

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Maurice Leiter

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

Attorneys for Plaintiff,
CAROLINA ESPARZA
and JENNIFER ROJAS

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

CAROLINA ESPARZA, an individual;
JENNIFER ROJAS, and individual;

Plaintiff,

v.

COLLAZO CHIROPRACTIC, INC., a
California corporation; DR. JEAN COLLAZO,
D.C., an individual; and DOES 1 through 20,
inclusive,

Defendants.

Case No. **22STCV28896**

COMPLAINT FOR DAMAGES FOR:

- 1. DISCRIMINATION IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 2. RETALIATION IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 3. FAILURE TO PREVENT
DISCRIMINATION AND RETALIATION
IN VIOLATION OF GOV'T CODE §
12940(k);**
- 4. RETALIATION (CAL. LABOR CODE
§ 98.6);**
- 5. RETALIATION (CAL. LABOR CODE
§§ 1102.5, 1102.6, 6310);**
- 6. RETALIATION IN VIOLATION OF
GOV'T CODE §§ 12945.2 ET. SEQ.;**
- 7. FAILURE TO PROVIDE REASONABLE
ACCOMMODATIONS IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 8. FAILURE TO ENGAGE IN A GOOD
FAITH INTERACTIVE PROCESS IN
VIOLATION OF GOV'T CODE §§ 12940
ET SEQ.;**

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
- 9. **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; AND**
 - 10. **FOR DECLARATORY JUDGMENT;**
 - 11. **FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 226.7, 1194, 1197);**
 - 12. **FAILURE TO PROVIDE REST PERIODS (CAL. LABOR CODE §§226.7);**
 - 13. **FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES (CAL. LABOR CODE §2802);**
 - 14. **FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, 226.3, 1174 ET SEQ.);**
 - 15. **WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
 - 16. **PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §§2699, ET. SEQ.); AND**
 - 17. **UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.).**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFFS, CAROLINA ESPARZA AND JENNIFER ROJAS, 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 County, because Defendants' obligations and liability arise therein, because Defendants maintain offices and transact business within Los Angeles County, and because the work that is the subject of this action was performed by Plaintiffs in Los Angeles County.

1 **THE PARTIES**

2 2. Plaintiffs, CAROLINA ESPARZA (hereinafter “ESPARZA” or “Plaintiff Esparza”), and
3 JENNIFER ROJAS (hereinafter “ROJAS” or “Plaintiff Rojas”) are and at all times relevant hereto were
4 residents of the County of Los Angeles, State of California.

5 3. Plaintiffs are informed and believe, and based thereupon allege, that at all times relevant
6 hereto, Defendant COLLAZO CHIROPRACTIC, INC. (hereinafter referred to as “COLLAZO CHIRO”
7 or “EMPLOYERS”) was and is a California corporation doing business at 400 North Ford Blvd., Los
8 Angeles, CA 90022, in the County of Los Angeles, State of California.

9 4. Plaintiffs are informed and believe, and based thereupon allege, that at all times relevant
10 hereto, COLLAZO CHIRO owned and operated a business that performs chiropractic consultations and
11 adjustments, nutrition consultations, massage therapy and cupping therapy.

12 5. Plaintiffs are informed and believe, and based thereupon allege, that at all times relevant
13 hereto, Defendant DR. JEAN COLLAZO, D.C. (hereinafter referred to as “COLLAZO”) was and is an
14 individual resident of the County of Los Angeles, State of California. COLLAZO was Plaintiffs’
15 manager, corporate agent, supervisor and/or coworker at COLLAZO CHIRO.

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

20 7. At all times relevant herein, EMPLOYERS and DOES 1-20 were Plaintiffs employers,
21 joint employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
22 Commission Order Nos. 4-2001 and are each an “employer or other person acting on behalf of an
23 employer” as such term is used in Labor Code § 1102.5(c), and liable to Plaintiff on that basis.

24 8. Plaintiffs are informed and believe, and thereupon allege, that at all times relevant to this
25 action COLLAZO was a manager and/or supervisor of EMPLOYERS, acting as a managing agent for
26 EMPLOYERS; COLLAZO was acting within the course and scope of her employment and on behalf of
27 EMPLOYERS such that her acts or omissions are imputed to EMPLOYERS under the doctrine of
28 *respondeat superior*, or, alternatively, at all times relevant to this action, EMPLOYERS cloaked

1 COLLAZO with the appearance of actual authority, such that Plaintiffs were justified in relying on, and
2 therefore her acts or omissions are imputed to EMPLOYERS under the doctrine of *respondeat superior*.

3 9. EMPLOYERS and COLLAZO are hereinafter collectively referred to as “Defendants.”

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

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

18 12. Plaintiffs are informed and believe, and based thereupon allege, that Defendants, and each
19 of them, including those Defendants named as DOES 1-20, acted in concert with one another to commit
20 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
21 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code §
22 12940(i). Plaintiffs are further informed and believe, and based thereupon allege, that Defendants, and
23 each of them, including those Defendants named as DOES 1-20, and each of them, formed and executed
24 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
25 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
26 actually causing Plaintiffs harm.

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

4 14. Plaintiffs have filed complaints of discrimination, retaliation, failure to prevent
5 discrimination or retaliation, failure to accommodate, failure to engage in the interactive process, and
6 wrongful termination under Government Code §§ 12940, et seq., the California Fair Employment and
7 Housing Act ("FEHA") with the California Department of Fair Employment and Housing ("DFEH") and
8 has satisfied Plaintiffs administrative prerequisites with respect to these and all related filings.

9
10 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

11 15. Plaintiff are informed and believe, and based thereon allege, that there exists such a unity
12 of interest and ownership between EMPLOYERS and DOES 1-20 that the individuality and separateness
13 of Defendants have ceased to exist.

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

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

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

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

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

1 e. The business affairs of EMPLOYERS and DOES 1-20 are, and at all times
2 relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and the same
3 are in inextricable confusion. EMPLOYERS are, and at all times relevant hereto were, used by one
4 another, including by DOES 1-20, as a mere shell and conduit for the conduct of certain of
5 EMPLOYERS' affairs, and are, and were, the alter ego of one another and DOES 1-20. The
6 recognition of the separate existence of EMPLOYERS would not promote justice, in that it would
7 permit EMPLOYERS to insulate themselves from liability to Plaintiffs for violations of the
8 Government Code and other statutory violations. The corporate existence of EMPLOYERS and DOES
9 1-20 should be disregarded in equity and for the ends of justice because such disregard is necessary to
10 avoid fraud and injustice to Plaintiff herein.

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

13 18. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
14 thereon allege that EMPLOYERS and DOES 1-20 are Plaintiffs joint employers by virtue of a joint
15 enterprise, and that Plaintiffs were employees of EMPLOYERS and DOES 1-20. Plaintiffs performed
16 services for each and every one of EMPLOYERS, and to the mutual benefit of all EMPLOYERS, and all
17 EMPLOYERS shared control of Plaintiffs as employees, either directly or indirectly, and the manner in
18 which EMPLOYERS' business was and is conducted.

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

WAGE AND HOUR ALLEGATIONS

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

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

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

23. Throughout Plaintiffs’ employment, Plaintiffs were not permitted to, and not advised of Plaintiffs’ right to take one or more of their statutory 10-minute rest breaks for every four hours worked or major fraction thereof, and Plaintiffs tended to work eight (8) hours days, meaning they were each entitled to a second 10-minute rest break, but Defendants did not provide nor advise Plaintiffs of one or more of their required rest breaks.

24. Furthermore, throughout Plaintiff’s employment, Defendants violated Labor § 2802 by failing to reimburse Plaintiff for work-related expenses. Plaintiff was not paid for using his personal cell phone for work-related purposes, despite being required to communicate with his supervisor by phone.

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

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

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

PLAINTIFF ESPARZA’S
FACTUAL ALLEGATIONS

28. On or about June 3, 2019, EMPLOYERS hired Plaintiff Esparza to work in chiropractic office as a massage therapist, physical therapy aid, and chiropractic assistant.

29. EMPLOYERS promised to pay Plaintiff Esparza \$15.75 per hour from June 3, 2019, until the August 11, 2019. EMPLOYERS promised to pay Plaintiff Esparza \$17.00 per hour from August 12, 2019, until Plaintiff Esparza's wrongful termination on April 28, 2022.

30. Plaintiff Esparza worked on Monday, Wednesdays, and Thursdays from 8:30 a.m. to 6:00 p.m.; Plaintiff also worked on Fridays from 8:30 a.m. to 12:00 p.m.

31. Plaintiff Esparza was a full-time, non-exempt employee, and performed all of her job duties satisfactorily before Plaintiff Esparza was wrongfully terminated on or about April 28, 2022.

32. Plaintiff Esparza is informed and believes that COLLAZO was the owner of EMPLOYERS.

33. In or around September 2020, during the pandemic, while the mask mandate was in effect in Los Angeles, and prior to the release of any vaccine, Plaintiff Esparza complained to office administrator RAQUEL LAGUNAS (hereinafter “LAGUNAS”) about unsafe or unhealthy working conditions at EMPLOYERS’ office.

34. COLLAZO allowed patients who were not wearing masks to come into the office. In response to Plaintiff Esparza's complaint, LAGUNAS stated that COLLAZO did not believe that masks were effective against the virus.

35. Plaintiff Esparza was concerned about COLLAZO seeing patients in the office who were not wearing a mask as not wearing a mask indoors at that time in Los Angeles was illegal.

36. In or around March 16, 2021, Plaintiff Esparza was hospitalized for approximately four (4) days with a cyst on her ovaries that was infected and had swelled to the size of a grapefruit.

1 37. On or around March 18, 2021, Plaintiff Esparza received a note from her doctor, which
2 excused Plaintiff Esparza from going to work until June 19, 2021.

3 38. In May 2021, Plaintiff Esparza was hospitalized for approximately nine (9) days. Plaintiff
4 Esparza lost a significant amount of blood at this time and had to undergo five (5) blood transfusions.

5 39. On or around June 29, 2021, when Plaintiff Esparza did not return to work, EMPLOYERS
6 terminated Plaintiff Esparza citing job abandonment. EMPLOYERS maintained a policy that stated:
7 “absence without management notification in excess of 3 consecutive days, is considered job
8 abandonment and is considered a resignation by the employee”.

9 40. At all relevant times, Plaintiff Esparza notified and advised EMPLOYERS of her health
10 and work status.

11 41. Plaintiff Esparza soon provided EMPLOYERS with a doctor’s note citing that Plaintiff
12 Esparza was excused from working until July 19, 2021. Thereafter, Plaintiff Esparza was seemingly
13 employed once again by EMPLOYERS, but was deemed to be on medical leave.

14 42. From July 19, 2021, until January 14, 2022, Plaintiff Esparza was excused from work by
15 her doctor on a monthly basis. Plaintiff Esparza tended to see her doctor on the 18th of every month, and
16 Plaintiff Esparza’s doctor would extend her medical leave until the 19th of the next month. Plaintiff
17 Esparza’s doctor would communicate with EMPLOYERS and provide them with doctor’s notes to excuse
18 Plaintiff Esparza’s absences.

19 43. In or around August 2021, Plaintiff Esparza was hospitalized again. Plaintiff Esparza
20 would not stop bleeding and had to undergo a form of chemotherapy.

21 44. In or around September 2021, Plaintiff Esparza went to the emergency room because she
22 was bleeding excessively.

23 45. In or around November 2021, Plaintiff Esparza’s medical team recommended that she see
24 a specialist who would perform a hysterectomy. Plaintiff Esparza was placed on a waiting list to receive
25 her hysterectomy.

26 46. On or around January 14, 2022, Plaintiff Esparza’s leave was extended by her doctor until
27 March 25, 2022, because Plaintiff Esparza’s hysterectomy surgery was postponed until sometime in
28 February 2022.

1 47. In or around February 2022, Plaintiff Esparza underwent hysterectomy surgery.

2 48. On or about February 21, 2022, Plaintiff Esparza discovered that she was suffering
3 complications from a punctured intestine. Plaintiff Esparza's medical professionals believed her intestine
4 was punctured during her hysterectomy surgery.

5 49. On or about March 25, 2022, Plaintiff Esparza's doctor excused Plaintiff Esparza from
6 work until April 25, 2022.

7 50. On or about April 22, 2022, Plaintiff Esparza's doctor provided a note to EMPLOYERS,
8 which excused Plaintiff Esparza from work until May 21, 2022.

9 51. On or about April 28, 2022, Plaintiff was terminated from her employment by
10 EMPLOYERS because she did not return to work. EMPLOYERS stated that they had not received
11 Plaintiff's doctor's note provided on April 22, 2022.

12 52. Defendants discriminated and retaliated against Plaintiff Esparza by not engaging in a
13 good faith interactive process with Plaintiff Esparza, failing to bring any alternative available position to
14 Plaintiff Esparza's attention, and/or by wrongfully terminating her, and by refusing to allow Plaintiff
15 Esparza to exercise her right to request time off to recover from an ovarian cyst as an accommodation of
16 Plaintiff Esparza's real or perceived disability, real or perceived medical condition.

17 53. At all relevant times, Defendants failed to properly engage in a good faith interactive
18 process in an effort to properly accommodate Plaintiff Esparza's disability and/or medical condition such
19 that Plaintiff could continue working for Defendants.

20 54. At all relevant times, Defendants failed to reasonably accommodate Plaintiff Esparza even
21 though Plaintiff Esparza was able to perform the essential job duties of her position or another position
22 with or without accommodations.

23 55. Plaintiff Esparza's termination was substantially motivated by her real or perceived
24 disability, real or perceived medical condition, without any discussion of disability accommodations or
25 any good faith attempt to engage in the interactive process with Plaintiff Esparza. Defendants'
26 discriminatory animus is evidenced by the previously mentioned facts and Defendants' express wrongful
27 termination.

1 **PLAINTIFF ROJAS'**

2 **FACTUAL ALLEGATIONS**

3 56. In or around March 2020, EMPLOYERS hired Plaintiff Rojas to work in the chiropractic
4 office as a front desk receptionist, physical therapy aid, and chiropractic assistant.

5 57. EMPLOYERS promised to pay Plaintiff Rojas \$16.25 per hour from in or around March
6 2020, until on or about January 1, 2021. EMPLOYERS promised to pay Plaintiff Rojas \$16.50 per hour
7 from on or about January 1, 2021, until December 31, 2021.

8 58. EMPLOYERS promised to pay Plaintiff Rojas \$17.50 per hour from on or about January
9 1, 2022, until on or about December 31, 2022, when she requested a raise from COLLAZO and
10 LAGUNAS. However, EMPLOYERS did not pay Plaintiff Rojas \$17.50 per hour, and instead she
11 received the same rate of \$16.50 per hour.

12 59. Plaintiff Rojas worked on Monday, Wednesdays, Thursdays, Friday from 8:30 a.m. to
13 6:00 p.m. Plaintiff Rojas also worked on Fridays from 8:30 a.m. to 12:00 p.m.

14 60. Throughout Plaintiff Rojas' time working for EMPLOYERS, Plaintiff Rojas complained
15 on several occasions that she was uncomfortable reusing surgical gloves on patients as it was unsafe and
16 unsanitary. Plaintiff Rojas also complained about the lack of disinfectant in the office, especially with the
17 COVID-19 pandemic still a cause for concern. EMPLOYERS simply stated that supplies were low, and
18 did nothing further to address the situation.

19 61. Plaintiff Rojas consistently used new gloves for every patient. EMPLOYERS told Plaintiff
20 Rojas to reuse her surgical gloves on patients because "the price is too high". Plaintiff Rojas was disturbed
21 by this mandate as an office where people are seen for therapeutic medical treatment should be stocked
22 with sanitation supplies.

23 62. Plaintiff Rojas was also required to use old Electrical Muscle Stimulation ("ESTIM") pads
24 on patients. When the ESTIM pads were overused, it often resulted in patients getting burned. Plaintiff
25 Rojas spoke with LAGUNAS several times to ask for replacements, as she felt the pads were unsafe, but
26 LAGUNAS refused to provide new pads.

27 63. Several patients were burned by the reused ESTIM pads while Plaintiff Rojas was
28 employed by EMPLOYERS. Despite this, EMPLOYERS continued to use old ESTIM pads.

1 64. In or around June 2021, Plaintiff Rojas complained to LAGUNAS, that EMPLOYERS
2 were not providing her with a statutory 10-minute rest break, and LAGUNAS ignored Plaintiff Rojas.

3 65. In or around September 2021, Plaintiff Rojas received cosmetic surgery. The cosmetic
4 surgery resulted in complications and subsequently Plaintiff Rojas underwent a blood transfusion.
5 Plaintiff Rojas was originally scheduled to be off work to recover from her surgery for two (2) weeks,
6 but two (2) weeks eventually became four (4) months due to complications which necessitated the blood
7 transfusion.

8 66. While Plaintiff Rojas was recovering from her surgery, LAGUNAS inundated her with
9 text messages asking for an estimated date of arrival back at EMPLOYERS.

10 67. Plaintiff Rojas underwent a regimen of iron supplements to get herself back to feeling one
11 hundred percent. Plaintiff Rojas felt pressure to return to work due to the consistent badgering from
12 LAGUNAS over text.

13 68. Plaintiff Rojas feared that she would be terminated if she did not return to EMPLOYERS
14 quickly. Plaintiff Rojas requested that her doctor provide her with a return-to-work form, despite her
15 doctor believing that Plaintiff Rojas should take more time off from work to recover from her blood
16 transfusion.

17 69. Thereafter, Plaintiff Rojas returned to EMPLOYERS in or around January 2022.

18 70. In or around February 2022, Plaintiff Rojas again complained to LAGUNAS that
19 EMPLOYERS were not providing her with a statutory 10-minute rest break. At this point in time, Plaintiff
20 Rojas felt that regular breaks at work would do her good, as she was still recovering from her blood
21 transfusion. LAGUNAS simply ignored Plaintiff Rojas' complaints about statutory rest breaks once
22 again.

23 71. Throughout Plaintiff Rojas' time working at EMPLOYERS, she was prevented from
24 taking bathroom breaks on several occasions.

25 72. In or around May 2022, LAGUNAS began nit-picking Plaintiff Rojas' actions at
26 EMPLOYERS. LAGUNAS and COLLAZO regularly scheduled employee lunches during this time that
27 Plaintiff Rojas was not invited to.
28

73. Thereafter, after continually being denied a bathroom break accommodation, on or about July 8, 2022, Plaintiff Rojas felt she had no choice but to resign from EMPLOYERS. Plaintiff Rojas was constructively terminated on or about July 8, 2022.

74. Defendants discriminated and retaliated against Plaintiff Rojas by not engaging in a good faith interactive process with Plaintiff Rojas, failing to bring any alternative available position to Plaintiff Rojas' attention, and/or by constructively wrongfully terminating her, and by refusing to allow Plaintiff Rojas to exercise her right to request time off to recover from an blood transfusion as an accommodation of Plaintiff Rojas' real or perceived disability, real or perceived medical condition.

75. At all relevant times, Defendants failed to properly engage in a good faith interactive process in an effort to properly accommodate Plaintiff Rojas' disability and/or medical condition such that Plaintiff could continue working for Defendants.

76. At all relevant times, Defendants failed to reasonably accommodate Plaintiff Rojas even though Plaintiff Rojas was able to perform the essential job duties of her position or another position with or without accommodations.

77. Plaintiff Rojas' constructive termination was substantially motivated by her real or perceived disability, real or perceived medical condition, without any discussion of disability accommodations or any good faith attempt to engage in the interactive process with Plaintiff Esparza. Defendants' discriminatory animus is evidenced by the previously mentioned facts and Defendants' express constructive wrongful termination.

GENERAL ALLEGATIONS

78. Defendants' conduct described herein was undertaken, authorized, and/or ratified Defendants' officers, directors and/or managing agents, including, but not limited to COLLAZO, and those identified herein as DOES 1 through 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 who further had advanced knowledge of the actions and conduct of said individuals whose actions and conduct were ratified, authorized, and

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

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

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

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

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

16
17 **FIRST CAUSE OF ACTION**

18 **BY PLAINTIFFS ESPARZA AND ROJAS**

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

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

21 83. Plaintiffs ESPARZA and ROJAS re-allege and incorporate by reference Paragraphs 1
22 through 78, inclusive, as though set forth in full herein.

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

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

27 86. FEHA requires Defendants to refrain from discriminating against an employee on the
28 basis of real or perceived disability, real or perceived medical condition, use or anticipated use of medical

1 leave, and/or engagement in protected activities, and to prevent from occurring discrimination,
2 harassment, and retaliation on the same bases.

3 87. Plaintiffs were members of multiple protected classes as a result of Plaintiffs' real or
4 perceived disability, real or perceived medical condition, use or anticipated use of medical leave, and/or
5 engagement in protected activities.

6 88. At all times relevant hereto, Plaintiffs were performing competently in the positions
7 Plaintiffs held with Defendants.

8 89. Plaintiffs suffered the adverse employment actions of unlawful discrimination, failure to
9 accommodate, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate and/or
10 return to work, and termination, and were harmed thereby.

11 90. Plaintiffs are informed and believe that Plaintiffs real or perceived disability, real or
12 perceived medical condition, use or anticipated use of medical leave, and/or engagement in protected
13 activities, and/or some combination of these protected categories
14 subjected Plaintiffs to the aforementioned adverse employment actions.

15 91. Said conduct violates the FEHA, and such violations were a proximate cause in Plaintiffs'
16 damage as stated below.

17 92. The damage allegations of Paragraphs 79 through 82, inclusive, are herein incorporated
18 by reference.

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

25 94. Pursuant to Government Code § 12965(b), Plaintiffs requests a reasonable award of
26 attorneys' fees and costs, including expert fees pursuant to the FEHA.

SECOND CAUSE OF ACTION
BY PLAINTIFFS ESPARZA AND ROJAS
FOR RETALIATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.
AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

95. Plaintiffs ESPARZA and ROJAS re-allege and incorporate by reference Paragraphs 1 through 78, inclusive, as though set forth in full herein.

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

97. These laws set forth in the preceding paragraph require Defendants to refrain from retaliating against an employee for engaging in protected activity.

98. Plaintiffs engaged in the protected activities of requesting accommodation and requesting medical leave and/or exercising Plaintiffs' right to medical leave.

99. Plaintiffs suffered the adverse employment actions of unlawful discrimination, failure to accommodate, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate and/or return to work, and termination, and were harmed thereby.

100. Plaintiffs are informed and believe that Plaintiffs' conduct of requesting accommodation, requesting medical leave and/or exercising Plaintiff's right to medical leave, and/or some combination of these factors, were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

101. Defendant violated the FEHA by retaliating against Plaintiffs and terminating Plaintiffs for attempting to exercise Plaintiffs' protected rights, as set forth hereinabove.

102. Plaintiffs are informed and believe, and based thereon allege, that the above acts of retaliation committed by Defendants were done with the knowledge, consent, and/or ratification of, or at the direction of, each other Defendant and the other Managers.

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

104. The damage allegations of Paragraphs 79 through 82, inclusive, are herein incorporated by reference.

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

7 106. Pursuant to Government Code § 12965(b), Plaintiffs requests a reasonable award of
8 attorneys' fees and costs, including expert fees pursuant to the FEHA.

9
10 **THIRD CAUSE OF ACTION**
11 **BY PLAINTIFFS ESPARZA AND ROJAS**
12 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION**
13 **IN VIOLATION OF GOV'T CODE § 12940(k)**
14 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

15 107. Plaintiffs ESPARZA and ROJAS re-allege and incorporate by reference Paragraphs 1
16 through 78, inclusive, as though set forth in full herein.

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

22 109. The above said acts of Defendants constitute violations of the FEHA and were a proximate
23 cause in Plaintiffs' damage as stated below.

24 110. The damage allegations of Paragraphs 79 through 82, inclusive, are herein incorporated
25 by reference.

26 111. The foregoing conduct of Defendants individually, or by and through their officers,
27 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiffs or was
28 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of

1 Plaintiffs or subjected Plaintiffs to cruel and unjust hardship in conscious disregard of Plaintiffs' rights
2 such as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiffs to
3 punitive damages in an amount appropriate to punish or make an example of Defendants.

4 112. Pursuant to Government Code § 12965(b), Plaintiffs requests a reasonable award of
5 attorneys' fees and costs, including expert fees pursuant to the FEHA.

6
7 **FOURTH CAUSE OF ACTION**
8 **BY PLAINTIFFS ESPARZA AND ROJAS**
9 **FOR RETALIATION**
10 **LABOR CODE §§ 98.6**

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

12 113. Plaintiff ESPARZA and ROJAS re-alleges and incorporates by reference Paragraphs 1
13 through 78, inclusive, as though set forth in full herein.

14 114. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against an
15 employee for, among other things, complaining that he or she is owed unpaid wages, for whistleblowing;
16 and for exercising "any rights afforded him or her" under the Labor Code. Thus, Section 98.6 prohibits
17 an employer from discharging or in any manner discriminating or retaliating against an employee who,
18 among other things, has exercised his or her rights under that Chapter, including refusing to participate
19 in unlawful conduct, and any conduct described in Chapter 5 (commencing with Section 1101) of the
20 Labor Code.

21 115. An employee who has been discharged or retaliated against in violation of Labor Code
22 §98.6 is entitled to recovery of a civil penalty against the employer in an amount not exceeding ten
23 thousand dollars (\$10,000.00) for each violation of that section.

24 116. Plaintiffs are informed and believe, and on that basis alleges, that Plaintiffs were treated
25 unequally and terminated from their employment with Defendants as a result of their complaints about
26 unsafe working conditions and conduct which Plaintiffs believed was illegal.

27 117. The above-described conduct by Defendants, violates Labor Code §98.6 and Plaintiffs are
28 entitled to damages and a civil penalty of ten thousand dollars (\$10,000) against Defendants.

1 118. As a result of Plaintiffs' exercising their rights under Labor Code §98.6, Plaintiffs are
2 informed and believe and thereon allege that Defendants retaliated against Plaintiffs via termination
3 among other conduct, after complaints about health and safety conditions in the workplace were ignored
4 by Defendants.

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

13 120. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered
14 special damages including but not limited to past and future loss of income, benefits, and other damages
15 to be proven at time of trial.

16 121. The damage allegations of Paragraphs 79 through 82, inclusive, are herein incorporated
17 by reference.

18 122. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered
19 general damages including, but not limited to, shock, embarrassment, physical distress and injury,
20 humiliation, emotional distress, stress and other damages to be proven at the time of trial.

21 123. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively
22 in conscious disregard for Plaintiffs' rights. Plaintiffs are therefore entitled to recover punitive damages
23 from Defendants in an amount according to proof at trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTH CAUSE OF ACTION
BY PLAINTIFFS ESPARZA AND ROJAS
FOR RETALIATION
LABOR CODE §§ 232.5, 1102.5, 1102.6, 6310
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

124. Plaintiffs ESPARZA and ROJAS re-allege and incorporate by reference Paragraphs 1 through 78, inclusive, as though set forth in full herein.

125. At all relevant times, Labor Code §1102.5 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 federal statute, or 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. This law also prohibits retaliation against an employee for *refusing to participate* in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

126. Pursuant to Labor Code §1102.5(f), in addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.

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

128. Labor Code section 232.5, subdivision (c), prohibits employers from discharging, formally disciplining, or otherwise discriminating against employees who disclose information about the

1 employer's working conditions. Indeed, the law in California is that an employee's good faith but
2 mistaken belief in the illegality of his co-workers', supervisor's, and employer's conduct is protected
3 from employer retaliation in the whistle-blowing context.

4 129. Plaintiff Esparza is informed and believes, and on that basis alleges, that Plaintiff Esparza
5 was subjected to adverse employment actions, not the least of which was being terminated from her
6 employment with Defendants as a result of her complaints that there were unsafe working conditions in
7 the office due to clients not being required to wear masks during the worst part of the covid-19 pandemic.

8 130. Plaintiff Rojas is informed and believes, and on that basis alleges, that Plaintiff Rojas was
9 subjected to adverse employment actions, not the least of which was being constructively terminated from
10 her employment with Defendants as a result of her complaints that there were unsafe working conditions
11 in the office, specifically the lack of gloves, ESTIM pads, and disinfectant in the workplace, which often
12 led to patients being burned and surfaces being unclean and unsanitary in the midst of the COVID-19
13 pandemic.

14 131. Said conduct by Defendants violates Labor Code Labor Code §1102.5 and Labor Code
15 §1102.6, and such violations were a proximate cause in Plaintiffs' damages as hereinabove stated.

16 132. As a result of Defendants' actions, Plaintiffs are entitled to a civil penalty not to exceed
17 \$10,000.00 for Defendants' violations of Labor Code § 1102.5.

18 133. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
19 special damages including but not limited to past and future loss of income, benefits, and other damages
20 to be proven at time of trial.

21 134. The damage allegations of Paragraphs 79 through 82, inclusive, are herein incorporated
22 by reference.

23 135. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed
24 \$10,000.00 for Defendants' violations of Labor Code § 1102.5.

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

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

3
4 **SIXTH CAUSE OF ACTION**
5 **BY PLAINTIFFS ESPARZA AND ROJAS**
6 **FOR RETALIATION IN VIOLATION OF GOV'T CODE §§ 12945.2 ET SEQ.**
7 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

8 137. Plaintiff ESPARZA and ROJAS re-alleges and incorporates by reference Paragraphs 1
9 through 78, inclusive, as though set forth in full herein.

10 138. At all times hereto, the California Family Rights Act, codified by Government Code §§
11 12945.2, et al. ("CFRA") was in full force and effect and was binding upon Defendants and each of them.
12 Under the CFRA, it shall be an unlawful employment practice for any covered employer to refuse to
13 grant a request by any qualified employee to take up to a total of 12 workweeks in any 12-month period
14 for family care and medical leave for the employee's own serious medical condition. Under the CFRA,
15 it is also an unlawful employment practice for a covered employer to refuse to hire, or to discharge, fine,
16 suspend, expel, or discriminate against, any individual because the individual has exercised or attempted
17 to exercise his or her right to take protected family care and medical leave under the CFRA. Under the
18 CFRA, it is also an unlawful employment practice for an employer to interfere with, restrain, or deny the
19 exercise of, or the attempt to exercise, any right provided under the CFRA.

20 139. At all times hereto, Plaintiffs were employees eligible for CFRA leave. At all times hereto,
21 Plaintiffs had been employed by Defendants for more than 12 months and had worked at least 1,250
22 hours during the previous 12 months. Further, Defendants employed at least five or more employees.

23 140. Defendants violated the CFRA by failing and/or refusing to provide Plaintiffs with the
24 family care and medical leave that Plaintiffs requested.

25 141. Defendants violated the CFRA by retaliating against Plaintiffs for exercising or attempting
26 to exercise Plaintiffs' right to protected medical leave under the CFRA.

1 142. Defendants violated the CFRA by interfering with or restraining Plaintiffs from exercising
2 or attempting to exercise Plaintiffs' right to protected medical leave under the CFRA, by failing to give
3 Plaintiffs notice of Plaintiffs' rights under the CFRA, including the right to take protected leave.

4 143. Plaintiffs suffered the adverse employment actions of unlawful discrimination, retaliation
5 termination and constructive termination.

6 144. Plaintiffs are informed and believe that exercising or attempting to exercise Plaintiffs'
7 right to medical leave was a motivating reason and/or factor in the decisions to subject Plaintiff to the
8 aforementioned adverse employment actions.

9 145. The above said acts of Defendants constitute violations of the CFRA and were a proximate
10 cause in Plaintiff's damage as stated below.

11 146. The damage allegations of Paragraphs 79 through 82, inclusive, are herein incorporated
12 by reference.

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

19 148. Pursuant to Government Code § 12965(b), Plaintiffs requests a reasonable award of
20 attorneys' fees and costs, including expert fees pursuant to the FEHA.

21
22 **SEVENTH CAUSE OF ACTION**
23 **BY PLAINTIFFS ESPARZA AND ROJAS**
24 **FOR FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS**
25 **IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**
26 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

27 149. Plaintiffs ESPARZA and ROJAS re-allege and incorporate by reference Paragraphs 1
28 through 78, inclusive, as though set forth in full herein.

1 150. At all times hereto, the FEHA, including in particular Government Code § 12940(m), was
2 in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty on
3 Defendants to make reasonable accommodations for the known physical disability and/or medical
4 condition of an employee.

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

9 152. At all times herein, Plaintiffs were willing and able to perform the duties and functions of
10 the positions in which Plaintiffs were employed or could have performed the duties and functions of those
11 positions with reasonable accommodations. At no time would the performance of the functions of the
12 employment positions, with reasonable accommodations for Plaintiffs' disabilities or medical conditions,
13 actual or as it was perceived by Defendants, have been a danger to Plaintiffs' or any other person's health
14 or safety. Accommodation of Plaintiffs' disabilities or medical conditions, real or perceived by
15 Defendants, would not have imposed an undue hardship on Defendants. Defendants failed and refused
16 to accommodate Plaintiffs' disabilities, failed to engage in the interactive process with Plaintiffs and
17 continue to violate this obligation, up to and including the date of Plaintiffs' termination or, if Defendant
18 contends Plaintiffs were never terminated, through the present and ongoing.

19 153. The above said acts of Defendants constitute violations of the FEHA and were a proximate
20 cause in Plaintiffs' damages as stated below.

21 154. The damage allegations of Paragraphs 79 through 82, inclusive, are herein incorporated
22 by reference.

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

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

3
4 **EIGHTH CAUSE OF ACTION**
5 **BY PLAINTIFFS ESPARZA AND ROJAS**
6 **FOR FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS**
7 **IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**
8 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

9 157. Plaintiffs ESPARZA and ROJAS re-allege and incorporate by reference Paragraphs 1
10 through 78, inclusive, as though set forth in full herein.

11 158. At all times hereto, the FEHA, including in particular Government Code § 12940(n), was
12 in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty on
13 Defendants to engage in a timely, good faith, interactive process with the employee to determine effective
14 reasonable accommodations, if any, in response to a request for reasonable accommodation by an
15 employee with a known physical disability or known medical condition and/or becoming aware of the
16 employee's need for accommodation.

17 159. At all relevant times, Plaintiffs were members of a protected class within the meaning of,
18 in particular, Government Code §§ 12940(a) & 12986(1) et seq. because Plaintiffs had physical
19 disabilities that affected Plaintiffs' major life activities, and medical conditions of which Defendants had
20 both actual and constructive knowledge.

21 160. Plaintiffs reported the disabilities to Defendants and requested accommodations,
22 triggering Defendants' obligation to engage in the interactive process with Plaintiffs, but at all times
23 herein, Defendants failed and refused to do so. Thereafter, despite Defendants' continuing obligation to
24 engage in the interactive process with Plaintiffs, Defendants failed and refused to have any dialogue with
25 Plaintiffs whatsoever, on any of these occasions, and Defendants violated and continued to violate this
26 obligation up to and including the date of Plaintiffs' termination, or, if Defendant contends Plaintiffs was
27 never terminated, through the present and ongoing.

1 161. The above said acts of Defendants constitute violations of the FEHA and were a proximate
2 cause in Plaintiffs' damage as stated below.

3 162. The damage allegations of Paragraphs 79 through 82, inclusive, are herein incorporated
4 by reference.

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

11 164. Pursuant to Government Code § 12965(b), Plaintiffs requests a reasonable award of
12 attorneys' fees and costs, including expert fees pursuant to the FEHA.

13
14 **NINTH CAUSE OF ACTION**
15 **BY PLAINTIFFS ESPARZA AND ROJAS**
16 **FOR WRONGFUL TERMINATION**
17 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
18 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

19 165. Plaintiffs ESPARZA and ROJAS re-allege and incorporate by reference Paragraphs 1
20 through 78, inclusive, as though set forth in full herein.

21 166. At all relevant times mentioned in this complaint, the FEHA was in full force and effect
22 and was binding on Defendants. This law requires Defendants to refrain, among other things, from
23 discriminating against any employee on the basis of real or perceived disability, real or perceived medical
24 condition, use or anticipated use of medical leave, and/or engagement in protected activities, and/or some
25 combination of these protected characteristics.

26 167. At all times mentioned in this complaint, it was a fundamental policy of the State of
27 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of real
28

1 or perceived disability, real or perceived medical condition, use or anticipated use of medical leave,
2 and/or engagement in protected activities and/or some combination of these protected characteristics.

3 168. Plaintiff believes and thereon alleges that Plaintiff's real or perceived disability, real or
4 perceived medical condition, use or anticipated use of medical leave, and/or engagement in protected
5 activities, and/or some combination of these protected characteristics, were factors in Defendants'
6 conduct as alleged hereinabove.

7 169. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
8 employment on the basis of Plaintiffs' real or perceived disability, real or perceived medical condition,
9 use or anticipated use of medical leave, and/or engagement in protected activities, and/or some
10 combination of these protected characteristics, were a proximate cause in Plaintiff's damages as stated
11 below.

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

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

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

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

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

8 174. At all relevant times mentioned in this complaint, Labor Code §§6310, and 6400, et seq.,
9 were in full force and effect and were binding on Defendants.

10 175. Labor Code §6310 declares, in pertinent part, that no person shall discharge, or in any
11 manner discriminate against an employee, because the employee has made any oral or written complaint
12 to his employer with reference to employee safety or health. The public policy underlying Labor Code
13 §6310 is not merely to aid the reporting of actual safety violations; it is to prevent retaliation against those
14 who in good faith report working conditions they believe to be unsafe.

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

17 177. When read together, the foregoing statutes establish a fundamental public policy of the
18 State of California requiring employers to provide a safe and secure workplace, including a requirement
19 that an employer take reasonable steps to address credible safety and hazard violations in the workplace.

20 178. Plaintiffs believe and thereon allege that their complaints regarding the safety and health
21 of the place of employment furnished by Defendants were factors in Defendants' decision to retaliate
22 against Plaintiff by terminating Plaintiff, as alleged hereinabove.

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

25 180. At all times mentioned in this complaint, it was a fundamental policy of the State of
26 California that Defendants cannot discriminate and/or retaliate in violation of the FEHA or for
27 complaining about unsafe working conditions and Labor Code violations in violation of §§ 98.6, 1102.5
28 and 6310.

1 181. Plaintiff believes and thereon alleges that Plaintiff's engagement in protected activities
2 and/or protected characteristics, was a factor in Defendants' conduct as alleged hereinabove.

3 182. Such retaliation, resulting in the wrongful termination of Plaintiff's employment on the
4 basis of Plaintiff's protected status and/or engagement in protected activity, was a proximate cause in
5 Plaintiff's damages as stated below.

6 183. The above said acts of Defendants constitute violations of the Government Code, FEHA,
7 Labor Code, and the public policy of the State of California embodied therein as set forth above.
8 Defendants violated these laws by discriminating and retaliating against Plaintiff and terminating
9 Plaintiff's employment in retaliation for exercise of protected rights.

10 184. At all times mentioned in this complaint, it was a fundamental policy of the State of
11 California that Defendants cannot retaliate against any employee who engages in protected activity.

12 185. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's protected
13 status as a protected member of the class under FEHA, engagement in protected activities under Labor
14 Code sections 98.6, 1102.5, 6310, was a proximate cause in Plaintiff's damages as stated below.

15 186. The damage allegations of Paragraphs 79 through 82, inclusive, are herein incorporated
16 by reference.

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

TENTH CAUSE OF ACTION
BY PLAINTIFFS ESPARZA AND ROJAS
FOR DECLARATORY JUDGMENT
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

188. Plaintiffs ESPARZA and ROJAS re-allege and incorporate by reference Paragraphs 1 through 187, inclusive, as though set forth in full herein.

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

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

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

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

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

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

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

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

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

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

4
5 192. An actual controversy has arisen and now exists between Plaintiffs and Defendants
6 concerning their respective rights and duties as it is believed that Defendants may allege that they did not
7 discriminate and retaliate against Plaintiffs; that Plaintiffs were not terminated as a result of Plaintiff's
8 real or perceived disability, real or perceived medical condition, use or anticipated use of medical leave,
9 and/or engagement in protected activities, and/or some combination of these protected characteristics.
10 Plaintiffs contends that Defendants did discriminate and retaliate against Plaintiffs on the basis of
11 Plaintiffs' real or perceived disability, real or perceived medical condition, and/or some combination of
12 these protected characteristics; and that Plaintiffs were retaliated against and ultimately wrongfully
13 terminated as a result of Plaintiffs' real or perceived disability, real or perceived medical condition, use
14 or anticipated use of medical leave, and/or engagement in protected activities, and/or some combination
15 of these protected characteristics. Plaintiffs are informed and believe, and on that basis allege, that
Defendants shall dispute Plaintiffs' contentions.

16
17 193. Pursuant to Code of Civil Procedure § 1060, Plaintiffs seek a judicial determination of
18 Plaintiffs' rights and duties, and a declaration that Plaintiffs' real or perceived disability, real or perceived
19 medical condition, use or anticipated use of medical leave, and/or engagement in protected activities,
20 and/or some combination of these protected characteristics was a substantial motivating factor in the
decision to subject Plaintiffs to the aforementioned adverse employment actions.

21
22 194. A judicial declaration is necessary and appropriate at this time under the circumstances in
23 order that Plaintiffs, for Plaintiffs and on behalf of employees in the State of California and in conformity
24 with the public policy of the State, obtain a judicial declaration of the wrongdoing of Defendants and to
25 condemn such discriminatory employment policies or practices prospectively. *Harris v. City of Santa*
Monica (2013) 56 Cal.4th 203.

26
27 195. A judicial declaration is necessary and appropriate at this time such that Defendants may
28 also be aware of their obligations under the law to not engage in discriminatory practices and to not
violate the law in the future.

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

7
8 **ELEVENTH CAUSE OF ACTION**

9 **BY PLAINTIFFS ESPARZA AND ROJAS**

10 **FOR FAILURE TO PAY WAGES DUE**

11 **LABOR CODE §§201, 1182.12, 1194, 1194.2**

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

13 197. Plaintiffs ESPARZA and ROJAS re-allege and incorporate by reference Paragraphs 1
14 through 78, inclusive, as though set forth in full herein.

15 198. At all relevant times, Defendants failed and refused to pay Plaintiffs wages earned and
16 required by 8 Code of Regulations §11040, as set forth hereinabove. As alleged herein, Defendants failed
17 to pay Plaintiffs wages for missed rest break periods.

18 199. Defendants, as a pattern and practice in uniform administration of corporate policy with
19 regard to Plaintiffs and the other aggrieved employees, required Plaintiffs and the other aggrieved
20 employees to perform labor without compensation. Specifically, Plaintiffs and the other aggrieved
21 employees were made to work through their rest breaks and were not paid for all hours worked.

22 200. As alleged herein, Plaintiffs were not exempt from the requirements of Labor Code §510,
23 8 Code of Regulations §11040, and Industrial Welfare Commission Order No. 4-2001.

24 201. Plaintiffs have been deprived of Plaintiffs rightfully earned compensation as a direct and
25 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiffs are entitled to
26 recover such amounts, plus interest thereon, attorneys' fees and costs.

27 202. The damage allegations of Paragraphs 81 through 85, inclusive, are herein incorporated
28 by reference.

1 203. Plaintiffs seeks civil penalties pursuant to Labor Code §225.5, of one hundred dollars
2 (\$100) for each initial failure to pay each employee and two hundred dollars (\$200) for each subsequent
3 violation, or any willful or intentional violations for each failure to pay each employee, plus 25 percent
4 of the amount unlawfully withheld.

5 204. Labor Code §558(a) provides that any person acting on behalf of an employer who
6 violates, or causes to be violated, any statute or provision regulating hours and days of work in any order
7 of the Industrial Welfare Commission pay a civil penalty in the amount of \$50 for each underpaid
8 employee for each pay period in which the employee was underpaid in addition to an amount sufficient
9 to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the person acting
10 on behalf of an employer is liable in the amount of \$100 for each underpaid employee for each pay period
11 for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

12 205. In addition to the unpaid wages, Plaintiff Esparza is entitled to civil penalties in this
13 amount stated above based upon Defendants' underpayment of minimum and overtime wages. Within
14 the one year immediately preceding the filing of this Complaint, Defendants, and each of them, violated
15 Labor Code §558 on 26 pay periods, the first of which Defendants are penalized \$50.00, and the
16 remainder of which Defendants are penalized \$100.00 each, for a total due in Labor Code §558 penalties
17 of \$2,550.00.

18 206. In addition to the unpaid wages, Plaintiff Rojas is entitled to civil penalties in this amount
19 stated above based upon Defendants' underpayment of minimum and overtime wages. Within the one
20 year immediately preceding the filing of this Complaint, Defendants, and each of them, violated Labor
21 Code §558 on 26 pay periods, the first of which Defendants are penalized \$50.00, and the remainder of
22 which Defendants are penalized \$100.00 each, for a total due in Labor Code §558 penalties of \$2,550.00

23 207. Pursuant to Labor Code §§ 218, 218.5, and 218.6, Plaintiffs are entitled to recover the full
24 amount of unpaid wages, prejudgment interest, attorneys' fees and costs.
25
26
27
28

TWELFTH CAUSE OF ACTION
BY PLAINTIFFS ESPARZA AND ROJAS
FOR FAILURE TO PROVIDE REST BREAKS
LABOR CODE § 226.7
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

208. Plaintiffs ESPARZA and ROJAS re-allege and incorporate by reference Paragraphs 1 through 78, inclusive, as though set forth in full herein.

209. Labor Code §226.7 requires an employer to provide employees with an uninterrupted rest period of not less than ten (10) minutes, for every period worked of four (4) hours, or a substantial portion thereof.

210. For approximately one (1) year and nine (9) months, Plaintiff Esparza worked three (3) nine and a half (9.5) hour workdays per week and was thereby entitled to take two (2) 10-minute rest periods on each day of work.

211. Consequently, Plaintiff Esparza is owed one hour of pay at Plaintiff Esparza's then regular hourly rate, whichever is greater, for each day that Plaintiff Esparza was denied such rest periods, calculated as follows:

a. From approximately June 3, 2019, through August 11, 2019, Plaintiff Esparza was not permitted and not advised of Plaintiff Esparza right to take one or more of Plaintiff Esparza statutory 10-minute rest period three (3) times per week, or approximately 30 days. Consequently, Plaintiff Esparza is owed one hour of pay at \$15.75 for each day, or \$472.50 plus interest thereon, for unpaid rest periods.

b. From approximately August 12, 2019, through March 16, 2021, Plaintiff Esparza was not permitted and not advised of Plaintiff Esparza's right to take one or more of Plaintiff Esparza's statutory 10-minute rest period three (3) times per week, or approximately 249 days. Consequently, Plaintiff Esparza is owed one hour of pay at \$17.00 for each day, or \$4,233.00 plus interest thereon, for unpaid rest periods.

212. Thus, the total missed rest period compensation owing Plaintiff Esparza for this time period is \$4,705.50.

1 213. For approximately two years (2) years and four (4) months, Plaintiff Rojas worked three
2 (3) nine and a half (9.5) hour workdays per week and was thereby entitled to take two (2) 10-minute rest
3 periods on each day of work.

4 214. Consequently, Plaintiff Rojas is owed one hour of pay at Plaintiff Rojas's then regular
5 hourly rate, whichever is greater, for each day that Plaintiff was denied such rest periods, calculated as
6 follows:

7 c. From approximately March 1, 2020, through December 31, 2021, Plaintiff Rojas was not
8 permitted and not advised of Plaintiff Rojas' right to take one or more of Plaintiff Rojas' statutory 10-
9 minute rest period three (3) times per week, or approximately 285 days. Consequently, Plaintiff Rojas is
10 owed one hour of pay at \$16.25 for each day, or \$4,631.25 plus interest thereon, for unpaid rest periods.

11 d. From approximately January 1, 2022, through July 8, 2022, Plaintiff Rojas was not
12 permitted and not advised of Plaintiff Rojas' right to take one or more of Plaintiff Rojas' statutory 10-
13 minute rest period three (3) times per week, or approximately 78 days. Consequently, Plaintiff Rojas is
14 owed one hour of pay at \$16.50 for each day, or \$1,287.00 plus interest thereon, for unpaid rest periods.

15 215. Thus, the total missed rest period compensation owing Plaintiff Rojas for this time period
16 is \$5,918.25.

17 216. The damage allegations of Paragraphs 79 through 82, inclusive, are herein incorporated
18 by reference.

19 217. Thus, for the entirety of the time periods set forth above, Plaintiffs Esparza is entitled to
20 recover such amounts in the combined amount of \$4,705.50, pursuant to Labor Code §226.7(b), plus
21 interest thereon and costs of suit. Plaintiff Rojas is entitled to recover such amounts in the combined
22 amount of \$5,918.25, pursuant to Labor Code §226.7(b), plus interest thereon and costs of suit.

THIRTEENTH CAUSE OF ACTION
FOR FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES
LABOR CODE §2802
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

218. Plaintiffs ESPARZA and ROJAS re-allege and incorporate by reference paragraphs 1 through 78, inclusive, as though set forth in full herein,

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

220. Pursuant to Labor Code §2802(a), “an 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, or of his or her obedience to the directions of the employer.”

221. Plaintiffs were required by Defendants to expend Plaintiffs’ personal funds because of the duties required by Defendants, as alleged hereinabove.

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

223. Defendants have failed and refused to reimburse Plaintiffs for all necessary business expenditures, including for using their personal cellphones for business related purposes.

224. As a proximate result of the aforementioned violations of Labor Code §§450(a) and 2502(a), Plaintiffs are entitled to recover from Defendants the unpaid balance of all of the necessary aforementioned expenditures.

225. As a proximate result of the aforementioned violations of Labor Code §§450(a) and 2502(a), Plaintiff Esparza has been damaged in an amount according to proof at the time of trial but estimated as follows: Plaintiff Esparza was required to use her own cellphone throughout her employment for work related purposes, for approximately two (2) years. Defendants have at the very least failed to reimburse Plaintiff for her cellphone use in the amount according to proof.

226. As a proximate result of the aforementioned violations of Labor Code §§450(a) and 2502(a), Plaintiff Rojas has been damaged in an amount according to proof at the time of trial but estimated as follows: Plaintiff Rojas was required to use her own cellphone throughout her employment

1 for work related purposes, for approximately two and a half (2.5) years. Defendants have at the very least
2 failed to reimburse Plaintiff for her cellphone use in the amount according to proof.

3 227. The damage allegations of Paragraphs 79 through 82, inclusive, are herein incorporated
4 by reference.

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

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

10
11 **FOURTEENTH CAUSE OF ACTION**
12 **BY PLAINTIFFS ESPARZA AND ROJAS**
13 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
14 **LABOR CODE §§226, 226.3 1174 ET SEQ.**
15 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

16 230. Plaintiffs ESPARZA and ROJAS re-allege and incorporates by reference Paragraphs 1
17 through 78, inclusive, as though set forth in full herein.

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

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

1 233. At all relevant times, Defendants failed to provide Plaintiffs with timely and accurate wage
2 and hour statements showing gross wages earned, total hours worked, all deductions made, net wages
3 earned, the name and address of the legal entity employing Plaintiffs, and all applicable hours and rates
4 in effect during each pay period and the corresponding number of hours worked at each hourly rate by
5 Plaintiffs. Not one of the paystubs that Plaintiffs received complied with Labor Code §226, and contained
6 almost none of the required information, including hours actually worked.

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

8 235. This failure has injured Plaintiffs, by misrepresenting and depriving Plaintiffs of hour,
9 wage, and earnings information to which Plaintiffs are entitled, causing Plaintiffs difficulty and expense
10 in attempting to reconstruct time and pay records, causing Plaintiffs not to be paid wages Plaintiffs are
11 entitled to, causing Plaintiffs to be unable to rely on earnings statements in dealings with third parties,
12 eviscerating Plaintiffs' rights under Labor Code §226(b) to review itemized wage statement information
13 by inspecting the employer's underlying records, and deceiving Plaintiffs regarding Plaintiffs'
14 entitlement to rest period wages.

15 236. Plaintiffs were paid every two (2) weeks, and therefore Defendants violated Labor Code
16 §226 approximately twenty-six (26) times during the last year that Plaintiff worked for Defendants.
17 Consequently, Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory
18 maximum amount of \$4,000.00, whichever is greater.

19 237. The damage allegations of Paragraphs 79 through 82, inclusive, are herein incorporated
20 by reference.

21 238. In addition, thereto, Plaintiff Esparza is entitled to civil penalties pursuant to Labor Code
22 §226.3 in the amount of \$25,250.00 (\$250.00 + \$1,000.00 x 25 subsequent pay periods).

23 239. In addition, thereto, Plaintiff Rojas is entitled to civil penalties pursuant to Labor Code
24 §226.3 in the amount of \$25,250.00 (\$250.00 + \$1,000.00 x 25 subsequent pay periods).

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

FIFTEENTH CAUSE OF ACTION
BY PLAINTIFFS ESPARZA AND ROJAS
FOR WAITING TIME PENALTIES
LABOR CODE §§201-203
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

241. Plaintiffs ESPARZA and ROJAS re-allege and incorporate by reference Paragraphs 1 through 78, inclusive, as though set forth in full herein.

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

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

244. The damage allegations of Paragraphs 79 through 82, inclusive, are herein incorporated by reference.

245. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff Esparza is entitled to payment of Plaintiff Esparza's rest break compensation, as previously pleaded herein, and more than \$5,158.13 in wait time penalties, calculated based on 30 days of Plaintiff's daily wage rate of \$171.93, inclusive of overtime.

246. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff Rojas is entitled to payment of Plaintiff Rojas' rest break compensation, as previously pleaded herein, and more than \$5,158.13 in wait time penalties, calculated based on 30 days of Plaintiff's daily wage rate of \$171.93, inclusive of overtime.

247. Based on Defendants' conduct as alleged herein, Defendants are liable to Plaintiff Esparza for \$5,158.13 in statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys' fees and costs.

1 248. Based on Defendants' conduct as alleged herein, Defendants are liable for \$5,158.13 in
2 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
3 fees and costs.

4
5 **SIXTEENTH CAUSE OF ACTION**
6 **BY PLAINTIFFS ESPARZA AND ROJAS**
7 **FOR PRIVATE ATTORNEY GENERAL ACT**
8 **LABOR CODE §2699**
9 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

10 249. Plaintiffs ESPARZA and ROJAS re-allege and incorporate by reference Paragraphs 1
11 through 248, inclusive, as though set forth in full herein.

12 250. Under Labor Code §2699, Plaintiffs, as an aggrieved employee, may bring an action
13 against Defendants, on behalf of themselves and other current or former employees, seeking statutory
14 civil penalties for Defendants' violations of the California Labor Code.

15 251. Plaintiffs were aggrieved employees within the meaning of Labor Code §§2699(c) and
16 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiffs, as
17 previously pleaded in this Complaint.

18 252. On June 22, 2022, more than 65 calendar days before filing this Complaint, Plaintiffs
19 provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail
20 to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
21 satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ 201,
22 202, 203, 226, 226.7, 1174, 1194, 1194.2, and 1197 each of which is enumerated among the serious
23 violations set forth in Labor Code §2699.5.

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

27 254. Further, as of the filing of this Complaint, Plaintiffs have not received from Defendants
28 written notice by certified mail that the alleged violations have been cured, including a description of the

1 actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given
2 authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor
3 Code §2699.

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

7 8 **PENALTIES**

9 256. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code
10 that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
11 Agency (“LWDA”) (or any of its departments, divisions, commissions, board agency or employees), such
12 civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved
13 employee on behalf of himself or herself and other current or former employees) and Labor Code
14 §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which
15 a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil
16 penalties, as follows:

17 a. As applicable, civil penalties under Labor Code §2699(f), for all violations of the
18 Labor Code except for those for which a civil penalty is specifically provided, in the amount of one
19 hundred dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two
20 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation; and

21 b. As applicable, civil penalties under Labor Code §98.6 (in addition to and entirely
22 independent and apart from any other penalty provided for in the Labor Code), for violations of Labor
23 Code §98.6, in the amount of \$10,000 per aggrieved employee for each violation of this section, to be
24 awarded to the employee or employees who suffered the violation;

25 c. As applicable, civil penalties under Labor Code §203 (in addition to and entirely
26 independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee
27 who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor
28 Code §§201, 201.1, 201.5, 202, and 205, in the amount of a civil penalty of one day of pay, at the same

1 rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30)
2 days;

3 d. As applicable, Labor Code §204 (in addition to an entirely independent and apart
4 from any other penalty provided in the Labor Code), for any aggrieved employee who Defendants failed
5 to pay all earned wages during employment, in the amount of a civil penalty of \$100 for the initial
6 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation plus 25
7 percent of the amount unlawfully withheld;

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

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

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

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

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

24 259. The damage allegations of Paragraphs 81 through 85, inclusive, are herein incorporated
25 by reference.

26 260. As a direct and proximate result of Defendants California Labor Code violations as set
27 forth in this Complaint, Plaintiffs are entitled to civil penalties of \$100 for each aggrieved employee per
28 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each

1 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
2 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
3 provide for a penalty, §§203, 210, 225.5, 226.3, 226.7, and 558.

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

6
7 **SEVENTEENTH CAUSE OF ACTION**

8 **FOR UNFAIR COMPETITION**

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

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

11 262. Plaintiffs ESPARZA and ROJAS re-allege and incorporate by reference Paragraphs 1
12 through 261, inclusive, as though set forth in full herein.

13 263. Defendants' violations of 8 Code of Regulations §11040, Industrial Welfare Commission
14 Order No. 4-2001, Labor Code §§ 201-203, 226, 226.7, 1182.12, 1194, 1194.2, 1197, 1198.5, 2699, and
15 other applicable provisions, as alleged herein, including Defendants' failure to provide rest breaks,
16 Defendants' failure to provide timely and accurate wage and hour statements, Defendants' failure to pay
17 compensation due in a timely manner upon termination or resignation, and Defendants' failure to
18 maintain complete and accurate payroll records for Plaintiffs, constitute unfair business practices in
19 violation of Business & Professions Code §§17200, et seq.

20 264. The damage allegations of Paragraphs 79 through 82, inclusive, are herein incorporated
21 by reference.

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seeks judgment against Defendants and each of them, in an amount of no less than \$1,000,000, 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 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 statutory penalties or damages pursuant to Labor Code §558 in the amount of no less than \$5,100.00;

5. For reimbursement of necessary business expenses pursuant to Labor Code §2802, in the amount according to proof but no less than \$1,500.00, plus interest for cellphone use;

6. For payment of rest period compensation pursuant to Labor Code §226.7 in the amount of no less than \$10,623.75;

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

8. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no less than \$50,500.00;

9. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less than \$10,316.25;

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

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

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

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

10 14. For civil penalties under Labor Code §226.7, in addition to and entirely independent and
11 apart from any other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved
12 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for
13 each subsequent violation;

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

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

20 17. For prejudgment interest on all amounts recovered herein pursuant to Labor Code §218.6,
21 Labor Code §1194(a), and/or Civil Code §3287;

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

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

26 20. Pursuant to Government Code section 12965, subdivision (b), Plaintiffs requests a
27 reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA, the Labor
28 Code, Civil Code section 1021.5, and/or any other applicable law;

1 21. Treble exemplary and punitive damages according to proof;

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

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

6 23. For a declaratory judgment reaffirming Plaintiffs' equal standing under the law and
7 condemning Defendants' discriminatory practices;

8 24. For injunctive relief barring Defendants' discriminatory employment policies and
9 practices in the future, and restoring Plaintiffs to Plaintiffs' former position with Defendants;

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

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

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

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

20 29. For post-judgment interest; and

21 30. For any other relief that is just and proper.

22
23 DATED: August 8, 2022

GUERRA & CASILLAS LLP

24
25 By: 

26 Tizoc Perez-Casillas, Esq.
27 Ruben Guerra, Esq.
28 Attorneys for Plaintiffs
CAROLINA ESPARZA
JENNIFER ROJAS

1 **JURY TRIAL DEMANDED**

2 Plaintiff demands trial of all issues by jury.

3
4 DATED: August 8, 2022

GUERRA & CASILLAS LLP

5
6 By:



Tizoc Perez-Casillas, Esq.
Ruben Guerra, Esq.
Attorneys for Plaintiffs
CAROLINA ESPARZA
JENNIFER ROJAS