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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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By: Jack Junker, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

XIOMARA MONTERO, an individual,

Plaintiff,

vs.

FIVE STAR GOURMET FOODS, INC., a
California corporation; EPIC HR, LLC, a
Delaware limited liability company; ALE
DOE, an individual; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: CIVSB2505383

COMPLAINT FOR:

- 1. SEXUAL HARASSMENT IN VIOLATION OF GOVT. CODE §12940(j);**
- 2. HARASSMENT BASED ON SEX IN VIOLATION OF GOVT. CODE §12940(j);**
- 3. HOSTILE WORK ENVIRONMENT IN VIOLATION OF GOVT. CODE §12940 ET SEQ.;**
- 4. RETALIATION IN VIOLATION OF GOVT. CODE §12940 ET SEQ.;**
- 5. FAILURE TO PREVENT HARASSMENT IN VIOLATION OF GOVT. CODE §12940 (k);**
- 6. WRONGFUL CONSTRUCTIVE TERMINATION IN VIOLATION OF PUBLIC POLICY IN VIOLATION OF GOVT. CODE §12940 *et seq.*;**
- 7. FAILURE TO PAY MINIMUM WAGE AND PAY FOR ALL WAGES EARNED (*Labor Code* §§ 204, 1194 and 1197; *IWC Wage Order No. 8*);**
- 8. FAILURE TO PAY FOR MEAL PERIODS NOT PROVIDED (*Cal. Labor Code* §§ 226.7, 512; *IWC Wage Order No. 8*);**

- 1 9. FAILURE TO PROVIDE REST
2 PERIODS (Cal. *Labor Code* §226.7;
3 IWC Wage Order No. 8);
4 10. WAITING TIME PENALTIES (Cal.
5 *Labor Code* §226);
6 11. FAILURE TO PAY WAGES DUE
7 UPON TERMINATION (Cal. *Labor*
8 *Code* §§201-203);
9 12. FAILURE TO PROVIDE A
10 UNIFORM MAINTENANCE
11 ALLOWANCE (Cal. *Labor Code* §
12 2802);
13 13. FAILURE TO ALLOW
14 INSPECTION OF EMPLOYMENT
15 RECORDS (Cal. *Labor Code*
16 §1198.5); and
17 14. UNFAIR COMPETITION (Cal. Bus.
18 & Prof. Code §§17200 et seq.)

19 **DEMAND FOR A JURY TRIAL**

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Xiomara Montero (“Plaintiff”) alleges the following:

I. **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Complaint under California Government Code §12920 *et seq.*, and the rules, regulations and directives implementing those statutes. This Court also has jurisdiction over this Complaint under *Code of Civil Procedure* §410.10 and *Business & Professions Code* §§ 17200 *et seq.*

2. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Government Code* violations as against the persons identified herein, occurred in San Bernardino County and because Defendants Five Star Gourmet Foods, Inc., and Epic HR, LLC owned and operated their businesses in San Bernardino County.

II. **PARTIES**

3. At all times relevant hereto, Plaintiff Xiomara Montero (“Plaintiff”) was an individual over age 18 and a resident of Fontana, California.

1 4. Plaintiff is informed and believes and thereon alleges that at all times material
2 hereto, Defendant Five Star Gourmet Foods, Inc. ("FSGF"), has been, and is a California
3 corporation, with a principal place of business at 3880 Ebony Street, Ontario, CA 91761. At all
4 times material hereto, FSGF has been, and is, a food preparation and distribution company.
5 Plaintiff is informed and believes and thereon alleges that at all times material hereto FSGF has
6 been authorized to do business and has been doing business in the State of California.

7 5. Plaintiff is informed and believes and thereon alleges that at all times material
8 hereto, Defendant Epic HR, LLC ("EPIC"), has been, and is a Delaware limited liability
9 company, with a principal place of business at 7031 Kohl Center Parkway, Suite 290,
10 Pleasanton, CA 94566. At all times material hereto, EPIC has been, and is, a staffing company.
11 Plaintiff is informed and believes and thereon alleges that at all times material hereto EPIC has
12 been authorized to do business and has been doing business in the State of California.

13 6. Plaintiff is informed and believes and thereon alleges that Defendant Ale Doe
14 ("Ale") (collectively with FSGF and EPIC "Defendants") is an individual, who at all times
15 relevant herein, was a resident of San Bernardino County. Ale is Plaintiff's former supervisor at
16 FSGF.

17 7. Plaintiff is informed and believes and thereon alleges, that at all times relevant
18 herein, Defendants and some of DOES 1 through 100 were the agents, employees, and/or
19 servants, masters, or employers of the remaining DOES 1 through 100, and in doing the things
20 herein alleged, were acting within the course and scope of such agency or employment, and
21 with the approval and ratification of each of the other Defendants.

22 8. Plaintiff is ignorant of the true names and capacities of Defendants sued herein
23 as DOES 1 through 100, inclusive, and therefore Plaintiff sues these Defendants by such
24 fictitious names and capacities. Plaintiff will amend her Complaint to show their true names
25 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
26 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an
27 individual person who owned, controlled, or managed the business for which Plaintiff worked
28 and/or who directly or indirectly exercised operational control over the wages, hours, and

1 working conditions of Plaintiff. These DOE Defendants held ownership, officer, director
2 and/or executive positions with the remaining Defendants, and acted on behalf of the remaining
3 Defendants, which included decision-making responsibility for, and establishment of, sexual
4 harassment and wage and hour violations for Defendants which have damaged Plaintiff.
5 Therefore, Does 1 through 100, in addition to the remaining Defendants, are “employers” as a
6 matter of law and are liable on the causes of action alleged herein.

7 9. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
8 through 100 are, and at all times relevant hereto were, persons, corporations or other business
9 entities organized and existing under and by virtue of the laws of the State of California, and
10 are/were qualified to transact and conduct business in the State of California, and did transact
11 and conduct business in the State of California, and are thus subject to the jurisdiction of the
12 State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses,
13 employ persons, conduct business and engage in sexual harassment and wage and hour
14 violations in the County of San Bernardino.

15 10. An employer or other person acting on behalf of an employer, who violates, or
16 causes to be violated, a provision regulating minimum wages or hours and days of work in an
17 order of the Industrial Welfare Commission may be held liable as the employer for that
18 violation. (Lab. Code § 558.1(a).) The term “other person acting on behalf of an employer” is
19 limited to a natural person who is an owner, director, officer, or managing agent of the
20 employer, and the term “managing agent” has the same meaning as in C.C.P. § 3294(b). (Lab.
21 Code. § 558.1(b).)

22 11. Plaintiff is further informed and believes, and thereon alleges, that each of the
23 fictitiously named Defendants aided and assisted the named Defendants in committing the
24 wrongful acts alleged herein, and that Plaintiff’s damages were proximately caused by each
25 Defendant.

26 **III. PAGA NOTICE**

27 12. Pursuant to the California Labor Code, on or about February 25, 2025, Plaintiff
28 filed a notice with Labor and Workforce Development Agency (LWDA) of her intent to

1 pursue claims against Defendant under the Private Attorney General Act (PAGA). As such,
2 Plaintiff further reserves the right to amend this Complaint once she completes and complies
3 with the provisions under the law.

4 **IV. FACTUAL ALLEGATIONS THAT ARE COMMON TO ALL CAUSES OF**
5 **ACTION**

6 **Employment Information**

7 19. From in or about May 1, 2023 through March 15, 2024, FSGF and EPIC
8 employed Plaintiff as a Production Operator. Plaintiff was paid \$16.50 per hour. Plaintiff often
9 worked 8 or more hours per day, 5 days per week. Plaintiff worked in a production line and
10 performing salad-related duties. She was employed at FSGF and EPIC until March 15, 2024,
11 when Plaintiff was wrongfully constructively terminated.

12 20. Plaintiff is informed and believes and thereon alleges that FSGF contracted with
13 EPIC whereby EPIC would provide FSGF with staffing/employment services.

14 21. Plaintiff is informed and believes and thereon alleges that FSGF and EPIC
15 exercised control over Plaintiff's wages, hours and/or working conditions (start time, end time,
16 etc.) such that they were joint employers.

17 22. Given the amount of influence, control and direction FSGF and EPIC exerted
18 over Plaintiff's employment, FSGF and EPIC were Plaintiff's co-employers.

19 **Sexual Harassment and Wrongful Termination**

20 23. Plaintiff was denied a work environment free of sexual harassment and was
21 targeted for wrongful constructive termination on or about March 15, 2024.

22 24. Starting in or about November 2023, Plaintiff's coworkers started spreading a
23 rumor about Plaintiff that she was sleeping with the lead in the department, Javier. The
24 department consisted of 28 employees and most of them spread the rumor. The rumor started
25 because Plaintiff's coworkers thought she was always provided a better spot in the production
26 line that they were assigned to work at.

27 25. The rumors continued to increase and Plaintiff consistently heard derogatory
28 comments from her coworkers such as "How gross being the lover".

26. In or about December 2023, Plaintiff reported the sexual harassment to Ale. Ale responded by telling Plaintiff to knock it off and focus on her job.

27. Thereafter, in or about February 2024, Plaintiff reported the sexual harassment to Ale again, but nothing was ever done to rectify the situation. Ale had a good relationship with Plaintiff's coworkers and he, therefore, never took any action to stop the harassment.

28. On or about March 15, 2024, Plaintiff was forced to resign due to the sexual harassment.

29. As a result of the harassment, Plaintiff suffered emotional distress.

30. FSGF and EPIC's wrongful constructive termination of Plaintiff was wrongfully motivated by sexual harassment and her complaints relating thereto.

31. At all times material hereto, FSGF and EPIC regularly employed five or more persons and therefore are employers, as that term is defined in *Government Code* § 12926(d).

32. On February 25, 2025, Plaintiff filed an administrative complaint with the Department of Fair Employment and Housing (“DFEH”) alleging sexual harassment by FSGF, EPIC and Ale. On February 25, 2025, the DFEH issued to Plaintiff a Right to Sue Notice as to FSGF, EPIC and Ale.

Wage and Hour Violations

33. Plaintiff's employment with FSGF and EPIC is governed by Industrial Welfare Commission Wage Order No. 8, which covers those persons employed in industries handling products after harvest.

34. Plaintiff did not receive minimum wages due to FSGF and EPIC's failure to afford her compliant meal/rest breaks.

35. Plaintiff's meal breaks were afforded late and/or not afforded.

36. Plaintiff's rest breaks were interrupted and she was restricted from leaving her work area during her rest breaks.

37. As a result of FSGF and EPIC's failure to afford Plaintiff minimum wages and compliant meal/rest breaks, the wage statements issued to her did not comply with Labor Code

1 § 226 and California Industrial Welfare Commission ("IWC") Wage Order No. 8 in that they
2 did not accurately reflect all wages earned and due and owing.

3 38. As a further result of FSGF and EPIC's failure to pay minimum wages and to
4 afford meal/rest breaks to Plaintiff, when Plaintiff left their employ, she was not timely paid all
5 wages due her, as required by Labor Code §§ 201, 202 and IWC Wage Order No. 8.

6 39. FSGF and EPIC failed to provide Plaintiff with a uniform maintenance
7 allowance.

8 40. FSGF and EPIC failed to provide Plaintiff with her requested employment
9 records.

10 **FIRST CAUSE OF ACTION**

11 **(Sexual Harassment in violation of Government Code § 12940(j)– By Plaintiff Against all**
12 **Defendants and Does 1 through 100**

13 41. Plaintiff realleges and incorporates by reference all of the allegations set forth in
14 this Complaint.

15 42. In perpetrating the above-described actions, Defendants engaged in a pattern and
16 practice of unlawful sexual harassment in violation of FEHA, *Government Code* § 12940(j).

17 43. Defendants sexually harassed Plaintiff. The harassment was sufficiently
18 pervasive and severe as to alter the conditions of employment and create a hostile work
19 environment.

20 44. As a proximate result of this sexual harassment in violation of public policy,
21 Plaintiff was caused to suffer, and continues to suffer, from humiliation, anxiety, severe
22 emotional distress, worry, fear, and special damages (including lost wages) all to her special
23 and general damage, in an amount within the jurisdiction of this Court, according to proof.

24 45. Pursuant to California Government Code §12965(b), Plaintiff requests an award
25 of attorneys' fees in this action.

26 46. All actions of Defendants were known, ratified and approved by the officers or
27 managing agents of Defendant FSGF and EPIC. Therefore, Plaintiff is entitled to punitive or
28 exemplary damages against Defendants in an amount to be determined at the time of trial.

(Harassment in Violation of Government Code § 12940(j) - By Plaintiff Against all Defendants and Does 1 through 100)

48. The FEHA explicitly prohibits any employer or any other person from harassing an employee because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation. *Gov. Code* § 12940(j).

50. Defendants' harassment, as set forth above, created an abusive working environment in violation of Government Code § 12940(j). Defendants harassed Plaintiff and/or failed to take immediate and appropriate corrective action. The harassment was sufficiently pervasive and severe as to alter the conditions of employment and to create a hostile or abusive work environment.

52. Pursuant to California Government Code § 12965(b), Plaintiff requests an award of attorneys' fees in this action.

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1 **THIRD CAUSE OF ACTION**

2 **(Hostile Work Environment in Violation Govt. Code § 12940 et seq.- By Plaintiff Against**
3 **Defendants FSGF, EPIC and Does 1 through 100)**

4 54. Plaintiff realleges and incorporates by reference all of the allegations set forth in
5 this Complaint.

6 55. The offensive conduct to which Plaintiff was subjected constitutes a hostile
7 work environment in violation to FEHA, California Government Code § 12940 et seq. During
8 her employment, FSGF and EPIC violated FEHA, California Government Code § 12940 (j), by
9 allowing sexual harassment by their employees.

10 56. FSGF and EPIC's harassment was hostile, abusive, continuous and pervasive to
11 create a hostile work environment for Plaintiff.

12 57. FSGF and EPIC's harassment was unwelcome, humiliating, offensive and
13 adversely affected the terms of Plaintiff's employment.

14 58. Plaintiff was subjectively offended by FSGF and EPIC's conduct and any
15 reasonable person in Plaintiff's position would perceive FSGF and EPIC's conduct as being
16 offensive, hostile and abusive.

17 59. As a direct result of FSGF and EPIC's failure to take all reasonable steps
18 necessary to prevent sexual harassment, Plaintiff has suffered and will continue to suffer pain
19 and suffering, extreme and severe mental anguish and emotional distress, loss of earnings and
20 earning capacity. Plaintiff is hereby entitled to general and compensatory damages in an
21 amount within the jurisdiction of this Court, according to proof.

22 60. FSGF and EPIC did the things hereinabove alleged, intentionally, oppressively,
23 and maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against
24 public policy, were obnoxious, despicable, and ought not to be suffered by any member of the
25 community.

26 61. All actions of FSGF and EPIC were known, ratified and approved by the
27 officers or managing agents of FSGF and EPIC. Therefore, Plaintiff is entitled to punitive or
28 exemplary damages against FSGF and EPIC in an amount to be determined at the time of trial.

62. Pursuant to California Government Code § 12965(b), Plaintiff requests an award of attorneys' fees in this action.

FOURTH CAUSE OF ACTION

(Retaliation in Violation of Government Code §§12940 et seq. - By Plaintiff Against Defendants FSGF, EPIC and Does 1 through 100)

63. Plaintiff realleges and incorporates by reference all of the allegations set forth above in the Complaint.

64. This cause of action is brought pursuant to the FEHA, Govt. Code §12940(h), which provides that it is unlawful to retaliate against a person "because the person has opposed any practices forbidden under [Government Code sections 12900 through 12966] or because the person has filed a complaint, testified, or assisted in any proceeding under the FEHA."

65. Because she was subject to sexual harassment, Plaintiff was wrongfully constructively terminated by FSGF and EPIC.

66. FSGF and EPIC's retaliatory conduct toward Plaintiff caused her emotional injury, including, but not limited to, humiliation, anxiety, fear, and loss of self-esteem. FSGF and EPIC's retaliatory conduct was a substantial factor and the proximate cause of Plaintiff's damages.

67. Plaintiff's complaints concerning sexual harassment was the reason FSGF and EPIC retaliated against her.

68. Plaintiff has suffered monetary damages, lost wages and privileges of employment illegally caused by FSGF and EPIC's discriminatory conduct in an amount within the jurisdiction of this Court, according to proof.

69. FSGF and EPIC's conduct was the proximate cause of the Plaintiff's damages.

70. FSGF and EPIC did the things hereinabove alleged, intentionally, oppressively, and maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against public policy, were obnoxious, despicable, and ought not to be suffered by any member of the community.

71. All actions of FSGF and EPIC were known, ratified and approved by the officers or managing agents of FSGF and EPIC. Therefore, Plaintiff is entitled to punitive or exemplary damages against FSGF and EPIC, in an amount to be determined at the time of trial.

72. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

FIFTH CAUSE OF ACTION

(Failure to Prevent Harassment from Occurring in Violation of Government Code § 12940(k) - By Plaintiff Against Defendants FSGF, EPIC and Does 1 through 100)

73. Plaintiff realleges and incorporates by reference all of the allegations set forth above in the Complaint.

74. Plaintiff alleges that FSGF and EPIC violated Government Code §12940(k) by failing to take all reasonable steps to prevent sexual harassment from occurring.

75. FSGF and EPIC's conduct in subjecting Plaintiff to sexual harassment constituted breach of their duty under FEHA, including the duty to take immediate and appropriate corrective action and to take all reasonable steps to prevent the sexual harassment and retaliation from occurring pursuant to California Government Code § 12940(k).

76. FSGF and EPIC knew or reasonably should have known of Plaintiff's coworkers' propensities for engaging in unlawful, harassing conduct in the workplace, and FSGF and EPIC should have restrained Plaintiff's coworkers from engaging in unlawful, harassing conduct towards Plaintiff. FSGF and EPIC failed to take all reasonable steps necessary to prevent the retaliation and harassment from occurring.

77. Plaintiff is informed and believes and thereupon alleges that FSGF failed to provide adequate training to their employees to prevent sexual harassment from occurring.

78. FSGF and EPIC's conduct was the proximate cause of Plaintiff's damages.

79. As a direct result of FSGF and EPIC's failure to take all reasonable steps necessary to prevent sexual harassment, Plaintiff has suffered and will continue to suffer pain and suffering, extreme and severe mental anguish and emotional distress, loss of earnings and

1 earning capacity. Plaintiff is hereby entitled to general and compensatory damages in an
2 amount within the jurisdiction of this Court, according to proof.

3 80. FSGF and EPIC did the things hereinabove alleged, intentionally, oppressively,
4 and maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against
5 public policy, were obnoxious, despicable, and ought not to be suffered by any member of the
6 community.

7 81. All actions of FSGF and EPIC were known, ratified and approved by the
8 officers or managing agents of FSGF and EPIC. Therefore, Plaintiff is entitled to punitive or
9 exemplary damages against FSGF and EPIC, in an amount to be determined at the time of trial.

10 82. Pursuant to California Government Code § 12965(b), Plaintiff requests an award
11 of attorneys' fees in this action.

12 **SIXTH CAUSE OF ACTION**

13 **(Wrongful Constructive Termination in Violation of Govt. Code §§ 12940 et seq. – By**
14 **Plaintiff Against Defendants FSGF, EPIC and Does 1 through 100)**

15 83. Plaintiff realleges and incorporates by reference all of the allegations set forth in
16 this Complaint.

17 84. Plaintiff alleges that significant policies exist in the State of California that
18 prohibit sexual harassment, retaliation, wrongfully constructively terminating an employee due
19 to complaining about sexual harassment and protesting against unlawful employment practices.
20 Among others, the right to be free from harassment and retaliation are codified in the California
21 and United States Constitutions and the provisions of Government Code §§ 12900 *et seq.*

22 85. These policies are set forth in various laws including, but not limited to,
23 Government Code §§ 12940 (a), 12940 (k); Cal. Const. Art. 1, § 8 (sexual harassment).

24 86. FSGF and EPIC, acting through their employees and supervisor, intentionally
25 created and knowingly permitted the sexual harassment.

26 87. FSGF and EPIC wrongfully constructively terminated Plaintiff in violation of
27 important and well-established public policies, including, but not limited to, policies against
28 sexual harassment.

1 88. FSGF and EPIC's wrongful conduct proximately caused Plaintiff to suffer
2 general damages, special and statutory damages, in an amount within the jurisdiction of this
3 Court, according to proof at trial.

4 89. As a further proximate result of the unlawful acts of FSGF and EPIC as alleged
5 above, Plaintiff has been harmed in that she has suffered humiliation, mental anguish, and
6 emotional and physical distress that a reasonable person would suffer upon losing her job. As
7 a result of such actions and consequent harm, Plaintiff has suffered such damages in an
8 amount according to proof.

9 90. The above acts of FSGF and EPIC constituted a wrongful constructive
10 termination of Plaintiff and were in violation of public policy as described above. Such
11 termination was a substantial factor in causing damage and injury to Plaintiff as set forth
12 below.

13 91. Plaintiff believes and thereon alleges that engaging in a protected activity,
14 including, but not limited to, refusing to be subject to sexual harassment by her coworkers and
15 complaining about harassment were factors in FSGF and EPIC's conduct as alleged
16 hereinabove.

17 92. As a result of FSGF and EPIC's conduct, Plaintiff is entitled to recover punitive
18 damages in amount according to proof at trial.

19 93. Pursuant to California Government Code § 12965(b), Plaintiff requests an award
20 of attorneys' fees in this action.

21 **SEVENTH CAUSE OF ACTION**

22 **(Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194, 1197, 1197.1, 1198,**
23 **119, IWC Wage Order No. 8 – By Plaintiff Against Defendants FSGF, EPIC and Does 1**
24 **through 100)**

25 94. Plaintiff realleges and incorporates by reference all of the allegations set forth in
26 this Complaint.

27 95. *Labor Code* § 1197 states the California requirement that employees must be
28 paid at least the minimum wage fixed by the Commission, and any payment of less than the

1 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
2 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
3 the full amount of this minimum wage.” IWC Wage Order No. 8-2001 also obligates employers
4 to pay each employee minimum wages for all hours worked. These minimum wage standards
5 apply to each hour employees worked for which they were not paid. Therefore, an employer’s
6 failure to pay for any particular hour of time worked by an employee is unlawful, even if
7 averaging an employee’s total pay over all hours worked, paid or not, results in an average
8 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
9 (2005).

10 96. California Labor Code section 558 provides in pertinent part:

11 (a) Any employer or other person acting on behalf of an employer who
12 violates, or causes to be violated, a section of this chapter or any
13 provision regulating hours and days of work in any order of the
14 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

15 (1) For any initial violation, fifty dollars (\$50) for each underpaid
16 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

17 (2) For each subsequent violation, one hundred dollars (\$100) for each
18 underpaid employee for each pay period for which the employee was
19 underpaid in addition to an amount sufficient to recover underpaid
wages.

20 (3) Wages recovered pursuant to this section shall be paid to the affected
21 employee...

22 (c) The civil penalties provided for in this section are in addition to any
23 other civil or criminal penalty provided by law.

24 97. Here, Plaintiff was not paid minimum wages that were due to her because of
25 FSGF and EPIC’s failure to afford compliant meal/rest breaks.

26 98. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
27 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
28 wage, including interest thereon, reasonable attorneys’ fees, and costs of suit.

1 99. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
2 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
3 *Code* § 1194. Where an employee, such as Plaintiff is not paid for all hours worked under
4 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
5 the overtime for which they received no compensation. *See Sillah v. Command Int'l Sec. Servs.*,
6 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime
7 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
8 minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
9 (N.D. Cal. 2016).

10 100. Plaintiff suffered and continues to suffer losses related to the use and enjoyment
11 of compensation due and owing to her as a direct result of Defendants FSGF and EPIC's
12 unlawful acts and Labor Code violations in the amount of at least \$99,495, to be shown
13 according to proof at trial.

14 101. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
15 wages against employers and those individuals acting in their behalf. Plaintiff requests that this
16 Court assess said penalty against Defendant FSGF and EPIC, in an amount to be proven at trial.

17 102. Therefore, pursuant to Labor Code §§ 200, 203, 218.5, 226, 558, 1194 and
18 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages FSGF and
19 EPIC owe her, plus interest, penalties, attorneys' fees, expenses and costs of suit, in an amount
20 within the jurisdiction of this Court, according to proof.

21 103. Under *Labor Code* § 1194.2, Plaintiff is entitled to recover as liquidated
22 damages, amounts equal to the wages unlawfully unpaid and interest thereon.

23 **EIGHTH CAUSE OF ACTION**

24 **(For Failure to Provide Meal Breaks in violation of Cal. Labor Code § 226.7– By Plaintiff**
25 **Against Defendants FSGF, EPIC and Does 1 through 100)**

26 104. Plaintiff realleges and incorporates by reference all of the allegations set forth in
27 this Complaint.
28

1 105. California Labor Code § 226.7(a) prohibits an employer from requiring an
2 employee to work during any meal period mandated by an applicable Industrial Wage Order.
3 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
4 employee to work during a meal or rest break or recovery period mandated pursuant to an
5 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
6 Commission..."

7 106. California Labor Code § 1198 makes unlawful the employment of an employee
8 under conditions the IWC prohibits.

9 107. IWC Wage Order No. 8 provides, in relevant part: "No employer shall employ
10 any person for a work period of more than five (5) hours without a meal period of not less than
11 30-minutes, except that when a work period of not more than six (6) hours will complete the
12 day's work the meal period may be waived by mutual consent of the employer and the
13 employee."

14 108. IWC Wage Order No. 8 further provides, in relevant part: "Unless the employee
15 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an
16 'on duty' meal period and counted as time worked."

17 109. Section 512(a) of the California Labor Code provides, in relevant part, that:
18 An employer may not employ an employee for a work period of more than five
19 hours per day without providing the employee with a meal period of not less
20 than 30-minutes, except that if the total work period per day of the employee is
21 no more than six hours, the meal period may be waived by mutual consent of
22 both the employer and employee. An employer may not employ an employee for
23 a work period of more than 10 hours per day without providing the employee
24 with a second meal period of not less than 30-minutes, except that if the total
25 hours worked is no more than 12 hours, the second meal period may be waived
26 by mutual consent of the employer and the employee only if the first meal
27 period was not waived.

1 110. The Labor Code and Wage Order provisions cited above require California
2 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
3 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
4 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
5 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
6 the fifth hour of their shifts.

7 111. FSGF and EPIC violated Labor Code § 512 and IWC Wage Order No. 8 by
8 routinely failing to provide Plaintiff timely meal breaks. Her meal breaks were provided after
9 the fifth hour of work. Further, at times, Plaintiff clocked out for her meal break even though
10 she did not take a meal break.

11 112. FSGF and EPIC further violated IWC Wage Order No. 8 and Labor Code §
12 226.7 by failing to pay one hour of compensation to Plaintiff at her individual and regular rate
13 of pay for each work day that the meal period was not provided, in the amount of \$99,495.00.
14 This amount remains owed and unpaid.

15 113. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to
16 recover wages due based on the deprivation of timely meal periods under Cal. Labor Code
17 § 226.7(b).

18 114. As a direct and proximate result of FSGF and EPIC's unlawful conduct as
19 alleged herein, Plaintiff has sustained economic damages, including but not limited to unpaid
20 wages and lost interest, in an amount to be established at trial, and is entitled to recover
21 economic and statutory damages, attorneys' fees and penalties and other appropriate relief due
22 to FSGF and EPIC's violations of the California Labor Code and IWC Wage Order No. 8.

23 **NINTH CAUSE OF ACTION**

24 **(For Failure to Provide Rest Breaks in violation of Cal. Labor Code §226.7– By Plaintiff**
25 **Against Defendants FSGF, EPIC and Does 1 through 100)**

26 115. Plaintiff realleges and incorporates by reference all of the allegations set forth in
27 this Complaint.
28

116. Labor Code § 226.7 and IWC Wage Order No. 8 provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work, or major fraction thereof.

117. Labor Code § 226.7 and IWC Wage Order No. 8 provide that if an employer fails to provide an employee with rest periods in accordance with those provisions, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest periods were not so provided.

118. FSGF and EPIC have intentionally and improperly denied compliant rest periods to Plaintiff in violation of Labor Code § 226.7 and IWC Wage Order No. 8.

119. Plaintiff's rest periods were interrupted and she was restricted from leaving her work area during her rest breaks.

120. At all times relevant hereto, Plaintiff has worked 8 or more hours daily.

121. At all times relevant hereto, FSGF and EPIC failed to provide rest periods as required by Labor Code § 226.7 and IWC Wage Order No. 8.

122. By virtue of FSGF and EPIC's unlawful failure to provide rest periods to the Plaintiff, Plaintiff has suffered, and will continue to suffer, damages in the amount of \$99,495.00.

TENTH CAUSE OF ACTION

**(Waiting Time Penalties in Violation of Labor Code § 226 - By Plaintiff Against
Defendants FSGF, EPIC and Does 1 through 100)**

123. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

124. At all times relevant hereto, FSGF and EPIC failed to issue payrolls statements to Plaintiff which complied with *Labor Code* § 226 in that the statements issued to Plaintiff did not properly and accurately pay her minimum wages and premium pay for meal/rest breaks not afforded.

125. FSGF and EPIC knowingly and intentionally failed to comply with *Labor Code* § 226(a), causing damage to Plaintiff. These damages, including but not limited to, costs

1 expended calculating the actual hours worked and the amount of employment taxes which were
2 not properly paid to state and federal tax authorities, are difficult to estimate. Therefore,
3 Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the
4 violations occurred, and \$100.00 for each violation in subsequent pay periods, pursuant to
5 *Labor Code* § 226(e), in the amount of \$4,000.00 plus reasonable attorneys' fees and costs.

6 126. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus
7 attorneys' fees and costs in obtaining the injunction, pursuant to *Labor Code* § 226(g).

8 **ELEVENTH CAUSE OF ACTION**

9 **(Failure to Pay Wages Due Upon Termination Labor Code §§ 201-203 By Plaintiff**
10 **Against Defendants FSGF, EPIC and Does 1 through 100)**

11 127. Plaintiff realleges and incorporates by reference all of the allegations set forth in
12 this Complaint.

13 128. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
14 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
15 from employment, unpaid wages are due and payable within 72 hours of resignation.

16 129. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
17 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
18 paid, not to exceed thirty days.

19 130. Plaintiff was wrongfully constructively terminated from FSGF and EPIC's
20 employ and FSGF and EPIC willfully failed to pay minimum wages, to afford meal/rest breaks
21 to Plaintiff and did not pay her premium pay for meal/rest breaks not afforded.

22 131. FSGF and EPIC wrongfully constructively terminated Plaintiff on March 15,
23 2024, yet failed to pay her wages due to her.

24 132. Under Labor Code § 203(a), Plaintiff is entitled to one day's wages for each day
25 she was not timely paid, not to exceed 30 days' wages, interest, and attorneys' fees and costs in
26 an amount within the jurisdiction of this Court, according to proof.

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TWELFTH CAUSE OF ACTION

FAILURE TO PROVIDE A UNIFORM MAINTENANCE ALLOWANCE

(Cal. Labor Code § 2802 By Plaintiff Against Defendants FSGF, EPIC and Does 1 through 100)

133. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

134. Under California law, if an employer requires non-exempt employees to wear a uniform, the employer must pay for and maintain the uniform for the employee. Labor Code §2802.

135. An employer may never impose a financial burden on employees, with respect to purchasing or maintaining clothing, which would reduce the employee's wage rate below the minimum wage.

136. Here, Plaintiff was required to purchase uniforms for work.

137. FSGF and EPIC failed to purchase the uniforms for Plaintiff nor reimburse her for the cost thereof.

138. Additionally, Plaintiff maintained the uniforms herself.

139. As a proximate result of the aforementioned violations of § 2802, Plaintiff is entitled to recovery from FSGF and EPIC for reimbursement of necessary expenditures including interest and attorneys' fees.

140. As a proximate result of the aforementioned violations of Labor Code § 2802, Plaintiff has been damaged in an amount according to proof at the time of trial.

THIRTEENTH CAUSE OF ACTION

(Failure to Allow Inspection of Employment Records in Violation of Cal. Labor Code §1198.5 By Plaintiff Against Defendants FSGF, EPIC and Does 1 through 100)

141. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

142. California Labor Code Section 1198.5 provides:

1 (a) Every current and former employee, or his or her representative, has the right
2 to inspect and receive a copy of the personnel records that the employer
3 maintains relating to the employee's performance or to any grievance concerning
4 the employee.

5 (b) The employer shall make the contents of those personnel records available
6 for inspection to the current or former employee, or his or her representative, at
7 reasonable intervals and at reasonable times, but not later than 30 calendar days
8 from the date the employer receives a written request, unless the current or
9 former employee, or his or her representative, and the employer agree in writing
10 to a date beyond 30 calendar days to inspect the records, and the agreed-upon
11 date does not exceed 35 calendar days from the employer's receipt of the written
12 request to inspect the records. Upon a written request from a current or former
13 employee, or his or her representative, the employer shall also provide a copy of
14 the personnel records ... later than 30 calendar days from the date the employer
15 receives the request...

16 (k) If an employer fails to permit a current or former employee, or his or her
17 representative, to inspect or copy personnel records within the times specified I
18 this section... the current or former employee may recover a penalty of seven
19 hundred fifty dollars (\$750) from the employer.

20 (l) A current or former employee may also bring an action for injunctive relief
21 to obtain compliance with this section, and may recover costs and reasonable
22 attorney's fees in such an action.

23 143. Additionally, pursuant to IWC Wage Order No. 8, at section 7 re: Records,
24 employers are required to keep accurate payroll records on each employee, and such records
25 must be made readily available for inspection by the employee upon reasonable request. The
26 employer must also maintain accurate production records.

27 144. On or about February 25, 2025, Plaintiff's counsel issued a written request to
28 FSGF and EPIC for copies of her personnel records.

1 145. Under California Labor Code Sections 226, 432 and 1198.5, such records were
2 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
3 Plaintiff's counsel and FSGF and EPIC did not enter into an agreement to enlarge the time for
4 FSGF and EPIC's compliance, and FSGF and EPIC have failed and refused to permit Plaintiff
5 copies of her records.

6 146. As a direct result and consequence of FSGF and EPIC's failure and refusal to
7 permit Plaintiff full access to her records, Plaintiff seeks injunctive relief in the form of an
8 order or decree mandating FSGF and EPIC's compliance. Plaintiff has suffered and will suffer
9 harm as a result of FSGF and EPIC's ongoing refusal to comply. Plaintiff also seeks recovery
10 of the statutory penalty of \$750 based upon FSGF and EPIC's violation of §1198.5.

11 **FOURTEENTH CAUSE OF ACTION**

12 **(Unfair Competition Cal. Bus. & Prof. Code §17200 et. seq. –By Plaintiff Against**
13 **Defendants FSGF, EPIC and Does 1 through 100)**

14 147. Plaintiff realleges and incorporates by reference all of the allegations set forth in
15 this Complaint.

16 148. California Business & Professions Code § 17200 *et seq.* prohibits acts of unfair
17 competition, which shall mean and include any "unlawful and unfair business practices."

18 149. FSGF and EPIC's conduct as alleged herein has been and continues to be unfair,
19 unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights
20 affecting the public interest within the meaning of the Cal. Code of Civ. Proc. § 1021.5.
21 Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, and
22 therefore has standing to bring this suit for restitution.

23 150. Paying minimum wages, affording of meal/rest breaks, providing a uniform
24 maintenance allowance and providing employment records are fundamental public policies of
25 the State of California. It is also the public policy of this State to enforce minimum labor
26 standards, to ensure that employees are not required or permitted to work under substandard
27 and unlawful conditions, and to protect those employers who comply with the law from losing
28

1 competitive advantage to other employers who fail to comply with labor standards and
2 requirements.

3 151. FSGF and EPIC failed to pay Plaintiff minimum wages, afford Plaintiff
4 meal/rest breaks, provide a uniform maintenance allowance and failed to provide her personnel
5 records.

6 152. Through the conduct alleged herein, FSGF and EPIC acted contrary to these
7 public policies and has thus engaged in unlawful and/or unfair business practices in violation of
8 Business & Professions Code §§ 17200 *et. seq.*, depriving Plaintiff of the rights, benefits, and
9 privileges guaranteed to employees under California law.

10 153. FSGF and EPIC regularly and routinely violated the following statutes and
11 regulations with respect to Plaintiff:

- 12 (a) *Labor Code* § 1197 and IWC Wage Order No. 8 (failure to pay minimum
13 wages);
- 14 (b) *Lab. Code* § 226.7 (failure to afford meal/rest breaks);
- 15 (c) *Labor Code* § 226 (failure to provide accurate wage statements to
16 employees at the time of payment of wages);
- 17 (d) *Labor Code* §§ 202 and 203 (failure to pay wages due at termination);
- 18 (e) *Labor Code* § 2802 (failure to provide a uniform maintenance
19 allowance); and
- 20 (f) *Labor Code* § 1198.5 (failure to allow inspection of employment
21 records).

22 154. By engaging in these business practices, which are unfair business practices
23 within the meaning of Bus. & Prof. Code §§ 17200 *et seq.*, FSGF and EPIC harmed Plaintiff
24 and gained an unfair competitive edge. Under the Business & Professions Code § 17203,
25 Plaintiff is entitled to obtain restitution of these funds, in the amount of at least \$99,495.00.

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1. For compensatory damages in the amount of unpaid minimum wages due to Plaintiff, in an amount of \$99,495;
2. For compensatory damages for lost wages and employment benefits, in an amount of \$99,495;
3. For general damages, according to proof;
4. For an award of consequential damages, according to proof;
5. For one hour of pay at the regular rate of compensation for Plaintiff for each workday that a meal/rest period was not provided, in the amount of \$99,495;
6. For compensatory damages in the amount of Plaintiff's out of pocket expenses for purchase of uniforms, plus interest, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);
7. For payment of unpaid wages in accordance with California labor and employment law, in the amount of \$99,495;
8. For mental and emotional distress damages, in an amount according to proof;
9. For past and future medical expenses, in an amount according to proof;
10. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code* § 203, in an amount equal to her respective daily rates of pay at the time of termination or layoff, multiplied by the total amount of days elapsed between the date of the involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30 days' pay, in an amount within the jurisdiction of this Court, according to proof;
11. For specific relief enforcing waiting time penalties of 30 days of per diem wage pursuant to *Cal. Bus. & Prof. Code* § 17200 and *Cal. Lab. Code* § 203, according to proof;
12. For statutory penalties pursuant to *Cal. Lab. Code* §§ 203.1, 558, 226.7, 226.8, according to proof;

1 13. For reasonable costs, including attorneys' fees, in an amount according to proof
2 pursuant to *Government Code* § 12965(b), Cal. Lab. Code §§ 218.5, 1194, 1198.5(1), 2802 and
3 Cal. Code Civ. Proc. §1021.5;

4 14. For injunctive relief ordering the continuing unfair business acts and practices to
5 cease, as the Court deems just and proper;

6 15. For other injunctive relief ordering Defendants FSGF and EPIC to notify
7 Plaintiff that she has not been paid the proper amounts in accordance with California law;

8 16. For injunctive relief requiring Defendants FSGF and EPIC to comply with Labor
9 Code §1198.5(b)(1);

10 17. For an award of liquidated damages pursuant to Cal. Lab. Code § 1194.2 in an
11 amount equal to the wages unlawfully unpaid according to proof, and interest thereon;

12 18. For punitive and exemplary damages in a sum to be determined at trial;

13 19. For prejudgment interest accrued on all due and unpaid minimum wages from
14 the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a),
15 according to proof;

16 20. For costs of suit, generally and pursuant to Code of Civil Procedure §1021.5;
17 and

18 21. For such other and further relief as the Court deems just and proper.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff Xiomara Montero hereby respectfully requests a trial by jury for all claims and
21 issues raised in her Complaint that may be entitled to a jury trial.

22
23 LIPELES LAW GROUP, APC

24 Date: February 25, 2025

25
26 By: Molly Hoot
27 Molly E. Hoot
28 Attorneys for Plaintiff
 Xiomara Montero