

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Lawrence Riff

Walter Mosley, Esq. (SBN 244169)
wm@waltermosleyesq.com
Carlos E. Montoya, Esq. (SBN 317057)
cem@waltermosleyesq.com
Nathalie Meza Contreras, Esq. (SBN 322545)
nmc@waltermosleyesq.com
Mosley & Associates
1055 W. 7th St., 33rd Floor
Los Angeles, California 90017
Telephone: (213) 232 - 3886

Attorney for Plaintiff,
Jorge Moreno

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

JORGE MORENO, an individual,

Plaintiff,

v.

KISS Enterprises, Inc. d/b/a Golden State
Roofing, a Nevada corporation; Arturo Rubio,
an individual; and DOES 1 through 20,
inclusive,

Defendants.

Case No. **22STCV18603**

COMPLAINT FOR DAMAGES FOR:

- 1. RETALIATION (LAB. CODE §98.6);**
- 2. RETALIATION (LAB. CODE §§1102.5);**
- 3. RETALIATION (LAB. CODE §6310);**
- 4. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 5. FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 1194);**
- 6. FAILURE TO PAY MINIMUM WAGES (CAL. LABOR CODE §§1182.12, 1194, 1194.2, 1197);**
- 7. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);**
- 8. FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES (CAL. LABOR CODE §2802)**
- 9. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);**

1
2
3
4
5
6
7
8
9
10
11
12

**10. FAILURE TO PROVIDE ITEMIZED
WAGE AND HOUR STATEMENTS (CAL.
LABOR CODE §§226, ET SEQ.);**
**11. WAITING TIME PENALTIES (CAL.
LABOR CODE §§201-203);**
**12. PRIVATE ATTORNEY GENERAL ACT
(CAL. LABOR CODE §2699, ET SEQ.);**
**13. UNFAIR COMPETITION (BUS. & PROF.
CODE §17200 ET SEQ.); AND**
14. CONVERSION;
15. FOR DECLARATORY JUDGMENT
DEMAND OVER \$25,000
[DEMAND FOR JURY TRIAL]

13
14
15

COMES NOW PLAINTIFF, Jorge Moreno, and for causes of action against the Defendants
and each of them, alleges as follows:

16
17
18
19
20

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Los Angeles because
Defendants' obligations and liability arise therein, because Defendants maintain offices and transact
business within Los Angeles County, and because the work that is the subject of this action was performed
by Plaintiff in Los Angeles County.

21
22
23
24
25
26
27
28

THE PARTIES

2. Plaintiff, Jorge Moreno (hereinafter "Plaintiff" and "Moreno"), is and at all times relevant
hereto was a resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
hereto, Defendant KISS Enterprises, Inc. doing business as Golden State Roofing (hereinafter referred to
as "Kiss Enterprises" and "Employers") was and is a corporation doing business and with its principal
executive office in the County of Los Angeles, State of California.

///

1 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
2 hereto, Defendant Arturo Rubio (hereinafter referred to as “Mr. Rubio” and “INDIVIDUAL
3 DEFENDANT”) was and is an individual doing business and residing in the County of Los Angeles,
4 State of California.

5 5. KISS Enterprises and Mr. Rubio are hereinafter collectively referred to as “Defendants.”

6 6. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
7 hereto, Employers owned and operated a private roofing company.

8 7. At all times relevant herein, Employers and DOES 1-20 were Plaintiff’s employers, joint
9 employers and/or special employers within the meaning of Government Code §§12926, subdivision (d),
10 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more
11 persons and are therefore subject to the jurisdiction of this Court.

12 8. At all times relevant herein, Employers and DOES 1-20 were Plaintiff’s employers, joint
13 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
14 Commission Order No. 16-2001 and are each any “employer or other person acting on behalf of an
15 employer” as such term is used in Labor Code section 558, and liable to Plaintiff on that basis.

16 9. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
17 hereto, Defendant Mr. Rubio was and is an individual resident of the County of Los Angeles, State of
18 California, and is hereinafter individually referred to by last name and as the “INDIVIDUAL
19 DEFENDANT.” The INDIVIDUAL DEFENDANT was Employers’ managers corporate agents,
20 supervisor, and/or employee.

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

28 ///

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

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

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

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

25 ///

26 ///

27 ///

28 ///

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

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

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

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

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

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

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

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

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

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

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

FACTUAL ALLEGATIONS

20. On or about July 14, 2020, Employers hired Mr. Moreno to work as a roofer. Mr. Moreno was a full-time, non-exempt employee, and performed all of Mr. Moreno's job duties satisfactorily before Mr. Moreno was wrongfully terminated on or about April 7, 2021.

21. Employers staffed about 15 foremen, who each oversaw approximately 5 roofers.

22. Throughout his employment, Mr. Moreno was primarily assigned to work for Foreman Arturo Rubio (“Mr. Rubio”).

23. Mr. Moreno worked full-time and five days per week when he had started working for Employers until his hours were cut upon making his first safety-issue complaint.

24. Mr. Moreno's hourly wage was approximately \$24.00.

///

**Employers Retaliated Against Mr. Moreno for Complaining About Unsafe Working
Conditions and Reimbursement for Business Expenses**

25. On or about September 2020, Mr. Moreno made his first complaint to Foreman Arturo Rubio (“Mr. Rubio”) about not having the proper equipment to move heavy materials for a particular job.

26. The job also required them to wear a safety tether while they worked six feet away from an elevated ledge.

27. Mr. Rubio answered Mr. Moreno’s complaint by telling him that they had to move the heavy materials by hand because setting up the proper machinery to bring the materials to the roof was too time-consuming.

28. Despite his safety concerns, Mr. Moreno continued to perform his duties and managed to finish the project by hand as he was instructed.

29. On or about November 2020, Mr. Moreno asked Mr. Rubio if his time driving his personal vehicle to pick up and deliver materials for various projects would be compensated. Throughout his employment, on or around 6 separate occasions, Mr. Rubio instructed Mr. Moreno to pick up or drop off company materials from the company’s worksites or offices and drive them to his assigned work site. On average these trips were approximately 10 miles each way, or 20 miles roundtrip.

30. Mr. Rubio responded Mr. Moreno by informing him that “driving time,” was not compensated and/or reimbursed.

31. Additionally, Mr. Rubio retaliated against Mr. Moreno by transferring him to work with another crew without any justification.

32. On or about January 2021, Mr. Moreno complained about the unavailability of drinking water at the work site to the onsite Foreman, Ezequiel Doe (“Ezequiel”).

33. Immediately following his complaint, Mr. Moreno noticed that he was scheduled to work fewer days. Mr. Moreno’s went from consistently being scheduled five days per week to being scheduled to approximately 3 days per week.

34. Mr. Moreno’s shortened schedule persisted for approximately three weeks before he was returned to his regular five days per week schedule.

///

1 35. On or about the end of February 2021, Mr. Moreno complained about having to pick up
2 prohibitively heavy rolls that were approximately ten feet long and two feet wide and weighing
3 approximately 800-1000 pounds, without the proper safety equipment.

4 36. Mr. Moreno knew that this kind of task required the use of machinery, such as a crane, in
5 order to lift the rolls.

6 37. Mr. Moreno raised a complaint with Mr. Rubio and told him that the union book said that
7 although they could lift up to 100 pounds individually, items that weighed 800 to 1000 pounds were too
8 heavy to lift by hand, even with the help of six other team members.

9 38. Mr. Rubio responded to Mr. Moreno's complaint in the same manner as previous times,
10 opting to prioritize profit margins over his personnel, saying that setting up the equipment would "take
11 too long."

12 39. Mr. Rubio forced Mr. Moreno and six other roofers to lift the roll despite Mr. Moreno's
13 safety complaints.

14 40. Employers, again, retaliated against Mr. Moreno for complaining by cutting his schedule
15 in half. This retaliatory conduct made Mr. Moreno apprehensive about making any more complaints about
16 or reporting unsafe working conditions.

17 41. Finally, on or around March 2021, Mr. Moreno made a complaint about how they were
18 forced to continue working past the hours they were scheduled.

19 42. Regularly, Employers insisted on having Mr. Moreno work past his regular work hours
20 without paying him his regular and overtime rate. Employers only paid Mr. Moreno's wages for clocked-
21 in hours, even though Employer forced Mr. Moreno to work before and past the listed hours.

22 43. When Mr. Moreno complained about his hours and wages, Ezequiel just laughed and told
23 him to sign out at 3:00 p.m., which was the time that Mr. Moreno had been scheduled to sign out.

24 44. Every time Employers forced Mr. Moreno to stay past his clocked-in hours without
25 compensation, Mr. Moreno reiterated his complaints. Again, Ezequiel simply laughed and told Mr.
26 Moreno to sign out.

27 ///

28 ///

1 45. Finally, after so many complaints, Mr. Moreno was told that he was laid off, under the
2 pretense that there was “not enough work.” However, other employees with less seniority were not laid
3 off.

4 **Employers Did Not Pay Mr. Moreno All Wages Owed for Hours Worked and Overtime**

5 46. For nearly every day that Mr. Moreno worked for Employers, he was not paid the entire
6 amount of wages owed to him for his time worked, nor was he paid overtime for hours he worked beyond
7 eight hours.

8 47. Mr. Moreno was typically scheduled to work either between 6:00 a.m. and 3:00 p.m., or
9 7:00 a.m. and 4:00 p.m. However, Mr. Moreno was always instructed to arrive at work to begin preparing
10 work materials 15 to 20 minutes before sign-in time.

11 48. Moreover, Mr. Moreno was almost always consistently made to stay 25 to 35 minutes
12 after his scheduled sign-out time, but would never be paid beyond eight hours, despite the fact that the
13 time he spent coming in earlier and leaving later than his respective sign-in and sign-out times put him
14 beyond eight hours on any given workday.

15 49. Whenever Mr. Moreno made attempts to remind the foremen that it was time to sign out,
16 he would often have his work hours reduced and he would not be called back to work.

17 **Employers Did Not Allow Mr. Moreno to Take any Reset Breaks**

18 50. Employers did not allow Mr. Moreno to take 10-minute rest breaks at any time during his
19 employment.

20 51. Mr. Moreno typically worked over eight hours on any given work day, so he should have
21 been given two 10-minute rest breaks per day.

22 52. Defendants’ conduct described herein was undertaken, authorized, and/or ratified by
23 Defendants’ officers, directors and/or managing agents, including, but not limited to INDIVIDUAL
24 DEFENANT and those identified herein as DOES 1 through 20, who were authorized and empowered to
25 make decisions that reflect and/or create policy for Defendants. The aforementioned conduct of said
26 managing agents and individuals was therefore undertaken on behalf of Defendants who further had
27 advanced knowledge of the actions and conduct of said individuals whose actions and conduct were
28

1 ratified, authorized, and approved by managing agents whose precise identities are unknown to Plaintiff
2 at this time and are therefore identified and designated herein as DOES 1 through 20, inclusive.

3 53. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
4 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
5 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
6 counseling and treatment, and past and future lost wages and benefits.

7 54. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
8 commissions, benefits and loss or diminution of earning capacity.

9 55. Plaintiff claims general damages for emotional and mental distress and aggravation in a
10 sum in excess of the jurisdictional minimum of this Court.

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

16
17 **FIRST CAUSE OF ACTION**

18 **RETALIATION**

19 **LABOR CODE §98.6**

20 **AGAINST ALL DEFENDANTS**

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

23 58. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against
24 an employee for political activities; for complaining that he or she is owed unpaid wages, for
25 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
26 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's
27 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
28 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private

1 Attorneys General Act;” and for exercising “any rights afforded him or her” under the Labor Code.
2 Thus, Section 98.6 prohibits an employer from discharging or in any manner discriminating or
3 retaliating against an employee who, among other things, has exercised his rights under that Chapter,
4 including the right to take meal breaks, and/or make a written or oral complaint that he or she is owed
5 unpaid wages. An employee who has been discharged or retaliated against in violation of Labor Code
6 §98.6 is entitled to recovery of a civil penalty against the employer in an amount not exceeding ten
7 thousand dollars (\$10,000.00) for each violation of that section.

8 59. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was
9 terminated from Plaintiff’s employment with Defendants as a result of Plaintiff’s complaints about not
10 being paid all wages due, not receiving meal and/or rest breaks, exercising Plaintiff’s right to take meal
11 and/or rest breaks. Defendants’ retaliatory animus is evidenced by, among other things, the following
12 facts: Defendants retaliated against Plaintiff when he complained about not being paid for using his
13 own car to deliver materials to and from work sites for the Defendants, not being paid overtime for
14 hours worked beyond eight, and not being paid for the times he started work before clocking into work
15 and continued working after clocking out of work. Defendants retaliated against Plaintiff in each of
16 these instances by reducing his work hours and/or discharging Plaintiff.

17 60. Defendants’ conduct described herein was undertaken, authorized, and/or ratified by
18 Defendants, and Defendants’ officers and/or managing agents, including, and those identified herein as
19 DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create policy
20 for Defendants. The aforementioned conduct of said managing agents and individuals was therefore
21 undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions and
22 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
23 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore
24 identified and designated herein as DOES 1-20, inclusive.

25 61. The damage allegations of the above preceding Paragraphs, inclusive, are herein
26 incorporated by reference.

27 62. As a result of Defendants’ actions, Plaintiffs are each entitled to a civil penalty not to
28 exceed \$10,000.00 for Defendants’ violations of Labor Code §§ 98.6 and/or 1102.

1 63. Because the acts taken toward Plaintiff were carried out by managerial employees acting
2 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiffs' rights
3 and in order to injure and damage them, Plaintiffs requests that punitive damages be levied against
4 Defendants and each of them, in sums in excess of the jurisdictional minimum of this court.

5
6 **SECOND CAUSE OF ACTION**
7 **FOR RETALIATION**
8 **IN VIOLATION OF LABOR CODE §§ 1102.5**
9 **AGAINST ALL DEFENDANTS**

10 64. Plaintiff re-alleges and incorporates by reference all Paragraphs, inclusive, as though
11 set forth in full herein.

12 65. At all relevant times, Labor Code §1102.5(a) was in full force and effect, and was
13 binding on Defendants. This law prohibits an employer, or any person acting on behalf of the employer,
14 from discharging an employee or in any manner discriminating or retaliating against, or taking any
15 adverse action against an employee because, among other things, the employee disclosed information
16 to a government or law enforcement agency, or to a person with authority over the employee or another
17 employee who has the authority to investigate, discover, or correct the violation or noncompliance, if
18 the employee has reasonable cause to believe that the information discloses a violation of state or
19 federal statute, or violation of or noncompliance with a local, state, or federal rule or regulation,
20 regardless of whether disclosing the information is part of the employee's job duties.

21 66. Plaintiff reported violations of employment practices to his supervisors when
22 Defendants required him and other employees to violate union health and safety protocols.

23 67. Defendants subjected Plaintiff to the adverse employment action, including without
24 limitation, termination because Plaintiff reported the violations of employment practices to her
25 supervisors.

26 68. Plaintiff's reports of these violations were a motivating and contributing factor for the
27 adverse employment actions by Defendants against Plaintiff.

28 ///

1 69. Said conduct violates Labor Code Labor Code §1102.5, and such violations were a
2 proximate cause in Plaintiffs' damages as hereinabove stated.

3 70. The damage allegations of all above preceding Paragraphs, inclusive, are herein
4 incorporated by reference.

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

11
12 **THIRD CAUSE OF ACTION**

13 **RETALIATION**

14 **LABOR CODE §6310**

15 **AGAINST ALL DEFENDANTS**

16 1. Plaintiff re-alleges and incorporates by reference all Paragraphs, inclusive, as though set forth in full
17 herein.

18 2. At all relevant times, Labor Code §6310 was in full force and effect and was binding on
19 Defendants. This law prohibits an employer, from among other things, threatening to discharge, or in any
20 manner discriminate or retaliate against an employee who has exercised his or her rights by making an
21 oral or written complaint, in good faith, to his or her employer regarding working conditions, or work
22 practices in his or her place of employment that the employee reasonably believes are unsafe.

23 3. The public policy underlying Labor Code §6310 is not merely to aid the reporting of actual
24 safety violations; it is to prevent retaliation against those who in good faith report working conditions
25 they believe to be unsafe.

26 4. Any employee who has been subject to any of the aforementioned adverse employment
27 actions shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by
28 the acts of the employer.

1 5. Any employer who willfully refused to rehire, promote, or otherwise restore an employee
2 or former employee who has been determined to be eligible for rehiring or promotion is guilty of a
3 misdemeanor.

4 6. Plaintiff made a good faith oral complaint about unsafe working conditions at his
5 workplace. Plaintiff made the complaints based upon reasonable belief that Defendants were requiring
6 Plaintiff and other employees to violate union health and safety protocols in executing their construction
7 projects.

8 7. Defendants violated Labor Code §6310 by retaliating against and ultimately wrongfully
9 terminating Plaintiff for reporting unsafe working conditions in the workplace.

10 8. Plaintiff is informed and believes, and based thereupon alleges, that he was discharged
11 from his employment and/or otherwise discriminated and retaliated against by Defendants, including
12 Defendants' retaliatory animus is evidenced by the aforementioned facts.

13 9. Defendants' conduct described herein was undertaken authorized, and/or ratified by
14 Defendants, Defendants' officers and/or managing agents, and those identified herein as DOES 1-20,
15 who were authorized and empowered to make decisions that reflect and/or create policy for Defendants.
16 The aforementioned conduct of said managing agents and individuals was therefore undertaken on behalf
17 of Defendants. Defendants further had advanced knowledge of the actions and conduct of said individuals
18 whose actions and conduct were ratified, authorized, and approved by managing agents whose precise
19 identities are unknown to Plaintiff at this time and therefore are identified and designated herein as DOES
20 1-20, inclusive.

21 10. In committing the acts alleged herein, Defendants acted knowingly and willfully, with the
22 wrongful and illegal deliberate intention of causing injury to Plaintiff. Defendants committed such acts
23 with improper motives amounting to malice, and such acts were carried out in conscious disregard of
24 Plaintiff's rights. Plaintiff is thus entitled to received nominal, actual, compensatory, punitive, and
25 exemplary damages in amounts according to proof at trial.

26 11. As a result of Defendants' actions, Plaintiff has suffered and continued to suffer substantial
27 losses related to loss of wages. Plaintiff is entitled to recover costs and expenses in seeking to compel
28

1 Defendants to fully perform their obligation under state law and Plaintiff's respective damage amounts
2 according to proof at trial.

3 12. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
4 and special damages, including emotional distress, anxiety, and depression, as well as medical expenses,
5 expenses for psychological counseling and treatment. Plaintiff claims general damages for emotional and
6 mental distress and aggravation in a sum in excess of the jurisdictional minimum of this Court.

7 13. Pursuant to this Court's authority, Plaintiff requests costs in prosecuting this action,
8 including expert fees and any other relief the court deems proper.

9
10 **FOURTH CAUSE OF ACTION**
11 **FOR WRONGFUL TERMINATION**
12 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
13 **AGAINST ALL DEFENDANTS**

14 14. Plaintiff re-alleges and incorporates by reference all preceding Paragraphs, inclusive, as
15 though set forth in full herein.

16 15. At all relevant times mentioned in this complaint, Labor Code §98.6 was in full force
17 and effect and was binding upon Defendants and each of them. This law prohibits retaliation against
18 employees who complain about unpaid wages and/or attempt to exercise the rights under the Labor
19 Code. Labor Code §98.6 reflects the State's broad public policy interest in protecting the rights of
20 individual employees and job applicants who could not otherwise afford to protect themselves from
21 violations of the Labor Code.

22 16. At all relevant times mentioned in this complaint, Labor Code §1102.5 was in full force
23 and effect and was binding upon Defendants and each of them. This law prohibits retaliation against
24 employees who disclose reasonable suspicions of illegal activity or conduct by their employer to a
25 government or law enforcement agency, or to employer itself. Labor Code §1102.5 reflects the State's
26 broad public policy interest in encouraging workplace "whistleblowers," who may without fear of
27 retaliation report concerns regarding an employer's suspected illegal conduct, irrespective of whether
28 the reporting is made to governmental agencies or to the employer itself, and irrespective of whether

1 the employee's suspicions are correct that the challenged conduct actually violates some law. Indeed,
2 the law in California is that an employee's good faith but mistaken belief in the illegality of his co-
3 workers', supervisor's, and employer's conduct is protected from employer retaliation in the whistle-
4 blowing context.

5 17. At all relevant times mentioned in this complaint, Labor Code §6310 was in full force
6 and effect and was binding upon Defendants and each of them. This law prohibits an employer, from
7 among other things, threatening to discharge, or in any manner discriminate or retaliate against an
8 employee who has exercised his or her rights by making an oral or written complaint, in good faith, to
9 his or her employer regarding working conditions, or work practices in his or her place of employment
10 that the employee reasonably believes are unsafe.

11 18. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's
12 engagement in protected activities under Labor Code §§ 98.6 and/or 1102.5 was a proximate cause in
13 Plaintiff's damages as stated below.

14 19. The damage allegations of the above preceding Paragraphs, inclusive, are herein
15 incorporated by reference.

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

22
23 **FIFTH CAUSE OF ACTION**
24 **FOR FAILURE TO PAY WAGES DUE**
25 **LABOR CODE §§201, 1182.12, 1194, 1194.2**
26 **AGAINST ALL DEFENDANTS**

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

1 22. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and
2 required by 8 Code of Regulations § , as set forth hereinabove. As alleged herein, Defendants routinely
3 failed to pay Plaintiff for hours worked beyond eight in a day or 40 per week.

4 23. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510,
5 and the applicable Code of Regulations, and Industrial Welfare Commission Order No. 16-2001.

6 24. Plaintiff has been deprived of Plaintiff's/her rightfully earned compensation as a direct
7 and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to
8 recover such amounts, plus interest thereon, attorneys' fees and costs.

9 25. Labor Code §558(a) provides that any person acting on behalf of an employer who
10 violates, or causes to be violated, overtime rules pay a civil penalty in the amount of \$50 for each
11 underpaid employee for each pay period in which the employee was underpaid in addition to an amount
12 sufficient to recover underpaid wages. Also, under Labor Code §558(a) for each subsequent violation,
13 the person acting on behalf of an employer is liable in the amount of \$100 for each underpaid employee
14 for each pay period for which the employee was underpaid in addition to an amount sufficient to recover
15 the underpaid wages.

16 26. In addition to the unpaid wages, Plaintiff is entitled to civil penalties in this amount stated
17 above based upon Defendants' underpayment of minimum and overtime wages. Within the one year
18 immediately preceding the filing of this Complaint, Defendants, and each of them, violated Labor Code
19 §558 on 38 pay periods, the first of which Defendants are penalized \$50.00, and the remainder of which
20 Defendants are penalized \$100.00 each, for a total due in Labor Code §558 penalties of \$3,750.00.

21 27. Under California Labor Code 558.1(a), "any employer or other person acting on behalf of
22 an employer who violates or causes to be violated, any provision regulating minimum wages or hours
23 and days of work in any order of the of the Industrial Welfare Commission...may be held liable as the
24 employer for such violation."

25 28. California Labor Code § 558.1(b) limits "other person acting on behalf of an employer"
26 to "a natural person who is an owner, officer, or managing agent of the employer."

27 29. California Labor Code § 558.1(b) states that "managing agent of the employer" has the
28 same meaning as in subdivision (b) of Section 3294 of the Civil Code.

1 30. Therefore, Individual Defendant, alongside Employers, will also be found liable to
2 Plaintiff for failure and refusal to pay Plaintiff for wages earned.

3
4 **SIXTH CAUSE OF ACTION**
5 **FOR FAILURE TO PAY MINIMUM WAGES**
6 **LABOR CODE §§1182.12, 1194, 1194.2, 1197**
7 **AGAINST ALL DEFENDANTS**

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

10 32. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law is
11 unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid
12 hours exceeded the minimum wage. Under California law, Plaintiff is entitled to at least the minimum
13 wage for every hour worked.

14 33. At all relevant times, Employers failed and refused to pay Plaintiff the legal minimum
15 wage in the State of California, as set forth in Labor Code §1182.12.

16 34. Despite this, Defendants failed to pay Plaintiff the requisite minimum wage in each of the
17 following ways in the four years immediately preceding the filing of this complaint:

18 a. From July 14, 2020 to April 7, 2021, Plaintiff worked approximately 44 hours per
19 week, without being paid for starting 20 minutes early and staying to work 30 minutes after clocking out.
20 Therefore, Plaintiff is owed \$2,118.36 calculated at 4.17 hours per week for 24 weeks at \$13.00 per hour
21 from July 14, 2020 to December 31, 2020, plus 4.17 hours per week for 14 weeks at \$14.00 per hour
22 from January 1, 2021 to April 7, 2021.

23 35. Thus, for the entirety of the time periods set forth above, Plaintiff is owed unpaid minimum
24 wages in the amount of \$2,118.36.

25 36. Defendants' failure to pay the legal minimum wage to Plaintiff as alleged herein is
26 unlawful and creates entitlement, pursuant to Labor Code §1197, to recovery by Plaintiff in a civil action
27 for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference between
28 the straight time compensation paid and applicable minimum wage, including interest thereon.

1 37. Pursuant to Labor Code §1194, Plaintiffs requests that the court award reasonable
2 attorneys' fees and costs incurred by Plaintiffs in this action.

3 38. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated
4 damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an
5 additional \$2,118.36, plus interest thereon

6 39. Under California Labor Code 558.1(a), "any employer or other person acting on behalf of
7 an employer who violates or causes to be violated, any provision regulating minimum wages or hours
8 and days of work in any order of the of the Industrial Welfare Commission...may be held liable as the
9 employer for such violation."

10 40. California Labor Code § 558.1(b) limits "other person acting on behalf of an employer"
11 to "a natural person who is an owner, officer, or managing agent of the employer."

12 41. California Labor Code § 558.1(b) also states that "managing agent of the employer" has
13 the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

14 42. Therefore, Individual Defendant would be liable to Plaintiff alongside Employers for
15 failure to pay minimum wages owed to Plaintiff.

16
17 **SEVENTH CAUSE OF ACTION**

18 **FOR FAILURE TO PAY OVERTIME COMPENSATION**

19 **LABOR CODE §§510, 1194**

20 **AGAINST ALL DEFENDANTS**

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

23 44. Labor Code §510 requires employers to pay their non-exempt employees one and one-half
24 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40
25 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12
26 hours in a single day. It also requires employers to pay their non-exempt employees overtime
27 compensation for the first eight hours of work done on the seventh consecutive day of work done in any
28

1 work week and double-time compensation for any work done beyond the first eight hours on the seventh
2 consecutive day of work.

3 45. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
4 compensation required by Labor Code §510, the applicable Code of Regulation section, and Industrial
5 Welfare Commission Order No. 16-2001.

6 46. At all relevant times, Defendants required Plaintiff to work more than eight hours per day
7 and/or more than 40 hours per workweek. Despite this, Defendants failed to pay Plaintiff the requisite
8 overtime wages in each of the following ways in the four years immediately preceding the filing of this
9 complaint:

10 a. From approximately July 14, 2020, through December 31, 2020, Plaintiff worked
11 an average of 44 hours per week, at an hourly rate of \$24.00 less the minimum wage portion which
12 Plaintiff has already claimed in the previous cause of action, and is therefore owed \$11.00 per hour.
13 During this time period, Plaintiff worked an average of 4.17 hours of overtime each week, for 24 weeks.
14 Plaintiff was not paid Plaintiff's overtime premium for 100.08 hours. Therefore, Plaintiff is owed \$23.00
15 for each of those 100.08 hours, totaling \$2,301.84.

16 b. From approximately January 1, 2021 through April 7, 2021, Plaintiff worked an
17 average of 44 hours per week, at an hourly rate of \$24.00. During this time period, Plaintiff worked an
18 average of 4.17 hours of overtime each week, for 14 weeks. Plaintiff was not paid Plaintiff's overtime
19 premium for 58.38 hours. Therefore, Plaintiff is owed \$22.00 for each of those 58.38 hours, totaling
20 \$1,284.36.

21 47. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
22 Code §510, the applicable Code of Regulations section and Industrial Welfare Commission Order No.
23 16-2001.

24 48. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages
25 of \$3,586.20.

26 49. Plaintiff has been deprived of Plaintiff's rightfully earned overtime compensation as a
27 direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is
28 entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

1 50. Under California Labor Code 558.1(a), “any employer or other person acting on behalf of
2 an employer who violates or causes to be violated, any provision regulating minimum wages or hours
3 and days of work in any order of the of the Industrial Welfare Commission...may be held liable as the
4 employer for such violation.”

5 51. California Labor Code § 558.1(b) limits “other person acting on behalf of an employer”
6 to “a natural person who is an owner, officer, or managing agent of the employer.”

7 52. California Labor Code § 558.1(b) also states that “managing agent of the employer” has
8 the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

9 53. Therefore, Individual Defendant will also be liable alongside Employers for failure to pay
10 Plaintiff his overtime wages.

11
12 **EIGHTH CAUSE OF ACTION**
13 **FOR FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES**
14 **LABOR CODE §2802**
15 **AGAINST ALL DEFENDANTS**

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

18 55. Pursuant to Labor Code §450(a), “no employer...may compel or coerce any employee. . .
19 to patronize Plaintiff’s or her employer, or any other person, in the purchase of any thing of value.”

20 56. Pursuant to Labor Code §2802(a), “an employer shall indemnify Plaintiff’s or her
21 employee for all necessary expenditures or losses incurred by the employee in direct consequence of the
22 discharge of Plaintiff’s or her duties, or of Plaintiff’s or her obedience to the directions of the employer.”

23 57. Plaintiff was required by Defendants to expend Plaintiff’s personal funds because of the
24 duties required by Defendants, as alleged hereinabove.

25 58. Pursuant to Labor Code §2802(a), Defendants are legally required to reimburse Plaintiff
26 for all necessary expenditures incurred in the performance of her duties.

27 59. Defendants have failed and refused to reimburse Plaintiff for all necessary business
28 expenditures, including Plaintiff’s mileage when required to do shopping errands for Plaintiff’s employer.

1 60. As a proximate result of the aforementioned violations of Labor Code §§450(a) and
2 2502(a), Plaintiff is entitled to recover from Defendants the unpaid balance of all of the necessary
3 aforementioned expenditures.

4 61. As a proximate result of the aforementioned violations of Labor Code §§450(a) and
5 2502(a), Plaintiff has been damaged in an amount according to proof at the time of trial, but estimated as
6 follows: Defendants failed to reimburse Plaintiff mileage for approximately six (6) separate trips for 20
7 miles each trip.

8 62. Pursuant to Labor Code §2802(b), Plaintiff requests that the Court award interest at the
9 same rate as judgments in civil actions, accruing from the date on which Plaintiff incurred the necessary
10 expenditure or loss.

11 63. Pursuant to Labor Code §2802(c), Plaintiff requests that the Court award Plaintiff
12 reasonable attorneys' fees and costs incurred in this action.

13 64. Under California Labor Code 558.1(a), "any employer or other person acting on behalf of
14 an employer who violates or causes to be violated, any provision regulating minimum wages or hours
15 and days of work in any order of the of the Industrial Welfare Commission...may be held liable as the
16 employer for such violation."

17 65. California Labor Code § 558.1(b) limits "other person acting on behalf of an employer"
18 to "a natural person who is an owner, officer, or managing agent of the employer."

19 66. California Labor Code § 558.1(b) also states that "managing agent of the employer" has
20 the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

21 67. Therefore, Individual Defendant will also be held liable alongside Employers for failure
22 to indemnify Plaintiff for his necessary business expenses.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

NINTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE MEAL AND REST BREAKS
LABOR CODE §§226.7, 512
AGAINST ALL DEFENDANTS

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

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

70. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted rest period of not less than 10 minutes, for every period worked in excess of four hours.

71. In the four years last past, Plaintiff regularly worked in excess of 8 hours per day and was thereby entitled to take uninterrupted 30-minute meal periods and 10-minute rest periods on each day of work.

72. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the applicable sections of the applicable Code of Regulations section, and Industrial Welfare Commission Order No. 16-2001, as follows:

73. From approximately July 14, 2020 through April 7, 2021, Plaintiff's statutory 10-minute rest periods were interrupted and cut short approximately 5 times per week for 38 weeks, or on approximately 190 days (5 days per week for 38 weeks).

74. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of the applicable Code of Regulations section and Industrial Welfare Commission Order No. 16-2001. Consequently, Plaintiff is owed one hour of pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each day that Plaintiff was denied such rest periods, calculated as follows:

a. From approximately July 14, 2020 through April 7, 2021, Defendants failed to provide Plaintiff with the statutory rest period for those days on which Plaintiff worked at least four hours on approximately 190 separate days. Consequently, Plaintiff is owed one hour of pay at \$24.00 for each

1 day, or \$4,560.00, plus interest thereon, for unpaid rest periods. Thus, Plaintiff is owed a total of
2 \$4,560.00, plus interest thereon, for unpaid rest periods for this time period.

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

5 76. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
6 such amounts in the combined amount of \$4,560.00, pursuant to Labor Code §226.7(b), plus interest
7 thereon and costs of suit.

8 77. Under California Labor Code 558.1(a), "any employer or other person acting on behalf of
9 an employer who violates or causes to be violated, any provision regulating minimum wages or hours
10 and days of work in any order of the of the Industrial Welfare Commission...may be held liable as the
11 employer for such violation."

12 78. California Labor Code § 558.1(b) limits "other person acting on behalf of an employer"
13 to "a natural person who is an owner, officer, or managing agent of the employer."

14 79. California Labor Code § 558.1(b) also states that "managing agent of the employer" has
15 the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

16 80. Thus, Individual Defendant will be liable to Plaintiff alongside Employers for unpaid meal
17 and rest breaks.

18
19 **TENTH CAUSE OF ACTION**

20 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**

21 **LABOR CODE §§226 ET SEQ.**

22 **AGAINST ALL DEFENDANTS**

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

25 82. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
26 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
27 total deductions and net wages earned. An employer who violates these code sections is liable to its
28 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the

1 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
2 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
3 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
4 at all.

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

8 84. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
9 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
10 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
11 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
12 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
13 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying
14 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not
15 one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none
16 of the required information, including hours actually worked.

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

18 86. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
19 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
20 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
21 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
22 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
23 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
24 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
25 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

26 87. Plaintiff was paid on a weekly basis, and therefore Defendants violated Labor Code §226
27 approximately 38 times during the last year that Plaintiff worked for Defendants. Consequently,
28

1 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
2 amount of \$3,750.00, whichever is greater.

3 88. In addition thereto, Plaintiff is entitled civil penalties pursuant to Labor Code §226.3 in
4 the amount of \$37,250.00 (\$250.00 + \$1,000.00 x 37 subsequent pay periods).

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

8 90. Under California Labor Code 558.1(a), "any employer or other person acting on behalf of
9 an employer who violates or causes to be violated, any provision regulating minimum wages or hours
10 and days of work in any order of the of the Industrial Welfare Commission...may be held liable as the
11 employer for such violation."

12 91. California Labor Code § 558.1(b) limits "other person acting on behalf of an employer"
13 to "a natural person who is an owner, officer, or managing agent of the employer."

14 92. California Labor Code § 558.1(b) also states that "managing agent of the employer" has
15 the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

16 93. Therefore, Individual Defendant will be liable to Plaintiff alongside Employers for failure
17 to provide itemized wage and hour statements.

18
19 **ELEVENTH CAUSE OF ACTION**
20 **FOR WAITING TIME PENALTIES**
21 **LABOR CODE §§201-203**
22 **AGAINST ALL DEFENDANTS**

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

25 95. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
26 other compensation due immediately upon termination or within 72 hours of resignation, as required.
27 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest
28 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of

1 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-
2 203.

3 96. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
4 203.

5 97. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
6 is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and
7 more than \$5,760.00 in wait time penalties, calculated based on 30 days of regular weekly wages.

8 98. Based on Defendants' conduct as alleged herein, Defendants are liable for \$5,760.00 in
9 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
10 fees and costs.

11
12 **TWELFTH CAUSE OF ACTION**
13 **FOR PRIVATE ATTORNEY GENERAL ACT**
14 **LABOR CODE §2699**
15 **AGAINST ALL DEFENDANTS**

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

18 100. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against
19 Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties
20 for Defendants' violations of the California Labor Code.

21 101. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and
22 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as
23 previously pleaded in this Complaint.

24 102. On April 5, 2022, more than 63 calendar days before filing this Complaint, Plaintiff
25 provided written notice by certified mail to the Labor and Workforce Development Agency and to
26 Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
27 satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ 98.6,
28

201, 202, 203, 226, 226.7, 510, 512, 1102.5, 1182.12, 1194, 1194.2, 1197, 2802, and 6310 each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

103. As of the filing of this Complaint, Plaintiff has not received any response from the Labor and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

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

105. These penalties are recoverable for Plaintiff alone totaling approximately \$7,500.00. Plaintiff may also seek these same penalties on behalf of all other aggrieved employees.

106. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

107. Under California Labor Code 558.1(a), "any employer or other person acting on behalf of an employer who violates or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the of the Industrial Welfare Commission...may be held liable as the employer for such violation."

108. California Labor Code § 558.1(b) limits "other person acting on behalf of an employer" to "a natural person who is an owner, officer, or managing agent of the employer."

109. California Labor Code § 558.1(b) also states that "managing agent of the employer" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

110. Therefore, Individual Defendant is also liable to Plaintiff alongside Employers for all claims that arise out of the Private Attorney General Act.

///

///

///

1 **THIRTEENTH CAUSE OF ACTION**
2 **FOR UNFAIR COMPETITION**
3 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**
4 **AGAINST ALL DEFENDANTS**

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

7 112. Defendants' violations of the applicable Code of Regulations section, Industrial Welfare
8 Commission Order No. 16-2001, Labor Code §§201-203, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2,
9 1197, 1198.5, 2699, and other applicable provisions, as alleged herein, including Defendants' failure and
10 refusal to pay minimum wages, overtime wages, Defendants' failure to provide meal and rest breaks,
11 Defendants' failure to provide timely and accurate wage and hour statements, Defendants' failure to pay
12 compensation due in a timely manner upon termination or resignation, and Defendants' failure to
13 maintain complete and accurate payroll records for the Plaintiff, constitute unfair business practices in
14 violation of Business & Professions Code §§17200, et seq.

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

18 114. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent
19 injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore
20 to the Plaintiff the overtime compensation and other monies and benefits unlawfully withheld from
21 Plaintiff.

22
23 **FOURTEENTH CAUSE OF ACTION**
24 **FOR CONVERSION**
25 **LABOR CODE §1198.5**
26 **AGAINST ALL DEFENDANTS**

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

1 116. Plaintiff's right to receive full compensation for Plaintiff's work vested when Plaintiff's
2 work was performed.

3 117. Unpaid wages constitute a property right which, at all times relevant hereto, was held by
4 Plaintiff.

5 118. As set forth herein, Defendants wrongfully withheld, and failed and refused to pay
6 Plaintiff the full amount of compensation to which Plaintiff was entitled, as alleged herein.

7 119. Defendants converted said compensation and money as part of an intentional and
8 deliberate scheme to maximize profits, at the expense of Plaintiff.

9 120. Plaintiff has been injured by Defendants' intentional conversion of such wages,
10 compensation, and other monies, and is entitled to all monies converted by Defendants, with interest
11 thereon as well as any and all profits, whether direct or indirect, which Defendants acquired by their
12 unlawful conversion.

13 121. The amount converted by Defendants from Plaintiff is a specific sum, equal to the
14 amount Defendants failed to pay Plaintiff, as detailed in the preceding causes of action.

15 122. As a result of Defendant's actions, Plaintiff has suffered and will continue to suffer
16 general and special damages, including severe and profound pain and emotional distress, anxiety,
17 depression, headaches, tension, and other physical ailments, as well as medical expenses, expenses for
18 psychological counseling and treatment.

19 123. Plaintiff claims general damages for emotional and mental distress and aggravation in a
20 sum in excess of the jurisdictional minimum of this court.

21 124. Because the acts taken toward Plaintiff was carried out by managerial employees acting
22 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's rights
23 and in order to injure and damage her, Plaintiff requests that punitive damages be levied against
24 Defendants and each of them, in sums in excess of the jurisdictional minimum of this court.

25 125. The foregoing conduct of Defendants individually, or by and through their managing
26 agents, was intended by Defendants to cause injury to Plaintiff or was despicable conduct carried on by
27 Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel
28 and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice, oppression,

1 or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive damages in an amount
2 appropriate to punish or make an example of Defendants.

3
4 **FIFTEENTH CAUSE OF ACTION**
5 **FOR DECLARATORY JUDGMENT**
6 **AGAINST ALL DEFENDANTS**

7 126. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
8 though set forth in full herein.

9 127. Government Code §12920 sets forth the public policy of the State of California as
10 follows:

11 It is hereby declared as the public policy of this state that it is necessary to
12 protect and safeguard the right and opportunity of all persons to seek,
13 obtain, and hold employment without discrimination or abridgment on
14 account of race, religious creed, color, national origin, ancestry, physical
disability, mental disability, medical condition, genetic information,
marital status, sex, gender, gender identity, gender expression, age, or
sexual orientation.

15 It is recognized that the practice of denying employment opportunity and
16 discriminating in the terms of employment for these reasons foments
domestic strife and unrest, deprives the state of the fullest utilization of its
17 capacities for development and advancement, and substantially and
adversely affects the interests of employees, employers, and the public in
18 general.

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

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

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

25 128. Government Code §12920.5 embodies the intent of the California legislature and states:

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

1 Constitution.

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

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

7 130. An actual controversy has arisen and now exists between Plaintiff and Defendants
8 concerning their respective rights and duties as it is believed that Defendants may allege that they did
9 not discriminate and retaliate against Plaintiff; that Plaintiff was not terminated as a result of Plaintiff's
10 engagement in protected activities. Plaintiff contends that Defendants did discriminate and retaliate
11 against Plaintiff on the basis of Plaintiff's engagement in protected activities; and that Plaintiff was
12 retaliated against and, ultimately wrongfully terminated as a result of Plaintiff's engagement in
13 protected activities. Plaintiff is informed and believes, and on that basis alleges, that Defendants shall
14 dispute Plaintiff's contentions.

15 131. Pursuant to Code of Civil Procedure §1060, Plaintiff desires a judicial determination of
16 Plaintiff's rights and duties, and a declaration that Defendants harassed Plaintiff on the basis of
17 Plaintiff's engagement in protected activities.

18 132. Pursuant to Code of Civil Procedure §1060, Plaintiff seeks a judicial determination of
19 Plaintiff's rights and duties, and a declaration that Plaintiff's engagement in protected activities was a
20 substantial motivating factor in the decision to subject Plaintiff to the aforementioned adverse
21 employment actions.

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

27 ///

28 ///

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

135. Government Code §12965(b) provides that an aggrieved party, such as the Plaintiff herein, may be awarded reasonable attorney's fees and costs: "In civil actions brought under this section, the court, in its discretion, may award to the prevailing party, including the department, reasonable attorney's fees and costs, including expert witness fees." Such fees and costs expended by an aggrieved party may be awarded for the purpose of redressing, preventing, or deterring discrimination and harassment.

PRAYER FOR RELIEF

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

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

2. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than \$10,000.00;

3. For civil penalties pursuant to Labor Code § 1102.5 in the amount of no less than \$10,000.00;

4. For payment of unpaid minimum wage compensation pursuant to Labor Code §§1182.12, 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 16-2001, in the amount of no less than \$2,118.36;

5. For liquidated damages pursuant to Labor Code §1194.2 in the amount of \$2,118.36, plus interest;

6. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194, Industrial Welfare Commission Order No. 16-2001, and 8 Code of Regulations §, in the amount of no less than \$3,586.20;

1 7. For statutory penalties or damages pursuant to Labor Code §558 in the amount of no less
2 than \$3,750.00;

3 8. For reimbursement of necessary business expenses pursuant to Labor Code §2802, in the
4 amount according to proof at trial;

5 9. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512,
6 in the amount of no less than \$4,560.00;

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

8 11. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
9 less than \$37,250.00;

10 12. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
11 than \$5,760.00;

12 13. For statutory penalties pursuant to Labor Code §2699(f), in the amount of no less than
13 \$7,500.00 on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants' aggrieved
14 employees, estimated to exceed \$500,000.00;

15 14. For statutory penalties pursuant to Labor Code §1198.5 in the amount of no less than
16 \$750.00;

17 15. For prejudgment interest on each of the foregoing at the legal rate from the date the
18 obligation became due through the date of judgment in this matter;

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

21 16. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
22 condemning Defendants' discriminatory practices;

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

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

27 19. For injunctive relief compelling Defendants to report to federal and state authorities wages
28 earned by Plaintiff, and other employees, and pay all state and federal taxes owing, employer matching

1 funds, unemployment premiums, social security, Medicare, and workers' compensation premiums, all
2 this in an amount according to the proof;

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

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

8 22. For post-judgment interest; and

9 23. For any other relief that is just and proper.

10
11 DATED: June 6, 2022

MOSLEY AND ASSOCIATES

12
13 By: 

14 _____
15 Walter Mosley, Esq.
16 Carlos E. Montoya, Esq.
17 Nathalie Meza Contreras, Esq.
18 Attorneys for Plaintiff
19 Jorge Moreno

20
21 **JURY TRIAL DEMANDED**

22 Plaintiff Jorge Moreno demands trial of all issues by jury.

23 DATED: June 6, 2022

MOSLEY AND ASSOCIATES

24 By: 

25 _____
26 Walter Mosley, Esq.
27 Carlos E. Montoya, Esq.
28 Nathalie Meza Contreras, Esq.
Attorneys for Plaintiff
Jorge Moreno