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SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF LOS ANGELES**

ERICA GARCIA,

Plaintiff,

vs.

PROPERTY MANAGEMENT AND
 DEVELOPMENT CORPORATION; and
 DOES 1 to 25, inclusive

Defendants.

CASE NO.: **22STCV09912**

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) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE SECTION 17200.

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, ERICA GARCIA (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 Los Angeles in this judicial district because Defendants PROPERTY MANAGEMENT AND DEVELOPMENT CORPORATION, and DOES 1 to 25, inclusive do business in the County of Los Angeles and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles 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 Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant PROPERTY MANAGEMENT AND DEVELOPMENT CORPORATION (hereinafter “PMDC”) is and was a Nevada corporation, doing business in Los Angeles County, and which employed Plaintiff.

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

8
9 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
10 that information and belief, alleges that at all times herein mentioned, each of the remaining
11 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
12 under the authority of their agency, employment, or representative capacity, with the consent of
13 his/her codefendants.

14 **GENERAL ALLEGATIONS**

15
16 6. Plaintiff started working for PMDC on or around May 17, 2021 as a Resident Manager
17 for the property located at 449 S. Kingsley Dr., Los Angeles, California. Plaintiff's
18 employment ended on or around August 26, 2021.

19 7. Plaintiff was classified as an hourly, non-exempt employee who earned \$16.00 per
20 hour. Plaintiff's schedule was 6 days per week. Plaintiff worked a shorter shift of 8am to 12pm
21 a few days a week and also worked a longer shift of 8am to 5pm approximately 4 days per
22 week. During her employment tenure, Plaintiff clocked-in and out on a company iPad.

23 8. It is Plaintiff's position that PMDC has violated numerous Labor Code Sections against
24 Plaintiff and other similarly situated aggrieved employees.

25 9. PMDC violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay
26 Plaintiff and other similarly situated aggrieved employees California's statutory minimum
27 wage for all hours worked and for "off the clock" work. This is so because PMDC had a policy
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1 and practice of rounding down hours worked to the detriment of employees. In addition,
2 Plaintiff did in fact work both before her scheduled shifts and after her scheduled shifts, while
3 “off the clock”, and for which she was never paid any compensation, not even the minimum
4 wage. The latter can easily be proven by looking at Plaintiff’s company emails. Plaintiff would
5 send emails at 6pm or 7pm or 8pm, long after her shift had ended. In addition, PMDC also
6 failed to pay Plaintiff and others for all hours worked to the extent that Plaintiff and others
7 worked during or through their meal breaks and while they were “off the clock”.

8 10. Due to the above “off the clock” violations, PMDC violated Labor Code §510 because
9 it failed to pay Plaintiff and other similarly situated aggrieved employees overtime, even
10 though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
11 throughout their employment. In addition, PMDC failed to include bonus payment or incentive
12 payments in calculating employees’ regular rate of pay for purposes of deciphering their
13 overtime rate of pay. As such, Plaintiff and others are entitled to overtime compensation.

14 11. PMDC violated Labor Code §§ 512 and 226.7 as well as the relevant Industrial Welfare
15 Commission Wage Order (no. 5) because it failed to provide Plaintiffs and other similarly
16 situated aggrieved employees the requisite 30-minute, timely, uninterrupted meal periods for
17 every five (5) hours of work throughout their employment, and Plaintiff did not validly waive
18 said meal periods. PMDC did not completely relieve Plaintiff of all duty during said meal
19 periods. PMDC did not pay to Plaintiff one additional hour of pay at Plaintiff’s regular rate of
20 compensation for each workday that one or more statutory meal periods was not provided.
21 Plaintiff’s meal breaks would often be late and after the 5th hour as evidenced by her time
22 records. The latter was due to the fact that Plaintiff was asked on numerous occasions to amend
23 assignments immediately, including changing the phrasing of certain words, etc. The latter
24 resulted in Plaintiff having to take her meal break at a later time. Moreover, there were
25 occasions wherein Plaintiff was so busy and inundated with work that she would completely
26 skip her meal break and then perhaps take it during the last hour of the day. The culture and
27 work environment at PMDC was not conducive to employees such as Plaintiff taking timely,
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uninterrupted meal periods wherein they were relieved of all work duty.

12. PMDC violated Labor Code § 226.7 as well as the relevant Industrial Welfare Commission Wage Order (no. 5) because it failed to provide Plaintiff and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. PMDC did not completely relieve Plaintiff of all duty during said rest periods. PMDC did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods was not provided. Like the situation involving meal breaks, Plaintiff rarely received timely, uninterrupted statutory rest breaks. Most of the time, Plaintiff's rest breaks would be interrupted by regional manager, Kristie Barstow, who would just tell Plaintiff to complete an assignment if Plaintiff was ever attempting to take a statutory rest break.

13. Furthermore, during the relevant time period, and due to all of the aforementioned violations, PMDC failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. PMDC was also in violation of California Labor Code section 226(a), by failing to include pertinent information on the wage statements, including but not limited to, all hours worked (regular and overtime), gross wages earned, all deductions, net wages earned, premium pay for missed meal and rest breaks, the correct start and end of the pay period, all identifying employee information, the correct name and address of the legal employer, and all applicable hourly rates, among other items. As such, PMDC did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

14. PMDC violated Labor Code § 203 because it willfully failed to pay Plaintiff 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. After Plaintiff's employment at PMDC ended, PMDC failed and refused to pay all wages earned and due immediately upon separation. These earned but unpaid wages include the unpaid minimum wages, overtime wages, meal/rest period compensation described above, and business expense reimbursement.

1 15. During the relevant time period, PMDC also failed to keep accurate and complete payroll
2 records showing the actual hours worked per day (including the time for meal periods) and the
3 wages paid to Plaintiff and others pursuant to California Labor Code sections 1174(d).

4 16. During the relevant time period, Plaintiff and other aggrieved employees incurred
5 necessary, business-related expenses and costs that were not reimbursed by PMDC. These costs
6 include, but are not limited to, use of personal phones for business-related purposes because the
7 headset didn't work. In addition, Plaintiff had to forward calls to her personal cell phone because
8 the office phone would not be operable. Accordingly, PMDC was in violation of California
9 Labor Code sections 2800 and 2802.

10 17. In or around July 2021, Plaintiff's husband caught Covid-19 and Plaintiff requested time
11 off from work to care for her sick husband and to quarantine due to her exposure to the Covid-
12 19 virus. Thereafter, Plaintiff contracted Covid-19 and requested time off work. Shortly after,
13 Plaintiff's son contracted Covid-19, and Plaintiff requested further time off work to care for her
14 son.

15 18. On or around August 26, 2021, PMDC, through its Regional Manager, emailed
16 Plaintiff a notification advising her that her employment has been terminated because her
17 "performance has been unsatisfactory." In fact, PMDC terminated Plaintiff's employment based
18 on her physical disability, her association with a disabled person (her husband and her son)
19 and for taking time off work in order to care for her sick family members.

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

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FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(California Industrial Welfare Commission Order 5-2001, California Code of Regulations Title 8 Section 11050, and California Labor Code Section 1198)

(Plaintiff against all named Defendants and all DOE Defendants)

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

21. At all times relevant herein, Defendants were required to compensate their employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 5-2001, California Code of Regulations, Title 8, Section 11050.

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

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

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

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

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

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 27. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 26, inclusive, of this Complaint as though fully set forth herein.
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8 28. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an
9 employer to suffer or permit a California employee to work without paying wages at the
10 minimum wage rate for all hours worked as required by the applicable Industrial Welfare
11 Commission Wage Order No. 5-2001, codified at California Code of Regulations, Title 8,
12 Section 11050, subdivision 4.

13 29. Pursuant to IWC Wage Order No. 5-2001, subdivision 2(K), at all relevant times,
14 “hours worked” included “the time during which an employee is subject to the control of an
15 employer, and includes all the time the employee is suffered or permitted to work, whether or
16 not required to do so, and in the case of an employee who is required to reside on the
17 employment premises, that time spent carrying out assigned duties shall be counted as hours
18 worked...”

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

24 31. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
25 permitted to work by Defendants. Defendants’ acts or omissions in failing to adequately
26 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
27 to believe that their acts or omissions were not contrary to California law.
28

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

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

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO PAY OVERTIME**

11 **(California Industrial Welfare Commission Order 5-2001, California Code of**
12 **Regulations Title 8 Section 11050)**

13 **(Plaintiff against all named Defendants and all DOE Defendants)**

14 34. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 33, inclusive, of this Complaint as though fully set forth herein.

16 35. Pursuant to Industrial Welfare Commission 4-2001/5-2001, California Code of
17 Regulations, Title 8, Section 11050 for the period of Plaintiff's employment,
18 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
19 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
20 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
21 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
22 consecutive work day in a week.

23 36. Plaintiff was a non-exempt employee entitled to the protections of the California
24 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations,
25 Title 8, Section 11050.

26 37. Plaintiff worked more than eight (8) hours or twelve (12) hours in a single workday or
27 forty (40) hours in a single workweek on numerous occasions.
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38. Plaintiff was entitled to the above overtime premiums.

39. 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 eight (8) in a day and two-times Plaintiff's regular rate of pay for hours worked past twelve (12) in a day.

40. 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.

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

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

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

44. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus reasonable attorney's fees and costs of suit.

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code Section 226)

(Plaintiff against all named Defendants and all DOE Defendants)

46. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 45, inclusive, of this Complaint as though fully set forth herein.

47. Pursuant to California Labor Code Section 226, every employer must furnish each

employee an itemized statement of wages and deductions at the time of payment of wages.

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

49. Pursuant to California Labor Code Section 226(e), Plaintiff 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 exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to the 3-year period immediately preceding the date this lawsuit was filed.

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES OWED EVERY PAY PERIOD

(California Labor Code Section 204)

(Plaintiff against all named Defendants and all DOE Defendants)

52. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 51, inclusive, of this Complaint as though fully set forth herein.

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

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

5 55. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
6 informed, believes, and thereon alleges, that all times relevant during the liability period,
7 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
8 including overtime hours and premium pay for missed rest breaks and meal breaks.

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

13 57. 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 **SIXTH CAUSE OF ACTION**

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

18 **(California Labor Code Sections 201, 202, 203)**

19 **(Plaintiff against all named Defendants and all DOE Defendants)**

20 58. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 57, inclusive, of this Complaint as though fully set forth herein.

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

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

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

5 62. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
6 continue to refuse to pay her unpaid wages as required by Labor Code Section 203.

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

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

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

17 **SEVENTH CAUSE OF ACTION**

18 **VIOLATION OF LABOR CODE SECTION 558**

19 **(California Labor Code Section 558)**

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

21 66. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 65, inclusive, of this Complaint as though fully set forth herein.

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

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

- 8 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular
9 wages, including overtime wages for overtime hours worked and premium pay for
10 missed meal breaks and rest breaks. As such, Defendants violated Section 558
11 under which penalties are due. Plaintiff therefore prays for penalties of \$50.00 for
12 the first pay period and \$100.00 for each subsequent violation for each pay period
13 for which Plaintiff was underpaid in addition to an amount sufficient to recover
14 underpaid wages.
15
- 16 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for
17 relief associated with Plaintiff's prosecution of this cause of action under California
18 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
19 paying Plaintiff for all hours worked, her overtime hours worked, and premium pay
20 for missed meal breaks and rest breaks.
21
- 22 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
23 fees for relief associated with Plaintiff's prosecution of this cause of action under
24 California Labor Code Sections 200, et seq.
25

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

1 70. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs an
2 attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

3 **EIGHTH CAUSE OF ACTION**

4 **FAILURE TO MAINTAIN ACCURATE RECORDS**

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

6 **(Plaintiff against all named Defendants and all DOE Defendants)**

7
8 71. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 70, inclusive, of this Complaint as though fully set forth herein.

10 72. Labor Code section 1174(d) requires that employers, including Defendants, maintain
11 accurate records showing the hours worked daily by its employees and to whom wages were
12 paid.

13 73. Additionally, the "Records" section of the applicable IWC Wage Order obligates the
14 employer, including Defendants, to keep accurate information with respect to each one of their
15 employees including, but not limited to, the total wages paid each payroll period, and time
16 records showing when the employee begins and ends each work period, meal periods, split
17 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
18 the applicable rates of pay.

19 74. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails
20 to maintain accurate and complete records required by Labor Code section 1174(d) is subject
21 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate
22 records of Plaintiff's total daily hours, including rest breaks and meal breaks, the total hours
23 worked in the payroll period, the applicable rates of pay, and total wages earned for the payroll
24 period.

25 75. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
26 continues to suffer substantial losses related to Defendants' failure to record and maintain
27 records of meal and rest periods as well as time records.
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1 76. Plaintiff seeks all available remedies for Defendants' violations including, but not
2 limited penalties, and costs to the extent permitted by law and according to proof at trial.

3 **NINTH CAUSE OF ACTION**

4 **FAILURE TO GIVE REST BREAKS**

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

6 77. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 76, inclusive, of this Complaint as though fully set forth herein.

8 78. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 9 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which
10 provides that every employer shall authorize and permit all employees to take rest
11 periods, which insofar as practicable shall be in the middle of each work period.
12 The authorized rest period time shall be based on the total hours worked daily at the
13 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
14
15 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which
16 provides that if an employer fails to provide an employee a rest period in
17 accordance with the applicable provisions of this order, the employer shall pay the
18 employee one (1) hour of pay at employee's regular rate of compensation for each
19 workday that the rest period is not provided;
20
21 c. Title 8 of the California Code of Regulations sections 11050(20)(A), which
22 penalizes the employer \$50.00 for each initial violation, per employee, of any
23 provision of the Wage Order, and \$100.00 for each additional violation thereafter
24 per employee; and
25
26 d. California Labor Code section 226.7, which states that (a) no employer shall require
27 any employee to work during any rest period mandated by an applicable order of
28 the Industrial Welfare Commission, and (b) if an employer fails to provide an

1 employee a rest period in accordance with an applicable order of the Industrial
2 Welfare Commission, the employer shall pay the employee one (1) additional hour
3 of pay at employee's regular rate of compensation for each work day that the rest
4 period is not provided.

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

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

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

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

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18 **TENTH CAUSE OF ACTION**

19 **FAILURE TO GIVE MEAL BREAKS**

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

21 83. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 82, inclusive, of this Complaint as though fully set forth herein.

23 84. Plaintiff brings this cause of action under the following laws, for the following
24 reasons:

- 25
26 a. California Labor Code section 512(a), which requires that employees be given a 30-
27 minute uninterrupted meal break after five (5) hours of work, and a second
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uninterrupted meal break after ten (10) hours of work;

- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11050, which states that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage 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;
- d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11050, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as codified under California Code of Regulations Section 11050, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order No. 5) as enforceable law.

1 85. Plaintiff alleges that her meal breaks would often be late and after the 5th hour as
2 evidenced by her time records. The latter was due to the fact that Plaintiff was asked on
3 numerous occasions to amend assignments immediately, including changing the phrasing of
4 certain words, etc. The latter resulted in Plaintiff having to take her meal break at a later time.
5 Moreover, there were occasions wherein Plaintiff was so busy and inundated with work that
6 she would completely skip her meal break and then perhaps take it during the last hour of the
7 day. California Labor Code section 512(a) and California Industrial Welfare Commission
8 Order No. 5, as codified under California Code of Regulations Section 11050 *et. seq.* requires
9 that employees receive uninterrupted meal periods every five (5) hours of consecutive work,
10 and that the meal period be at least 30 minutes in length, wherein employee is relieved of all
11 work duty. California Labor Code section 226.7 provides that employers may not require their
12 employees to work through their meal periods. California Labor Code section 226.7 and
13 California Code of Regulations section 11050 requires that if the employer fails to provide the
14 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
15 of pay for each work day that the meal period is not given.
16

17
18 86. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
19 regulations, and wage orders alleged in this cause of action along with any allowable interest,
20 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
21 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

22 87. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
23 fees as well as interest under Labor Code section 218.6.

24 88. 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 according to proof at
26 trial.

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ELEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802)

(Against All Named Defendants and all DOE Defendants)

89. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 88, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

94. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against her, and therefore is properly suited to represent the interests of other current and former employees, including all current and former hourly, non-exempt employees who worked for PMDC in the State of

California during the applicable PAGA Period.

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

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

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

98. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not seeking individual/victim specific relief or underpaid wages for herself or other employees under this specific PAGA cause of action. Plaintiff has separate causes of action in this Complaint for individual wages but is not seeking wages through the PAGA action.

99. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the following:

Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802 via 2698 and 2699 and any other Labor Codes/Industrial Welfare Commission Order (No. 5) violated based on the facts alleged in this Complaint.

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

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TWELFTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Plaintiff against all named Defendants and DOE Defendants)

101. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 100, inclusive, of this Complaint as thought fully set forth herein.

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

103. Beginning at least 3 years prior to the filing of this complaint, in order to discharge their duties for Defendants, Plaintiff incurred reasonable and necessary expenses in the course of completing her job duties, which were not reimbursed by Defendants. These expenses include, but are not limited to, use of personal phones for business-related purposes because the headset didn’t work. In addition, Plaintiff had to forward calls to her personal cell phone because the office phone would not be operable.

104. Plaintiff is entitled to reimbursement for these necessary expenditures, plus Interest and attorney’s fees and costs, under Labor Code section 2802.

THIRTEENTH CAUSE OF ACTION

DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY IN VIOLATION

OF FEHA

(Plaintiff against all named Defendants and all DOE Defendants)

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

106. At all times mentioned herein, the FEHA, Government Code section 12900 et seq., was in full force and effect and binding upon Defendants and each of them.

107. Government Code section 12940(a) provides that it is an unlawful employment

1 practice for an employer to discharge a person from employment because of “[r]ace, religious
2 creed, color, national origin, ancestry, physical disability, mental disability, medical condition,
3 genetic information, marital status, sex, age, sexual orientation, or military and veteran status.”

4 a. In *Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 2
5 Cal.App.5th 1028, 1036-1037 (207 Cal.Rptr.3d 120) (“*Ramirez*”), a case where the employer
6 refused to adjust the employee’s work schedule to administer home dialysis to his disabled son,
7 the court ruled that FEHA forbids discrimination based on a person’s association with another
8 who has a disability. As such, the court permitted the Claimant to proceed with his
9 associational disability claim.
10

11 b. In *Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th
12 635, 657-658 (163 Cal.Rptr.3d 392) (“*Rope*”), superseded by statute on another ground, the
13 court ruled that a prima facie case for associational discrimination existed when an employee
14 was fired for requesting time off to donate a kidney to his ailing sister.
15

16 c. Under California Government Code section 12921, the opportunity to seek,
17 obtain, and hold employment without discrimination because of a person’s association with a
18 person who has, or is perceived to have, a physical disability is a civil right.

19 108. California Government Code section 12926(m) has established a “broad
20 definition” of physical disability: disability protections under the Fair Employment and
21 Housing Act (“FEHA”) even extend to “perceived” physical disabilities. *Id.* Under the law of
22 this state, “working” is a major life activity. *See* section 12926.1(c).
23

24 109. Plaintiff’s Covid-19 illness, which was debilitating, and which limited a major
25 life activity, qualifies as a disability under the FEHA, and Plaintiff was entitled to its
26 protection. Moreover, Plaintiff’s husband’s Covid-19 illness and Plaintiff’s son’s Covid 19
27 illness also qualify as physical disabilities under the FEHA.

28 110. Defendants knew of Plaintiff’s disability and were also aware of Plaintiff’s

1 association with a disabled person (her husband and her son). Defendants violated California
2 Government Code section 12940 et. seq. by discriminating against Plaintiff on the basis of her
3 disability and her association with a disabled person (her husband and her son).

4 111. As a direct and proximate result of the aforementioned acts and omissions of
5 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
6 loss of income (past and future), loss of employment benefits (past and future), general and
7 compensatory damages (past and future), mental pain and anguish and emotional distress (past
8 and future), and will continue to suffer in the future, in an amount to be proved at trial.

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

16
17 113. As a proximate result of the foregoing conduct, which violated the provisions of
18 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
19 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

20 **FOURTEENTH CAUSE OF ACTION**

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

22 **FEHA**

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

24
25 114. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 113, inclusive, of this Complaint as though fully set forth herein.

27 115. California Government Code section 12940(p) provides that it is unlawful for an
28

1 employer to fail to make reasonable accommodation for the known physical disability of an
2 employee.

3 116. Defendants knew Plaintiff, Plaintiff's husband, and Plaintiff's son had all tested
4 positive for the Covid-19 virus shortly after one another. As such, as was the case in *Ramirez*
5 and *Rope*, Plaintiff was closely associated with physically disabled persons (her husband and
6 her son).

7 117. Defendants failed to make reasonable accommodation of Plaintiff's physical
8 disability and her association with a physically disabled person (her husband and her son) of
9 which Defendants were unequivocally aware.
10

11 118. 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

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

22 120. As a proximate result of the foregoing conduct, which violated the provisions of
23 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
24 fees and costs in the prosecution of this claim, in an amount to be proven at trial.
25

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27 ///

FIFTEENTH CAUSE OF ACTION

FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA

(Plaintiff against all named Defendants and all DOE Defendants)

121. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 120, inclusive, of this Complaint as though fully set forth herein.

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

123. As described above, Defendants knew that Plaintiff suffered from a physical disability and were aware of her association with a disabled person (her husband and her son). Defendants failed to engage in any kind of interactive process with Plaintiff in order to determine whether they could provide Plaintiff with reasonable accommodations. Instead, Defendants pursued discriminatory actions against Plaintiff, including terminating Plaintiff's employment.

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

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

126. As a proximate result of the foregoing conduct, which violated the provisions of

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.

SIXTEENTH CAUSE OF ACTION

RETALIATION IN VIOLATION OF FEHA

(Plaintiff against all named Defendants and all DOE Defendants)

127. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 126, inclusive, of this Complaint as though fully set forth herein.

128. At all times herein mentioned, Government Code section 12940 et. seq. was in full force and effect and was binding upon Defendants and each of them. Said statute imposes certain duties upon Defendants concerning discrimination and retaliation against persons, such as Plaintiff, on the basis of physical disability or on the basis of Plaintiff requesting time off of work/missing time from work due to a physical disability or her association with a disabled person. Said statutes were intended to prevent the type of injury and damage set forth herein. Plaintiff was, at all times herein mentioned, a member of the class of persons intended to be protected by said statutes. As alleged above, Plaintiff was retaliated against and terminated from her employment as a result of her physical disability and her association with a disabled person (her husband and her son), and for requesting time off as a result of her physical disability and to care for her sick family members.

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

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

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

5 132. The acts of oppression, fraud, and/or malice, were engaged in by employees of
6 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
7 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
8 wrongful conduct for which an award of punitive damages is sought, and/or was personally
9 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
10 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on
11 part of an officer, director, or managing agent of each of the Defendants, thereby entitling
12 Plaintiff to punitive and exemplary damages against each of the Defendants in accordance with
13 California Civil Code section 3294 in a sum appropriate to punish and make an example of
14 each Defendant
15

16 133. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
17 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
18 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
19 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
20 award of attorneys' fees and costs.
21

22 **SEVENTEENTH CAUSE OF ACTION**

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

24 **OF FEHA**

25 **(Plaintiff against all named Defendants and all DOE Defendants)**

26 134. Plaintiff re-alleges and incorporates by reference each and every allegation in
27
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1 paragraphs 1 through 133, inclusive, of this Complaint as though fully set forth herein.

2 135. At all times herein mentioned, FEHA, California Government Code section
3 12940(k), was in full force and effect and was binding on Defendants. According to
4 Government Code § 12940(k), it is an unlawful employment practice for an employer to fail to
5 take all reasonable steps necessary to prevent disability discrimination from occurring.

6 136. As described above, Defendants knew that Plaintiff suffered from a physical
7 disability and were also aware of Plaintiff's association with a disabled person (her husband
8 and her son). Defendants failed to engage in any kind of interactive process with Plaintiff in
9 order to determine whether it could provide Plaintiff with reasonable accommodations. Instead,
10 Defendants pursued discriminatory actions against Plaintiff, including terminating Plaintiff's
11 employment.
12

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

23 138. Plaintiff believes and, on that basis, alleges that her physical disability, her
24 association with a disabled person (her husband and her son), and taking time off work to
25 recover from the Covid-19 illness and care for her sick family members, were substantial
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27
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1 motivating factors in Defendants' employees' discriminating against her and retaliating against
2 her.

3 139. As a direct and proximate result of the aforementioned acts and omissions of
4 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
5 loss of income (past and future), loss of employment benefits (past and future), general and
6 compensatory damages (past and future), mental pain and anguish and emotional distress (past
7 and future), and will continue to suffer in the future, in an amount to be proved at trial.

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

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

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19 **EIGHTEENTH CAUSE OF ACTION**

20 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC**
21 **POLICY**

22 **(Against All Named and DOE Defendants)**

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

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

27 144. Plaintiff is informed and believes and thereon alleges that Defendants' decision
28

1 to discriminate against her and retaliate against her, as alleged herein, was motivated by
2 Plaintiff's physical disability, Plaintiff's association with a disabled person (her husband and
3 her son) and Plaintiff having to miss work due to her disability and to take care of sick family
4 members. Plaintiff is further informed and believes and thereon alleges that any other reasons
5 proffered by Defendants were and are pretextual in nature. Defendants intentionally created the
6 aforementioned discrimination and retaliation and failed to reasonably accommodate Plaintiff's
7 physical disability, thereby not giving Plaintiff an opportunity to work in an environment free
8 of discrimination and retaliation.
9

10 145. The employment of Plaintiff was wrongfully terminated on or around August
11 26, 2021 in violation of the fundamental public policy of the State of California with respect to
12 discriminating against an employee on account of her physical disability and her association
13 with a disabled person, as well as denying reasonable accommodations to Plaintiff. Plaintiff
14 was forced to hire an attorney to assist her to end these illegal activities. Said conduct violated
15 statutory and constitutional expressions of public policy including, but not limited to,
16 California Government Code sections 12940 et seq., and the California Constitution, Article 1
17 section 8.
18

19 146. As set forth above, said actions by Defendants were wrongful and in violation
20 of the fundamental principles of the public policy of the State of California as reflected in its
21 laws, objectives and policies. Said statutes and constitutional expressions of public policy
22 include, but are not limited to, California Government Code sections 12940 et seq., and the
23 California Constitution, Article 1 section 8. These laws inure to the benefit of the public at
24 large, and not just the private interests of the employers and employees whom they govern or
25 protect.
26

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

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.

5 148. The foregoing conduct engaged in by Defendants and each of their directors,
6 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
7 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
8 an environment free of discrimination and retaliation based on physical disability and where
9 workers receive reasonable accommodations for their physical disabilities, and where workers
10 do not get retaliated against due to issues related to their physical disabilities, so as to justify
11 the imposition of punitive damages to punish and set an example of said Defendants.
12

13 **NINETEENTH CAUSE OF ACTION**

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

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

16 **(Plaintiff against All Defendants and all DOE defendants)**

17 149. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 148, inclusive, of this Complaint as though fully set forth herein.
19

20 150. 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.

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

26 152. 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

1 California laws as well as retaliating against and terminating employees due to a physical
2 disability, requesting a reasonable accommodation due to a physical disability, and taking
3 time off work due to a physical disability.

4 153. The aforementioned acts of Defendants were willful, wanton, malicious,
5 intentional, oppressive, and despicable and was done in willful and conscious disregard of the
6 rights, welfare, and safety of Plaintiff, and was done by managerial agents and employees of
7 Defendants and DOES 1 to 25, and with the express knowledge, consent, and ratification of
8 managerial agents and employees of Defendants and DOES 1 to 25, thereby justifying the
9 awarding of punitive and exemplary damages in an amount to be determined at the time of
10 trial.
11

12 154. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
13 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of
14 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et
15 seq.

16 155. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
17 multiple damages as specifically provided in California Business and Professions Code section
18 17200 et seq.

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

23 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
24 follows:

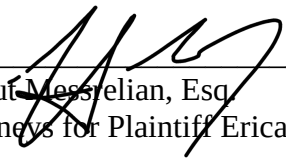
- 25 1. For general and compensatory damages including lost past wages, regular wages,
26 overtime, and all other sums of money, together with interest on said amounts, and any
27 other economic injury to Plaintiff, according to proof;
28

2. For special, liquidated, and consequential damages to the extent allowed by law;
3. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
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 Defendants against Plaintiff in an amount subject to proof at trial;
7. For an order enjoining 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/action;
11. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of attorney's fees, costs, interest, and penalties according to proof to the extent permitted by law;
12. For restitution and/or damages for all amounts unlawfully withheld from the wages of Plaintiff, as may be proven;
13. For the imposition of civil penalties and/or statutory penalties;
14. For all interest as allowed by law;
15. For all costs and disbursements incurred in this suit;

- 1 16. Reasonable attorney's fees where available by law, including but not limited to,
2 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section
3 1021.5, the California Labor Code; and/or other applicable laws; and
4 17. For an award of punitive and exemplary damages against Defendants according to
5 proof; and
6 18. For such other and further relief as this Court may deem proper.
7

8 DATED: March 3, 2022

MESSRELIAN LAW INC.

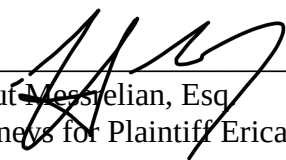
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10 By 
11 Harout Messrelian, Esq.
12 Attorneys for Plaintiff Erica Garcia
13

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
16

17 DATED: March 3, 2022

MESSRELIAN LAW INC.

18
19 By 
20 Harout Messrelian, Esq.
21 Attorneys for Plaintiff Erica Garcia
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