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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MONIQUE LOPEZ,

Plaintiff,

vs.

SALLY HERSHBERGER L.A.; DHANYA)
INC.; SALLY HERSHBERGER; and DOES)
1 to 25, inclusive,)

Defendants.)

CASE NO.: **23ST CV 00898**

COMPLAINT FOR DAMAGES FOR:

- 1) FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) FAILURE TO PAY MINIMUM WAGES;**
- 3) FAILURE TO PAY OVERTIME;**
- 4) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 6) FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 7) FAILURE TO PROVIDE REST BREAKS;**
- 8) FAILURE TO PROVIDE MEAL BREAKS;**
- 9) PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**
- 10) FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 11) FAILURE TO PROVIDE PERSONNEL RECORDS;**
- 12) FAILURE TO PROVIDE PAY RECORDS;**
- 13) HARASSMENT ON THE BASIS OF RACE, NATIONAL ORIGIN, AND/OR ANCESTRY IN VIOLATION OF FEHA (GOV. CODE § 12940(J));**
- 14) FAILURE TO PREVENT**

) **HARASSMENT IN VIOLATION OF**
) **THE FEHA;**
) **15) NEGLIGENT RETENTION AND**
) **SUPERVISION;**
) **16) WRONGFUL CONSTRUCTIVE**
) **DISCHARGE IN VIOLATION OF**
) **PUBLIC POLICY;**
) **17) VIOLATION OF BUSINESS AND**
) **PROFESSIONS CODE SECTION**
) **17200**
)
)
) **JURY TRIAL DEMANDED**

COMES NOW Plaintiff, MONIQUE LOPEZ (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants SALLY HERSHBERGER L.A.; DHANYA INC.; SALLY HERSHBERGER, and DOES 1 to 25 do business in the County of Los Angeles, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000. HERSHBERGER L.A.; DHANYA INC.; SALLY HERSHBERGER and DOES 1 to 25 are collectively referred to herein as "HERSHBERGER" or "Defendant(s)".

2. Plaintiff is a female resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant HERSHBERGER L.A. is a Delaware corporation, doing business in the County of Los Angeles, State of California, and which employed Plaintiff. Plaintiff is further informed and believes that at all times herein mentioned, Defendant DHANYA INC. is a corporation with its principal place of business in New York, doing business in the County of Los Angeles, State of California, and which employed Plaintiff. SALLY HERSHBERGER L.A. and DHAYNA INC.

1 are "joint employers" in that they both controlled the wages, hours, and/or working conditions
2 of Plaintiff and other employees working in the state of California.

3 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant SALLY
4 HERSHBERGER is a female resident of the state of California, was the owner and managing
5 agent of SALLY HERSHBERGER L.A. and DHANYA INC., was personally involved in the
6 day-to-day business operations of SALLY HERSHBERGER L.A. and DHANYA INC. and
7 thus controlled the wages, hours, and/or working conditions of PLAINTIFF and other similarly
8 situated aggrieved employees.

9
10 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
11 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
12 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
13 defendants, numbers 1 to 25, reside in the State of California and are in some manner
14 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
15 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
16 and capacities of these fictitiously named defendants.

17
18 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
19 that information and belief, alleges that at all times herein mentioned, each of the remaining
20 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
21 under the authority of their agency, employment, or representative capacity, with the consent
22 of his/her codefendants.

23 **GENERAL ALLEGATIONS**

24
25 7. Plaintiff started working for HERSHBERGER on or around May 2021. During her
26 employment, Plaintiff was classified as an hourly, non-exempt employee. Plaintiff was forced to
27 quit her employment in April 2022.

28 8. It is Plaintiff's position that HERSHBERGER has committed numerous labor code

1 violations against Plaintiff and other hourly, non-exempt employees who worked for
2 HERSHBERGER at any of their California locations during the relevant PAGA period.

3 9. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
4 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
5 Security Services USA, Inc., an onsite security provider. After about a year of employment,
6 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
7 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
8 termination of employment and weekly payment of wages to temporary employees. The trial
9 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
10 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
11 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
12 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
13 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
14 PAGA representative to sue for violations that the representative has personally suffered. The
15 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
16 and others. The statute also states that an “aggrieved employee” is “any person who was
17 employed by the alleged violator and against whom one or more of the alleged violations was
18 committed.” Because at least one of the violations that Huff had alleged had affected him
19 personally, the Court of Appeal denied Securitas’ motion.

20 10. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
21 other employees, it allows for suits broader than the specific violations the named employee
22 experienced. Therefore, even if the employee did not personally experience the Labor Code
23 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s
24 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
25 other employees, including ALL hourly, non-exempt employees.

27 11. HERSHBERGER did not provide Plaintiff and other similarly situated aggrieved
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1 employees with the minimum wages to which they were entitled for all work performed and
2 did not compensate her and others for all hours worked pursuant to California Labor Code
3 sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and
4 were not paid for time that they worked “off the clock”. This is so because the company did not
5 have a formal timekeeping system wherein the employees had control of clocking in and
6 clocking out for work. “Rain”, a supervisor, was responsible for clocking in and clocking out
7 employees. The issue was that “Rain” would manipulate the work hours and would also not
8 accurately clock in and clock out employees. There were several occasions wherein Plaintiff
9 and others would leave post-it notes with the times they left the salon; however, “Rain” would
10 not input the hours correctly. “Rain” would also forget to clock employees in or out and would
11 input random hours. In fact, a lot of the time “Rain” would leave at 6:30pm and would put the
12 time that she left for other employees’ end time, which was not accurate, and even thought
13 there were other employees working at the salon past 6:30pm. Additionally, Jamie Collins and
14 “Andi” were all about saving money so they would urge “Rain” to “clock them out” as quickly
15 as possible. As such, the company did not have an accurate and reliable timekeeping system. In
16 addition, the company had a policy and practice of rounding down hours worked and “time
17 shaving”, which led to the employees not being paid for all hours worked, which would include
18 the minimum wage. Moreover, to the extent employees worked through their meal periods and
19 those meal periods were interrupted, they were not compensated for that time, which would be
20 akin to a minimum wage violation.

21 12. Due to the above “off the clock” violations and as a matter of company policy,
22 HERSHBERGER violated Labor Code §510 because it failed to pay Plaintiff and other similarly
23 situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12
24 hours per day, and/or 40 hours per week throughout their employment. Plaintiff’s and others’
25 actual work hours, which included the “off the clock” work as described above, entitled them to
26 overtime, however, it was not company policy to keep accurate track of all hours worked and to
27 pay employees all due overtime. In addition, HERSHBERGER did not include bonuses and/or
28 incentive payments in calculating employees’ true regular rate of pay for purposes of deciphering

1 their correct overtime rate of pay.

2 13. HERSHBERGER violated Labor Code § 226.7 along with Industrial Welfare
3 Commission Wage Order no. 2 because it failed to provide Plaintiff and other similarly situated
4 aggrieved employees 10-minute rest periods for every four hours of work, or majority portion
5 thereof, throughout their employment. HERSHBERGER did not completely relieve Plaintiff of
6 all duty during said rest periods. HERSHBERGER did not pay to Plaintiff one additional hour
7 of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory
8 rest periods was not provided. Rest breaks were not authorized or enforced at the workplace. In
9 fact, it was not part of HERSHBERGER's culture for employees such as Plaintiff and others to
10 take at least one 10-minute rest break every day wherein they are relieved of all work duties. The
11 latter was due to understaffing of employees and an overall company culture wherein rest breaks
12 were ignored. As such, rest breaks were not enforced and not a policy or practice of the company.

13 14. HERSHBERGER also violated Labor Code §§ 512 and 226.7 along with Industrial
14 Welfare Commission Wage Order No. 2 because it failed to provide Plaintiff and other similarly
15 situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five
16 (5) hours of work throughout their employment, and Plaintiff did not validly waive said meal
17 periods. HERSHBERGER did not completely relieve Plaintiff of all duties during said meal
18 periods. HERSHBERGER did not pay to Plaintiff one additional hour of pay at Plaintiff's
19 regular rate of compensation for each workday that one or more statutory meal periods was not
20 provided. If HERSHBERGER had Plaintiff sign a meal period waiver, it would not be valid and
21 enforceable since Plaintiff and others generally worked more than a 6-hour shift. If
22 HERSHBERGER had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed
23 to work through her meal period, it would also be invalid and unenforceable because the nature
24 of Plaintiff's job does not prevent her from taking a meal period. As such, Plaintiff and others did
25 not receive statutory, timely meal periods during their employment. In other words, employees
26 did not receive an uninterrupted 30-minute meal period that was taken **before** the 5th hour
27 worked. As was the case with rest periods, meal breaks were definitively not part of the
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HERSHBERGER's culture. The meal periods were not always authorized and were not enforced. Furthermore, even if HERSHBERGER did in fact provide meal period penalties to Plaintiff and others for late, short, interrupted, or no meal periods, that does not absolve HERSHBERGER of PAGA penalties. In Kirby v. Immoos Fire Protection, Inc. (2012) 53 Cal.4th 1244, 1256, the Court stated that "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay" (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. See also Wert v. U.S. Bancorp (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4).

15. The crucial thing to note about meal and rest breaks was that even though meal and rest breaks were not taken, at the end of the day, Plaintiff and others would be forced to manually enter that they took breaks even if they had not taken them. This was the company's way of trying to look compliant on paper even though the reality was that meal and rest breaks were not enforced and not provided.

16. Furthermore, during the relevant time period and due to the above-mentioned labor code violations, HERSHBERGER failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including the minimum wages and overtime as described above as well as meal/rest break premiums. HERSHBERGER was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, all hours worked, gross wages earned, net wages earned, all deductions, premium payments for meal and rest breaks, the correct legal name and address of the employer, the correct beginning and end of the pay period, all applicable hourly rates, and all identifying employee information, among other items. As such, HERSHBERGER did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

17. HERSHBERGER violated Labor Code § 203 because it willfully failed to pay Plaintiff

1 and other similarly situated aggrieved employees earned and due wages upon separation of
2 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
3 These earned but unpaid wages include compensation for all hours worked including minimum
4 wages and overtime compensation, and premiums for the missed meal and rest breaks.

5 18. During the relevant time period, HERSHBERGER also failed to keep accurate and
6 complete payroll records showing the actual hours worked per day (including the time for meal
7 periods) and the wages paid to Plaintiff and other aggrieved employees pursuant to California
8 Labor Code sections 1174(d). Additionally, during the relevant time period, Plaintiff and others
9 incurred necessary, business-related expenses and costs that were not reimbursed by
10 HERSHBERGER. These costs include, but are not limited to, use of personal cell phones for
11 work purposes. Accordingly, HERSHBERGER was in violation of California Labor Code
12 sections 2800 and 2802.

13 19. Furthermore, Plaintiff would also have individual claims against HERSHBERGER for
14 harassment in violation of the Fair Employment and Housing Act (FEHA), failure to prevent
15 harassment in violation of FEHA, negligent retention/supervision, and constructive discharge.
16 Plaintiff was forced to quit her employment due to supervisor Rain's conduct at the workplace,
17 which included making racist comments regarding Hispanics and to Hispanic staff, which made
18 Plaintiff extremely uncomfortable and transformed her work environment into a hostile one.
19 Moreover, there were many occasions wherein Rain would show up to work intoxicated, which
20 would further lead to Rain making racist and inappropriate comments at the workplace. Plaintiff
21 could not deal with the work environment any longer as it had become intolerable, and she was
22 forced to quit her employment in April 2022. Prior to filing this action, Plaintiff timely exhausted
23 her administrative remedies by timely filing an administrative complaint with the Department of
24 Fair Employment and Housing ("DFEH") and receiving her DFEH right to sue letter.

25 **FIRST CAUSE OF ACTION**

26 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

27 **(California Industrial Welfare Commission Order 2-2001, California Code of**
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1 **Regulations Title 8 Section 11020, and California Labor Code Section 1198)**

2 **(Plaintiff against all named defendants and all DOE defendants)**

3 20. Plaintiff re-alleges and incorporates by reference each and every allegation in
4 paragraphs 1 through 19, inclusive, of this Complaint as though fully set forth herein.

5 21. At all times relevant herein, Defendants were required to compensate its employees for
6 all hours worked upon reporting for work at the appointed time stated by the employer
7 pursuant to Industrial Welfare Commission Order 2-2001, California Code of Regulations,
8 Title 8, Section 11020.

9 22. For the three (3) years preceding filing of this action, Defendants failed to compensate
10 Plaintiff for all hours worked.

11 23. Under the aforementioned wage order and regulations, Plaintiff is to recover
12 compensation for all hours worked but not paid by Defendants for the three (3) years
13 preceding the filing of this Complaint.

14 24. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
15 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
16 this Court.

17 25. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
18 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
19 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
20 reasonable attorney's fees and costs of suit.

21 26. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
22 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
23 amount known to Plaintiff once she has obtained all of her payroll records from
24 Defendants.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY MINIMUM WAGES**

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

1 **(Plaintiff against all named defendants and all DOE defendants)**

2 27. Plaintiff re-alleges and incorporates by reference each and every allegation in
3 paragraphs 1 through 26, inclusive, of this Complaint as though fully set forth herein.

4 28. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
5 to suffer or permit a California employee to work without paying wages at the minimum wage
6 rate for all hours worked as required by the applicable Industrial Welfare Commission
7 (hereinafter "IWC") Wage Order No. 2-2001, codified at California Code of Regulations, Title
8 8, Section 11020, subdivision 4.

9 29. Pursuant to IWC Wage Order no. 2-2001, subdivision 2(G), at all relevant times, "hours
10 worked" included "the time during which an employee is subject to the control of an employer,
11 and includes all the time the employee is suffered or permitted to work, whether or not required
12 to do so..."

13 30. During her employment, Plaintiff was regularly required as a matter of uniform
14 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
15 was paid less than the minimum wage rate by Defendants for hours worked in violation of
16 California Labor Code Section 1197 and the applicable California Industrial Wage
17 Commission wage order(s).

18 31. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
19 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
20 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
21 to believe that their acts or omissions were not contrary to California law.

22 32. For all hours worked by Plaintiff for which he was paid less than the minimum wage
23 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
24 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
25 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
26 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

27 33. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
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1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
2 trial.

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4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME**

6 **(California Industrial Welfare Commission Order 2-2001, California Code of**
7 **Regulations Title 8 Section 11020)**

8 **(Plaintiff against all named defendants and all DOE defendants)**

9 34. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 33, inclusive, of this Complaint as though fully set forth herein.

11 35. Pursuant to Industrial Welfare Commission Order No. 2-2001, California Code of
12 Regulations, Title 8, Section 11020, for the period of Plaintiff's employment, Defendants were
13 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
14 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
15 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
16 hours in a day or hours worked in excess of eight (8) on the seventh consecutive workday in a
17 week.

18 36. Plaintiff was a non-exempt employee entitled to the protections of the California
19 Industrial Welfare Commission Order No. 2-2001, California Code of Regulations, Title 8,
20 Section 11020.

21 37. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a
22 single workweek on numerous occasions.

23 38. Plaintiff worked more than twelve (12) hours in a single workday.

24 39. Plaintiff was entitled to the above overtime premiums.

25 40. Defendants did not pay Plaintiff premium wages of at least one and one-half times
26 Plaintiff's regular rate of pay for hours worked past eight (8) in a day.

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

2 42. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's regular
3 rate of pay for hours worked past twelve (12) in a day.

4 43. Plaintiff worked at least one pay period in which she was not properly paid overtime
5 within the three (3) years prior to the initiation of this lawsuit.

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

8 45. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
9 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
10 Court.

11 46. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
12 Regulations, Title 8, Sections 11020 and/or 11070 , Plaintiff is entitled to recover damages for
13 the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
14 reasonable attorney's fees and costs of suit.

15 47. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
16 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
17 trial.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

20 **(California Labor Code Section 226)**

21 **(Plaintiff against all named defendants and all DOE defendants)**

22 48. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 47, inclusive, of this Complaint as though fully set forth herein.

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

26 50. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs
27 that accurately reflected all information required by Labor Code Section 226, including but not
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1 limited to, accurate figures for gross wages earned, net wages earned, total hours worked by
2 the employee (regular and overtime), all applicable hourly rates, all deductions, premium pay
3 for missed rest breaks and meal breaks, the correct start and end of the pay period, the correct
4 name and address of the legal employer, and business expense reimbursement. Therefore,
5 Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in
6 accordance with California Labor Code Section 226(a).

7 51. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
8 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
9 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
10 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
11 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
12 the 1-year period immediately preceding the date this lawsuit was filed.

13 52. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
14 sustained damages, including loss of earnings, in an amount to be established at trial. As a
15 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
16 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
17 and attorney's fees pursuant to statute.

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

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

23 **(California Labor Code Sections 201, 203)**

24 **(Plaintiff against all named defendants and all DOE defendants)**

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

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

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

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

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

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

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

19 61. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
20 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
21 trial.

22 **SIXTH CAUSE OF ACTION**

23 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

24 **(California Labor Code Section 204)**

25 **(Plaintiff against all named defendants and all DOE defendants)**

26 62. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 61, inclusive, of this Complaint as though fully set forth herein.
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1 63. California Labor Code Section 204 establishes the fundamental right of all employees
2 in the State of California to be paid wages in a timely fashion for their work.

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

5 65. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
6 informed, believes, and thereon alleges, that all times relevant during the liability period,
7 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
8 including overtime hours and the minimum wage as well as premiums for missed rest breaks
9 and meal breaks.

10 66. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
11 amount, subject to proof, to the extent she was not paid all wages each pay period. The precise
12 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
13 from Defendants' records or indirectly based on information from Defendants' records.

14 67. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
15 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
16 trial.

17 **SEVENTH CAUSE OF ACTION**

18 **FAILURE TO GIVE REST BREAKS**

19 **(Plaintiff against all named defendants and all DOE defendants)**

20 68. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.
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23 69. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 24 a. Title 8 of the California Code of Regulations Sections 11020(12)(A), which
25 provides that every employer shall authorize and permit all employees to take rest
26 periods, which insofar as practicable shall be in the middle of each work period.

27 The authorized rest period time shall be based on the total hours worked daily at the
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1 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

2 b. Title 8 of the California Code of Regulations Sections 11020(12)(B), which
3 provides that if an employer fails to provide an employee a rest period in
4 accordance with the applicable provisions of this order, the employer shall pay the
5 employee one (1) hour of pay at employee's regular rate of compensation for each
6 workday that the rest period is not provided;

7 c. Title 8 of the California Code of Regulations sections 11020(20)(A), which
8 penalizes the employer \$50.00 for each initial violation, per employee, of any
9 provision of the Wage Order, and \$100.00 for each additional violation thereafter
10 per employee; and
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12 d. California Labor Code section 226.7, which states that (a) no employer shall require
13 any employee to work during any rest period mandated by an applicable order of
14 the Industrial Welfare Commission, and (b) if an employer fails to provide an
15 employee a rest period in accordance with an applicable order of the Industrial
16 Welfare Commission, the employer shall pay the employee one (1) additional hour
17 of pay at employee's regular rate of compensation for each work day that the rest
18 period is not provided.
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20 70. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute
21 rest break after every four (4) hours of work or major fraction thereof, as required by California
22 law.

23 71. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
24 regulations, and wage orders alleged in this cause of action along with any allowable interest,
25 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
26 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
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1 72. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
2 fees as well as interest under Labor Code section 218.6.

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

6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO GIVE MEAL BREAKS**

8 **(Plaintiff against all named defendants and all DOE defendants)**

9 74. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.
11

12 75. Plaintiff brings this cause of action under the following laws, for the following
13 reasons:

- 14 a. California Labor Code section 512(a), which requires that employees be given a 30-
15 minute uninterrupted meal break after five (5) hours of work, and a second
16 uninterrupted meal break after ten (10) hours of work;
- 17 b. California Labor Code section 226.7, which states that (a) no employer shall require
18 any employee to work during any meal period mandated by an applicable order of
19 the Industrial Welfare Commission, and (b) if any employer fails to provide an
20 employee a meal period in accordance with an applicable order of the Industrial
21 Welfare Commission, the employer shall pay the employee one (1) additional hour
22 of pay at the employee's regular rate of compensation for each workday that the
23 meal period is not provided;
- 24 c. California Industrial Welfare Commission Order No. 2 section 11(B), as codified
25 under Title 8 of the California Code of Regulations Section 11020, which state that
26 if an employer fails to provide an employee a meal period in accordance with the
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1 applicable provisions of the Wage Order, the employer shall pay the employee one
2 (1) hour of pay at the employee's regular rate of compensation for each workday
3 that the meal period is not provided;

- 4 d. California Industrial Welfare Commission Wage Order No. 2 Section 7(A)(3), as
5 codified under Title 8 of the California Code of Regulations Section 11020, which
6 requires an employer to maintain records documenting its employees' meal periods;
7
8 e. California Industrial Welfare Commission wage order No. 2 Section 20(A), as
9 codified under California Code of Regulations Section 11020, which penalizes the
10 employer \$50.00 for each initial violation, per employee, of any provision of the
11 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
12
13 f. California Labor Code section 1171 and 1173, which have given the California
14 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 2)
15 as enforceable law.

16 76. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
17 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
18 take a second relieved meal break after ten (10) hours of work, as required by California law.
19 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
20 1 and/or 7, as codified under California Code of Regulations Sections 11020 et. seq., require
21 that employees receive uninterrupted meal periods every five (5) hours of consecutive work,
22 and that the meal period be at least 30 minutes in length, wherein employee is relieved of all
23 work duty. California Labor Code section 226.7 provides that employers may not require their
24 employees to work through their meal periods. California Labor Code section 226.7 and
25 California Code of Regulations section 11020 requires that if the employer fails to provide the
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1 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
2 of pay for each workday that the meal period is not given.

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

7 78. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
8 fees as well as interest under Labor Code section 218.6.

9 79. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
10 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
11 trial.

12
13 **NINTH CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
16 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197,**
1198, 2802)

17 **(Against All Named Defendants and all DOE Defendants)**

18 80. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.

20 81. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
21 Defendants of the specific violations of the California Labor Code that Defendants
22 and DOE defendants have violated and continue to violate.

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

25 83. Plaintiff therefore has exhausted all administrative remedies required of her under
26 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
27 cause of action and pursue penalties in a representative action for Defendants' violations of the
28

1 Labor Code.

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

8 85. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
9 violator and had one or more of the alleged violations committed against her, and therefore is
10 properly suited to represent the interests of other current and former hourly, non-exempt
11 employees who worked for HERSHBERGER at its various locations in the State of California
12 during the PAGA period.

13 86. Based on the acts alleged above, Plaintiff, on behalf of herself and all other hourly,
14 non-exempt employees who worked for HERSHBERGER in the State of California during
15 the applicable PAGA period, seeks penalties under California Labor Code sections 2698 and
16 2699 because of Defendants’ violations of numerous provisions of the California Labor Code
17 as alleged in this Complaint.

18 87. Plaintiff therefore has exhausted all administrative remedies required of her under
19 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
20 cause of action and pursue penalties in a representative action for Defendants’ violations of the
21 Labor Code.

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

24 89. California Labor Code section 558 establishes a civil penalty as follows: Any
25 employer or other person action on behalf of an employer who violates, or causes to be
26 violated, a section of this chapter or any provision regulating hours and days of work in any
27 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
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1 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
2 dollars (\$50) for each underpaid employee for each pay period for which the employee was
3 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
4 employee for each pay period for which the employee was underpaid ...;

5 90. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
6 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
7 seeking individual/victim specific relief or underpaid wages under this particular cause of
8 action.

9 91. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
10 law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
11 the following:

12 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210,
13 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802,
14 via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage
15 Orders (Order no. 2) violated based on the facts alleged in this Complaint.

16 92. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
17 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
18 employees as alleged herein in an amount to be shown according to proof at trial and within the
19 jurisdictional limits of this Court.

20 **TENTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

22 **(Plaintiff against all Defendants and DOE Defendants, and each of them)**

23 93. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 92, inclusive, of this Complaint as thought fully set forth herein.

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

95. Beginning at least 3 years prior to the filing of this complaint, in order to discharge their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of completing her job duties, which were not reimbursed by Defendant. These costs include, but are not limited to, use of personal cell phones for work purposes.

96. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and attorney’s fees and costs, under Labor Code section 2802.

ELEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE PERSONNEL RECORDS

(Plaintiff against All Named Defendants and all DOE Defendants)

97. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 96, inclusive, of this Complaint as though fully set forth herein.

98. Labor Code section 1198.5 dictates “every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.”

99. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times...” On information and belief, Defendants intentionally failed to provide Plaintiff with personnel records when requested by Plaintiff via letter on July 15, 2022, as required by law. Plaintiff requested her personnel records in accordance with California Labor Code section 1198.5(k) on July 15, 2022, via U.S. certified mail, return receipt requested.

100. Defendants failed to provide Plaintiff with an opportunity to inspect or copy her records within 30 days. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants’ failure to provide personnel records.

101. Plaintiff seeks all available remedies for Defendants’ violations including, but

1 not limited penalties, and costs to the extent permitted by law and according to proof at trial.
2 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
3 amount of \$750.00, along with costs and attorney's fees.

4 **TWELFTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE PAY RECORDS**

6 **(Plaintiff against All Named Defendants and all DOE Defendants)**

7 102. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 101, inclusive, of this Complaint as though fully set forth herein.

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

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

21 105. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
22 and continues to suffer substantial losses related to Defendants' failure to provide pay records.
23 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
24 amount of \$750.00, along with costs and attorney's fees.

25 106. Plaintiff seeks all available remedies for Defendants' violations including, but
26 not limited penalties, and costs to the extent permitted by law and according to proof at trial.

27 **THIRTEENTH CAUSE OF ACTION**

28 **HARASSMENT ON THE BASIS OF RACE, NATIONAL ORIGIN, AND/OR**

(Gov. Code § 12940(j))

**(Plaintiff against SALLY HERSHBERGER L.A.; DHANYA INC. and all DOE
defendants)**

107. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 106, inclusive, of this Complaint as though fully set forth herein.

108. Plaintiff was and is at all times relevant hereto an employee covered by Government Code section 12926(c).

109. Defendants were at all times relevant hereto employers within the meaning of Government Code section 12926(d) and, as such, required by FEHA to take all reasonable steps to prevent harassment and discrimination from occurring and to ensure a workplace free from racial harassment.

110. Employers are strictly liable for harassment by their supervisors or agents. (*See* Cal. Code Regs., tit. 2, § 11019(b)(3).) Additionally, the harasser can be held personally liable for damages. (*See* Cal. Gov. Code, § 12940(j)(3).)

111. As described above, supervisor “Rain” racially harassed Plaintiff repeatedly during her employment by inappropriately making racist comments. “Rain” was a supervisor and/or an agent of Defendants. Therefore, Defendants are strictly liable for “Rain’s” harassment.

112. In engaging in the aforementioned conduct, Defendants and DOES 1 to 25, inclusive, and each of them, aided, abetted, incited, compelled, and/or coerced unlawful employment practices in violation of the announced policy of this State against such practices. Furthermore, they failed to take immediate and appropriate corrective action to prevent this discrimination.

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

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

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

10 **FOURTEENTH CAUSE OF ACTION**
11 **FAILURE TO PREVENT HARASSMENT**
12 **IN VIOLATION OF FEHA**

13 **(Plaintiff against SALLY HERSHBERGER L.A.; DHANYA INC. and all DOE**
14 **defendants)**

15 116. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 115, inclusive, of this Complaint as though fully set forth herein.

17 117. At all times herein mentioned, FEHA, California Government Code section
18 12940(k), was in full force and effect and was binding on Defendants. This statute states that it
19 is an unlawful employment practice in California for an employer to "fail to take all reasonable
20 steps necessary to prevent discrimination and harassment from occurring."

21 118. As alleged above, Plaintiff was subjected to harassment.

22 119. Defendants failed to take all reasonable steps necessary to prevent harassment. In
23 addition, SALLY HERSHBERGER L.A./DHANYA INC. failed to remedy such harassment
24 when it realized and was informed that it was occurring. SALLY HERSHBERGER
25 L.A./DHANYA INC. further failed to train, supervise, and monitor its employees and agents.

26 120. The failure of Defendants to prevent harassment created and encouraged an
27 environment where such harassment was condoned, encouraged, tolerated, sanctioned, and/or
28 ratified.

121. As a direct and proximate result of the aforementioned acts and omissions of

1 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
2 loss of income (past and future), loss of employment benefits (past and future), general and
3 compensatory damages (past and future), mental pain and anguish and emotional distress (past
4 and future), and will continue to suffer in the future, in an amount to be proved at trial.

5 122. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
6 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
7 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
8 their workers' right to work in an environment free of harassment, so as to justify the imposition
9 of punitive damages to punish and set an example of said Defendants.

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

13 **FIFTEENTH CAUSE OF ACTION**

14 **NEGLIGENT RETENTION AND SUPERVISION**

15 **(Plaintiff against SALLY HERSHBERGER L.A.; DHANYA INC. and all DOE**
16 **defendants)**

17 124. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 123, inclusive, of this Complaint as though fully set forth herein.

19 125. Upon information and belief, SALLY HERSHBERGER L.A. and DHANYA
20 INC., by and through its agents and employees, knew or reasonably should have known through
21 reasonable investigation, of supervisor Rain's propensity for harassment and for showing up to
22 work inebriated.

23 126. Defendants had a duty not to hire or retain "Rain", provide proper training to
24 "Rain" and provide reasonable supervision of "Rain".

25 127. Defendants negligently hired, retained and/or failed to adequately train and
26 supervise "Rain" in her management position, wherein "Rain" was able to commit the wrongful
27 acts complained of herein against Plaintiff. Defendants failed to provide reasonable supervision
28 of "Rain" despite knowing of her propensities for harassing behavior.

128. As a result of the above-described conduct, Plaintiff has suffered and continues

1 to suffer a great amount of stress, anxiety, humiliation, embarrassment, loss of sleep, loss of
2 confidence, loss of self-esteem, and general discomfort.

3 129. Defendants engaged in these acts alleged herein and/or condoned, permitted,
4 authorized, and/or ratified the conduct of their employees and agents and are vicariously liable
5 for the wrongful conduct of their employees and agents for this cause of action.

6 **SIXTEENTH CAUSE OF ACTION**

7 **WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY**

8 **(Plaintiff against SALLY HERSHBERGER L.A. and all DOE Defendants)**

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

11 131. At all times during her employment with HERSHBERGER , Plaintiff performed
12 her duties with the utmost diligence and competence.

13 132. Defendants intentionally created an illegal and hostile work environment and
14 atmosphere through the disparate treatment received by Plaintiff due to her national
15 origin/ethnicity/race in being Hispanic and Plaintiff had no alternative but to quit her job.

16 133. The employment of Plaintiff was constructively wrongfully terminated in or
17 around April 2022 in violation of the fundamental public policy of the State of California with
18 respect harassing an employee on account of her ethnicity/race/national origin. Moreover,
19 Plaintiff was forced to hire an attorney to assist her to end these illegal activities. Said conduct
20 violated statutory and constitutional expressions of public policy including, but not limited to,
21 California Government Code sections 12940 et seq., and the California Constitution, Article 1
22 section 8.

23 134. As set forth above, said actions by Defendants were wrongful and in violation
24 of the fundamental principles of the public policy of the State of California as reflected in its
25 laws, objectives and policies. Said statutes and constitutional expressions of public policy
26 include, but are not limited to, California Government Code sections 12940 et seq., and the
27 California Constitution, Article 1 section 8. These laws inure to the benefit of the public at
28 large, and not just the private interests of the employers and employees whom they govern or

1 protect.

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

7
8 136. The foregoing conduct engaged in by Defendants and each of its directors,
9 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
10 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
11 an environment free of harassment based on race/ethnicity/national origin, so as to justify the
12 imposition of punitive damages to punish and set an example of said Defendants.

13
14 **SEVENTEENTH CAUSE OF ACTION**

15 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

16 **(California Business and Professions Code Section 17200)**

17 **(Plaintiff against SALLY HERSHBERGER L.A.; DHANYA INC. and all DOE**
18 **defendants)**

19 137. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 136, inclusive, of this Complaint as though fully set forth herein.

21 138. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
22 constitutes unfair and unlawful business practices under California Business and Professions
23 Code Section 17200, et seq.

24 139. Defendant's violations of California labor laws and FEHA constitutes a business
25 practice because it was done repeatedly over a significant period of time in a systematic
26 manner that was detrimental to Plaintiff and other similarly situated aggrieved employees.

27 140. For the four years preceding the filing of this action, Plaintiff has suffered damages
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1 and request damages and/or restitution of all monies and profits to be disgorged from
2 Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of
3 this Court.

4
5 **PRAYER FOR RELIEF**

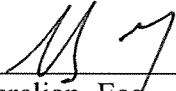
6 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
7 follows:

- 8 1. For compensatory damages including lost past and future wages, regular wages,
9 overtime, and all other sums of money, including employment benefits, together with
10 interest on said amounts, and any other economic injury to Plaintiff, according to proof;
- 11 2. For general damages according to proof;
- 12 3. For special and consequential damages to the extent allowed by law;
- 13 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
14 at trial;
- 15 5. For an award of punitive damages against Defendant SALLY HERSHBERGER
16 L.A./DHANYA INC. according to proof;
- 17 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
18 subject to proof at trial;
- 19 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
20 proof at trial;
- 21 8. For restitution and disgorgement for all unfair business practices by Defendant SALLY
22 HERSHBERGER L.A./DHANYA INC. against Plaintiff in an amount subject to proof
23 at trial;
- 24 9. For an order enjoining Defendant SALLY HERSHBERGER L.A./DHANYA INC.
25 from further unfair and unlawful business practices in violation of Business and
26 Professions Code Sections 17200, et seq.;
- 27 10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
28 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;

- 1 11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
2 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
3 12. For maximum civil penalties available under the Labor Code and applicable Wage
4 Order against Defendants as described more particularly in the Complaint and
5 representative PAGA claim;
6 13. For all remedies available to Plaintiff under the applicable Wage Order and the
7 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
8 liquidated damages, damages, penalties, and waiting time penalties according to proof
9 to the extent permitted by law via PAGA;
10 14. For the imposition of civil penalties and/or statutory penalties;
11 15. For all interest as allowed by law;
12 16. For all costs and disbursements incurred in this suit;
13 17. Reasonable attorney's fees where available by law, including but not limited to,
14 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
15 Labor Code section 1102.5, the Labor Code, FEHA; and/or other applicable laws; and
16 18. For such other and further relief as this Court may deem proper.

17 DATED: January 13, 2023

MESSRELIAN LAW INC.

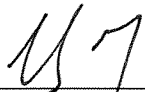
19 By 
20 Harout Messrelian, Esq.
21 Attorneys for Plaintiff Monique Lopez

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

24 DATED: January 13, 2023

MESSRELIAN LAW INC.

26 By 
27 Harout Messrelian, Esq.
28 Attorneys for Plaintiff Monique Lopez