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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

ANTONIO TORRES and EMILIANA
SANTIAGO JUAREZ,

Plaintiffs,

vs.

GROUND STEW FARMS; NICHOLAS
AYALA; and DOES 1 to 25, inclusive,

Defendants.

CASE NO.: 22CV002112

COMPLAINT FOR DAMAGES FOR:

- 1) FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) FAILURE TO PAY MINIMUM WAGES;**
- 3) FAILURE TO PAY OVERTIME;**
- 4) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 6) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 7) VIOLATION OF LABOR CODE SECTION 558;**
- 8) FAILURE TO GIVE REST BREAKS;**
- 9) FAILURE TO GIVE MEAL BREAKS**
- 10) FAILURE TO REIMBURSE FOR BUSINESS EXPENSES;**
- 11) PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**
- 12) FAILURE TO PROVIDE PERSONNEL RECORDS;**
- 13) FAILURE TO PROVIDE PAY RECORDS;**
- 14) RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5;**
- 15) RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6;**

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- 16) DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT (“FEHA”);**
17) FAILURE TO ACCOMMODATE PHYSICAL DISABILITY IN VIOLATION OF THE FEHA;
18) FAILURE TO ENGAGE IN INTERACTIVE PROCESS TO DETERMINE REASONABLE ACCOMMODATION IN VIOLATION OF THE FEHA;
19) RETALIATION IN VIOLATION OF THE FEHA;
20) FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION OF THE FEHA;
21) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
22) VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200.

DEMAND FOR JURY TRIAL

COME NOW Plaintiffs, ANTONIO TORRES and EMILIANA SANTIAGO JUAREZ (hereinafter “Plaintiffs”), and allege as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Monterey in this judicial district because Defendants GROUND STEW FARMS, NICHOLAS AYALA, and DOES 1 to 25, inclusive do business in the County of Monterey and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiffs in the County of Monterey is the subject of this action. Moreover, Plaintiffs’ damages sought herein exceed \$25,000.

2. Plaintiff ANTONIO TORRES (“TORRES”) is a male resident of the County of Monterey, State of California.

1 3. Plaintiff EMILIANA SANTIAGO JUAREZ (“SANTIAGO”) is a female resident of the
2 County of Monterey, State of California.

3 4. Plaintiffs are informed and believe that at all times herein mentioned, Defendant
4 GROUND STEW FARMS is and was a California business, doing business in Monterey County,
5 and which employed Plaintiffs.

6 5. Plaintiffs are informed and believe that at all times herein mentioned, Defendant
7 NICHOLAS AYALA (“AYALA”) is a male resident of the County of Monterey, State of
8 California, and the owner, director, officer, and/or managing agent of GROUND STEW
9 FARMS. Plaintiffs are informed and believe and thereon allege that NICHOLAS AYALA
10 managed and was directly involved in the day-to-day operations of GROUND STEW FARMS
11 and is being included in this lawsuit pursuant to Labor Code Section 558.1. GROUND STEW
12 FARMS and NICHOLAS AYALA are hereinafter collectively referred to as “GROUND
13 STEW” or “Defendants”.

14 6. The “Aggrieved Employees” are all current and former employees, including those
15 employees who were supposed to be paid on an hourly basis and were classified as hourly, non-
16 exempt employees and who worked for GROUND STEW at any of their California locations
17 during the relevant time period pursuant to California Labor Code section 2698, et. seq., the
18 Labor Code Private Attorneys General Act of 2004 (“PAGA”).

19 7. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate, or
20 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiffs sue
21 them by these fictitious names. Plaintiffs are informed and believe that each of the DOE
22 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
23 for the conduct alleged herein. Upon discovering the true names and capacities of these
24 fictitiously named defendants, Plaintiffs will amend this complaint to show the true names and
25 capacities of these fictitiously named defendants.

26 8. Unless otherwise alleged in this complaint, Plaintiffs are informed, and on the basis of
27 that information and belief, allege that at all times herein mentioned, each of the remaining
28 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
under the authority of their agency, employment, or representative capacity, with the consent of

his/her codefendants.

GENERAL ALLEGATIONS

9. Plaintiffs started working for GROUND STEW on or around 2018 or 2019. Both were strictly paid in cash. Plaintiff TORRES' latest rate of pay was \$20/hour whereas Plaintiff SANTIAGO's latest rate of pay was \$18/hour. Plaintiffs were apparently classified as hourly, non-exempt employees and were paid weekly on Mondays. Plaintiffs generally worked 6 days per week for about 12-14 hours per day. There was no formal timekeeping system for either Plaintiff.

10. It is Plaintiffs' position that Defendants have violated numerous Labor Code Sections against Plaintiffs and other similarly situated Aggrieved Employees.

11. GROUND STEW did not provide Plaintiffs and other similarly situated Aggrieved Employees with the minimum wages to which they were entitled for all work performed and as such did not compensate Plaintiffs and others for all hours worked at the minimum wage rate pursuant to California Labor Code sections 1194, 1197 and 1197.1. This is so because the company would not accurately record the number of hours worked by employees, including Plaintiffs, especially because there was no formal timekeeping system. As such, it is Plaintiffs' contention that the company had a policy and practice of rounding down work hours to the detriment of employees, resulting in minimum wage violations. As such, Plaintiffs did not get compensated for all the hours they actually worked and did not receive at least the minimum wage for all the hours they worked in contravention of California law.

12. Due to the above "off the clock" violations and as a matter of company policy and practice, GROUND STEW also violated Labor Code §510 and Industrial Welfare Commission Wage Order 14 because it failed to pay Plaintiffs and other similarly situated aggrieved employees overtime, even though they worked more than 10 hours per day throughout their employment. In fact, Plaintiffs consistently worked 12-14 hours days, 6 days per week, however, they were never compensated for their full hours worked and never received overtime compensation at 1.5 times their regular rate of pay for hours worked past 10 in a workday.

13. GROUND STEW violated Labor Code § 226.7 and the applicable Industrial Welfare Commission Wage Order no. 14 because it failed to provide Plaintiffs and other similarly

1 situated aggrieved employees 10-minute rest periods for every four hours of work, or majority
2 portion thereof, throughout their employment. GROUND STEW did not completely relieve
3 Plaintiffs of all duty during said rest periods. GROUND STEW did not pay to Plaintiffs one
4 additional hour of pay at Plaintiffs' regular rate of compensation for each workday that one or
5 more statutory rest periods was not provided. It was not part of the company policy and culture
6 for employees such as Plaintiffs and others to consistently take timely, uninterrupted rest breaks,
7 especially due to the continuous work obligations at the farm. Moreover, there was never a
8 situation wherein Plaintiffs actually received 3 rest breaks, which is what they would be entitled
9 considering that they typically worked 12-14 hour days. As such, there would be a rest break
10 violation on every single day Plaintiffs worked. As such, the culture and environment at
11 GROUND STEW did not lend itself to the employees receiving statutory breaks wherein they
12 were relieved of all work duties. It was the normal practice and custom of GROUND STEW not
13 to authorize, permit, and enforce timely, uninterrupted statutory rest periods.

14 14. GROUND STEW violated Labor Code §§ 512 and 226.7 and the applicable Industrial
15 Welfare Commission Wage Order no. 14 because it failed to provide Plaintiffs and other
16 similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for
17 every five (5) hours of work (and before the fifth hour) throughout their employment, and
18 Plaintiffs did not validly waive said meal periods. GROUND STEW did not completely relieve
19 Plaintiffs of all duties during said meal periods. GROUND STEW did not pay to Plaintiffs one
20 additional hour of pay at Plaintiffs' regular rate of compensation for each workday that one or
21 more statutory meal periods was not provided. Plaintiffs never received a meal period throughout
22 their entire employment tenure, much less an uninterrupted before period before the 5th hour
23 worked. It simply did not exist and was not part of the company culture. Like the rest breaks,
24 receiving a timely, thirty-minute uninterrupted meal break was not part of the company culture
25 and was not enforced by GROUND STEW. It was the normal practice and custom of GROUND
26 STEW not to authorize, permit, and enforce timely statutory meal periods.

27 15. Furthermore, during the relevant time period, and due to the above labor code violations,
28 GROUND STEW failed to pay Plaintiffs and other similarly situated aggrieved employees all
wages due to them within any time period specified by California Labor Code section 204.

1 GROUND STEW was also in violation of California Labor Code section 226(a) by failing to
2 include pertinent information on the wage statements, including but not limited to, the correct
3 hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned,
4 net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start
5 and end of the pay period, all employee identifying information, the correct name and address of
6 the legal employer, and reimbursement for business expenses, among others. In fact, Plaintiffs
7 never received paystubs as they were paid in cash. Paystubs did not exist. As such, GROUND
8 STEW did not provide Plaintiffs and other similarly situated aggrieved employees with
9 complete, accurate itemized wage statements.

10 16. GROUND STEW violated Labor Code § 203 because it willfully failed to pay Plaintiffs
11 and other similarly situated aggrieved employees earned and due wages upon separation of
12 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
13 These earned but unpaid wages include the unpaid minimum wages/compensation for all hours
14 worked, overtime, premium pay for missed meal and rest breaks, and business expense
15 reimbursement, among others.

16 17. During the relevant time period, GROUND STEW also failed to keep accurate and
17 complete payroll records showing the correct wages paid to Plaintiffs and other aggrieved
18 employees pursuant to California Labor Code sections 1174(d).

19 18. Additionally, during the relevant time period, Plaintiffs and other aggrieved employees
20 incurred necessary, business-related expenses and costs that were not reimbursed by GROUND
21 STEW. These costs include, but are not limited to, the use of personal cell phones for work
22 purposes and Mr. Torres having to utilize his personal truck for work purposes without being
23 compensated for gas/mileage. Accordingly, GROUND STEW was in violation of California
24 Labor Code sections 2800 and 2802.

25 19. Moreover, GROUND STEW failed to provide Worker's Compensation coverage for
26 Plaintiffs and other aggrieved employees in violation of Labor Code Section 3700.5 and also
27 failed to provide sick pay in violation of Labor Code Sections 233 and 246.

28 20. In addition, Plaintiffs would have individual claims against GROUND STEW for
wrongful termination in violation of public policy. Plaintiff TORRES suffered a fall at the farm

on or around October 2021. TORRES informed the owner, AYALA that he had injured himself at work and hurt his right foot and lower back. TORRES asked AYALA if he could take TORRES to the hospital, but AYALA refused and said it was not a bad injury. Not surprisingly and due to suffering an injury-on-the-job and due to his physical disability, TORRES was terminated from his employment on or around November 8, 2021 as a retaliatory measure. The excuse given to TORRES was that there was no more work for him, however, the company had hired a new person to replace TORRES. Moreover, Plaintiff SANTIAGO would also have claims against GROUND STEW for wrongful termination in that she was associated with TORRES. Moreover, Plaintiffs also complained to AYALA about wage and hour violations, including no overtime being paid. In response, AYALA responded that the overtime laws did not apply to him. It is Plaintiffs' position that they were also terminated as a retaliatory measure for complaining about wage and hour violations in contravention of California Labor Code sections 98.6 and 1102.5.

21. Pursuant to California Government Code section 12960, Plaintiffs have exhausted their administrative remedies. Plaintiffs filed a complaint with the Department of Fair Employment and Housing ("DFEH"), alleging claims in this complaint. The DFEH immediately issued to Plaintiffs a right to sue letter.

FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(California Industrial Welfare Commission Order 14-2001, California Code of Regulations Title 8 Section 11140, and California Labor Code Section 1198)

(Plaintiffs against all named Defendants and all DOE Defendants)

22. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 21, inclusive, of this Complaint as though fully set forth herein.

23. At all times relevant herein, Defendants were required to compensate their employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 14-2001, California Code of Regulations, Title 8, Section 11140.

24. For the three (3) years preceding filing of this action, Defendants failed to compensate

1 Plaintiffs for all hours worked. This is so because Defendants would not accurately record the
2 number of hours worked by employees, including Plaintiffs.

3 25. Under the aforementioned wage order and regulations, Plaintiffs are to recover
4 compensation for all hours worked but not paid by Defendants for the three (3) years preceding
5 the filing of this Complaint.

6 26. As a proximate result of the aforementioned violations, Plaintiffs have been damaged in
7 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
8 this Court.

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

13 28. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
14 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
15 amount known to Plaintiff once they have obtained all of their payroll records from Defendants.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES**

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

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

20 29. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
21 1 through 28, inclusive, of this Complaint as though fully set forth herein.

22 30. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
23 to suffer or permit a California employee to work without paying wages at the minimum wage
24 rate for all hours worked as required by the applicable Industrial Welfare Commission Wage
25 Order No. 14-2001, codified at California Code of Regulations, Title 8, Section 11140,
26 subdivision 4.

27 31. Pursuant to IWC Wage Order No. 14-2001, subdivision 2(G), at all relevant times, "hours
28 worked" included "the time during which an employee is subject to the control of an employer,
and includes all the time the employee is suffered or permitted to work, whether or not required

1 to do so, and in the case of an employee who is required to reside on the employment premises,
2 that time spent carrying out assigned duties shall be counted as hours worked...”

3 32. During their employment, Plaintiffs were regularly required as a matter of uniform policy
4 and practice to work, and in fact worked, as employees of Defendants and Plaintiffs were paid
5 less than the minimum wage rate by Defendants for hours worked in violation of California
6 Labor Code Section 1197 and the applicable California Industrial Wage Commission wage
7 order(s).

8 33. Plaintiffs were, at all relevant times, under the control of Defendants and suffered or
9 permitted to work by Defendants. Defendants’ acts or omissions in failing to adequately
10 compensate Plaintiffs were not in good faith nor were there reasonable grounds for Defendants
11 to believe that their acts or omissions were not contrary to California law.

12 34. For all hours worked by Plaintiffs for which they were paid less than the minimum wage
13 rate by Defendants, Plaintiffs are entitled to not less than the applicable California minimum
14 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount equal
15 to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194, Plaintiffs
16 are also entitled to attorney’s fees, costs and interests according to proof.

17 35. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
18 along with any allowable interest, penalties, attorney’s fees, and costs according to proof at trial.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PAY OVERTIME**

21 **(California Industrial Welfare Commission Order 14-2001, California Code of
22 Regulations Title 8 Section 11140)**

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

24 36. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
25 1 through 35, inclusive, of this Complaint as though fully set forth herein.

26 37. Pursuant to Industrial Welfare Commission 14-2001, California Code of Regulations,
27 Title 8, Section 11140 for the period of Plaintiffs’ employment, Defendants were required to
28 compensate Plaintiffs for all overtime, which is calculated at one and one-half (1.5) times the
regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week,

1 and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a
2 day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

3 38. Plaintiffs were non-exempt employees entitled to the protections of the California
4 Industrial Welfare Commission Order No. 14-2001, California Code of Regulations, Title 8,
5 Section 11140.

6 39. Plaintiffs worked more than eight (8) hours or twelve (12) hours in a single workday or
7 forty (40) hours in a single workweek on numerous occasions.

8 40. Plaintiffs were entitled to the above overtime premiums.

9 41. Defendants did not pay Plaintiffs premium wages of at least one and one-half times
10 Plaintiffs' regular rate of pay for hours worked past eight (8) in a day and two-times Plaintiffs'
11 regular rate of pay for hours worked past twelve (12) in a day.

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

14 43. Plaintiffs worked at least one pay period in which they were not properly paid overtime
15 within the three (3) years prior to the initiation of this lawsuit.

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

18 45. As a proximate result of Defendants' violations, Plaintiffs have been damaged in an
19 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
20 Court.

21 46. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
22 Regulations, Title 8, Sections 11140, Plaintiffs are entitled to recover damages for the
23 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
24 reasonable attorney's fees and costs of suit.

25 47. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
26 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
27 trial.

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FOURTH CAUSE OF ACTION**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS****(California Labor Code Section 226)****(Plaintiffs against all named Defendants and all DOE Defendants)**

48. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 47, inclusive, of this Complaint as though fully set forth herein.

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

50. Defendants knowingly and intentionally did not furnish Plaintiffs with any pay stubs that accurately reflected all information required by Labor Code Section 226, including but not limited to, gross wages earned, including overtime, net wages earned, total hours worked by the employee, all deductions, and premium pay for missed meal breaks and rest breaks. In addition, the pay stubs are devoid of any compensation for rest and recovery time pursuant to 226.2. Therefore, Defendants failed to maintain and provide accurate itemized wage statements to Plaintiffs in accordance with California Labor Code Section 226(a).

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

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

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

FIFTH CAUSE OF ACTION**FAILURE TO PAY WAGES OWED EVERY PAY PERIOD****(California Labor Code Section 204)****(Plaintiffs against all named Defendants and all DOE Defendants)**

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

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

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

57. Defendants failed to pay Plaintiffs all wages earned each pay period. Plaintiffs are informed, believe, and thereon allege, that all times relevant during the liability period, Defendants maintained a policy or practice of not paying Plaintiffs wages for all hours worked, including overtime hours and premium pay for missed rest breaks and meal breaks.

58. As a result of Defendants' unlawful conduct, Plaintiffs have suffered damages in an amount, subject to proof, to the extent they were not paid all wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiffs but can be determined directly from Defendants' records or indirectly based on information from Defendants' records.

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

SIXTH CAUSE OF ACTION**FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS****(California Labor Code Sections 201, 202, 203)****(Plaintiff against all named Defendants and all DOE Defendants)**

60. Plaintiff re-allege and incorporate by reference each and every allegation in paragraphs 1 through 59, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

11 65. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
12 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.
13 Moreover, Plaintiffs pray for the above-mentioned money from 3 years immediately preceding
14 the filing of this lawsuit.

15 66. Under this cause of action, Plaintiffs also pray for attorney's fees and costs under
16 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
17 forth herein. Plaintiffs also pray for interest under California Labor Code Section 218.6.

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

20 **SEVENTH CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE SECTION 558**

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

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

24 68. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
25 1 through 67, inclusive, of this Complaint as though fully set forth herein.

26 69. California Labor Code Section 558 states that any person acting on behalf of an employer
27 who violates, or causes to be violated, a section of this chapter or any provision regulating hours
28 and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
penalty for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay

1 period for which the employee was underpaid in addition to an amount sufficient to recover
2 underpaid wages. The civil penalty for each subsequent violation is one hundred dollars (\$100)
3 for each underpaid employee for each pay period for which the employee was underpaid in
4 addition to an amount sufficient to recover underpaid wages. Plaintiff claims penalties for five
5 (5) years immediately preceding the date this lawsuit was filed.

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

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

23 71. Under this cause of action, Plaintiffs pray for all penalties and pay otherwise due under
24 the statutes, regulations, and wage orders alleged in this cause of action along with any
25 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

26 72. Plaintiffs also pray for Labor Code Section 211 and 218.5 recovery of costs and
27 attorney's fees for the time Plaintiffs' attorney spent prosecuting this cause of action.

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EIGHTH CAUSE OF ACTION**FAILURE TO GIVE REST BREAKS**

(Plaintiffs against all named Defendants and all DOE Defendants)

73. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 72, inclusive, of this Complaint as though fully set forth herein.

74. Plaintiffs brings this cause of action under the following laws, for the following reasons:

- a. Title 8 of the California Code of Regulations Sections 11140(12), which provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- b. Title 8 of the California Code of Regulations sections 11140(18)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- c. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

75. Plaintiffs allege that they were not authorized and permitted to take a ten (10) minute rest break after every four (4) hours of work or major fraction thereof, as required by California law.

76. Under this cause of action, Plaintiffs pray for wages due to them under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiffs pray for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

1 77. Plaintiffs also pray for Labor Code section 218.5 recovery of costs and attorney's
2 fees as well as interest under Labor Code section 218.6.

3 78. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
4 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
5 trial.

6 **NINTH CAUSE OF ACTION**

7 **FAILURE TO GIVE MEAL BREAKS**

8 **(Plaintiffs against all named Defendants and all DOE Defendants)**

9 79. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
10 1 through 78, inclusive, of this Complaint as though fully set forth herein.

11 80. Plaintiffs brings this cause of action under the following laws, for the following
12 reasons:

- 13 a. California Labor Code section 512(a), which requires that employees be given a 30-
14 minute uninterrupted meal break after five (5) hours of work, and a second
15 uninterrupted meal break after ten (10) hours of work;
- 16 b. California Labor Code section 226.7, which states that (a) no employer shall require
17 any employee to work during any meal period mandated by an applicable order of
18 the Industrial Welfare Commission, and (b) if any employer fails to provide an
19 employee a meal period in accordance with an applicable order of the Industrial
20 Welfare Commission, the employer shall pay the employee one (1) additional hour
21 of pay at the employee's regular rate of compensation for each workday that the meal
22 period is not provided;
- 23 c. California Industrial Welfare Commission Order No. 14 section 11(A), as codified
24 under Title 8 of the California Code of Regulations Section 11140, which states that
25 an employer may not employ an employee for a work period of more than five (5)
26 hours without providing the employee with a meal period of not less than 30 minutes,
27 except that when a work period of not more than six (6) hours will complete the day's
28 work the meal period may be waived by mutual consent of employer and employee.
- d. California Industrial Welfare Commission Wage Order No. 14 Section 7(A)(3), as

- 1 codified under Title 8 of the California Code of Regulations Section 11140, which
2 requires an employer to maintain records documenting its employees' meal periods;
- 3 e. California Industrial Welfare Commission wage order No. 14 Section 18(A), as
4 codified under California Code of Regulations Section 11140, which penalizes the
5 employer \$50.00 for each initial violation, per employee, of any provision of the
6 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- 7 f. California Labor Code section 1171 and 1173, which have given the California Labor
8 Commission jurisdiction to enact Wage Orders (such as Wage Order No. 14) as
9 enforceable law.

10 81. Plaintiffs allege that they were not authorized and permitted to take relieved meal breaks
11 after five (5) hours of work (and before the fifth hour) and Defendants did not completely relieve
12 Plaintiffs of all duties during said meal periods. California Labor Code section 512(a) and
13 California Industrial Welfare Commission Order No. 14, as codified under California Code of
14 Regulations Section 11140 *et. seq.* requires that employees receive uninterrupted meal periods
15 every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in
16 length, wherein employee is relieved of all work duty. California Labor Code section 226.7
17 provides that employers may not require their employees to work through their meal periods.
18 California Labor Code section 226.7 requires that if the employer fails to provide the employee
19 with an uninterrupted meal period, the employer must pay the employee one (1) hour of pay for
each work day that the meal period is not given.

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

24 83. Plaintiffs also pray for Labor Code section 218.5 recovery of costs and attorney's fees as
25 well as interest under Labor Code section 218.6.

26 84. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
27 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
28 trial.

TENTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Plaintiffs against all named Defendants and DOE Defendants)

85. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 84, inclusive, of this Complaint as though fully set forth herein.

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

87. Beginning at least 3 years prior to the filing of this complaint, in order to discharge their duties for Defendants, Plaintiffs incurred reasonable and necessary expenses in the course of completing job duties, which were not reimbursed by Defendants. These expenses include, but are not limited to, the use of personal cell phones for work purposes and Plaintiff TORRES having to utilize his personal truck for work purposes without being compensated for gas and mileage.

88. Plaintiffs are entitled to reimbursement for these necessary expenditures, plus interest and attorney’s fees and costs, under Labor Code section 2802.

ELEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 232, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197.1, 1198, 2802, 3700.5)

(Plaintiffs against all named Defendants and all DOE Defendants)

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

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

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

1 92. Plaintiffs therefore have exhausted all administrative remedies required of them under
2 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
3 cause of action and pursue penalties in a representative action for DEFENDANTS' violations of
4 the Labor Code.

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

11 94. Plaintiffs are "Aggrieved Employees" because Plaintiffs were employed by the alleged
12 violator and had one or more of the alleged violations committed against them, and therefore are
13 properly suited to represent the interests of other current and former employees, including all
14 current and former hourly, non-exempt employees who worked for Defendants in the State of
California during the applicable PAGA Period.

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

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

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

24 98. Plaintiffs seek penalties for Defendants' misconduct as alleged herein as permitted by
25 law, but only those penalties that are required to be shared with the LWDA as Plaintiffs are not
26 seeking individual/victim specific relief or underpaid wages for themselves or other employees
27 under this specific PAGA cause of action.

28 99. Specifically, Plaintiffs seek penalties under California Labor Code section 2699, for

1 the following:

2 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,
3 226.3, 226.7, 232, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197.1, 1198, 2802,
4 3700.5 and any other Labor Codes/Industrial Welfare Commission Order (No. 14) violated
5 based on the facts alleged in this Complaint.

6 100. Pursuant to Labor Code section 2698 et seq., Plaintiffs seek to recover attorney's fees,
7 costs, and civil penalties on behalf of Plaintiffs and other current and former Aggrieved
8 Employees as alleged herein in an amount to be shown according to proof at trial and within the
9 jurisdictional limits of this Court.

10 **TWELFTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE PERSONNEL RECORDS**

12 **(Plaintiffs against all named Defendants and all DOE defendants)**

13 101. Plaintiffs re-allege and incorporate by reference each and every allegation in
14 paragraphs 1 through 100, inclusive, of this Complaint as though fully set forth herein.

15 102. Labor Code section 1198.5 dictates "every current and former employee, or his
16 or her representative, has the right to inspect and receive a copy of the personnel records that the
17 employer maintains relating to the employee's performance or to any grievance concerning the
18 employee."

19 103. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the
20 employer shall make the contents of those personnel records available for inspection to the
21 current or former employee, or his or her representative, at reasonable intervals and at reasonable
22 times..." On information and belief, Defendants intentionally failed to provide Plaintiffs with
23 personnel records when requested by Plaintiffs via letter on April 14, 2022, as required by law.
24 Plaintiffs requested their personnel records in accordance with California Labor Code section
25 1198.5(k) on April 14, 2022 via U.S. certified mail, return receipt requested.

26 104. Defendants failed to provide Plaintiffs with an opportunity to inspect or copy their
27 records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiffs have
28 suffered and continue to suffer substantial losses related to Defendants' failure to provide
personnel records.

1 105. Plaintiffs seek all available remedies for Defendants’ violations including, but not
2 limited penalties, and costs to the extent permitted by law and according to proof at trial.
3 Pursuant to Labor Code section 1198.5, Plaintiffs pray for judgment against Defendants in the
4 amount of \$750.00 each, along with costs and attorney’s fees.

5 **THIRTEENTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE PAY RECORDS**

7 **(Plaintiffs against all named Defendants and all DOE defendants)**

8 106. Plaintiffs re-allege and incorporate by reference each and every allegation in
9 paragraphs 1 through 105, inclusive, of this Complaint as though fully set forth herein.

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

13 108. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer
14 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
15 pertaining to a current or former employee shall comply with the request as soon as practicable,
16 but no later than 21 calendar days from the date of the request.” On information and belief,
17 Defendants intentionally failed to provide Plaintiffs with pay records when requested by
18 Plaintiffs via certified letter, return receipt requested, on April 14, 2022, and as required by law.
19 Plaintiffs requested their pay records in accordance with California Labor Code section 226 on
20 April 14, 2022, via certified mail. Defendants failed to provide Plaintiffs with an opportunity to
inspect or copy their pay records within 21 days.

21 109. As a direct result of Defendants’ violations alleged herein, Plaintiffs have suffered
22 and continue to suffer substantial losses related to Defendants’ failure to provide pay records.
23 Pursuant to Labor Code section 226, Plaintiffs pray for judgment against Defendants in the
24 amount of \$750.00, along with costs and attorney’s fees.

25 110. Plaintiffs seek all available remedies for Defendants’ violations including, but not
26 limited penalties, and costs to the extent permitted by law and according to proof at trial.

27 ///

28 ///

FOURTEENTH CAUSE OF ACTION**RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5****(Plaintiffs against all named Defendants and all DOE defendants)**

111. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 110, inclusive, of this Complaint as though fully set forth herein.

112. At all times material to this Complaint, California Labor Code § 1102.5 was in effect and binding on Defendants. This section requires Defendant to refrain from retaliating against an employee for refusing to participate in an activity that he/she reasonably believes would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation. California Labor Code section 1102.5 also requires Defendant to refrain from retaliating against an employee for disclosing information to a person with authority over the employee if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

113. Defendants retaliated against Plaintiffs for their complaints to management and ownership about the missing hours of pay and not getting paid overtime, as alleged above, all in violation of Labor Code § 1102.5.

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

115. Plaintiffs request all available relief under Labor Code § 1102.5 including damages, attorney's fees, and the imposition of civil penalties of \$10,000 for each violation.

FIFTEENTH CAUSE OF ACTION**RETALIATION IN VIOLATION OF LABOR CODE 98.6****(Plaintiffs against all named Defendants and all DOE defendants)**

116. Plaintiffs re-allege and incorporate by reference each and every allegation in

1 paragraphs 1 through 115, inclusive, of this Complaint as though fully set forth herein.

2 117. California Labor Code section 98.6 provides, in pertinent part, as follows:

3 “A person shall not discharge an employee or in any manner discriminate, retaliate, or
4 take any adverse action against any employee or applicant for employment because the
5 employee or applicant engaged in any conduct delineated in this chapter...or because the
6 employee or applicant...made a written or oral complaint that he or she is owed unpaid
7 wages...

8 118. Defendants violated Labor Code Section 98.6 in that they retaliated against
9 Plaintiffs for complaining about wage and hour and labor code violations, including missing
10 hours of pay and not being paid overtime, that were being committed by Defendants in the
11 workplace.

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

17 120. Moreover, pursuant to Labor Code section 98.6, an employer who violates this
18 section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee
19 for each violation of this section.

20 121. The foregoing conduct engaged in by Defendants and each of its directors,
21 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
22 ratified, and carried on with a conscious and willful disregard of their workers’ right to work in
23 an environment free of retaliation, so as to justify the imposition of punitive damages to punish
24 and set an example of said Defendants.

25 **SIXTEENTH CAUSE OF ACTION**

26 **DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY IN VIOLATION**
27 **OF THE FEHA**

28 **(Plaintiffs against all named Defendants and all DOE Defendants)**

122. Plaintiffs re-allege and incorporate by reference each and every allegation in
paragraphs 1 through 121, inclusive, of this Complaint as though fully set forth herein.

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

3 124. California Government Code section 12926(m) has established a “broad
4 definition” of physical disability: disability protections under the Fair Employment and Housing
5 Act (“FEHA”) even extend to “perceived” physical disabilities. *Id.* Under the law of this state,
6 “working” is a major life activity. *See* section 12926.1(c). Furthermore, the FEHA also protects
7 a person’s association with another who has a disability

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

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

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

21 125. Plaintiff TORRES’ injury to his right foot and lower back, which was debilitating,
22 and which limited a major life activity, qualifies as a disability under FEHA, and Plaintiff
23 TORRES was entitled to its protection.

24 126. Defendants knew of Plaintiff TORRES’s disability and were also aware of
25 Plaintiff SANTIAGO’s association with a disabled person (TORRES). Defendants violated
26 California Government Code section 12940 et. seq. by discriminating against both Plaintiffs on
27 the basis of TORRES’s disability and SANTIAGO’s association with TORRES.

28 127. As a direct and proximate result of the aforementioned acts and omissions of
Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,

1 loss of income (past and future), loss of employment benefits (past and future), general and
 2 compensatory damages (past and future), mental pain and anguish and emotional distress (past
 3 and future), and will continue to suffer in the future, in an amount to be proved at trial.

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

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

13 **SEVENTEENTH CAUSE OF ACTION**

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

15 **THE FEHA**

16 **(Plaintiff TORRES against all named Defendants and all DOE Defendants)**

17 130. Plaintiff TORRES re-alleges and incorporates by reference each and every
 18 allegation in paragraphs 1 through 129, inclusive, of this Complaint as though fully set forth
 19 herein.

20 131. California Government Code section 12940(p) provides that it is unlawful for an
 21 employer to fail to make reasonable accommodation for the known physical disability of an
 22 employee.

23 132. Defendants knew Plaintiff injured his right foot and lower back at work and failed
 24 to make reasonable accommodation of Plaintiff's physical disability.

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

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

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

9 **EIGHTEENTH CAUSE OF ACTION**

10 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF**

11 **THE FEHA**

12 **(Plaintiff TORRES against all named Defendants and all DOE Defendants)**

13 136. Plaintiff TORRES re-alleges and incorporates by reference each and every
14 allegation in paragraphs 1 through 135, inclusive, of this Complaint as though fully set forth
15 herein.

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

19 138. As described above, Defendants knew that Plaintiff suffered from a physical
20 disability. Defendants failed to engage in any kind of interactive process with Plaintiff in order
21 to determine whether they could provide Plaintiff with reasonable accommodations. Instead,
22 Defendants pursued discriminatory actions against Plaintiff, including terminating Plaintiff's
23 employment.

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

140. The foregoing conduct engaged in by Defendants and each of their directors,

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

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

8 **NINETEENTH CAUSE OF ACTION**

9 **RETALIATION IN VIOLATION OF THE FEHA**

10 **(Plaintiffs against all named Defendants and all DOE Defendants)**

11 142. Plaintiffs re-allege and incorporate by reference each and every allegation in
12 paragraphs 1 through 141, inclusive, of this Complaint as though fully set forth herein.

13 143. At all times herein mentioned, Government Code section 12940 et. seq. was in
14 full force and effect and was binding upon Defendants and each of them. Said statute imposes
15 certain duties upon Defendants concerning discrimination and retaliation against persons, such
16 as Plaintiff TORRES, on the basis of physical disability or on the basis of Plaintiff requesting
17 time off of work/missing time from work due to a physical disability or Plaintiff SANTIAGO's
18 association with a disabled person (TORRES). Said statutes were intended to prevent the type
19 of injury and damage set forth herein. Plaintiffs were, at all times herein mentioned, members of
20 the class of persons intended to be protected by said statutes. As alleged above, Plaintiffs were
21 retaliated against and terminated from their employment as a result of Plaintiff TORRES's
22 physical disability and Plaintiff SANTIAGO's association with a disabled person (TORRES).

23 144. As a direct and proximate result of Defendants' conduct, Plaintiffs have been
24 harmed in that Plaintiffs have suffered the loss of wages, salary, and benefits, among other things.
25 As a result, Plaintiffs have suffered such damages in an amount according to proof.

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

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

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

14 148. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
15 a prevailing Plaintiff in an action brought under its provisions. Plaintiffs have employed and
16 will continue to employ attorneys for the initiation and prosecution of this action. Plaintiffs
17 have incurred and will continue to incur attorneys' fees and costs herein. Plaintiffs are entitled
18 to an award of attorneys' fees and costs.

19 **TWENTIETH CAUSE OF ACTION**

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

21 **OF THE FEHA**

22 **(Plaintiffs against all named Defendants and all DOE Defendants)**

23 149. Plaintiffs re-allege and incorporate by reference each and every allegation in
24 paragraphs 1 through 148, inclusive, of this Complaint as though fully set forth herein.

25 150. At all times herein mentioned, FEHA, California Government Code section
26 12940(k), was in full force and effect and was binding on Defendants. According to Government
27 Code § 12940(k), it is an unlawful employment practice for an employer to fail to take all
28 reasonable steps necessary to prevent disability discrimination from occurring.

 151. As described above, Defendants knew that Plaintiff TORRES suffered from a

1 physical disability and were also aware of Plaintiff SANTIAGO's association with a disabled
2 person (TORRES). Defendants failed to engage in any kind of interactive process with Plaintiff
3 TORRES in order to determine whether they could provide Plaintiff TORRES with reasonable
4 accommodations. Instead, Defendants pursued discriminatory actions against Plaintiffs,
5 including terminating Plaintiffs' employment.

6 152. During the course of Plaintiffs' employment, Defendants failed to prevent their
7 employees, including management, from engaging in intentional actions that resulted in
8 Plaintiffs being treated less favorably and eventually being terminated because of Plaintiffs'
9 protected status (i.e., TORRES' physical disability and SANTIAGO's association with a
10 disabled person). During the course of Plaintiffs' employment, Defendants failed to prevent their
11 employees from engaging in unjustified employment practices against employees in such
12 protected classes. During the course of Plaintiffs' employment, Defendants failed to prevent a
13 pattern and practice by their employees of intentional discrimination and retaliation on the basis
14 of physical disability, and/or other protected status and/or protected activity.

15 153. Plaintiffs believe and, on that basis, allege that TORRES' physical disability,
16 and SANTIAGO's association with a disabled person (TORRES), were substantial motivating
17 factors in Defendants' employees' discriminating against them and retaliating against them.

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

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

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

Government Code section 12940, et seq., Plaintiffs have been forced to and will incur attorney's fees and costs in the prosecution of this claim, in an amount to be proven at trial.

TWENTY FIRST CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Plaintiffs against all named Defendants and all DOE Defendants)

157. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 156, inclusive, of this Complaint as though fully set forth herein.

158. At all times during their employment with Defendants, Plaintiffs performed their duties with the utmost diligence and competence.

159. Plaintiffs are informed and believe and thereon allege that Defendants' decisions to retaliate against them, as alleged herein, was motivated by Plaintiff TORRES' physical disability, Plaintiff SANTIAGO's association with a disabled person (TORRES) and Plaintiffs' complaints regarding the labor code violations that were taking place at the workplace. Plaintiffs are further informed and believe and thereon allege that any other reasons proffered by Defendants were and are pretextual in nature. Defendants intentionally created the aforementioned discrimination and retaliation, thereby not giving Plaintiffs an opportunity to work in an environment free of labor code violations, discrimination, and retaliation.

160. The employment of Plaintiffs was wrongfully terminated on or around November 8, 2021 in violation of the fundamental public policy of the State of California with respect to discrimination and retaliation based on physical disability, as well as retaliation against an employee for complaining about labor code violations. Plaintiffs were forced to hire an attorney to assist them to end these illegal activities. Said conduct violated statutory and constitutional expressions of public policy including, but not limited to, California Government Code sections 12940 et seq., and the California Constitution, Article 1, section 8.

161. As set forth above, said actions by Defendants were wrongful and in violation of the fundamental principles of the public policy of the State of California as reflected in its laws, objectives and policies. Said statutes and constitutional expressions of public policy include, but are not limited to, California Labor Code and the California Constitution, Article 1 section 8. These laws inure to the benefit of the public at large, and not just the private interests

of the employers and employees whom they govern or protect.

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

163. The foregoing conduct engaged in by Defendants and each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified, and carried on with a conscious and willful disregard of their workers' right to work in an environment free of labor code violations, so as to justify the imposition of punitive damages to punish and set an example of said Defendants.

TWENTY SECOND CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(California Business and Professions Code Section 17200)

(Plaintiffs against all named Defendants and all DOE defendants)

164. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 163, inclusive, of this Complaint as though fully set forth herein.

165. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants constitute unfair and unlawful business practices under California Business and Professions Code Section 17200, et seq.

166. Defendants' violations of the FEHA, California labor laws, and the Labor Code, as alleged above constitutes a business practice because it was done repeatedly over a significant period of time in a systematic manner that was detrimental to Plaintiffs and other similarly situated Aggrieved Employees.

167. For the four years preceding the filing of this action, Plaintiffs have suffered damages and request damages and/or restitution of all monies and profits to be disgorged from Defendant in an amount according to proof at time of trial, but in excess of the jurisdiction of this Court.

///

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for Judgment against Defendants, and each of them, as follows:

1. For compensatory damages including lost past and future wages, regular wages, overtime, and all other sums of money, including employment benefits, together with interest on said amounts, and any other economic injury to Plaintiffs, according to proof;
2. For general damages according to proof;
3. For special and consequential damages to Plaintiffs in an amount subject to proof at trial;
4. For damages for wages and overtime not paid to Plaintiffs in an amount subject to proof at trial;
5. For damages and penalties under Labor Code Section 226 for Plaintiffs in an amount subject to proof at trial;
6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
7. For restitution and disgorgement for all unfair business practices by Defendants against Plaintiffs in an amount subject to proof at trial;
8. For an order enjoining Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
9. For an award of punitive and exemplary damages against Defendants according to proof;
10. For one hour of wages due to Plaintiffs for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
11. For one hour of wages due to Plaintiffs for each work period of four (4) hours or major fraction thereof when Plaintiffs did not receive a ten (10) minute rest break;
12. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendant as described more particularly in the Complaint and Representative PAGA claim/action;
13. For all remedies available to Plaintiffs under the applicable Wage Order and the Labor

Code including an award of attorney's fees, costs, interest, and penalties according to proof to the extent permitted by law;

14. For restitution and/or damages for all amounts unlawfully withheld from the wages of Plaintiffs, as may be proven;

15. For the imposition of civil penalties and/or statutory penalties;

16. For all interest as allowed by law;

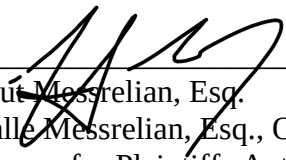
17. For all costs and disbursements incurred in this suit;

18. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, the California Labor Code; and/or other applicable laws; and

19. For such other and further relief as this Court may deem proper.

DATED: July 20, 2022

MESSRELIAN LAW INC.

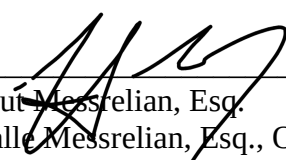
By 
 Harout Messrelian, Esq.
 Maralle Messrelian, Esq., Of Counsel
 Attorneys for Plaintiffs Antonio Torres and
 Emiliana Santiago Juarez

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand, as a matter of right, a trial by jury in this case.

DATED: July 20, 2022

MESSRELIAN LAW INC.

By 
 Harout Messrelian, Esq.
 Maralle Messrelian, Esq., Of Counsel
 Attorneys for Plaintiffs Antonio Torres and
 Emiliana Santiago Juarez