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FILED
Superior Court of California
County of Los Angeles

06/24/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: N. Osollo Deputy

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

15 GABRIEL PADILLA ELIZALDE, an
16 individual,

17 Plaintiff,

18 v.

19 HILLSTONE RESTAURANT GROUP, INC., a
20 DELAWARE corporation and DOES 1 through
21 20, inclusive,

22 Defendants.

Case No. 22STCV18860

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR:**

1. RETALIATION (LAB. CODE §98.6);
2. RETALIATION (LAB. CODE §§1102.5);
3. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
4. FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 510, 1194);
5. FAILURE TO PAY MINIMUM WAGES (CAL. LABOR CODE §§1182.12, 1194, 1194.2, 1197);
6. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);
7. FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES (CAL. LABOR CODE §2802);
8. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);
9. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);

10. FAILURE TO PERMIT INSPECTION OF
PERSONNEL AND PAYROLL RECORDS
(CAL. LABOR CODE §1198.5);

11. UNFAIR COMPETITION (BUS. & PROF.
CODE §17200 ET SEQ.); AND

DEMAND OVER \$25,000

COMES NOW PLAINTIFF, **Gabriel Padilla Elizalde**, and for causes of action against the
Defendants and each of them, alleges as follows:

JURISDICTION

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

THE PARTIES

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

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
hereto, Defendant HILLSTONE RESTAURANT GROUP, INC. (hereinafter referred to as
"HILLSTONE" and "EMPLOYER DEFENDANT") was and is a DELAWARE corporation doing
business as HOUSTON'S at 320 S. Arroyo Pkwy, Pasadena in the County of Los Angeles, State of
California.

4. HILLSTONE and DOES 1 through 20 are hereinafter collectively referred to as
"Defendants."

5. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
hereto, HILLSTONE owned and operated a private restaurant.

6. At all times relevant herein, EMPLOYER DEFENDANT and DOES 1-20 were Plaintiff's
employers, joint employers and/or special employers within the meaning of the Labor Code and Industrial

1 Welfare Commission Order No. 5-2001 and are each any “employer or other person acting on behalf of
2 an employer” as such term is used in Labor Code section 558, and liable to Plaintiff on that basis.

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

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

16 9. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
17 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
18 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
19 wrongful acts alleged herein, and/or attempted to do so, including pursuant to the California Labor Code.
20 Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and each of them,
21 including those defendants named as DOES 1-20, and each of them, formed and executed a conspiracy
22 or common plan pursuant to which they would commit the unlawful acts alleged herein, with all such
23 acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and actually causing
24 Plaintiff harm.

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

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

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

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

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

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

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

18 d. EMPLOYER DEFENDANT does not comply with all requisite corporate
19 formalities to maintain a legal and separate corporate existence.

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

13. Accordingly, EMPLOYER DEFENDANT constitutes the alter ego of one another and DOES 1-20, and the fiction of their separate corporate existence must be disregarded.

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

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

FACTUAL ALLEGATIONS

16. On or about August 31, 2000, Hillstone hired Mr. Padilla Elizalde to work as a Food Prep. In or around 2008, Mr. Padilla Elizalde was promoted to the position of Key Employee which made him responsible for opening the restaurant kitchen and beginning the preparation of food and assisting with receiving deliveries to the restaurant, in addition to his position as Food Prep. Mr. Padilla Elizalde was a full-time, non-exempt employee, and performed all of his job duties satisfactorily before he was constructively discharged on or about October 28, 2021.

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1 17. Mr. Padilla Elizalde's job duties consisted of cutting meat, preparing food items, and
2 opening the restaurant five days per week. Mr. Padilla Elizalde occasionally had to run errands, such as
3 grocery shopping, to make sure Hillstone was stocked with necessary items.

4 18. Mr. Padilla Elizalde's managers were Greg De La Torre ("Mr. De La Torre") and Janna
5 Lee ("Ms. Lee").

6 19. Mr. Padilla Elizalde reported to Mr. De La Torre, who acted as the Kitchen Manager and
7 Chef at Hillstone.

8 20. Ms. Lee served as the General Manager at Hillstone.

9 21. Between on or about April 4, 2018 and March 9, 2019, Mr. Padilla Elizalde's hourly wage
10 rate was approximately \$25.00 per hour. During this time period, Mr. Padilla Elizalde's fixed schedule
11 was six days per week, Monday through Saturday, for approximately nine hours per day.

12 22. Between on or about April 10, 2019 and April 5, 2020, Mr. Padilla Elizalde's hourly wage
13 rate was approximately \$26.00 per hour. During this time period, Mr. Padilla Elizalde's fixed schedule
14 was six days per week, Monday through Saturday, for approximately nine hours per day.

15 23. Between on or about April 6, 2020 and June 2, 2020, Mr. Padilla Elizalde's hourly wage
16 rate was approximately \$14.25 per hour. During this time period, Mr. Padilla Elizalde's fixed schedule
17 was two to three days per week, for approximately six to seven hours per day.

18 24. Between June 3, 2020 and October 25, 2021, Mr. Padilla Elizalde's hourly wage rate was
19 approximately \$26.00 per hour. During this time period, Mr. Padilla Elizalde was working three to five
20 days per week, for approximately eight hours per day.

21 **Employer Deprived Mr. Padilla Elizalde of his Rest and Meal Breaks**

22 25. Throughout his employment, Ms. Lee and Mr. Del La Torre did not permit or advise Mr.
23 Padilla Elizalde of his right to take statutory 10-minute rest breaks for every four hours worked or a
24 substantial portion thereof.

25 26. Throughout his employment, Mr. Padilla Elizalde did not receive timely, uninterrupted
26 statutory 30-minute meal periods for days on which he worked at least 5 hours, which was each day he
27 worked. One or more of Plaintiff's 30-minute meal periods were interrupted or not taken approximately
28 three to four times per week.

1 27. More specifically, whenever Mr. Padilla Elizalde was tasked with baking bread and
2 opening the kitchen, Ms. Lee and Mr. De La Torre required him to work consistently to make sure that
3 the restaurant was prepared for opening at 11:30 a.m. Ms. Lee and Mr. De La Torre would then require
4 Mr. Padilla Elizalde to clock out for the 30-minute meal break but would then make him continue working
5 through his break to make sure the tasks were done on time.

6 28. This pattern of requiring to take untimely meal breaks continued up until or around
7 November 2020.

8 **Hillstone Required Mr. Padilla Elizalde to Work-Off-The Clock and Use His Personal**
9 **Vehicle for Company Business**

10 29. Beginning in or around 2008 until his last day of work, Mr. Padilla Elizalde was frequently
11 contacted via text message while off-the-clock by Mr. De La Torre or the Assistant Chef regarding work
12 assignments. Mr. Padilla Elizalde was contacted regarding work at least three (3) times per week.

13 30. For example, Mr. Padilla Elizalde was contacted while off-the-clock by the Assistant
14 Manager instructing Mr. Padilla Elizalde to contact vendors and order additional supplies for the kitchen.
15 Most times, Mr. Padilla Elizalde was contacted off-the-clock to stop by a grocery store on his way into
16 work to purchase to groceries and/or supplies needed for work that day. Mr. Padilla Elizalde was also
17 given other types of instructions on work assignments that he would need to execute when arriving to
18 work. Mr. Padilla Elizalde was required to respond to these text messages while off-the-clock. Each time
19 he was contacted outside of work hours, he would work anywhere between 20 and 45 minutes off-the-
20 clock.

21 31. Hillstone did not pay Mr. Padilla Elizalde for this time worked. As a result, Hillstone did
22 not pay Mr. Padilla Elizalde all wages owed to him for the hours he actually worked.

23 32. Beginning in or around 2008, until approximately October 17, 2021, Mr. De La Torre or
24 the Assistant Chef also instructed Mr. Padilla Elizalde, during his work shift, to go to a grocery store to
25 purchase supplies that were needed for work that day. Mr. Padilla Elizalde was required to use his
26 personal vehicle as a direct consequence of obeying the directions of Mr. De La Torre and/or the Assistant
27 Chef.

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1 33. Mr. Padilla Elizalde was required to use his personal vehicle to fulfill the directives given
2 to him by management approximately two (2) to three (3) times per week, in addition to separate
3 instructions given to Mr. Padilla Elizalde to stop by a grocery store on his way into work (and while off
4 the clock). As a result, Mr. Padilla Elizalde was required to travel on average approximately ten (10)
5 miles round trip each time he used his personal vehicle for company business.

6 34. Hillstone failed to reimburse Mr. Padilla for mileage for the use of his personal vehicle
7 for the company's benefit.

8 **Mr. Padilla Elizalde Writes a Formal Complaint to the Human Resources Department**
9 **About Being Deprived of Rest and Meal Breaks and Management's Illegal Conduct**

10 35. On October 17, 2021, Mr. Padilla Elizalde made a formal written complaint to Hillstone's
11 Human Resources Department ("HR").

12 36. Mr. Padilla Elizalde's complaint to HR was an attempt to report the fraudulent inventory
13 reporting of his coworkers, the abuse from his co-workers that the managers allowed to persist, and the
14 fact that he was consistently deprived of his rest periods.

15 37. In the letter, Mr. Padilla Elizalde detailed how he was often made to cover multiple kitchen
16 roles at once, which essentially doubled his duties. This often occurred whenever management or other
17 employees would take vacation.

18 38. Mr. Padilla Elizalde also complained about how management allowed other employees to
19 continuously harass him, and how he was afraid of reporting out of fear of retaliation.

20 **Hillstone Retaliates Against Mr. Padilla Elizalde for Complaining to Human Resources**
21 **About Depriving Him of his Meal and Rest Breaks and Their Illegal Conduct**

22 39. Soon after submitting his written complaint to HR, Mr. Padilla Elizalde was subjected to
23 a hostile work environment by his coworkers, including Mr. De La Torre. Mr. Padilla Elizalde asked to
24 speak with Mr. De La Torre about a fellow coworker's abusive conduct directed towards him and asked
25 Mr. De La Torre to speak with that coworker asking for everyone just to be able to do their jobs. In
26 response, Mr. De La Torre aggressively and loudly told Mr. Padilla Elizalde to do whatever he wanted.
27 Mr. Padilla Elizalde was embarrassed by the interaction and did not continue the conversation.

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1 40. On or about October 25, 2021, Mr. De La Torre approached Mr. Padilla Elizalde while at
2 working and asked him if he was suing Hillstone. Mr. Padilla Elizalde informed Mr. De La Torre that he
3 only wanted to address the problems in the workplace and be able to work. In response, Mr. De La Torre
4 informed Mr. Padilla Elizalde that the complaint he submitted to HR was shown to all of the Houston's
5 Pasadena managers. Mr. De La Torre asked Mr. Padilla Elizalde why he complained. Again, Mr. Padilla
6 Elizalde responded that he only wanted to address the problems in the workplace. Mr. De La Torre told
7 Mr. Padilla Elizalde that he could not win against Ms. Lee. Mr. Padilla Elizalde did not continue the
8 conversation as it was clear to him that Mr. De La Torre only wanted to berate him.

9 41. During his next scheduled work shifts, Mr. Padilla Elizalde palpably felt the tension
10 directed at him from Mr. De La Torre and his fellow coworkers. During one shift, Mr. De La Torre
11 verbally and aggressively reprimanded Mr. Padilla Elizalde about chicken he was preparing. This created
12 a hostile work environment and caused Mr. Padilla Elizalde to feel anxious. After one of these shifts, Mr.
13 Padilla Elizalde went to see a doctor and was prescribed medication for anxiety.

14 42. On or about October 28, 2021, Mr. De La Torre approached Mr. Padilla Elizalde during
15 his work shift at Houston's in Pasadena and told him that he no longer wanted Mr. Padilla Elizalde to
16 assist with orders. Mr. De La Torre also told Mr. Padilla Elizalde that he was no longer needed for work
17 at the Houston's Santa Monica location (where he had been covering shifts). Mr. De La Torre asked Mr.
18 Padilla Elizalde for the restaurant keys in front of all other employees in the kitchen, effectively stripping
19 him of his "Key Employee" position.

20 43. Mr. Padilla Elizalde did not receive any writeups in proximity to this encounter and
21 believed that his complaints to HR could have been the only possible reason for this sort of retaliatory
22 conduct.

23 44. Hillstone through Mr. De La Torre and Ms. Lee intentionally created or knowingly
24 permitted working conditions to exist that were so intolerable that a reasonable person in Mr. Padilla
25 Elizalde's position would have had no reasonable alternative except to resign. As a result, on or about
26 October 28, 2021, Mr. Padilla Elizalde resigned because of these working conditions.

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1 45. Plaintiff's constructive termination was substantially motivated by Plaintiff's engagement
2 in protected activities. Defendants' discriminatory animus is evidenced by the previously mentioned
3 facts.

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

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

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

18 49. Plaintiff claims general damages for emotional and mental distress and aggravation in a
19 sum in excess of the jurisdictional minimum of this Court.

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

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1 **FIRST CAUSE OF ACTION**

2 **RETALIATION**

3 **LABOR CODE §98.6**

4 **AGAINST ALL DEFENDANTS**

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

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

20 53. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was
21 terminated from Plaintiff's employment with Defendants as a result of Plaintiff's complaints about not
22 being paid all wages due, not receiving meal and/or rest breaks, exercising Plaintiff's right to take meal
23 and/or rest breaks. Defendants' retaliatory animus is evidenced by, among other things, the following
24 facts: Plaintiff was retaliated against and wrongfully terminated after making formal complaints to
25 Human Resources about his missed meal and rest breaks, as well as the false reporting and illegal
26 conduct that the managers engaged in.

27 54. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
28 Defendants, and Defendants' officers and/or managing agents, including, and those identified herein as

DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create policy for Defendants. The aforementioned conduct of said managing agents and individuals was therefore undertaken on behalf of Defendants. Defendants 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 Plaintiff at this time and are therefore identified and designated herein as DOES 1-20, inclusive.

55. The damage allegations of the preceding paragraphs, inclusive, are herein incorporated by reference.

56. As a result of Defendants' actions, Plaintiffs are each entitled to a civil penalty not to exceed \$10,000.00 for Defendants' violations of Labor Code § 98.6.

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

SECOND CAUSE OF ACTION
FOR RETALIATION
IN VIOLATION OF LABOR CODE § 1102.5
AGAINST ALL DEFENDANTS

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

59. At all relevant times, Labor Code §1102.5(a) was in full force and effect and was binding on Defendants. This law prohibits an employer, or any person acting on behalf of the employer, from discharging an employee or in any manner discriminating or retaliating against, or taking any adverse action against, an employee because, among other things, the employee disclosed information to a government or law enforcement agency, or to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, if the employee has reasonable cause to believe that the information discloses a violation of state or

1 federal statute, or violation of or noncompliance with a local, state, or federal rule or regulation,
2 regardless of whether disclosing the information is part of the employee's job duties.

3 60. Plaintiff reported violations of employment practices to the Human Resources
4 department on October 17, 2021.

5 61. Defendants subjected Plaintiff to the adverse employment action, including without
6 limitation, termination because Plaintiff reported the violations of employment practices to her
7 supervisors.

8 62. Plaintiff's reports of these violations were a motivating and contributing factor for the
9 adverse employment actions by Defendants against Plaintiff.

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

12 64. The damage allegations of the preceding paragraphs, inclusive, are herein incorporated
13 by reference.

14 65. As a result of Defendants' actions, Plaintiffs are each entitled to a civil penalty not to
15 exceed \$10,000.00 for Defendants' violations of Labor Code § 1102.5.

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17 **THIRD CAUSE OF ACTION**

18 **FOR WRONGFUL TERMINATION**

19 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**

20 **AGAINST ALL DEFENDANTS**

21 66. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
22 though set forth in full herein.

23 67. At all relevant times mentioned in this complaint, the FEHA was in full force and effect
24 and was binding on Defendants. This law requires Defendants to refrain, among other things, from
25 discriminating against any employee from retaliating against any employee who engages in protected
26 activity.

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1 68. At all times mentioned in this complaint, it was a fundamental policy of the State of
2 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of
3 engagement in protected activity.

4 69. Plaintiff believes and thereon alleges that Plaintiff's engagement in protected activity
5 factors into Defendants' conduct as alleged hereinabove.

6 70. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
7 employment on the basis of Plaintiff's engagement in protected activity was a proximate cause in
8 Plaintiff's damages as stated below.

9 71. The above said acts of Defendants constitute violations of the Government Code and
10 the public policy of the State of California embodied therein as set forth above. Defendants violated
11 these laws by discriminating and retaliating against Plaintiff and terminating Plaintiff's employment in
12 retaliation for exercise of protected rights.

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

19 73. At all relevant times mentioned in this complaint, Labor Code §1102.5 was in full force
20 and effect and was binding upon Defendants and each of them. This law prohibits retaliation against
21 employees who disclose reasonable suspicions of illegal activity or conduct by their employer to a
22 government or law enforcement agency, or to employer itself. Labor Code §1102.5 reflects the State's
23 broad public policy interest in encouraging workplace "whistleblowers," who may without fear of
24 retaliation report concerns regarding an employer's suspected illegal conduct, irrespective of whether
25 the reporting is made to governmental agencies or to the employer itself, and irrespective of whether
26 the employee's suspicions are correct that the challenged conduct actually violates some law. Indeed,
27 the law in California is that an employee's good faith but mistaken belief in the illegality of his co-

workers', supervisor's, and employer's conduct is protected from employer retaliation in the whistleblowing context.

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

75. The damage allegations of the preceding paragraphs, inclusive, are herein incorporated by reference.

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

FOURTH CAUSE OF ACTION
FOR FAILURE TO PAY WAGES DUE
LABOR CODE §§201, 510, 1194
AGAINST ALL DEFENDANTS

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

78. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and required by 8 Code of Regulations § 11050, as set forth hereinabove. As alleged herein, Defendants routinely failed to pay Plaintiff for hours worked.

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

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

3 80. At all relevant times, Defendants failed and refused to pay Plaintiff for overtime
4 compensation worked as required by Labor Code §510, 8 Code of Regulations §11050, and Industrial
5 Welfare Commission Order No. 5-2001.

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

10 A. From approximately April 4, 2018 through December 31, 2018, Plaintiff worked an
11 average of 0.5 overtime hours per week and was not paid any wages at all for approximately 39 weeks.
12 For this period, Plaintiff is owed an overtime rate of \$37.50 per hour less the applicable minimum wage
13 portion of \$11.00 per hour (which Plaintiff claims in the next cause of action), and is therefore owed
14 \$26.50 per hour. As a result, during this period, Plaintiff was not paid 1.5 hours per week at \$26.50 per
15 hour for 38 weeks. Therefore, for this period, Plaintiff is owed \$1,550.25.

16 B. From approximately January 1, 2019 through April 8, 2019, Plaintiff worked an average
17 of 0.5 overtime hours per week and was not paid any wages at all for approximately 14 weeks. For this
18 period, Plaintiff is owed an overtime rate of \$37.50 per hour less the applicable minimum wage portion
19 of \$12.00 per hour (which Plaintiff claims in the next cause of action), and is therefore owed \$25.50 per
20 hour. As a result, during this period, Plaintiff was not paid 1.5 hours per week at \$25.50 per hour for 14
21 weeks. Therefore, for this period, Plaintiff is owed \$535.50.

22 C. From approximately April 9, 2019 through December 31, 2019, Plaintiff worked an
23 average of 0.5 overtime hours per week and was not paid any wages at all for approximately 38 weeks.
24 For this period, Plaintiff is owed an overtime rate of \$39.00 per hour less the applicable minimum wage
25 portion of \$12.00 per hour (which Plaintiff claims in the next cause of action), and is therefore owed
26 \$27.00 per hour. As a result, during this period, Plaintiff was not paid 1.5 hours per week at \$27.00 per
27 hour for 38 weeks. Therefore, for this period, Plaintiff is owed \$1,539.00.

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1 D. From approximately January 1, 2020 through December 31, 2020, Plaintiff worked an
2 average of 0.5 overtime hours per week and was not paid any wages at all for approximately 44 weeks.
3 For this period, Plaintiff is owed an overtime rate of \$39.00 per hour less the applicable minimum wage
4 portion of \$13.00 per hour (which Plaintiff claims in the next cause of action), and is therefore owed
5 \$26.00 per hour. As a result, during this period, Plaintiff was not paid 1.5 hours per week at \$26.00 per
6 hour for 44 weeks. Therefore, for this period, Plaintiff is owed \$1,716.00.

7 E. From approximately January 1, 2021 through October 25, 2021, Plaintiff worked an
8 average of 0.5 overtime hours per week and was not paid any wages at all for approximately 43 weeks.
9 For this period, Plaintiff is owed an overtime rate of \$39.00 per hour less the applicable minimum wage
10 portion of \$14.00 per hour (which Plaintiff claims in the next cause of action), and is therefore owed
11 \$25.00 per hour. As a result, during this period, Plaintiff was not paid 1.5 hours per week at \$25.00 per
12 hour for 43 weeks. Therefore, for this period, Plaintiff is owed \$1,612.50.

13 82. As alleged herein, Defendants are not exempt from the overtime pay requirements of
14 Labor Code §510, 8 Code Regulations §11050, and Industrial Welfare Commission Order No. 5-2001.

15 83. Thus, for the entirety of the time periods set forth above, Plaintiff is owed unpaid wages
16 of \$6,953.25.

17 84. Plaintiff has been deprived of Plaintiff's rightfully earned compensation as a direct and
18 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to
19 recover such amounts, plus interest thereon, attorneys' fees and costs.

20
21 **FIFTH CAUSE OF ACTION**
22 **FOR FAILURE TO PAY MINIMUM WAGES**
23 **LABOR CODE §§ 1182.12, 1194, 1194.2, 1197**
24 **AGAINST ALL DEFENDANTS**

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

27 86. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law is
28 unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid

1 hours exceeded the minimum wage. Under California law, Plaintiff is entitled to at least the minimum
2 wage for every hour worked.

3 87. The historical minimum wage requirements in California for employers with over 26
4 employees are as follows: effective January 1, 2018, the minimum wage was \$11.00 per hour; effective
5 January 1, 2019, the minimum wage was \$12.00 per hour; effective January 1, 2020, the minimum wage
6 was \$13.00 per hour; and effective January 21, 2021, the minimum wage was \$14.00 per hour.

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

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

11 a. From approximately April 4, 2018 to December 31, 2018, Plaintiff worked
12 approximately 1.5 hours per week without getting paid anything. Therefore, Plaintiff is owed \$643.50
13 calculated at 1.5 hours per week for 39 weeks at \$11.00 per hour.

14 b. From approximately January 1, 2019 to December 31, 2019, Plaintiff worked
15 approximately 1.5 hours per week without getting paid anything. Therefore, Plaintiff is owed \$936.00
16 calculated at 1.5 hours per week for 52 weeks at \$12.00 per hour.

17 c. From approximately January 1, 2020 to December 31, 2020, Plaintiff worked
18 approximately 1.5 hours per week without getting paid anything. Therefore, Plaintiff is owed \$858.00
19 calculated at 1.5 hours per week for 44 weeks at \$13.00 per hour.

20 d. From approximately January 1, 2021 to October 25, 2021, Plaintiff worked
21 approximately 1.5 hours per week without getting paid anything. Therefore, Plaintiff is owed \$903.00
22 calculated at 1.5 hours per week for 43 weeks at \$14.00 per hour.

23 90. Thus, for the entirety of the time periods set forth above, Plaintiff is owed unpaid minimum
24 wages in the amount of \$3,340.50.

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

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

3 93. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated
4 damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an
5 additional \$3,340.50, plus interest thereon.

6
7 **SIXTH CAUSE OF ACTION**
8 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
9 **LABOR CODE §§226.7, 512**
10 **AGAINST ALL DEFENDANTS**

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

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

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

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

20 98. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
21 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the
22 applicable sections of 8 Code of Regulations § 11050 and Industrial Welfare Commission Order No. 5-
23 2001, as follows:

24 99. As alleged herein, Defendants are not exempt from the meal and rest break requirements
25 of 8 Code of Regulations §11050 and Industrial Welfare Commission Order No. 5-2001-2001.
26 Consequently, Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite
27 minimum wage, whichever is greater, for each day that Plaintiff was denied such meal periods, and is
28

1 owed one hour of pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is
2 greater, for each day that Plaintiff was denied such rest periods, calculated as follows:

3 a. From approximately April 4, 2018, through April 8, 2019, Defendants failed to
4 provide Plaintiff with an uninterrupted statutory meal period for those days on which Plaintiff worked at
5 least five hours on approximately 265 separate days. Consequently, Plaintiff is owed one hour of pay at
6 \$25.00 for each day, or \$6,625.00, plus interest thereon, for unpaid interrupted meal periods. During this
7 same time period, Defendants failed to provide Plaintiff with the statutory rest period for those days on
8 which Plaintiff worked at least four hours on approximately 265 separate days. Consequently, Plaintiff is
9 owed one hour of pay at \$25.00 for each day, or \$6,625.00, plus interest thereon, for unpaid rest periods.
10 Thus, Plaintiff is owed a total of \$13,250.00, plus interest thereon, for unpaid meal and rest periods for
11 this time period.

12 b. From approximately April 9, 2019, through October 25, 2021, Defendants failed
13 to provide Plaintiff with an uninterrupted statutory meal period for those days on which Plaintiff worked
14 at least five hours on approximately 390 separate days. Consequently, Plaintiff is owed one hour of pay
15 at \$25.00 for each day, or \$10,140.00, plus interest thereon, for unpaid interrupted meal periods. During
16 this same time period, Defendants failed to provide Plaintiff with the statutory rest period for those days
17 on which Plaintiff worked at least four hours on approximately 625 separate days. Consequently, Plaintiff
18 is owed one hour of pay at \$25.00 for each day, or \$16,250.00, plus interest thereon, for unpaid rest
19 periods. Thus, Plaintiff is owed a total of \$22,875.00, plus interest thereon, for unpaid meal and rest
20 periods for this time period.

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

23 101. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
24 such amounts in the combined amount of \$39,640.00., pursuant to Labor Code §226.7(b), plus interest
25 thereon and costs of suit.

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SEVENTH CAUSE OF ACTION
FOR FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES
LABOR CODE §2802
AGAINST ALL DEFENDANTS

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

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

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

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

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

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

108. In the four years last past, Defendants required Plaintiff to use his personal vehicle approximately three (3) separate trips for the benefit of the company and without paying him mileage for the use of his vehicle.

109. Consequently, Plaintiff is owed a reimbursement for operating his personal vehicle for the benefit of the company, and is owed the federal standard mileage rate for the relevant period, calculated as follows:

a. From approximately April 7, 2018, through December 31, 2018, Defendants failed to provide Plaintiff with mileage reimbursement for approximately thirty (30) miles per week, or 1,170 miles. Consequently, for this period, Plaintiff is owed \$0.545 per mile, the standard mileage rate for this period, for each mile, or \$637.65, plus interest thereon.

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1 b. From approximately January 1, 2019, through December 31, 2019, Defendants failed to
2 provide Plaintiff with mileage reimbursement for approximately thirty (30) miles per week, or 520 miles.
3 Consequently, for this period, Plaintiff is owed \$0.58 per mile, the standard mileage rate for this period,
4 for each mile, or \$904.80, plus interest thereon.

5 c. From approximately January 1, 2020, through December 31, 2020, Defendants failed to
6 provide Plaintiff with mileage reimbursement for approximately thirty (30) miles per week, or 1,320
7 miles. Consequently, for this period, Plaintiff is owed \$0.575 per mile, the standard mileage rate for this
8 period, for each mile, or \$759.00, plus interest thereon.

9 d. From approximately January 1, 2021, through October 25, 2021, Defendants failed to
10 provide Plaintiff with mileage reimbursement for approximately thirty (30) miles per week, or 1,290
11 miles. Consequently, for this period, Plaintiff is owed \$0.56 per mile, the standard mileage rate for this
12 period, for each mile, or \$722.40, plus interest thereon.

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

16 111. As a proximate result of the aforementioned violations of Labor Code §§450(a) and
17 2502(a).

18 112. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
19 such amounts in the combined amount of \$3,023.85, pursuant to Labor Code §2802(a).

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

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

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EIGHTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS
LABOR CODE §§226 ET SEQ.
AGAINST ALL DEFENDANTS

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

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

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

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

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

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

9 121. Plaintiff was paid on a weekly basis, and therefore Defendants violated Labor Code §226
10 approximately 29 times between April 7, 2021 and October 25, 2021. Consequently, Defendants are
11 liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum amount of
12 \$4,000.00, whichever is greater.

13 122. In addition, thereto, Plaintiff is entitled civil penalties pursuant to Labor Code §226.3 in
14 the amount of \$28,250.00.

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

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

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

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

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

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

5 127. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
6 is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and
7 more than \$6,240.00 in waiting time penalties, calculated based on 30 days of regular daily wages (i.e.,
8 \$208.00 per day times 30 days).

9 128. Based on Defendants' conduct as alleged herein, Defendants are liable for \$6,240.00 in
10 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
11 fees and costs.

12
13 **TENTH CAUSE OF ACTION**

14 **FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS**

15 **LABOR CODE §1198.5**

16 **AGAINST ALL DEFENDANTS**

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

19 130. Labor Code §1198.5 requires an employer, within thirty (30) days of a written request
20 thereof, to inspect or receive a copy of an employee's personnel and payroll records. An employer's
21 failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

22 131. On June 25, 2015, Plaintiff made a written request to inspect or receive a copy of
23 Plaintiff's personnel and payroll records from Defendants, which Defendants received.

24 132. Defendants failed and refused to permit Plaintiff's inspection of Plaintiff's personnel and
25 payroll records, and failed to provide a copy of Plaintiff's personnel and payroll records to Plaintiff within
26 the time required by Labor Code §1198.5, or ever.

27 133. As a result of Defendants' failure and refusal to comply with Labor Code §1198.5,
28 Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00.

ELEVENTH CAUSE OF ACTION
FOR UNFAIR COMPETITION
BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.
AGAINST ALL DEFENDANTS

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

135. Defendants' violations of 8 Code of Regulations §11050, Industrial Welfare Commission Order No. 5-2001, Labor Code §§98.6, 1102.5, 1102.6, 201, 202, 203, 1194, 226.7, 512, 226, 2699, and other applicable provisions, as alleged herein, including Defendants' failure and refusal to pay minimum wages, Defendants' failure to provide meal and rest breaks, Defendants' failure to provide timely and accurate wage and hour statements, Defendants' failure to pay compensation due in a timely manner upon termination or resignation, and Defendants' failure to maintain complete and accurate payroll records for the Plaintiff, constitute unfair business practices in violation of Business & Professions Code §§17200, et seq.

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

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

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PRAYER FOR RELIEF

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

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

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

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

4. For payment of unpaid minimum wage compensation pursuant to Labor Code §§1182.12, 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 5-2001, in the amount of no less than \$3,340.00;

5. For liquidated damages pursuant to Labor Code §1194.2 in the amount of \$3,340.00, plus interest;

6. For payment of unpaid compensation pursuant to Labor Code §§201, 510, 1194, Industrial Welfare Commission Order No. 5-2001, and 8 Code of Regulations §11050, in the amount of no less than \$6,953.25;

7. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512, in the amount of no less than \$16,765.00;

8. For reimbursement of necessary business expenses pursuant to Labor Code §2802, in the amount of no less than \$3,023.85, plus interest;

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

10. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less than \$6240.00;

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

1 12. For prejudgment interest on each of the foregoing at the legal rate from the date the
2 obligation became due through the date of judgment in this matter;

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

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

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

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

13 16. For costs of suit, attorneys' fees, and expert witness fees pursuant to the Labor Code and/or
14 any other basis;

15 17. For post-judgment interest; and

16 18. For any other relief that is just and proper.

17
18 DATED: June 24, 2022

MOSLEY AND ASSOCIATES

19
20 By: 

Walter Mosley, Esq.
Carlos E. Montoya, Esq.
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