

Tizoc Perez-Casillas, Esq. (SBN 309981)
Ruben Guerra, Esq. (SBN 291446)
GUERRA & CASILLAS LLP
617 South Olive Street, Suite 422
Los Angeles, California 90014
Telephone: (213) 437-9495
Facsimile: (213) 342-5503
tizoc@guerracasillas.com
ruben@guerracasillas.com

Attorneys for Plaintiff,
EVELINE GONZALEZ, KAIL DE LEON,
LETICIA MARTINEZ, and CLAUDIA CARDIEL

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

EVELINE GONZALEZ, an individual; KAIL
DE LEON, an individual; LETICIA
MARTINEZ, an individual; CLAUDIA
CARDIEL, an individual,

Plaintiff,

v.

OVERSEAS BUSINESS SOLUTIONS, LLC.,
a Florida limited liability company; SWATI
BHAGANI, an individual; TINA DOE, an
individual; and DOES 1 through 20, inclusive,

Defendants.

Case No. 22STCV17808

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR:**

- 1. DISCRIMINATION IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 2. HARASSMENT IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 3. RETALIATION IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 4. FAILURE TO PREVENT
DISCRIMINATION, HARASSMENT AND
RETALIATION IN VIOLATION OF
GOV'T CODE § 12940(k);**
- 5. FAILURE TO PROVIDE REASONABLE
ACCOMMODATIONS IN VIOLATION
OF GOV'T CODE §§12940 ET SEQ.;**
- 6. FAILURE TO ENGAGE IN A GOOD
FAITH INTERACTIVE PROCESS IN
VIOLATION OF GOV'T CODE §§12940
ET SEQ.;**
- 7. NEGLIGENT SUPERVISION AND
RETENTION;**
- 8. VIOLATION OF THE UNRUH CIVIL
RIGHTS ACT (CAL CIV. CODE §§ 51.7,
ET. SEQ);**

- 1 9. FOR DECLARATORY JUDGMENT;
2 10. RETALIATION (LAB. CODE § 98.6);
3 11. RETALIATION (LAB. CODE §§ 1102.5,
4 1102.6, 6310)
5 12. WRONGFUL TERMINATION IN
6 VIOLATION OF PUBLIC POLICY;
7 13. FAILURE TO PAY WAGES (CAL.
8 LABOR CODE §§201, 204, 221);
9 14. FAILURE TO PAY OVERTIME
10 COMPENSATION (CAL. LABOR CODE
11 §§510, 1194);
12 15. FAILURE TO PROVIDE MEAL AND
13 REST PERIODS (CAL. LABOR CODE
14 §§226.7, 512);
15 16. FAILURE TO INDEMNIFY FOR
16 NECESSARY BUSINESS EXPENSES
17 (CAL. LABOR CODE §2802);
18 17. FAILURE TO PROVIDE ITEMIZED
19 WAGE AND HOUR STATEMENTS (CAL.
20 LABOR CODE §§226, 226.3, 1174 ET
21 SEQ.);
22 18. WAITING TIME PENALTIES (CAL.
23 LABOR CODE §§201, 203);
24 19. PRIVATE ATTORNEY GENERAL ACT
25 (CAL. LABOR CODE §§2699, ET. SEQ.);
26 20. UNFAIR COMPETITION (BUS. & PROF.
27 CODE §17200 ET SEQ.); AND
28

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

**COMES NOW PLAINTIFFS, EVELINE GONZALEZ, KAIL DE LEON, LETICIA
MARTINEZ, AND CLAUDIA CARDIEL** and for causes of action against the Defendants and each
of them, alleges as follows:

1 **JURISDICTION**

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

6
7 **THE PARTIES**

8 2. Plaintiffs EVELINE GONZALEZ (hereinafter "GONZALEZ" or "Plaintiff Gonzalez"),
9 KAIL DE LEON (hereinafter "DE LEON" or "Plaintiff De Leon"), LETICIA MARTINEZ (hereinafter
10 "MARTINEZ"), and CLAUDIA CARDIEL (hereinafter "CARDIEL") are at all times relevant hereto
11 were residents of the County of Los Angeles, State of California.

12 3. Plaintiffs are informed and believe, and based thereupon allege, that at all times relevant
13 hereto, Defendant OVERSEAS BUSINESS SOLUTIONS, LLC. (hereinafter referred to as "OVERSEAS
14 BUSINESS SOLUTIONS" or "OBS"), was and is a Florida limited liability company doing business at
15 2717 Tanager Avenue, Commerce, CA 90040, in the County of Los Angeles, State of California.

16 4. Plaintiffs are informed and believe, and based thereupon allege, that at all times relevant
17 hereto, OVERSEAS BUSINESS SOLUTIONS owned and operated a software company that provides
18 warehouse and transportation management software solutions for companies.

19 5. Plaintiffs are informed and believe, and based thereupon allege, that all times relevant
20 hereto, Defendant SWATI BHAGANI (hereinafter referred to as "BHAGANI") was and is an individual
21 residing in the County of Los Angeles, State of California. BHAGANI was the Plaintiffs' manager,
22 corporate agent, supervisor, and/or coworker at OVERSEAS BUSINESS SOLUTIONS.

23 6. OVERSEAS BUSINESS SOLUTIONS and BHAGANI are collectively referred to as
24 EMPLOYERS.

25 7. Plaintiffs are informed and believe, and based thereupon allege, that all times relevant
26 hereto, Defendant TINA DOE (hereinafter referred to as "TINA") was and is an individual residing in
27 the County of Los Angeles, State of California. TINA was the Plaintiffs' manager, corporate agent,
28 supervisor, and/or coworker at EMPLOYERS.

1 8. BHAGANI and TINA are collectively referred to as “INDIVIDUAL DEFENDANTS.”

2 9. At all times relevant herein, INDIVIDUAL DEFENDANTS were each “supervisors”
3 within the meaning of Government Code section 12926, subdivision (t). Plaintiffs are informed and
4 believe, and thereon allege that at all time relevant to this action, INDIVIDUAL DEFENDANTS and
5 DOES 1-20 were managers and/or supervisors of EMPLOYERS, acting as managing agents for
6 EMPLOYERS; INDIVIDUAL DEFENDANTS and DOES 1-20 were each acting within the course and
7 scope of his or her employment and on behalf of Defendant such that his or her acts or omissions are
8 imputed to EMPLOYERS under the doctrine of *respondeat superior*; or, alternatively, at all times
9 relevant to this action, EMPLOYERS cloaked INDIVIDUAL DEFENDANTS and DOES 1-20 with the
10 appearance of actual authority, such that Plaintiff was justified in relying thereon, and therefore his or her
11 acts or omissions are imputed to EMPLOYERS under the doctrine of *respondeat superior*.

12 10. EMPLOYERS and INDIVIDUAL DEFENDANTS are collectively hereinafter referred to
13 as “DEFENDANTS.”

14 11. At all times relevant herein, EMPLOYERS and DOES 1-20 were Plaintiffs’ employers,
15 joint employers and/or special employers within the meaning of Government Code §§ 12926, subdivision
16 (d), 12940, subdivisions (a), (h), (1), (h)(3)(A), and (a), and 12950, and regularly employ five (5) or more
17 persons and are therefore subject to the jurisdiction of this Court.

18 12. At all times relevant herein, EMPLOYERS and DOES 1-20 were Plaintiffs’ employers,
19 joint employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
20 Commission Order No. 9-2001 and are each an “employer or other person acting on behalf of an
21 employer” as such term is used in Labor Code sections 558, 558.1 and/or 1197.1, and liable to Plaintiff
22 on that basis.

23 13. The true names and capacities, whether individual, corporate, associate, or otherwise, of
24 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiffs at this time and
25 therefore said Defendants are sued by such fictitious names. Plaintiffs will seek leave to amend this
26 complaint to insert the true names and capacities of said Defendants when the same become known to
27 Plaintiffs. Plaintiffs are informed and believe, and based thereupon allege, that each of the fictitiously
28

1 named Defendants is responsible for the wrongful acts alleged herein and is therefore liable to Plaintiffs
2 as alleged hereinafter.

3 14. Plaintiffs are informed and believe, and based thereupon allege, that Defendants, and each
4 of them, including those defendants named as INDIVIDUAL DEFENDANTS and DOES 1-20, acted in
5 concert with one another to commit the wrongful acts alleged herein, and aided, abetted, incited,
6 compelled and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so,
7 including pursuant to Government Code section 12940, subdivision (i). Plaintiffs are further informed
8 and believe, and based thereupon allege, that Defendants, and each of them, including INDIVIDUAL
9 DEFENDANTS and those Defendants named as DOES 1-20, and each of them, formed and executed a
10 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein, with
11 all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and actually
12 causing Plaintiff harms.

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

16 16. On June 1, 2022, Plaintiff Gonzalez and Plaintiff De Leon each filed their Right to Sue
17 complaints of discrimination, retaliation, harassment, and wrongful termination under Government Code
18 sections 12940, et seq., the California Fair Employment and Housing Act ("FEHA") with the California
19 Department of Fair Employment and Housing ("DFEH") and has satisfied the administrative
20 prerequisites with respect to these and all related filings.

21
22 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

23 17. Plaintiff are informed and believe, and based thereon allege, that there exists such a
24 unity of interest and ownership between EMPLOYERS and DOES 1-20 that the individuality and
25 separateness of defendants have ceased to exist.

26 18. Plaintiffs are informed and believe, and based thereon allege, that despite the formation
27 of purported corporate existence, EMPLOYERS, and DOES 1-20 are, in reality, one and the same,
28 including, but not limited to because:

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

5 b. EMPLOYERS and DOES 1-20 derive actual and significant monetary benefits
6 by and through one another's unlawful conduct, and by using one another as the funding source for
7 their own personal expenditures.

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

11 d. EMPLOYERS do not comply with all requisite corporate formalities to maintain
12 a legal and separate corporate existence.

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

23 19. Accordingly, EMPLOYERS constitute the alter ego of one another and DOES 1-20, and
24 the fiction of their separate corporate existence must be disregarded.

25 20. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
26 thereon allege that EMPLOYERS and DOES 1-20 are Plaintiffs joint employers by virtue of a joint
27 enterprise, and that Plaintiffs were employees of EMPLOYERS and DOES 1-20. Plaintiffs performed
28 services for each and every one of EMPLOYERS, and to the mutual benefit of all EMPLOYERS, and

1 all EMPLOYERS shared control of Plaintiffs as employees, either directly or indirectly, and the manner
2 in which EMPLOYERS' business was and is conducted.

3 21. Alternatively, Plaintiffs are informed and believe and, based thereupon allege, that as
4 and between DOES 1-20, EMPLOYERS, or any of them, (1) there is an express or implied agreement
5 of assumption pursuant to which EMPLOYERS and/or DOES 1-20 agreed to be liable for the debts of
6 the other EMPLOYERS, (2) the transaction between EMPLOYERS and/or DOES 1-20 and the other
7 EMPLOYERS amounts to a consolidation or merger of the two corporations, (3) EMPLOYERS and/or
8 DOES 1-20 are a mere continuation of the other EMPLOYERS, or (4) the transfer of assets to
9 EMPLOYERS and/or DOES 1-20 is for the fraudulent purpose of escaping liability for EMPLOYERS'
10 debts. Accordingly, Defendants and/or DOES 1-20 are the successors of one or more of the other
11 EMPLOYERS and are liable on that basis.

12
13 **WAGE AND HOUR ALLEGATIONS**

14 22. At all relevant times, Plaintiffs were full-time, non-exempt employees, and performed all
15 of their job duties satisfactorily throughout their respective employments.

16 23. Defendants violated Labor Code §§ 204 and 223 because Defendants failed to pay wages
17 for all hours worked paid at least twice during each calendar month to employees as required "by
18 contract" under Labor Code section 223, as well as an improper collection of wages paid to an employee
19 under Labor Code section 221. *Gonzales v. Downtown LA Motors*, 215 Cal. App. 4th 36 (2d App. Dist.
20 Mar. 6, 2013).

21 24. Defendants unlawfully collected or received part of wages from employees paid by
22 Defendants to said employees in violation of Labor Code §221.

23 25. EMPLOYERS does not have a policy or failed to enforce its policy of compliant meal
24 periods, thereby creating a rebuttable presumption that EMPLOYERS failed to provide their employees
25 compliant meal periods. *Donahue v. AMN Services, LLC*, ___ P.3d ___, 2021 WL 728871 (Cal. 2021)

26 26. Throughout Plaintiffs' employment, Plaintiffs were not permitted to, and not advised of
27 Plaintiffs' right to take one or more of their statutory 10-minute rest breaks for every four hours worked
28 or major fraction thereof, and Plaintiffs tended to work eight (8) hours days, meaning they were each

1 entitled to a second 10-minute rest break, but Defendants did not provide nor advise Plaintiffs of one or
2 more of their required rest breaks.

3 27. Throughout Plaintiffs' employment, Plaintiffs did not receive uninterrupted statutory 30-
4 minute meal periods for days on which Plaintiffs worked at least 5 hours and sometime, which was each
5 day Plaintiffs worked and sometimes Plaintiffs worked 10 or more hours, entitling them to a second 30-
6 minute meal break. One or more of Plaintiffs' 30-minute meal periods were not provided on each day
7 Plaintiffs worked.

8 28. Plaintiffs were also eligible for nondiscretionary bonus payments for work performed, but
9 upon earning said bonuses, EMPLOYERS failed to pay overtime wages and missed break premiums
10 including the performance-based bonuses when calculating the correct rate, thereby failing to pay correct
11 wages in violation of Labor Code §§ 226.7, 510, 512. *Alvarado v. Dart Container Corp.*, 4 Cal. 5th 542
12 (2018); *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021).

13 29. Throughout Plaintiffs' employment, Plaintiffs were not provided with paystubs that
14 complied with Labor Code §226, as Defendants consistently provided incorrect and inaccurate paystubs
15 that failed to properly itemize, regular, hours worked for said wages, commissions, sick time, tips, among
16 other inaccurate information. *Naranjo v. Spectrum Sec. Servs.* (May 23, 2022, S258966).

17 30. Plaintiffs are informed and believe, and thereon allege, that they themselves and other
18 employees were subject to the same violations and, therefore, are aggrieved employees within the
19 meaning of California Labor Code §2699. Thus, Plaintiffs, as an aggrieved employees, brings an action
20 against Defendants, on behalf of themselves and other current and former employees.

21 31. Additionally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23
22 Cal.App.5th 745, as aggrieved employees, Plaintiffs may investigate and pursue claims and penalties on
23 behalf of other aggrieved employees for other violations that they were not personally "aggrieved" by.

24
25 **PLAINTIFF GONZALEZ'S**

26 **FACTUAL ALLEGATIONS**

27 32. On or around September 20, 2021, EMPLOYERS hired GONZALEZ as an office
28 manager. Her responsibilities included printing labels, communicating with the owners of OBS and

1 vendors through a messaging application, checking documents and receiving documents. At all relevant
2 times, Defendants promised to pay Plaintiff Gonzalez \$18.00 per hour.

3 33. Between October 11, 2021, and October 22, 2021, Plaintiff Gonzalez worked over ninety
4 (90) hours for EMPLOYERS. Plaintiff was not paid time and a half for her overtime hours, and instead
5 received the same rate of \$18.00 per hour.

6 34. Plaintiff Gonzalez worked under supervisor and warehouse manager, BHAGANI. At all
7 relevant times, TINA supervised the employees of EMPLOYERS.

8 35. On or around October 2021, Plaintiff Gonzalez was transferred to the warehouse without
9 explanation. Plaintiff Gonzalez's new duties included carrying boxes and labeling them.

10 36. An associate and friend of TINA's, JOHN DOE (hereinafter referred to as "DOE")
11 rumored to be TINA's boyfriend, was allowed to enter the warehouse by TINA. It is unclear if DOE was
12 employed by EMPLOYERS or if he shared a personal relationship with TINA, who allowed DOE to
13 loiter around the warehouse.

14 37. DOE proceeded to intimidate Plaintiff Gonzalez by following her around the warehouse
15 so he could stare at Plaintiff Gonzalez's breasts and her buttocks every time she bent down.

16 38. DOE committed these acts while INDIVIDUAL DEFENDANTS were present and under
17 their supervision without receiving any form of discipline from either of them. Thus, BHAGANI and
18 TINA effectively ratified DOE's harassing conduct.

19 39. On or around November 2021, Plaintiff Gonzalez noticed that DOE gazed at her breasts
20 and buttocks at all times of the day, making Plaintiff's coworkers comment about the same.

21 40. Each time Plaintiff Gonzalez went to the restroom, which was located directly next to the
22 breakroom area, DOE would creepily follow her but walk into the men's restroom watching Plaintiff
23 Gonzalez as she entered.

24 41. DOE also stares at Plaintiff Gonzalez each time she bent down over to put stickers on
25 boxes. On one occasion, Plaintiff Gonzalez noticed DOE staring at her, making her feel uncomfortable,
26 and asked DOE the reason for staring at her. DOE panicked and stuttered before saying that he was
27 "looking for something."

28 42. On another occasion, DOE called Plaintiff Gonzalez "sexy."

1 43. On or around November 16, 2021, Plaintiff Gonzalez became incredibly frustrated by
2 DOE's repeated gawking at her body, and complained to BHAGANI. Plaintiff texted BHAGANI and
3 told her "I feel a little uncomfortable [] I don't know who this man is that Tina brought but I feel
4 uncomfortable he's always staring at me."

5 44. In response, BHAGANI told Plaintiff Gonzalez that she was sorry that she "was dealing
6 with this" and that she would file a complaint to address it. However, on information and belief,
7 BHAGANI never filed a complaint.

8 45. On or around November 17, 2021, Plaintiff Gonzalez was working on the warehouse floor,
9 and DOE stared at Plaintiff's buttocks each time she bent down to grab something. Plaintiff Gonzalez,
10 feeling frustrated that DOE continued his conduct which offended her, despite her complaints, asked
11 DOE if he wanted to say something.

12 46. DOE angrily questioned Plaintiff Gonzalez why she reported him, and if there was
13 "something you want to tell me." DOE further accused Plaintiff of lying.

14 47. Plaintiff responded to DOE by saying "I don't like how you look at me when I bend
15 down." DOE said "I have eyes. I can look where I want," in response.

16 48. The warehouse manager, Plaintiff De Leon, approached DOE at this time because DOE
17 raised his voice and was visibly upset. In an attempt to diffuse the situation, Plaintiff De Leon told DOE
18 he should calm down and go to the office and talk to the manager.

19 49. DOE became even more upset by Plaintiff De Leon's suggestions and attempted to push
20 DE LEON, inviting a fight with him.

21 50. Later that day, TINA arrived to the warehouse, and Plaintiff Gonzalez requested that
22 TINA further address the situation with DOE because his aggressiveness made her scared and
23 uncomfortable to continue working with him present.

24 51. DOE was never reprimanded for his conduct and continued to be present at the warehouse
25 up until the point that Plaintiff Gonzalez was terminated from her position.

26 52. On November 24, 2021, TINA brought every employee of EMPLOYERS a small "thank
27 you" gift. The thank you gifts included a bottle of wine and fifty (\$50) dollars. The only person who did
28 not receive a gift from TINA was Plaintiff.

1 53. That same day, instead of a gift, TINA terminated Plaintiff Gonzalez.

2
3 **PLAINTIFF DE LEON'S**

4 **FACTUAL ALLEGATIONS**

5 54. On or about August 15, 2021, Defendants hired Plaintiff De Leon to work in the warehouse
6 as a warehouse manager. Plaintiff was a full-time, non-exempt employee, and performed all of his job
7 duties satisfactorily throughout his employment.

8 55. At all relevant times, Plaintiff worked 5 days per week, Monday through Friday, averaging
9 approximately 45 hours per week. From August 15, 2021 through October 8, 2021, Plaintiff earned
10 \$25.00 per hour, and from October 9, 2021 through December 16, 2021, Plaintiff earned \$28.00 per hour.

11 56. During Plaintiff's employment, for approximately four (4) months, Plaintiff worked more
12 than 10 hours per day, averaging 2-3 days per week.

13 57. Plaintiff De Leon regularly used his cell phone at work and was not reimbursed for using
14 his phone. Plaintiff De Leon also used his personal vehicle at work and was not reimbursed for using his
15 vehicle.

16 58. On or about December 16, 2021, Plaintiff De Leon tested positive for COVID-19, and
17 informed EMPLOYERS of the same.

18 59. That same day, instead of offering any accommodation, EMPLOYERS wrongfully
19 terminated Plaintiff De Leon.

20
21 **PLAINTIFF MARTINEZ'S**

22 **FACTUAL ALLEGATIONS**

23 60. On or around October 2021, Defendants hired Plaintiff MARTINEZ to work as a
24 warehouse employee. Plaintiff was a full-time, non-exempt employee and performed all of her duties
25 satisfactorily throughout her employment.

26 61. From approximately October 2021 to December 20, 2021, Plaintiff worked 8 hours per
27 day, 5 days per week, Monday through Friday. At all relevant times, Defendants promised to pay Plaintiff
28 Martinez \$17.00 per hour.

1 62. On or around November 22, 2021, TINA promised bonuses to employees saying that for
2 “every 20 pallets you [unload] a day you will be given \$100.” Employees were to work in teams of two
3 (2) and would split the \$100 bonus. No team of two (2) were able to complete the challenge other than
4 Plaintiff Martinez and Plaintiff Cardiel, who were able to complete sixty-six (66) pallets. However,
5 Plaintiff and CARDIEL only received one bonus of \$100. Plaintiff informed TINA that she and
6 CARDIEL were owed two (2) more bonuses.

7 63. Plaintiff Martinez never received her promised bonuses.

8 64. After Plaintiff Martinez’s complaints and in a retaliatory effort, EMPLOYERS terminated
9 Plaintiff Martinez on or about December 20, 2021.

10
11 **PLAINTIFF CARDIEL’S**
12 **FACTUAL ALLEGATIONS**

13 65. On or around October 23, 2021, Defendants hired Plaintiff Cardiel to work in the
14 warehouse. Plaintiff was a full-time, non-exempt employee, and performed all of her job duties
15 satisfactorily throughout her employment.

16 66. At all relevant times, Plaintiff Cardiel worked 8 hours a day, 5 days per week, Monday
17 through Friday, averaging 40 hours per week. Defendants promised to pay Plaintiff \$18.00 per hour.

18 67. On or around November 22, 2021, TINA promised bonuses to employees saying that for
19 “every 20 pallets you [unload] a day you will be given \$100.” Employees were to work in teams of two
20 (2) and would split the \$100 bonus. No team of two (2) were able to complete the challenge other than
21 Plaintiff Cardiel and MARTINEZ, who were able to complete sixty-six (66) pallets. However, Plaintiff
22 Cardiel and MARTINEZ only received one bonus of \$100. Plaintiff Cardiel informed TINA that she and
23 MARTINEZ were each owed two (2) more bonuses.

24 68. Plaintiff Cardiel never received her promised bonuses.

25 69. After Plaintiff Cardiel’s complaints and in a retaliatory effort, EMPLOYERS terminated
26 Plaintiff Cardiel on or about December 20, 2021.

GENERAL ALLEGATIONS

70. Defendants' conduct described herein was undertaken, authorized, and/or ratified by Defendants' officers, directors and/or managing agents, including, but not limited to INDIVIDUAL DEFENDANTS, and those identified herein as DOES 1 through 20, who were authorized and empowered to make decisions that reflect and/or create policy for EMPLOYERS. The aforementioned conduct of said managing agents and individuals was therefore undertaken on behalf of EMPLOYERS who further had advanced knowledge of the actions and conduct of said individuals whose actions and conduct were ratified, authorized, and approved by managing agents whose precise identities are unknown to Plaintiffs at this time and are therefore identified and designated herein as DOES 1 through 20, inclusive.

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

72. As a result of the above, Plaintiffs are entitled to past and future lost wages, bonuses, commissions, benefits and loss or diminution of earning capacity.

73. Plaintiffs claim general damages for emotional and mental distress and aggravation in a sum in excess of the jurisdictional minimum of this Court.

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

FIRST CAUSE OF ACTION
BY PLAINTIFFS GONZALEZ AND DE LEON
FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.
AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

75. Plaintiffs GONZALEZ and DE LEON reallege and incorporate by reference Paragraphs 1 through 69, inclusive, as though set forth in full herein.

76. At all times hereto, the FEHA was in full force and effect and was binding upon Defendants and each of them.

77. As such term is used under FEHA, “on the bases enumerated in this part” means or refers to discrimination on the bases of one or more of the protected characteristics under FEHA. FEHA requires Defendants to refrain from discriminating against an employee on the basis of sex, gender, disability and/or medical condition, real or perceived, medical leave or anticipated use of medical leave, and to prevent discrimination and harassment on the basis of sex, gender, disability and/or medical condition, real or perceived and/or engagement in protected activities, and to prevent discrimination, harassment, and retaliation from occurring on the same bases.

78. Plaintiffs were members of multiple protected classes as a result of Plaintiffs sex, gender, disability, medical condition and/or the perception that Plaintiff was suffering from a disability and/or medical condition and/or engagement in protected activities.

79. At all times relevant hereto, Plaintiffs were performing in their positions competently.

80. Plaintiffs suffered the adverse employment actions of unlawful harassment, discrimination, retaliation, failure to investigate, remedy, and/or prevent discrimination, and termination, and was harmed thereby.

81. Plaintiffs are informed and believe that Plaintiff’s sex, gender, disability and/or medical condition, real and perceived and/or engagement in protected activities, and/or some combination of these protected characteristics under Government Code section 12926, subdivision (j) were motivating reasons and/or factors in Defendants’ decisions to subject Plaintiffs to the aforementioned adverse employment actions.

1 82. Said conduct violates the FEHA, and such violations were a proximate cause in Plaintiffs
2 damage as stated below.

3 83. The damage allegations of Paragraphs 70 through 74, inclusive, are herein incorporated
4 by reference.

5 84. Defendants discriminated against Plaintiffs by, among other things, terminating Plaintiffs
6 employment because of her sex, gender, disability and/or medical condition, real and perceived and/or
7 engagement in protected activities.

8 85. The foregoing conduct of Defendants individually, or by and through their officers,
9 directors and/or managing agents, was intended by the Defendants to cause injury to Plaintiffs or was
10 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
11 Plaintiffs or subjected Plaintiffs to cruel and unjust hardship in conscious disregard of the Plaintiffs'
12 rights such as to constitute malice, oppression, or fraud under Civil Code section 3294, thereby entitling
13 Plaintiffs to punitive damages in an amount appropriate to punish or make an example of Defendants.

14 86. Pursuant to Government Code section 12965, subdivision (b), Plaintiffs request a
15 reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

16
17 **SECOND CAUSE OF ACTION**

18 **BY PLAINTIFF GONZALEZ**

19 **FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**

20 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

21 87. Plaintiff Gonzalez re-alleges and incorporates by reference Paragraphs 1 through 69,
22 inclusive, as though set forth in full herein.

23 88. At all times hereto, the FEHA was in full force and effect and was binding upon
24 Defendants and each of them.

25 89. As such term is used under FEHA, "on the bases enumerated in this part" means or refers
26 to harassment on the bases of one or more of the protected characteristics under FEHA.

1 90. These laws set forth in the preceding paragraph require Defendants to refrain from
2 harassing, or creating, or maintaining a hostile work environment against an employee based upon the
3 employee's sex, gender and/or engagement in protected activities, as set forth hereinabove.

4 91. Defendants' harassing conduct was severe or pervasive, unwelcome by Plaintiff, and a
5 reasonable person in Plaintiff's circumstances would have considered the work environment to be hostile
6 or abusive.

7 92. Defendants violated the FEHA and the public policy of the State of California which is
8 embodied in the FEHA by creating a hostile work environment and harassed Plaintiff because of
9 Plaintiff's sex, gender, and/or engagement in protected activities, and/or some combination of these
10 protected characteristics, as set forth hereinabove.

11 93. The above said acts were perpetrated upon Plaintiff by a supervisor, and/or Defendants
12 knew or should have known of the conduct but failed to take immediate and appropriate corrective action.

13 94. The above said acts of Defendants constitute violations of the FEHA and violations of the
14 public policy of the State of California. Such violations were a proximate cause in Plaintiff's damage as
15 stated below.

16 95. The damage allegations of Paragraphs 70 through 74, inclusive, are herein incorporated
17 by reference.

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

24 97. Pursuant to Government Code section 12965, subdivision (b), Plaintiff requests a
25 reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

THIRD CAUSE OF ACTION
BY PLAINTIFFS GONZALEZ AND DE LEON
FOR RETALIATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.
AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

98. Plaintiffs GONZALEZ and DE LEON reallege and incorporate by reference Paragraphs 1 through 69, inclusive, as though set forth in full herein.

99. At all times hereto, the FEHA was in full force and effect and was binding upon Defendants and each of them.

100. The laws set forth in the preceding paragraphs require Defendants to refrain from retaliating against an employee for engaging in protected activity.

101. Plaintiff engaged in the protected activities of complaining about and protesting Defendants' discriminatory and harassing conduct based upon her sex, gender, real or perceived medical condition and/or disability, use of or anticipated use of medical leave, and/or engagement in protected activities, and violation of local, state and federal laws.

102. Plaintiff suffered the adverse employment actions of unlawful harassment, discrimination, failure to investigate, remedy, and/or prevent discrimination, termination, and was harmed thereby.

103. Plaintiff is informed and believes that Plaintiff's conduct of requesting accommodation, requesting medical leave and/or exercising Plaintiffs' right to medical leave, complaining about and protesting about Defendants' discriminatory, harassing, and unlawful conduct were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

104. Defendants violated the FEHA by retaliating against Plaintiff and terminating Plaintiff's employment for attempting to exercise Plaintiff's protected rights, as set forth hereinabove.

105. Plaintiff is informed and believes, and based thereon alleges, that the above acts of retaliation committed by Defendants were done with the knowledge, consent, and/or ratification of, or at the direction of, each of the other Defendants.

106. The above said acts of Defendants constitute violations of the FEHA and were a proximate cause in Plaintiff's damage as stated below.

1 107. The damage allegations of Paragraphs 70 through 74, inclusive, are herein incorporated
2 by reference.

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

9 109. Pursuant to Government Code section 12965, subdivision (b), Plaintiff requests a
10 reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

11
12 **FOURTH CAUSE OF ACTION**
13 **BY PLAINTIFFS GONZALEZ AND DE LEON**
14 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION**
15 **IN VIOLATION OF GOV'T CODE § 12940(k)**
16 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

17 110. Plaintiffs GONZALEZ and DE LEON reallege and incorporate by reference Paragraphs
18 1 through 69, inclusive, as though set forth in full herein.

19 111. At all times hereto, the FEHA, including in particular Government Code section 12940,
20 subdivision (k), was in full force and effect and was binding upon Defendants. This subsection imposes
21 a duty on Defendants to take all reasonable steps necessary to prevent discrimination, harassment, and
22 retaliation from occurring. As alleged above, Defendants violated this subsection and breached their duty
23 by failing to take all reasonable steps necessary to prevent discrimination, harassment and retaliation
24 from occurring.

25 112. The above said acts of Defendants constitute violations of the FEHA and were a proximate
26 cause in Plaintiff's damage as stated below.

27 113. The damage allegations of Paragraphs 70 through 74, inclusive, are herein incorporated
28 by reference.

1 114. The foregoing conduct of Defendants individually, or by and through their officers,
2 directors and/or managing agents, was intended by Defendants to cause injury to the Plaintiffs or was
3 despicable conduct carried on by Defendants with a willful and conscious disregard of the rights of
4 Plaintiffs or subjected Plaintiffs to cruel and unjust hardship in conscious disregard of Plaintiffs' rights
5 such as to constitute malice, oppression, or fraud under Civil Code section 3294, thereby entitling
6 Plaintiffs to punitive damages in an amount appropriate to punish or make an example of Defendants.

7 115. Pursuant to Government Code section 12965, subdivision (b), Plaintiffs request a
8 reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

9
10 **FIFTH CAUSE OF ACTION**
11 **BY PLAINTIFF DE LEON**
12 **FOR FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS**
13 **IN VIOLATION OF GOV'T CODE §12940 ET SEQ.**
14 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

15 116. Plaintiff De Leon re-alleges and incorporates by reference Paragraphs 1 through 69,
16 inclusive, as though set forth in full herein.

17 117. At all times hereto, the FEHA, including in particular Government Code §12940(m),
18 was in full force and effect and was binding upon Defendants. This subsection imposes an ongoing
19 duty on Defendants to make reasonable accommodation for the known physical disability and/or
20 medical condition of an employee.

21 118. At all relevant times, Plaintiff was a member of a protected class within the meaning of,
22 in particular, Government Code §§12940(a) & 12986(1) et seq. because Plaintiff had a disability, a
23 physical condition that affected Plaintiff's major life activities, and medical condition of which
24 Defendants had both actual and constructive knowledge.

25 119. At all times herein, Plaintiff was willing and able to perform the duties and functions of
26 the position in which Plaintiff was employed or could have performed the duties and functions of that
27 position with reasonable accommodations. At no time would the performance of the functions of the
28 employment position, with a reasonable accommodation for Plaintiff's disability or medical condition,

1 actual or as it was perceived by Defendants, have been a danger to Plaintiff's or any other person's
2 health or safety. Accommodation of Plaintiff's disability or disability or medical condition, real or
3 perceived by Defendants, would not have imposed an undue hardship on Defendants. Defendants
4 failed and refused to accommodate Plaintiff's disability, failed to engage in the interactive process with
5 Plaintiff and continue to violate this obligation, up to and including the date of Plaintiff's termination
6 or, if Defendant contends Plaintiff was never terminated, through the present and ongoing.

7 120. The above said acts of Defendants constitute violations of the FEHA and were a
8 proximate cause in Plaintiff's damage as stated below.

9 121. The damage allegations of Paragraphs 70 through 74, inclusive, are herein incorporated
10 by reference.

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

17 123. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
18 attorneys' fees and costs, including expert fees pursuant to the FEHA.

19
20 **SIXTH CAUSE OF ACTION**

21 **BY PLAINTIFF DE LEON**

22 **FOR FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS**

23 **IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**

24 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

25 124. Plaintiff De Leon re-alleges and incorporates by reference Paragraphs 1 through 69,
26 inclusive, as though set forth in full herein.

27 125. At all times hereto, the FEHA, including in particular Government Code §12940(n),
28 was in full force and effect and was binding upon Defendants. This subsection imposes an ongoing

1 duty on Defendants to engage in a timely, good faith, interactive process with the employee to
2 determine effective reasonable accommodations, if any, in response to a request for reasonable
3 accommodation by an employee with a known physical disability or known medical condition and/or
4 becoming aware of the employee's need for accommodation.

5 126. At all relevant times, Plaintiff was a member of a protected class within the meaning of,
6 in particular, Government Code §§12940(a) & 12986(1) et seq. because Plaintiff had a physical
7 disability that affected Plaintiff's major life activities, and medical condition of which Defendants had
8 both actual and constructive knowledge.

9 127. Plaintiff reported the disability to Defendants and requested accommodation, triggering
10 Defendants' obligation to engage in the interactive process with Plaintiff, but at all times herein,
11 Defendants failed and refused to do so. Thereafter, despite Defendants continuing obligation to engage
12 in the interactive process with Plaintiff, despite Plaintiff's submission of a positive test result
13 identifying Plaintiff's condition and Plaintiff's desire to continue working in some capacity,
14 Defendants failed and refused to have any dialogue with Plaintiff whatsoever, on any of these
15 occasions, and Defendants violated, and continued to violate this obligation up to and including the
16 date of Plaintiff's termination or, if Defendant contends Plaintiff was never terminated, through the
17 present and ongoing.

18 128. The above said acts of Defendants constitute violations of the FEHA, and were a
19 proximate cause in Plaintiff's damage as stated below.

20 129. The damage allegations of Paragraphs 70 through 74, inclusive, are herein incorporated
21 by reference.

22 130. The foregoing conduct of Defendants individually, and/or by and through their officers,
23 directors, and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
24 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
25 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
26 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
27 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.
28

1 131. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
2 attorneys' fees and costs, including expert fees pursuant to the FEHA.

3
4 **SEVENTH CAUSE OF ACTION**
5 **BY PLAINTIFFS GONZALEZ AND DE LEON**
6 **FOR COMMON LAW NEGLIGENT SUPERVISION AND RETENTION**
7 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

8 132. Plaintiffs Gonzalez and De Leon re-allege and incorporate by reference Paragraphs 1
9 through 69, inclusive, as though set forth in full herein.

10 133. An employer is liable for negligent supervision or retention of an employee if the
11 employer knew or should have known that the employee created a particular risk to others; that the
12 employee harmed the plaintiff, and that the employer's negligence in supervising or retaining the
13 employee was a substantial factor in causing the plaintiff's harm.

14 134. EMPLOYERS owed Plaintiff a duty of reasonable care to supervise their employees and
15 to take reasonable steps to prevent them from harassing, threatening or injuring Plaintiffs.

16 135. EMPLOYERS further owed Plaintiffs a duty of reasonable care to discharge from
17 employment employees or persons who had harassed, threatened or injured or were reasonably likely
18 to harass, threaten or injure others with whom they came into contact at work, including Plaintiff.

19 136. EMPLOYERS had reason to know that DOE created a risk or threat of injury to
20 Plaintiffs, as alleged herein, due to Plaintiffs' complaints of DOE's behavior, including but not limited
21 to DOE's harassment of Plaintiffs, and ratification by EMPLOYERS.

22 137. EMPLOYERS breached its duties by failing to properly supervise or control DOE and
23 by failing to terminate the employment or removal of DOE so that Plaintiffs could work in a reasonably
24 safe environment free from discrimination, hostility, intimidation, and harassment.

25 138. The damage allegations of Paragraphs 70 through 74, inclusive, are herein incorporated
26 by reference.

27 139. Pursuant to this Court's statutory authority, Plaintiffs request an award of punitive
28 damages, in addition to general and special damages, and other relief the court deems proper.

1 140. Pursuant to this Court’s statutory authority, Plaintiffs request an award of attorneys’
2 fees, and costs in prosecuting this action, including expert fees and any other relief the court deems
3 proper.

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

10
11 **EIGHTH CAUSE OF ACTION**
12 **BY PLAINTIFF GONZALEZ**
13 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**
14 **CAL CIV. CODE §§ 51.7, ET. SEQ.**
15 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

16 142. Plaintiff Gonzalez re-alleges and incorporates by reference Paragraphs 1 through 69,
17 inclusive, as though set forth in full herein.

18 143. California Civil Code section 51, subdivision (b) states “All persons within the jurisdiction
19 of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin,
20 disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary
21 language, or immigration status are entitled to the full and equal accommodations, advantages, facilities,
22 privileges, or services in all business establishments of every kind whatsoever.”

23 144. Also, California Civil Code section 51.5, subdivision (a) states “No business establishment
24 of any kind whatsoever shall discriminate against, boycott, or blacklist, or refuse to to buy from, contract
25 with, sell to, or trade with any person in this state on account of any characteristic listed or defined in
26 subdivision (b) or (e) of Section 51...” *Don Wilson Builders v. Superior Court of Los Angeles County*,
27 (1963) 2020 Cal.App.2d 77, 83.

1 145. EMPLOYERS are a software company that provides warehouse and transportation
2 management software solutions for companies, which employed Plaintiff Gonzalez, a female worker.

3 146. Throughout Plaintiff Gonzalez's employment, Plaintiff's supervisors allowed another
4 male employee or non-employee to sexually harass Plaintiff in the workplace.

5 147. Plaintiff Gonzalez reported DOE's actions to her supervisors TINA and BHAGANI to no
6 avail. No disciplinary action was taken nor was any complaint filed against DOE. Plaintiff was
7 terminated from her position approximately one week later.

8 148. Plaintiff is informed and believes that Plaintiff's sex, gender and/or some combination of
9 these protected characteristics under California Civil Code section 51 were motivating reasons and/or
10 factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

11 149. The damage allegations of Paragraphs 70 through 74, inclusive, are herein incorporated
12 by reference.

13 150. As a direct and proximate result of the conduct of DOE, Plaintiff has suffered and will
14 continue to suffer injuries, losses and damages in the amount in excess of the jurisdictional minimum of
15 this Court.

16 151. EMPLOYERS violation of Plaintiff's rights as guaranteed by the California Civil Code
17 section 51, et seq. entitles Plaintiff to recover from defendants general and special damages, damages up
18 to three times actual damages, but in no case less than four thousand dollars (\$4,000), attorney's fees,
19 and injunctive relief, all of which are provided for in California Civil Code 52.

20
21 **NINTH CAUSE OF ACTION**

22 **BY PLAINTIFFS GONZALEZ AND DE LEON**

23 **FOR DECLARATORY JUDGMENT**

24 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

25 152. Plaintiffs GONZALEZ and DE LEON re-allege and incorporate by reference each of
26 the foregoing paragraphs as though set forth herein.

27 153. Government Code §12920 sets forth the public policy of the State of California as
28 follows:

1 It is hereby declared as the public policy of this state that it is necessary to
2 protect and safeguard the right and opportunity of all persons to seek,
3 obtain, and hold employment without discrimination or abridgment on
4 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.

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

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

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

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

15 154. Government Code §12920.5 embodies the intent of the California legislature and states:

16 In order to eliminate discrimination, it is necessary to provide effective
17 remedies that will both prevent and deter unlawful employment practices
18 and redress the adverse effects of those practices on aggrieved persons.
19 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
Constitution.

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

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

25 156. An actual controversy has arisen and now exists between Plaintiffs and Defendants
26 concerning their respective rights and duties as it is believed that Defendants may allege that they did
27 not discriminate and retaliate against Plaintiffs; that Plaintiffs were not terminated as a result of
28 Plaintiff's sex, gender, disability or perceived disability, medical condition or perceived medical

1 condition, anticipated use of medical leave, engagement in protected activities, and/or some
2 combination of these protected characteristics. Plaintiffs contend that Defendants did discriminate and
3 retaliate against Plaintiffs on the basis of Plaintiffs' sex, gender, disability and/or perceived disability,
4 medical condition or perceived medical condition, engagement in protected activities, and/or some
5 combination of these protected characteristics; and that Plaintiffs were retaliated against and, ultimately
6 wrongfully terminated as a result of Plaintiffs sex, gender, disability and/or perceived disability,
7 medical condition or perceived medical condition, engagement in protected activities, and/or some
8 combination of these protected characteristics. Plaintiffs are informed and believe, and on that basis
9 allege, that Defendants shall dispute Plaintiffs contentions.

10 157. Pursuant to Code of Civil Procedure §1060, Plaintiffs seek a judicial determination of
11 Plaintiff's rights and duties, and a declaration that Plaintiffs sex, gender, perceived disability, medical
12 condition, perceived medical condition, disability, anticipated use of medical leave, engagement in
13 protected activities, and/or some combination of these protected characteristics was a substantial
14 motivating factor in the decision to subject Plaintiffs to the aforementioned adverse employment
15 actions.

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

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

24 160. Government Code §12965(b) provides that an aggrieved party, such as the Plaintiffs
25 herein, may be awarded reasonable attorney's fees and costs: "In civil actions brought under this
26 section, the court, in its discretion, may award to the prevailing party, including the department,
27 reasonable attorney's fees and costs, including expert witness fees." Such fees and costs expended by
28

1 an aggrieved party may be awarded for the purpose of redressing, preventing, or deterring
2 discrimination and harassment.

3
4 **TENTH CAUSE OF ACTION**

5 **BY PLAINTIFFS GONZALEZ AND DE LEON**

6 **RETALIATION**

7 **IN VIOLATION OF LABOR CODE §98.6**

8 **AGAINST DEFENDANTS AND DOES 1-20, INCLUSIVE**

9 161. Plaintiff Gonzalez re-alleges and incorporates by reference Paragraphs 1 through 69,
10 inclusive, as though set forth in full herein.

11 162. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against
12 an employee for political activities; for complaining that he or she is owed unpaid wages, for
13 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
14 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's
15 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
16 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private
17 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code.
18 Thus, Section 98.6 prohibits an employer from discharging or in any manner discriminating or
19 retaliating against an employee who, among other things, has exercised his or her rights under that
20 Chapter (Chapter 5 of the Labor Code, which encompasses §1102.5), including the right to take meal
21 breaks, and/or made a written or oral complaint that he or she is owed unpaid wages. An employee
22 who has been discharged or retaliated against in violation of Labor Code §98.6 is entitled to recovery of
23 a civil penalty against the employer in an amount not exceeding ten thousand dollars (\$10,000.00) for
24 each violation of that section.

25 163. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was
26 terminated from Plaintiff's employment with Defendants as a result of Plaintiff's complaints about
27 conduct she believed to be illegal, including DOE's tortious conduct. Defendants' retaliatory animus is
28 evidenced by, among other things, the following facts: (1) INDIVIDUAL DEFENDANTS never filed

1 any complaint against DOE; (2) DOE never suffered any form of discipline from EMPLOYERS; (3)
2 There were no performance issues or any other legitimate reason for Plaintiff's termination; and (4)
3 Plaintiff was wrongfully terminated a week after INDIVIDUAL DEFENDANTS claimed they would
4 file a complaint against DOE.

5 164. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
6 Defendants, and Defendants' officers and/or managing agents, including INDIVIDUAL
7 DEFENDANTS and those identified herein as DOES 1-20, who were authorized and empowered to
8 make decisions that reflect and/or create policy for Defendants. The aforementioned conduct of said
9 managing agents and individuals was therefore undertaken on behalf of Defendants. Defendants further
10 had advanced knowledge of the actions and conduct of said individuals whose actions and conduct were
11 ratified, authorized, and approved by managing agents whose precise identities are unknown to Plaintiff
12 at this time and are therefore identified and designated herein as DOES 1-20, inclusive.

13 165. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed
14 \$10,000.00 for Defendants' violations of Labor Code § 98.6.

15 166. The damage allegations of Paragraphs 70 through 74, inclusive, are herein incorporated
16 by reference.

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

21
22 **ELEVENTH CAUSE OF ACTION**
23 **BY PLAINTIFFS GONZALEZ AND DE LEON**
24 **FOR RETALIATION**
25 **IN VIOLATION OF LABOR CODE §§ 1102.5, 1102.6, 6310 ET SEQ.**
26 **AGAINST DEFENDANTS AND DOES 1-20, INCLUSIVE**

27 168. Plaintiff Gonzalez re-alleges and incorporates by reference Paragraphs 1 through 69,
28 inclusive, as though set forth in full herein.

1 169. At all relevant times, Labor Code section 1102.5 was in full force and effect and was
2 binding on Defendants. Labor Code section 1102.5, subdivision (b), prohibits an employer, or any person
3 acting on behalf of the employer, from discharging an employee or in any manner discriminating or
4 retaliating against, or taking any adverse action against, an employee because, among other things, the
5 employee disclosed, or because the employer believes that the employee disclosed or may disclose,
6 information to a government or law enforcement agency, or to a person with authority over the employee
7 or another employee who has the authority to investigate, discover, or correct the violation or
8 noncompliance, if the employee has reasonable cause to believe that the information discloses a violation
9 of state or federal statute, or violation of or noncompliance with a local, state, or federal rule or regulation,
10 regardless of whether disclosing the information is part of the employee's job duties. Labor Code section
11 1102.5, subdivision (c), also prohibits an employer, or any person acting on behalf of the employer, from
12 retaliating against an employee for refusing to participate in an activity that would result in a violation of
13 state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.
14 Sections 98.6, and 1102.5 create an entitlement to recovery by Plaintiff in a civil action for the unlawful
15 actions by Defendants. Pursuant to Labor Code §1102.5(f), in addition to other penalties, an employer
16 that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand
17 dollars (\$10,000) for each violation of this section.

18 170. At all relevant times, Labor Code section 6310 was in full force and effect and was binding
19 on Defendants. Labor Code section 6310 prohibits discrimination, including discharge or a threat of the
20 same, demotion, suspension or other adverse action because an employee made an oral or written
21 complaint to their employer with reference to employee health or safety. Any employee who is
22 discriminated against shall be entitled to reinstatement and reimbursement for lost wages and work
23 benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or
24 otherwise restore an employee or former employee who has been determined to be eligible for rehiring
25 or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a
26 misdemeanor.

1 171. Plaintiffs Gonzalez and De Leon reported suspected violations of California Law and
2 the Labor Code to Plaintiff's supervisor at EMPLOYERS, specifically regarding DOE's conduct and
3 making employees in fear for their health and safety.

4 172. Defendants subjected Plaintiffs to the adverse employment action, including without
5 limitation, termination because Plaintiffs reported the suspected violations of the Labor Code to
6 Plaintiff's supervisor.

7 173. Plaintiffs' reports of these violations were a motivating and contributing factor for the
8 adverse employment actions by Defendants against Plaintiffs.

9 174. Said conduct violates Labor Code Labor Code §§1102.5, 1102.6, and 6310, and such
10 violations were a proximate cause in Plaintiffs' damages as hereinabove stated.

11 175. As a result of Defendants' actions, Plaintiffs are entitled to a civil penalty not to exceed
12 \$10,000.00 for Defendants' violations of Labor Code § 1102.5.

13 176. The damage allegations of Paragraphs 70 through 74, inclusive, are herein incorporated
14 by reference.

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

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

TWELFTH CAUSE OF ACTION
BY PLAINTIFFS GONZALEZ AND DE LEON
FOR WRONGFUL TERMINATION
IN VIOLATION OF PUBLIC POLICY
AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

179. Plaintiffs GONZALEZ and DE LEON re-allege and incorporate by reference each of the foregoing paragraphs as though set forth herein.

180. At all relevant times mentioned in this complaint, the FEHA was in full force and effect and was binding on Defendants. This law requires Defendants to refrain from, among other things, from discriminating against any employee on the basis of sex, gender, real or perceived medical condition or disability, use of or anticipated use of medical leave, engagement in a protected activities, and/or any combination thereof. At all times mentioned in this complaint, Article I, Section 8 of the California Constitution was in full force and effect and binding on Defendants. This law requires Defendants to refrain from disqualifying a person from pursuing employment on the basis of race, color, national origin, or sex.

181. At all times mentioned in this complaint, it was a fundamental policy of the State of California that Defendants cannot discriminate, harass, and/or retaliate against any employee on the basis of sex, gender, real or perceived medical condition or disability, use of or anticipated use of medical leave, and/or engagement in protected activities, opposing workplace harassment and violation of the wage and hour laws.

182. Plaintiff Gonzalez believes and thereon alleges that Plaintiff Gonzalez's sex, gender, and/or engagement in protected activities, were factors in Defendants' conduct as alleged hereinabove.

183. Plaintiff De Leon believes and thereon alleges that Plaintiff De Leon's disability and/or medical condition, real or perceived, were factors in Defendants' conduct as alleged hereinabove.

184. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiffs GONZALEZ and DE LEON's employment on the basis of their sex, gender, disability and/or medical condition, real or perceived, anticipated use of medical leave, and/or engagement in protected activities was a proximate cause in Plaintiffs damages as stated below.

1 185. At all times mentioned in this complaint, Labor Code §§ 98.6, 1102.5, and 6310 were in
2 full force and effect and binding on Defendants. Labor Code § 98.6 reflects the State's broad public
3 policy interest in protecting the rights of individual employees and job applicants who could not otherwise
4 afford to protect themselves from violations of the Labor Code. Labor Code § 1102.5 reflects the State's
5 broad public policy interest in encouraging workplace "whistleblowers," who may without fear of
6 retaliation report concerns regarding an employer's suspected illegal conduct, irrespective of whether the
7 reporting is made to governmental agencies or to the employer itself, and irrespective of whether the
8 employee's suspicions are correct that the challenged conduct actually violates some law. Indeed, the law
9 in California is that an employee's good faith but mistaken belief in the illegality of his or her co-workers',
10 supervisor's, and employer's conduct is protected from employer retaliation in the whistle-blowing
11 context. These laws require Defendants to refrain, among other things, from discharging, suspending, or
12 in any other manner discriminating against an employee because the employee has made a bona fide oral
13 or written complaint to his or her employer and disclosed the employer's working conditions, or the
14 employer believes that the employee disclosed or may disclose information to a government or law
15 enforcement agency, and the employee shall be entitled to reinstatement and reimbursement for lost
16 wages and work benefits caused by the acts of the employer. The Labor code furthers that any employer
17 who willfully refuses to rehire, promote, or otherwise restore an employee is guilty of a misdemeanor.

18 186. Plaintiffs Gonzalez and De Leon are informed and believe, and based thereupon allege,
19 that Plaintiffs' engagement in protected activities under Labor Code §§ 98.6 and/or 1102.5 was a
20 proximate cause in Plaintiffs' damages as stated below.

21 187. Labor Code §6310 declares, in pertinent part, that no person shall discharge, or in any
22 manner discriminate against an employee, because the employee has made any oral or written complaint
23 to his employer with reference to employee safety or health. The public policy underlying Labor Code
24 §6310 is not merely to aid the reporting of actual safety violations; it is to prevent retaliation against those
25 who in good faith report working conditions they believe to be unsafe.

26 188. Labor Code §§6400, et seq., require that every employer shall furnish employment and a
27 place of employment that is safe and healthful for employees.

1 189. When read together, the foregoing statutes establish a fundamental public policy of the
2 State of California requiring employers to provide a safe and secure workplace, including a requirement
3 that an employer take reasonable steps to address credible threats of violence in the workplace.

4 190. Plaintiff believes and thereon alleges that his complaints regarding the safety and health
5 of the place of employment furnished by Defendants were factors in Defendants' decision to retaliate
6 against Plaintiff by refusing to investigate Plaintiff's complaints of harassment and discrimination, by
7 failing to prevent harassment and discrimination, defaming Plaintiff, cutting Plaintiff's hours and pay,
8 and by terminating Plaintiff, as alleged hereinabove.

9 191. Such discrimination and retaliation against Plaintiff who, in good faith, reported working
10 conditions he believed to be unsafe were a proximate cause in Plaintiff's damages as stated below.

11 192. At all times mentioned in this complaint, it was a fundamental policy of the State of
12 California that Defendants cannot retaliate against any employee on the basis of engagement in protected
13 activity.

14 193. The above said acts of Defendants constitute violations of the Government Code, Labor
15 Code, and the public policy of the State of California embodied therein as set forth above. Defendants
16 violated these laws by retaliating against Plaintiffs and terminating Plaintiffs employment in retaliation
17 for exercise of protected rights.

18 194. At all times mentioned in this complaint, it was a fundamental policy of the State of
19 California that Defendants cannot discriminate and/or retaliate against any employee who is a member
20 of protected class under FEHA.

21 195. Plaintiffs are informed and believe, and based thereupon allege, that Plaintiffs
22 GONZALEZ and DE LEON's status as protected members of a protected class or classes under FEHA,
23 and Plaintiffs Gonzalez and De Leon's engagement in protected activities under Labor Code sections
24 98.6, 1102.5, and/or 6310 were a proximate cause in Plaintiffs damages as stated below.

25 196. Plaintiffs Gonzalez and De Leon believe and thereon alleges that Defendants violated
26 Labor Code sections 98.6 and/or 1102.5 after discharging and retaliating against her after she exercised
27 her rights under the Labor Code.

1 197. The damage allegations of Paragraphs 70 through 74, inclusive, are herein incorporated
2 by reference.

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

9 199. Pursuant to Government Code § 12965(b), Plaintiff requests a reasonable award of
10 attorneys' fees and costs, including expert fees pursuant to the FEHA.

11
12 **THIRTEENTH CAUSE OF ACTION**

13 **BY ALL PLAINTIFFS**

14 **FOR FAILURE TO PAY WAGES DUE**

15 **LABOR CODE §§200, 201, 202, 221, 558**

16 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

17 200. Plaintiffs GONZALEZ, DE LEON, MARTINEZ and CARDIEL re-allege and incorporate
18 by reference each of the foregoing paragraphs as though set forth herein.

19 201. At all relevant times, Defendants failed and refused to pay Plaintiffs wages earned and
20 required by 8 Code of Regulations §11090, as set forth hereinabove. As alleged herein, Defendants
21 routinely failed to pay Plaintiffs overtime wages, for failure to take Plaintiff's statutory meal and rest
22 breaks.

23 202. As alleged herein, Plaintiffs were not exempt from the requirements of Labor Code §510,
24 8 Code of Regulations §11090, and Industrial Welfare Commission Order No. 9-2001.

25 203. California Labor Code § 200 defines wages as "all amounts for labor performed by
26 employees of every description, whether the amount is fixed or ascertained by the standard of time, task,
27 piece, commission basis or other method of calculation." Moreover, "an employee's 'wages' or
28 'earnings' are the amount the employer has *offered or promised to pay*, or has paid pursuant to such offer

1 or promise, as compensation for that employee's labor." See *Prachasaisoradej v. Ralphs Grocery Co.,*
2 *Inc.* (2007) 42 Cal.4th 217, 228 (emphasis original).

3 204. California Labor Code § 201 provides that if an employer discharges an employee, "the
4 wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202
5 provides that if an employee quits their job, "his or her wages shall be come due and payable not later
6 than 72 hours thereafter..."

7 205. Defendants violated Labor Code §§ 204 and 223 because Defendants failed to pay wages
8 for all hours worked paid at least twice during each calendar month to employees as required "by
9 contract" under Labor Code section 223, as well as an improper collection of wages paid to an employee
10 under Labor Code section 221. *Gonzales v. Downtown LA Motors*, 215 Cal. App. 4th 36 (2d App. Dist.
11 Mar. 6, 2013). Plaintiffs are owed promised bonuses, including premium wages for Defendants failing
12 to calculate the bonus pay into Plaintiffs' straight time pay when calculating overtime pay.

13 206. Plaintiffs has been deprived of their rightfully earned compensation as a direct and
14 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiffs are entitled to
15 recover such amounts, plus interest thereon, attorneys' fees and costs.

16 207. During Plaintiffs employment, Defendants violated Labor Code §221 by collecting and/or
17 receiving from Plaintiffs, and other aggrieved employees, part of their wages paid by Defendants to said
18 employees.

19 208. During the relevant time period, Defendants failed to pay Plaintiffs the earned and unpaid
20 wages set forth above, including but not limited to meal and rest period premium wages within seventy-
21 two (72) hours of their leaving Defendants' employ.

22 209. Labor Code §558(a) provides that any person acting on behalf of an employer who
23 violates, or causes to be violated, overtime rules pay a civil penalty in the amount of \$50 for each
24 underpaid employee for each pay period in which the employee was underpaid in addition to an amount
25 sufficient to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the
26 person acting on behalf of an employer is liable in the amount of \$100 for each underpaid employee for
27 each pay period for which the employee was underpaid in addition to an amount sufficient to recover the
28 underpaid wages.

1 210. Defendants' have committed these acts knowingly and willfully, with the wrongful and
2 deliberate intention of withholding, deducting and reducing wages owed to Plaintiffs for time spent on
3 compensable work activities. As a proximate result of these violations, Defendants have damaged
4 Plaintiffs in the amounts set forth herein, and according to proof at trial.

5 211. Plaintiffs have been deprived of their rightfully earned compensation as a direct and
6 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiffs are entitled to
7 recover such amounts, plus interest thereon, attorneys' fees and costs, pursuant to Labor Code § 218.5
8 and any other applicable law.

9
10
11 **FOURTEENTH CAUSE OF ACTION**

12 **BY ALL PLAINTIFFS**

13 **FOR FAILURE TO PAY OVERTIME COMPENSATION**

14 **LABOR CODE §§510, 1194**

15 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

16 212. Plaintiffs GONZALEZ and DE LEON re-allege and incorporate by reference each of the
17 foregoing paragraphs as though set forth herein.

18 213. Labor Code §510 requires employers to pay their non-exempt employees one and one-half
19 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40
20 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12
21 hours in a single day. It also requires employers to pay their non-exempt employees overtime
22 compensation for the first eight (8) hours of work done on the seventh consecutive day of work done in
23 any work week and double-time compensation for any work done beyond the first eight (8) hours on the
24 seventh consecutive day of work.

25 214. At all relevant times, Defendants required Plaintiffs to work more than eight hours per
26 day and/or more than 40 hours per workweek.

1 215. At all relevant times, Defendants failed and refused to pay Plaintiffs all the overtime
2 compensation required by Labor Code §510, 8 Code of Regulations §11090, and Industrial Welfare
3 Commission Order No. 9-2001.

4 216. In the two months that Plaintiff Gonzalez worked for EMPLOYERS, Plaintiff worked at
5 least ten (10) hours of overtime between October 11, 2021, and October 22, 2021, all of which should
6 have been paid at 1.5 times Plaintiff's regular hourly wage rate at that time, meaning \$27.00 per hour
7 (\$18.00/hr x. 1.5).

8 217. Thus, for the entirety of the time periods set forth above, Plaintiff Gonzalez is owed
9 overtime wages of at least \$90.00 [(\$27.00 x 10 hours) – \$180.00], above and beyond minimum wages
10 previously paid.

11 218. Defendants required Plaintiff De Leon to work more than eight hours per day and/or
12 more than 40 hours per workweek on several occasions between August 15, 2021, and December 16,
13 2021.

14 219. In the four months that Plaintiff De Leon worked for EMPLOYERS, Plaintiff worked
15 sixty-three (63) hours of overtime between August 15, 2021, and December 16, 2021, all of which
16 should have been paid at 1.5 times Plaintiff's regular hourly wage rate at that time.

17 (a) From September 11, 2021 through October 8, 2021, Plaintiff's hourly overtime
18 rate was \$37.50 (\$25.00 x 1.5). During this time period, Plaintiff worked approximately 9 hours of
19 overtime, all of which was paid at his regular hourly wage rate. Therefore, less the minimum wage
20 portion of \$25.00 per hour, Plaintiff is owed \$12.50 for each of those hours, totaling \$112.50.

21 (b) From October 9, 2021 through December 17, 2021, Plaintiff's hourly overtime
22 rate was \$42.00 (\$28.00 x 1.5). During this time period, Plaintiff worked approximately 56.56 hours of
23 overtime, all of which was paid at his regular hourly wage rate. Therefore, less the minimum wage
24 portion of \$28.00 per hour, Plaintiff is owed \$14.00 for each of those hours, totaling \$791.84.

25 220. Thus, for the entirety of the time periods set forth above, Plaintiff De Leon is owed
26 overtime wages of \$904.34.00, above and beyond the minimum wages.

27 221. Plaintiffs Martinez and Cardiel are also owed overtime wages, in an amount according to
28 proof, which rate can be determined after calculating the unpaid bonuses owed to each of the Plaintiffs.

1 222. As alleged herein, Plaintiffs are not exempt from the overtime pay requirements of Labor
2 Code §510, 8 Code Regulations §11090, and Industrial Welfare Commission Order No. 9-2001.

3 223. Thus, for the entirety of the time periods set forth above, Plaintiffs are owed overtime
4 wages in the amount according to proof.

5 224. Plaintiffs have been deprived of their rightfully earned overtime compensation as a direct
6 and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiffs are entitled
7 to recover such amounts, plus interest thereon, attorneys' fees, and costs.

8
9 **FIFTEENTH CAUSE OF ACTION**

10 **BY ALL PLAINTIFFS**

11 **FOR FAILURE TO PROVIDE MEAL AND REST PERIODS**

12 **LABOR CODE § 226.7, 512**

13 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

14 225. Plaintiffs GONZALEZ, DE LEON, MARTINEZ and CARDIEL re-allege and incorporate
15 by reference each of the foregoing paragraphs, as though set forth herein.

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

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

20 228. In the four years last past, Plaintiffs regularly worked in excess of five or ten hours per
21 day, and were thereby entitled to take at least one, sometimes two, uninterrupted 30-minute meal periods
22 and two 10-minute rest periods on each day of work. Defendants failed and refused to provide Plaintiffs
23 with meal and rest periods, and failed to compensate Plaintiffs for missed meal and rest periods, as
24 required by Labor Code §§226.7 and the applicable sections of 8 Code of Regulations §11090 and
25 Industrial Welfare Commission Order No. 9-2001.

26 229. As alleged herein, Plaintiffs are not exempt from the meal and rest break requirements of
27 8 Code of Regulations §11090 and Industrial Welfare Commission Order No. 9,. Consequently, Plaintiffs
28 are owed one hour of pay at Plaintiffs then regular hourly rate, including bonus pay, or the requisite

1 minimum wage, whichever is greater, for each day that Plaintiffs were denied such meal periods, and are
2 owed one hour of pay at Plaintiffs' regular hourly rate, or the requisite minimum wage, including bonus
3 pay, whichever is greater, for each day that Plaintiffs were denied such rest periods, calculated as follows:

4 a. From approximately September 20, 2021, through November 24, 2021, Plaintiff
5 Gonzalez's statutory 30-minute meal periods were missed, interrupted or cut short no less than five (5)
6 days per week for nine (9) weeks, or on approximately forty-five (45) days. During this same time period,
7 Plaintiff was not permitted and not advised of Plaintiff's right to take one or more of Plaintiff's statutory
8 10-minute rest periods for days on which Plaintiff worked for at least four hours, which was each day
9 Plaintiff worked, or approximately forty (40) days. Consequently, Plaintiff Gonzalez is owed one hour of
10 pay at \$18.00 for each day, or \$810 plus interest thereon, for unpaid missed or interrupted meal periods.
11 Consequently, Plaintiff Gonzalez is owed one hour of pay at \$18.00 for each day, or \$810, plus interest
12 thereon, for unpaid rest periods. Thus, Plaintiff Gonzalez is owed a total of \$1,620.00, plus interest
13 thereon, for unpaid meal and rest periods for this time period.

14 b. From approximately August 15, through November 16, 2021, Plaintiff De Leon's
15 statutory 30-minute meal periods were missed, interrupted or cut short no less than five (5) days per week
16 for thirteen (13) weeks, or on approximately sixty-five (65) days. During this same time period, Plaintiff
17 was not permitted and not advised of Plaintiff's right to take one or more of Plaintiff's statutory 10-
18 minute rest periods for days on which Plaintiff worked for at least four hours, which was each day Plaintiff
19 worked, or approximately sixty-five (65) days. Consequently, Plaintiff De Leon is owed one hour of pay
20 at \$28.00 for each day, or \$1,820 plus interest thereon, for unpaid missed or interrupted meal periods.
21 Consequently, Plaintiff De Leon is owed one hour of pay at \$28.00 for each day, or \$1,820, plus interest
22 thereon, for unpaid rest periods. Thus, Plaintiff De Leon is owed a total of \$3,640.00, plus interest
23 thereon, for unpaid meal and rest periods for this time period.

24 c. From approximately October 2021, through December 20, 2021, Plaintiff
25 MARTINEZ's statutory 30-minute meal periods were missed, interrupted or cut short no less than five
26 (5) days per week for eight (8) weeks, or on approximately forty (40) days. During this same time period,
27 Plaintiff MARTINEZ was not permitted and not advised of Plaintiff's right to take one or more of
28 Plaintiff's statutory 10-minute rest periods for days on which Plaintiff worked for at least four hours,

1 which was each day Plaintiff worked, or approximately forty (40) days. Consequently, Plaintiff
2 MARTINEZ is owed wages in an amount according to proof, after determining the unpaid bonus wages
3 Plaintiff is owed, which should be included in determining her wage rate for missed meal and rest breaks.

4 d. From approximately October 23, 2021, through December 20, 2021, Plaintiff
5 Cardiel's statutory 30-minute meal periods were missed, interrupted or cut short no less than five (5) days
6 per week for eight (8) weeks, or on approximately forty (40) days. During this same time period, Plaintiff
7 Cardiel was not permitted and not advised of Plaintiff's right to take one or more of Plaintiff's statutory
8 10-minute rest periods for days on which Plaintiff worked for at least four hours, which was each day
9 Plaintiffs worked, or approximately forty (40) days. Consequently, Plaintiff MARTINEZ is owed wages
10 in an amount according to proof, after determining the unpaid bonus wages Plaintiff is owed, which
11 should be included in determining her wage rate for missed meal and rest breaks.

12 230. Plaintiffs have been deprived of Plaintiffs rightfully earned compensation for meal and
13 rest breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

14 231. Thus, for the entirety of the time periods set forth above, Plaintiff Gonzalez is entitled to
15 recover such amounts in the combined amount of \$1,440.00, pursuant to Labor Code §226.7(b), plus
16 interest thereon and costs of suit. Plaintiff De Leon is entitled to recover such amounts in the combined
17 amount of \$4,480.00, pursuant to Labor Code §226.7(b), plus interest thereon and costs of suit.

18 232. Plaintiffs Martinez and Cardiel are entitled to recover such amounts according to proof,
19 after determining the unpaid bonus wages Plaintiff is owed, which should be included in determining her
20 wage rate for missed meal and rest breaks, plus interest thereon and costs of suit.

21
22 **SIXTEENTH CAUSE OF ACTION**

23 **BY PLAINTIFF DE LEON**

24 **FOR FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES**

25 **LABOR CODE §2802**

26 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

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

1 234. Pursuant to Labor Code §450(a), “no employer...may compel or coerce any employee...to
2 patronize his or her employer, or any other person, in the purchase of any thing of value.”

3 235. Pursuant to Labor Code §2802(a), “an employer shall indemnify his or her employee for
4 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
5 his or her duties, or of his or her obedience to the directions of the employer.”

6 236. Plaintiff was required by Defendants to expend Plaintiff’s personal funds because of the
7 duties required by Defendants, as alleged hereinabove.

8 237. Pursuant to Labor Code §2802(a), Defendants are legally required to reimburse Plaintiff
9 for all necessary expenditures incurred in the performance of Plaintiff’s duties.

10 238. Defendants have failed and refused to reimburse Plaintiff for all necessary business
11 expenditures, including for using her personal cellphone and vehicle for business related purposes.

12 239. As a proximate result of the aforementioned violations of Labor Code §§450(a) and
13 2502(a), Plaintiff is entitled to recover from Defendants the unpaid balance of all of the necessary
14 aforementioned expenditures.

15 240. As a proximate result of the aforementioned violations of Labor Code §§450(a) and
16 2502(a), Plaintiff has been damaged in an amount according to proof at the time of trial but estimated as
17 follows: Plaintiff was required to use his own cellphone and his own vehicle throughout his employment
18 for work related purposes, for approximately 4 months. Defendants have at the very least failed to
19 reimburse Plaintiff for her cellphone use in the amount according to proof. Additionally, Defendants have
20 failed to reimburse Plaintiff for his vehicle use and gasoline in an amount according to proof.

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

24 242. Pursuant to Labor Code §2802(c), Plaintiff requests that the Court award Plaintiff
25 reasonable attorneys’ fees and costs incurred in this action.

1 **SEVENTEENTH CAUSE OF ACTION**

2 **BY ALL PLAINTIFFS**

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

4 **LABOR CODE §§226, 226.3 1174 ET SEQ.**

5 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

6 243. Plaintiffs GONZALEZ, DE LEON, MARTINEZ, and CARDIEL re-allege and
7 incorporate by reference each of the foregoing paragraphs, as though set forth herein.

8 244. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
9 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
10 total deductions and net wages earned. An employer who violates these code sections is liable to its
11 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the
12 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
13 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
14 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
15 at all.

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

19 246. At all relevant times, Defendants failed to provide the Plaintiffs with timely and accurate
20 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
21 wages earned, the name and address of the legal entity employing Plaintiffs, and all applicable hours and
22 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
23 by Plaintiffs. For the majority of the time and as to nearly all of Plaintiffs' wages, Defendants knowingly
24 and intentionally, not inadvertently, failed to provide Plaintiffs with paystubs at all, and instead paying
25 Plaintiffs entirely in cash without any calculations of how Plaintiffs' gross wages were calculated. Not
26 one of the paystubs that Plaintiffs received complied with Labor Code §226, and contained almost none
27 of the required information, including hours actually worked.

28 247. As alleged herein, Plaintiffs are not exempt from the requirements of Labor Code §226.

1 248. This failure has injured Plaintiffs, by misrepresenting and depriving Plaintiffs of hour,
2 wage, and earnings information to which Plaintiffs are entitled, causing Plaintiffs difficulty and expense
3 in attempting to reconstruct time and pay records, causing Plaintiffs not to be paid wages Plaintiffs are
4 entitled to, causing Plaintiffs to be unable to rely on earnings statements in dealings with third parties,
5 eviscerating Plaintiffs' right under Labor Code §226(b) to review itemized wage statement information
6 by inspecting the employer's underlying records, and deceiving Plaintiffs regarding Plaintiffs'
7 entitlement to overtime, meal period, and rest period wages.

8 249. Plaintiffs were paid on a bi-weekly basis, and therefore Defendants violated Labor Code
9 §226 approximately eight (8) times during the last year that Plaintiffs worked for Defendants.
10 Consequently, Defendants are liable to Plaintiffs Plaintiff's actual damages, or penalties in the statutory
11 maximum amount of \$4,000.00, whichever is greater.

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

15
16 **EIGHTEENTH CAUSE OF ACTION**

17 **BY ALL PLAINTIFFS**

18 **FOR WAITING TIME PENALTIES**

19 **LABOR CODE §§201-203**

20 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

21 251. Plaintiffs GONZALEZ, DE LEON, MARTINEZ and CARDIEL re-allege and incorporate
22 by reference each of the foregoing paragraphs as though set forth herein.

23 252. At all relevant times, Defendants failed to pay all of the Plaintiffs' accrued wages and
24 other compensation due immediately upon termination or within 72 hours of resignation, as required.
25 These wages refer to, at a minimum, overtime compensation, and meal and rest period compensation that
26 Defendants should have paid but did not pay to Plaintiffs during the term of Plaintiffs' employment and
27 which were, at the latest, due within the time restraints of Labor Code §§201-203.

1 253. As alleged herein, Plaintiffs are not exempt from the requirements of Labor Code §§201-
2 203.

3 254. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
4 Gonzalez is entitled to payment of Plaintiff's regular time, meal and rest periods as previously pleaded
5 herein, and approximately \$4,320.00 in wait time penalties, calculated based on a daily average wage of
6 \$144.00, times 30 days (i.e., \$18.00 reg. hourly rate $\times$ 8 hours, the sum of which was multiplied by 30
7 days = \$4,320.00).

8 255. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
9 De Leon is entitled to payment of Plaintiff's regular time, meal and rest periods as previously pleaded
10 herein, and approximately \$6,720.00 in wait time penalties, calculated based on a daily average wage of
11 \$224.00, times 30 days (i.e., \$28.00 reg. hourly rate $\times$ 8 hours, the sum of which was multiplied by 30
12 days = \$6,720.00).

13 256. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
14 MARTINEZ is entitled to payment of Plaintiff's regular time, meal and rest periods as previously pleaded
15 herein, and approximately \$4,320.00 in wait time penalties, calculated based on a daily average wage of
16 \$144.00, times 30 days (i.e., \$18.00 reg. hourly rate $\times$ 8 hours, the sum of which was multiplied by 30
17 days = \$4,320.00).

18 257. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
19 Cardiel is entitled to payment of Plaintiff's regular time, meal and rest periods as previously pleaded
20 herein, and approximately \$4,320.00 in wait time penalties, calculated based on a daily average wage of
21 \$144.00, times 30 days (i.e., \$18.00 reg. hourly rate $\times$ 8 hours, the sum of which was multiplied by 30
22 days = \$4,320.00).

23 258. Based on Defendants' conduct as alleged herein, Defendants are liable to Plaintiff
24 Gonzalez for \$4,320.00 in statutory penalties pursuant to Labor Code §203 and other applicable
25 provisions, as well as attorneys' fees and costs.

26 259. Based on Defendants' conduct as alleged herein, Defendants are liable to Plaintiff De Leon
27 for \$6,720.00 in statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well
28 as attorneys' fees and costs.

1 260. Based on Defendants' conduct as alleged herein, Defendants are liable to Plaintiff
2 Martinez for \$4,320.00 in statutory penalties pursuant to Labor Code §203 and other applicable
3 provisions, as well as attorneys' fees and costs.

4 261. Based on Defendants' conduct as alleged herein, Defendants are liable to Plaintiff Cardiel
5 for \$4,320.00 in statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well
6 as attorneys' fees and costs.

7
8 **NINETEENTH CAUSE OF ACTION**

9 **BY ALL PLAINTIFFS**

10 **FOR PRIVATE ATTORNEY GENERAL ACT**

11 **LABOR CODE §2699**

12 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

13 262. Plaintiffs GONZALEZ, DE LEON, MARTINEZ, and CARDIEL re-allege and
14 incorporate by reference each of the foregoing paragraphs, as though set forth herein.

15 263. Under Labor Code §2699, Plaintiffs, as an aggrieved employee, may bring an action
16 against Defendants, on behalf of himself and other current or former employees, seeking statutory civil
17 penalties for Defendants' violations of the California Labor Code.

18 264. Plaintiffs were aggrieved employee within the meaning of Labor Code §§2699(c) and
19 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiffs, as
20 previously pleaded in this Complaint.

21 265. On January 12, 2022, more than 65 calendar days before filing this Complaint, Plaintiffs
22 provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail
23 to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
24 satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ 98.6,
25 200, 201, 202, 203, 204, 221, 226, 226.3, 226.7, 510, 512, 558, and 1102.5, 1194, 1197, each of which is
26 enumerated among the serious violations set forth in Labor Code §2699.5.

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

267. Further, as of the filing of this Complaint, Plaintiffs have not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of the actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor Code §2699.

268. Additionally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, as aggrieved employees, Plaintiffs may investigate and pursue claims and penalties on behalf of other aggrieved employees for other violations that they were not personally “aggrieved” by.

PENALTIES

269. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) (or any of its departments, divisions, commissions, board agency or employees), such civil penalties 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) and Labor Code §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil penalties, as follows:

- a) As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of one hundred dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation; and
- b) As applicable, civil penalties under Labor Code §558 (in addition to and entirely independent and apart from any other penalty provided for in the Labor Code), for violations of Labor Code

§§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid; and also an additional amount sufficient to recover under paid wages as penalties, with all wages recovered pursuant to Labor Code §557 paid to the aggrieved employees. Plaintiffs Gonzalez, Martinez, and Cardiel are entitled to penalties for at least four (4) pay periods, totaling \$350.00 each in penalties, and Plaintiff De Leon is entitled to penalties for at least eight (8) pay periods, totaling \$750.00 in penalties, meaning Defendants owe \$1,800 in total penalties pursuant to Labor Code §558;

c) As applicable, civil penalties under Labor Code §1197.1 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code) for violations of Labor Code §§1194 and 1197, in the amount of \$100 for each underpaid aggrieved employee for each pay period the aggrieved employee was intentionally underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation for each underpaid aggrieved employees regardless of whether the initial violation was intentionally committed in addition to an amount sufficient to recover underpaid wages, with all wages recovered pursuant to Labor Code §1197.1. Plaintiff may also recover penalties under § 1197.1 on behalf of herself and for the other aggrieved employees;

d) As applicable, civil penalties under Labor Code §225.5 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code) for violations of Labor Code § 221, in the amount of \$100 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid, and \$200 for each subsequent violation or any willful or intentional violation, for each underpaid aggrieved employees regardless of whether the initial violation was intentionally committed in addition to 25 percent of the amount unlawfully withheld;

e) As applicable, civil penalties under Labor Code §98.6 (in addition to and entirely independent and apart from any other penalty provided for in the Labor Code), for violations of Labor Code

§98.6, in the amount of \$10,000 per aggrieved employee for each violation of this section, to be awarded to the employee or employees who suffered the violation;

- f) As applicable, civil penalties under Labor Code §§201-203 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days;
- g) As applicable, Labor Code §204 (in addition to an entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee who Defendants failed to pay all earned wages during employment, in the amount of a civil penalty of \$100 for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation plus 25 percent of the amount unlawfully withheld; and
- h) As applicable, civil penalties under Labor Code §221 (in addition to an entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee who Defendants failed to pay all earned wages during employment, in the amount of a civil penalty of \$100 for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;
- i) As applicable, Labor Code §510 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee who Defendants failed to pay overtime wages during employment, in the amount of a civil penalty of \$100 for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation plus 25 percent of the amount unlawfully withheld;
- j) As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely independent and apart from any other civil penalty provided in the Labor Code), for each violation of Labor Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation. Plaintiffs Gonzalez, Martinez and Cardiel are each owed \$3,250.00 for four (4) pay

1 period violations and Plaintiff De Leon is owed \$7,250.00 for eight (8) pay period violations,
2 totaling \$17,000 in penalties pursuant to Labor Code §226.3;

3 k) As applicable, Labor Code §226.7 (in addition to an entirely independent and apart from any
4 other penalty provided in the Labor Code), for any aggrieved employee who Defendants failed
5 to pay all earned wages during employment, in the amount of a civil penalty of \$100 for the
6 initial violation, and \$200 for each aggrieved employee per pay period for each subsequent
7 violation;

8 l) As applicable, Labor Code §512 (in addition to an entirely independent and apart from any
9 other penalty provided in the Labor Code), for any aggrieved employee who Defendants failed
10 to pay all earned wages during employment, in the amount of a civil penalty of \$100 for the
11 initial violation, and \$200 for each aggrieved employee per pay period for each subsequent
12 violation plus 25 percent of the amount unlawfully withheld;

13 m) As applicable, civil penalties under Labor Code §1102.5 (in addition to and entirely
14 independent and apart from any other penalty provided in the Labor Code) for violations of
15 Labor Code §§1102.5, in the amount of \$10,000 for each aggrieved employee for each
16 violation; and

17 n) As applicable, any and all additional applicable civil penalties and sums as provided by the
18 Labor Code and/or other relevant statutes.

19 270. In addition, Plaintiffs seek and are entitled to seventy-five percent (75%) of all penalties
20 obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and
21 employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%)
22 to the aggrieved employees.

23 271. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek
24 recovery of pre-judgment interest on all amounts recovered herein.

25 272. As a direct and proximate result of Defendants' California Labor Code violations as set
26 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per
27 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
28 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly

1 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
2 provide for a penalty, §§200, 226.3, and 558.

3 273. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek
4 recovery of pre-judgment interest on all amounts recovered herein.

5 274. Further, Plaintiffs are entitled; to recover reasonable attorneys' fees and costs pursuant to
6 Labor Code §§2699(g)(1) and any other applicable statute.

7
8 **TWENTIETH CAUSE OF ACTION**

9 **BY ALL PLAINTIFFS**

10 **FOR UNFAIR COMPETITION**

11 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

12 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

13 275. Plaintiffs GONZALEZ, DE LEON, MARTINEZ, and CARDIEL re-allege and
14 incorporate by reference each of the foregoing paragraphs, as though set forth herein.

15 276. Defendants' violations of 8 Code of Regulations §11090, Industrial Welfare Commission
16 Order No. 9-2001, Labor Code §§ 98.6, 201, 202, 203, 204, 221, 225.5, 226, 226.3, 226.7, 510, 512, 558,
17 1102.5, 1194, 1197, 2699, and other applicable provisions, as alleged herein, including Defendants'
18 failure and refusal to pay overtime wages, Defendants' failure to provide and pay premium wages for
19 missed meal and rest breaks, Defendants' receipt and/or collection of wages paid, Defendants' retaliation
20 for engagement in protected activity, Defendants' failure to provide timely and accurate wage and hour
21 statements, Defendants' failure to pay compensation due in a timely manner upon termination or
22 resignation, and Defendants' failure to maintain complete and accurate payroll records for the Plaintiffs,
23 constitute unfair business practices in violation of Business & Professions Code §§17200, et seq.

24 277. As a result of Defendants' unfair business practices, Defendants have reaped unfair
25 benefits and illegal profits at the expense of Plaintiffs and members of the public. Defendants should be
26 made to disgorge their ill-gotten gains and restore such monies to Plaintiffs.

27 278. Defendants' unfair business practices entitle Plaintiffs to seek preliminary and permanent
28 injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore

1 to the Plaintiffs the overtime compensation and other monies and benefits unlawfully withheld from
2 Plaintiffs.

3
4 **PRAYER FOR RELIEF**

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

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

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

12 3. For civil penalties pursuant to Labor Code §1102.5 in the amount of no less than
13 \$10,000.00;

14 4. For civil penalties pursuant to Civil Code 51 in the amount of no less than \$4,000.00;

15 5. For penalties at \$120 for each day “that either the violation occurred or continued,”
16 pursuant to L.A.M.C. § 188.07.

17 6. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194,
18 Industrial Welfare Commission Order No. 9-2001, and 8 Code of Regulations §11090, in the amount of
19 no less than an amount according to proof;

20 7. For statutory penalties or damages pursuant to Labor Code §558 in the amount of no less
21 than \$1,800;

22 8. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512,
23 in the amount of no less than an amount according to proof ;

24 9. For damages pursuant to Labor Code §226 in the amount of no less than an amount
25 according to proof;

26 10. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
27 less than \$17,000;

1 11. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
2 than \$19,680.00;

3 12. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely
4 independent and apart from other penalties in the Labor Code and for Labor Code violations without a
5 specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each
6 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

7 13. For civil penalties under Labor Code §210, in addition to and entirely independent and
8 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
9 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
10 each subsequent violation, plus 25 percent of the amount unlawfully withheld;

11 14. For civil penalties under Labor Code §2802, in addition to and entirely independent and
12 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
13 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
14 each subsequent violation;

15 15. For civil penalties under Labor Code §§ 210 and 225.5, in addition to and entirely
16 independent and apart from any other penalty provided in the Labor Code, for each violation of Labor
17 Code §§204, 221 and 223, in the amount of \$100 for each aggrieved employee per pay period for each
18 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation or for each
19 willful or intentional violation, in addition to 25 percent of the amount unlawfully withheld;

20 16. For civil penalties under Labor Code §226.3, in addition to and entirely independent and
21 apart from any other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved
22 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for
23 each subsequent violation;

24 17. For civil penalties under Labor Code §§203 and/or 256, in addition to and entirely
25 independent and apart from any other penalty provided in the Labor Code, in the amount of one day of
26 pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination,
27 until payment was/is made, up to a maximum of thirty (30) days;

1 18. For reasonable attorneys' fees and costs incurred pursuant to Labor Code §2699(g)(1) and
2 any other applicable statute; and

3 19. For prejudgment interest on all amounts recovered herein pursuant to Labor Code §218.6,
4 Labor Code §1194(a), and/or Civil Code §3287

5 20. For prejudgment interest on each of the foregoing at the legal rate from the date the
6 obligation became due through the date of judgment in this matter.

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

9 21. For injunctive relief compelling Defendants to report to federal and state authorities wages
10 earned by Plaintiffs, and other employees, and pay all state and federal taxes owing, employer matching
11 funds, unemployment premiums, social security, Medicare, and workers' compensation premiums, all
12 this in an amount according to proof.

13 22. For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful
14 conduct, failure to pay wages and other compensation in accordance with the law;

15 23. For punitive damages, pursuant to Civil Code section 3294 in amounts sufficient to punish
16 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

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

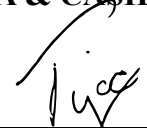
19 25. For post-judgment interest; and

20 26. For any other relief that is just and proper.

21
22 DATED: June 14, 2022

GUERRA & CASILLAS LLP

23
24 By:



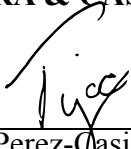
Tizoc Perez-Casillas, Esq.
Ruben Guerra, Esq.
Attorneys for Plaintiff
EVELINE GONZALEZ

JURY TRIAL DEMANDED

Plaintiff demands trial of all issues by jury.

DATED: June 14, 2022

GUERRA & CASILLAS LLP

By: 

Tizoc Perez-Casillas, Esq.
Ruben Guerra, Esq.
Attorneys for Plaintiff
EVELINE GONZALEZ