Regulations, Title 8, Sections 11040, Plaintiff is entitled to recover damages for the
10 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
11 reasonable attorney's fees and costs of suit.

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

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

17 **(California Labor Code Section 226)**

18 **(Plaintiff against all named defendants and all DOE defendants)**

19 48. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 47, inclusive, of this Complaint as though fully set forth herein.

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

23 50. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
24 accurately reflected all information required by Labor Code Section 226, including but not
25 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
26 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
27 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed
28 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with
California Labor Code Section 226(a).

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

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

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

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

17 **(California Labor Code Sections 201, 203)**

18 **(Plaintiff against all named defendants and all DOE defendants)**

19 54. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 53, inclusive, of this Complaint as though fully set forth herein.

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

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

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

1 failure to pay an employee owed wages.

2 58. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated
3 from her employment, Defendants willfully refused and continue to refuse to pay her unpaid
4 wages as required by Labor Code Section 203.

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

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

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

15 **SIXTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

17 **(California Labor Code Section 204)**

18 **(Plaintiff against all named defendants and all DOE defendants)**

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

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

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

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

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

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

8 **SEVENTH CAUSE OF ACTION**
9 **VIOLATION OF LABOR CODE SECTION 558**
10 **(California Labor Code Section 558)**

11 **(Plaintiff against all named defendants and all DOE defendants)**

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

14 69. California Labor Code Section 558 states that any person acting on behalf of an
15 employer who violates, or causes to be violated, a section of this chapter or any provision
16 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
17 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
18 employee for each pay period for which the employee was underpaid in addition to an amount
19 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one
20 hundred dollars (\$100) for each underpaid employee for each pay period for which the
21 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
22 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
23 filed.

24 70. Plaintiff hereby alleges that named Defendants violated Labor Code Section 558. Thus,
25 Defendants are subject to civil penalties under the following laws:

- 26 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular wages,
27 including minimum wages, and overtime wages for overtime hours worked.
28 Defendants also failed to Plaintiff premium pay for missed meal and rest breaks. As
such, Defendants violated Section 558 under which penalties are due. Plaintiff

1 therefore prays for penalties of \$50.00 for the first pay period and \$100.00 for each
2 subsequent violation for each pay period for which Plaintiff was underpaid in addition
3 to an amount sufficient to recover underpaid wages.

4 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for
5 relief associated with Plaintiff's prosecution of this cause of action under California
6 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
7 paying Plaintiff for her overtime hours worked and for all hours worked (including
8 the minimum wage).

9 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
10 fees for relief associated with Plaintiff's prosecution of this cause of action under
11 California Labor Code Sections 200, et seq.

12 71. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under
13 the statutes, regulations, and wage orders alleged in this cause of action along with any
14 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

15 72. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs and
16 attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO MAINTAIN ACCURATE RECORDS**

19 **(California Labor Code Section 1174(d))**

20 **(Plaintiff against all named defendants and all DOE defendants)**

21 73. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 72, inclusive, of this Complaint as though fully set forth herein.

23 74. Labor Code section 1174(d) requires that employers, including Defendants, maintain
24 accurate records showing the hours worked daily by its employees and to whom wages were
25 paid.

26 75. Additionally, the "Records" section of the applicable IWC Wage Order obligates the
27 employer, including Defendants, to keep accurate information with respect to each one of their
28 employees including, but not limited to, the total wages paid each payroll period, and time
records showing when the employee begins and ends each work period, meal periods, split

1 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
2 the applicable rates of pay.

3 76. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails
4 to maintain accurate and complete records required by Labor Code section 1174(d) is subject
5 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate
6 records of Plaintiff's total daily hours, the total hours worked in the payroll period, the
7 applicable rates of pay, and total wages earned for the payroll period.

8 77. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
9 continues to suffer substantial losses related to Defendants' failure to record and maintain
10 records of meal and rest periods as well as time records.

11 78. Plaintiff seeks all available remedies for Defendants' violations including, but not
12 limited penalties, and costs to the extent permitted by law and according to proof at trial.

13 **NINTH CAUSE OF ACTION**

14 **FAILURE TO GIVE REST BREAKS**

15 **(Plaintiff against all named defendants and all DOE defendants)**

16 79. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 78, inclusive, of this Complaint as though fully set forth herein.

18 80. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 19 a. Title 8 of the California Code of Regulations Sections 11040(12)(A), which provides
20 that every employer shall authorize and permit all employees to take rest periods,
21 which insofar as practicable shall be in the middle of each work period. The
22 authorized rest period time shall be based on the total hours worked daily at the rate
23 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- 24 b. Title 8 of the California Code of Regulations Sections 11040(12)(B), which provides
25 that if an employer fails to provide an employee a rest period in accordance with the
26 applicable provisions of this order, the employer shall pay the employee one (1) hour
27 of pay at employee's regular rate of compensation for each workday that the rest
28 period is not provided;
- c. Title 8 of the California Code of Regulations sections 11040(20)(A), which penalizes

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

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

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

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

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

21 **TENTH CAUSE OF ACTION**

22 **FAILURE TO GIVE MEAL BREAKS**

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

24 85. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 84, inclusive, of this Complaint as though fully set forth herein.

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

- 27 a. California Labor Code section 512(a), which requires that employees be given a 30-
28 minute uninterrupted meal break after five (5) hours of work, and a second
uninterrupted meal break after ten (10) hours of work;

- 1 b. California Labor Code section 226.7, which states that (a) no employer shall require
2 any employee to work during any meal period mandated by an applicable order of
3 the Industrial Welfare Commission, and (b) if any employer fails to provide an
4 employee a meal period in accordance with an applicable order of the Industrial
5 Welfare Commission, the employer shall pay the employee one (1) additional hour
6 of pay at the employee's regular rate of compensation for each workday that the meal
7 period is not provided;
- 8 c. California Industrial Welfare Commission Order No. 4 section 11(B), as codified
9 under Title 8 of the California Code of Regulations Section 11040, which states that
10 if an employer fails to provide an employee a meal period in accordance with the
11 applicable provisions of the Wage Order, the employer shall pay the employee one
12 (1) hour of pay at the employee's regular rate of compensation for each workday that
13 the meal period is not provided;
- 14 d. California Industrial Welfare Commission Wage Order No. 4 Section 7(A)(3), as
15 codified under Title 8 of the California Code of Regulations Section 11040, which
16 requires an employer to maintain records documenting its employees' meal periods;
- 17 e. California Industrial Welfare Commission wage order No. 4 Section 20(A), as
18 codified under California Code of Regulations Section 11040 , which penalizes the
19 employer \$50.00 for each initial violation, per employee, of any provision of the
20 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- 21 f. California Labor Code section 1171 and 1173, which have given the California Labor
22 Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4) as
23 enforceable law.

24 87. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
25 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
26 to take a second relieved meal break after ten (10) hours of work, as required by California law.
27 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
28 4, as codified under California Code of Regulations Sections 11040 et. seq. requires that
employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that

1 the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty.
2 California Labor Code section 226.7 provides that employers may not require their employees
3 to work through their meal periods. California Labor Code section 226.7 and California Code of
4 Regulations section 11040 requires that if the employer fails to provide the employee with an
5 uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each
6 work day that the meal period is not given.

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

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

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

16 **ELEVENTH CAUSE OF ACTION**

17 **PRIVATE ATTORNEYS GENERAL ACT**

18 **Individual and Representative Claim for PAGA penalties under California Labor Code** 19 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 232, 246, 510, 512, 558,** 20 **558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5)**

21 **(Against all Defendants and all DOE Defendants)**

22 91. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 90, inclusive, of this Complaint as though fully set forth herein.

24 92. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
25 Defendants of the specific violations of the California Labor Code that Defendants
26 and DOE defendants have violated and continue to violate.

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

94. Plaintiff therefore has exhausted all administrative remedies required of her under

1 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
2 cause of action and pursue penalties in a representative action for Defendants' violations of the
3 Labor Code.

4 95. Pursuant to California Labor Code section 2699, any provisions of the Labor
5 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
6 departments, divisions, commissions, boards, agencies, or employees for violation of the code
7 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
8 behalf of himself or herself and other current or former employees pursuant to the
9 procedures specified in California Labor Code section 2699.3.

10 96. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
11 violator and had one or more of the alleged violations committed against her, and therefore is
12 properly suited to represent the interests of other current and former employees, including all
13 hourly, non-exempt employees who worked for SERVICEMASTER at any of their California
14 locations during the relevant PAGA period.

15 97. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
16 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
17 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

18 98. Plaintiff therefore has exhausted all administrative remedies required of her under
19 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
20 cause of action and pursue penalties in a representative action for Defendants' violations of the
21 Labor Code.

22 99. California Labor Code section 2699 et seq. imposes penalties upon culpable
23 Defendants for violating the Labor Code.

24 100. California Labor Code section 558 establishes a civil penalty as follows: Any
25 employer or other person action on behalf of an employer who violates, or causes to be
26 violated, a section of this chapter or any provision regulating hours and days of work in any
27 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
28 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
dollars (\$50) for each underpaid employee for each pay period for which the employee was

1 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
2 employee for each pay period for which the employee was underpaid ...;

3 101. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
4 by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is
5 not seeking individual/victim specific relief or underpaid wages under this particular cause of
6 action.

7 102. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
8 by law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
9 the following:

10 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
11 226.3, 226.7, 232, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802 via
12 2698 and 2699, 3700.5 and any other Labor Codes and Industrial Welfare Commission
13 Wage Orders (Order no. 4) violated based on the facts alleged in this Complaint.

14 103. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's
15 fees, costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
16 employees as alleged herein in an amount to be shown according to proof at trial and within the
17 jurisdictional limits of this Court.

18 **TWELFTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

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

26 106. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
27 her duties for Defendants, Plaintiff incurred reasonable and necessary expenses in the course
28 of completing her job duties, which were not reimbursed by Defendants. These expenses

1 include, but are not limited to, purchasing cleaning supplies for business-related purposes and
2 mileage expenses.

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

5 **THIRTEENTH CAUSE OF ACTION**

6 **DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY**

7 **IN VIOLATION OF FEHA**

8 **(Plaintiff against all named corporate Defendants and all DOE Defendants)**

9 108. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 107, inclusive, of this Complaint as though fully set forth herein.

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

13 110. California Government Code section 12926(m) has established a "broad definition" of
14 physical disability: disability protections under the Fair Employment and Housing Act
15 ("FEHA") even extend to "perceived" physical disabilities. *Id.* Under the law of this state,
16 "working" is a major life activity. *See* section 12926.1(c).

17 111. Plaintiff's Covid-19 illness, which was debilitating, and which limited a major life
18 activity, qualifies as a disability under FEHA, and Plaintiff was entitled to its protection.

19 112. Defendants knew of Plaintiff's disability and violated California Government Code
20 section 12940 et. seq. by discriminating against Plaintiff on the basis of her disability.

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

26 114. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and
27 each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression
28 and was authorized, ratified, and carried on with a conscious and willful disregard of their
workers' right to work in an environment in which personnel decisions and company policies

1 are made without regard to physical disability, so as to justify the imposition of punitive damages
2 to punish and set an example of said Defendants.

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

6 **FOURTEENTH CAUSE OF ACTION**

7 **FAILURE TO ACCOMMODATE PHYSICAL DISABILITY IN VIOLATION OF**

8 **FEHA**

9 **(Plaintiff against all named corporate Defendants and all DOE Defendants)**

10 116. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 115, inclusive, of this Complaint as though fully set forth herein.

12 117. California Government Code section 12940(p) provides that it is unlawful for an
13 employer to fail to make reasonable accommodation for the known physical disability of an
14 employee.

15 118. Defendants failed to make reasonable accommodation of Plaintiff's physical disability
16 of which Defendants were unequivocally aware.

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

22 120. The foregoing conduct engaged in by Defendants and each of their directors, officers
23 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
24 and carried on with a conscious and willful disregard of their workers' right to receive reasonable
25 accommodations, so as to justify the imposition of punitive damages to punish and set an
26 example of said Defendants.

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

1 **FIFTEENTH CAUSE OF ACTION**

2 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA**

3 **(Plaintiff against all named corporate Defendants and all DOE Defendants)**

4 122. Plaintiff re-alleges and incorporates by reference each and every allegation in
5 paragraphs 1 through 121, inclusive, of this Complaint as though fully set forth herein.

6 123. California Government Code section 12940(n) provides that it is unlawful for an
7 employer to fail to engage in a timely, good faith, interactive process with an employee to
8 determine effective accommodations for that employee's physical disability.

9 124. Defendants failed to engage in a timely, good faith, interactive process with Plaintiff
10 to determine effective reasonable accommodations for Plaintiff's known physical disability.

11 125. As a direct and proximate result of the aforementioned acts and omissions of
12 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
13 loss of income (past and future), loss of employment benefits (past and future), general and
14 compensatory damages (past and future), mental pain and anguish and emotional distress (past
15 and future), and will continue to suffer in the future, in an amount to be proved at trial.

16 126. The foregoing conduct engaged in by Defendants and each of their directors, officers
17 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
18 and carried on with a conscious and willful disregard of their workers' right to engage in the
19 interactive process and receive reasonable accommodations, so as to justify the imposition of
20 punitive damages to punish and set an example of said Defendants.

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

24 **SIXTEENTH CAUSE OF ACTION**

25 **RETALIATION IN VIOLATION OF FEHA**

26 **(Plaintiff against all named corporate Defendants and all DOE Defendants)**

27 128. Plaintiff re-alleges and incorporates by reference each and every allegation in
28 paragraphs 1 through 127, inclusive, of this Complaint as though fully set forth herein.

129. At all times herein mentioned, Government Code section 12940 et. seq. was in full

1 force and effect and was binding upon Defendants and each of them. Said statute imposes certain
2 duties upon Defendants concerning discrimination and retaliation against persons, such as
3 Plaintiff, on the basis of physical disability or on the basis of Plaintiff requesting time off of
4 work/missing time from work due to a physical disability. Said statutes were intended to prevent
5 the type of injury and damage set forth herein. Plaintiff was, at all times herein mentioned, a
6 member of the class of persons intended to be protected by said statutes. As alleged above,
7 Plaintiff was retaliated against and was eventually terminated from her employment as a result
8 of her physical disability and being forced to miss work as a result of her physical disability.

9 130. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed
10 in that Plaintiff has suffered the loss of wages, salary, and benefits, among other things. As a
11 result, Plaintiff has suffered such damages in an amount according to proof.

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

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

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

28 134. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a

1 prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
2 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
3 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
4 award of attorneys' fees and costs.

5 **SEVENTEENTH CAUSE OF ACTION**

6 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION**

7 **OF FEHA**

8 **(Plaintiff against all named corporate Defendants and all DOE Defendants)**

9 135. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 134, inclusive, of this Complaint as though fully set forth herein.

11 136. At all times herein mentioned, FEHA, California Government Code section 12940(k),
12 was in full force and effect and was binding on Defendants. This statute states that it is an
13 unlawful employment practice in California for an employer to "fail to take all reasonable steps
14 necessary to prevent discrimination and harassment from occurring."

15 137. During the course of Plaintiff's employment, Defendants failed to prevent their
16 employees, including management, from engaging in intentional actions that resulted in Plaintiff
17 being treated less favorably and eventually being terminated because of Plaintiff's protected
18 status (i.e. her physical disability). During the course of Plaintiff's employment, Defendants
19 failed to prevent their employees from engaging in unjustified employment practices against
20 employees in such protected classes. During the course of Plaintiff's employment, Defendants
21 failed to prevent a pattern and practice by its employees of intentional discrimination and
22 retaliation on the basis of physical disability, and/or other protected status and/or protected
23 activity.

24 138. Plaintiff believes and, on that basis, alleges that her physical disability and other
25 protected status and/or protected activity in informing her employer about her positive Covid-19
26 test result was a substantial motivating factor in Defendants' employees' discriminating against
27 her and retaliating against her.

28 139. As a direct and proximate result of the aforementioned acts and omissions of

1 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
2 loss of income (past and future), loss of employment benefits (past and future), general and
3 compensatory damages (past and future), mental pain and anguish and emotional distress (past
4 and future), and will continue to suffer in the future, in an amount to be proved at trial.

5 140. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and
6 each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression
7 and was authorized, ratified, and carried on with a conscious and willful disregard of their
8 workers' right to work in an environment in which personnel decisions and company policies
9 are made without regard to physical disability, so as to justify the imposition of punitive damages
10 to punish and set an example of said Defendants.

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

14 **EIGHTEENTH CAUSE OF ACTION**

15 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC** 16 **POLICY**

17 **(Against All Named corporate Defendants and all DOE Defendants, and each of them)**

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

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

22 144. Plaintiff is informed and believes and thereon alleges that Defendants' decision to
23 discriminate against her and retaliate against her, as alleged herein, was motivated by Plaintiff's
24 physical disability and Plaintiff having to miss work due to her disability. Plaintiff is further
25 informed and believes and thereon alleges that any other reasons proffered by Defendants were
26 and are pretextual in nature. Defendants intentionally created the aforementioned discrimination
27 and retaliation and failed to reasonably accommodate Plaintiff's physical disability, thereby not
28 giving Plaintiff an opportunity to work in an environment free of discrimination and retaliation.

145. The employment of Plaintiff was wrongfully terminated in or around the end of

1 October of 2021 in violation of the fundamental public policy of the State of California with
2 respect to discriminating against an employee on account of her physical disability. Plaintiff
3 was forced to hire an attorney to assist her to end these illegal activities. Said conduct violated
4 statutory and constitutional expressions of public policy including, but not limited to,
5 California Government Code sections 12940 et seq., and the California Constitution, Article 1
6 section 8.

7 146. As set forth above, said actions by Defendants were wrongful and in violation of the
8 fundamental principles of the public policy of the State of California as reflected in its laws,
9 objectives and policies. Said statutes and constitutional expressions of public policy include,
10 but are not limited to, California Government Code sections 12940 et seq., and the California
11 Constitution, Article 1 section 8. These laws inure to the benefit of the public at large, and not
12 just the private interests of the employers and employees whom they govern or protect.

13 147. As a direct and proximate result of the aforementioned acts and omissions of
14 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
15 loss of income (past and future), loss of employment benefits (past and future), general and
16 compensatory damages (past and future), mental pain and anguish and emotional distress (past
17 and future), and will continue to suffer in the future, in an amount to be proved at trial.

18 148. The foregoing conduct engaged in by Defendants and each of their directors, officers
19 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
20 and carried on with a conscious and willful disregard of their workers' right to work in an
21 environment free of discrimination and retaliation based on physical disability and where
22 workers receive reasonable accommodations for their physical disabilities, and where workers
23 do not get retaliated against due to issues related to their physical disabilities, so as to justify the
24 imposition of punitive damages to punish and set an example of said Defendants.

25 **NINETEENTH CAUSE OF ACTION**

26 **FAILURE TO PROVIDE PERSONNEL RECORDS**

27 **(Plaintiff against all named defendants and all DOE defendants)**

28 149. Plaintiff re-alleges and incorporates by reference each and every allegation in
paragraphs 1 through 148, inclusive, of this Complaint as though fully set forth herein.

1 150. Labor Code section 1198.5 dictates “every current and former employee, or his or her
2 representative, has the right to inspect and receive a copy of the personnel records that the
3 employer maintains relating to the employee’s performance or to any grievance concerning the
4 employee.”

5 151. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the employer
6 shall make the contents of those personnel records available for inspection to the current or
7 former employee, or his or her representative, at reasonable intervals and at reasonable times...”
8 On information and belief, Defendants intentionally failed to provide Plaintiff with personnel
9 records when requested by Plaintiff via letter on November 8, 2021, as required by law. Plaintiff
10 requested her personnel records in accordance with California Labor Code section 1198.5(k) on
11 November 8, 2021, via U.S. certified mail, return receipt requested.

12 152. Defendants failed to provide Plaintiff with an opportunity to inspect or copy her records
13 within 30 days. As a direct result of Defendants’ violations alleged herein, Plaintiff has
14 suffered and continues to suffer substantial losses related to Defendants’ failure to provide
15 personnel records.

16 153. Plaintiff seeks all available remedies for Defendants’ violations including, but not
17 limited penalties, and costs to the extent permitted by law and according to proof at trial.
18 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants
19 in the amount of \$750.00, along with costs and attorney’s fees.

20 **TWENTIETH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE PAY RECORDS**

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

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

25 155. Labor Code section 226 sub-section (b) dictates “an employer...shall afford current
26 and former employees the right to inspect or copy records pertaining to their employment,
27 upon reasonable request to the employer...”

28 156. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer who
receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining

1 to a current or former employee shall comply with the request as soon as practicable, but no later
2 than 21 calendar days from the date of the request.” On information and belief, Defendants
3 intentionally failed to provide Plaintiff with pay records when requested by Plaintiff via certified
4 letter, return receipt requested, on November 8, 2021, and as required by law. Plaintiff requested
5 her pay records in accordance with California Labor Code section 226 on November 8, 2021,
6 via certified mail. Defendant failed to provide Plaintiff with an opportunity to inspect or copy
7 her pay records within 21 days.

8 157. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and
9 continues to suffer substantial losses related to Defendants’ failure to provide pay records.
10 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants
11 in the amount of \$750.00, along with costs and attorney’s fees.

12 158. Plaintiff seeks all available remedies for Defendants’ violations including, but not
13 limited penalties, and costs to the extent permitted by law and according to proof at trial.

14 **TWENTY-FIRST CAUSE OF ACTION**

15 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

16 **(California Business and Professions Code Section 17200)**

17 **(Plaintiff against All corporate Defendants and all DOE defendants)**

18 159. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 158, inclusive, of this Complaint as though fully set forth herein.

20 160. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
21 constitutes unfair and unlawful business practices under California Business and Professions
22 Code Section 17200, et seq.

23 161. Defendants’ violations of California labor laws and FEHA constitutes a
24 business practice because it was done repeatedly over a significant period of time in a
25 systematic manner that was detrimental to Plaintiff and others.

26 162. California Business and Professions Code section 17200 et seq. prohibits unfair
27 business practices by employers including, but not limited to, widespread violations of
28 California laws as well as retaliating against and terminating employees due to a physical
disability.

1 163. The aforementioned acts of Defendants was willful, wanton, malicious, intentional,
2 oppressive, and despicable and was done in willful and conscious disregard of the rights, welfare,
3 and safety of Plaintiff, and was done by managerial agents and employees of Defendant and
4 DOES 1 to 25, and with the express knowledge, consent, and ratification of managerial agents
5 and employees of Defendants and DOES 1 to 25, thereby justifying the awarding of punitive and
6 exemplary damages in an amount to be determined at the time of trial.

7 164. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
8 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of
9 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et
10 seq.

11 165. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to multiple
12 damages as specifically provided in California Business and Professions Code section 17200 et
13 seq.

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

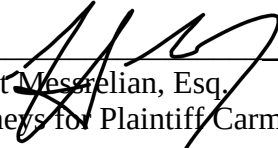
18 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
19 follows:

- 20 1. For general and compensatory damages including lost past wages, regular wages,
21 overtime, and all other sums of money, together with interest on said amounts, and any
22 other economic injury to Plaintiff, according to proof;
- 23 2. For special, liquidated, and consequential damages to the extent allowed by law;
- 24 3. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
25 at trial;
- 26 4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
27 subject to proof at trial;
- 28 5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
proof at trial;

6. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount subject to proof at trial;
7. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
10. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claim;
11. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
12. For the imposition of civil penalties and/or statutory penalties;
13. For all interest as allowed by law;
14. For all costs and disbursements incurred in this suit;
15. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., and the California Labor Code and/or other applicable laws;
16. For an award of punitive and exemplary damages against Defendants according to proof; and
17. For such other and further relief as this Court may deem proper.

DATED: March 3, 2022

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Carmen Villavicencio

1
2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
4

5 DATED: March 3, 2022

MESSRELIAN LAW INC.

6
7 By  _____
8 Harout Messrelian, Esq.
9 Attorneys for Plaintiff Carmen Villavicencio
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28