

1 Ian Pancer (SBN 246600)
2 The Law Office of Ian Pancer
3 105 West F Street, Suite 400
4 San Diego, California 92101
5 Phone: (619) 955-6644
6 Facsimile: (619) 374-7410

7 Attorneys for Plaintiff GABRIELLE
8 AVILLANOZA

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Superior Court of California,
County of San Diego

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

9 GABRIELLE AVILLANOZA, an individual,
10 DIMETRIEZE WALKER, an individual,

11 Plaintiffs,

12 v.

13 RANDSTAD GENERAL PARTNER (US) LLC,
14 a Delaware limited liability company, TAYLOR
15 LUCERO, an individual , and DOES 1 through
16 50,

17 Defendants

) **Case No.:** 37-2022-00034713-CU-OE-
) CTL

) **SECOND AMENDED INDIVIDUAL,**
) **CLASS ACTION, AND PAGA**
) **COMPLAINT**

-) 1. **Class Action and PAGA Claim for**
) **Wage and Hour Violation**
) 2. **Class Action and PAGA Claim For**
) **Violation Of Labor Code § 226**
) 3. **Class Action and PAGA Claim For**
) **Failure to Indemnify/Reimburse**
) **Expenses**
) 4. **Class Action and PAGA Claim for**
) **Unfair Competition**
) 5. **Class Action and PAGA Claim for**
) **Failure To Produce Pay Records**
) 6. **Class Action and PAGA Claim for**
) **Failure To Produce Personnel File**
) 7. **Class Action and PAGA Claim for**
) **Failure To Produce Signed**
) **Instruments**
) 8. **Individual Claim For Rest Period**
) **Violation**
) 9. **Individual Claim for Gender**
) **Discrimination (Cal Gov't Code §§**
) **12940(A))**
) 10. **Individual Claim For Sexual**
) **Harassment (Cal Gov't Code §§**
) **12940(J))**
) 11. **Individual Claim for Failure To**
) **Prevent Harassment And/or**
) **Discrimination (Cal Gov't Code §§**
) **12940(K))**

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- 12. Individual Claim for Retaliation (Cal Gov't Code §§ 12940(H))**
- 13. Individual Claim for Negligent Supervision**
- 14. Individual Claim for Retaliation (Cal. Labor Code§ 1102.5)**
- 15. Individual Claim for Wrongful Constructive Termination in Violation of Public Policy**

1 Plaintiffs GABRIELLE AVILLANOZA and DIMETRIEZE WALKER (“Named Plaintiffs”) on
2 behalf of themselves and acting for the interests of other current and former employees (hereinafter,
3 “Plaintiffs,” the “Class”), allege the following:

4 **NATURE OF THE ACTION**

5 1. Pursuant to Code of Civil Procedure § 382, Named Plaintiffs bring this proposed class action
6 against Defendants for wage and hour abuses in violation of the California Labor Code and the
7 Industrial Welfare Commission Wage Orders (the “IWC Wage Orders”), all of which contribute to
8 Defendants’ deliberate unfair competition.

9 2. Named Plaintiffs, on behalf of themselves and all Class Members, bring this action seeking
10 reimbursement, penalties, restitution, injunctive and other equitable relief, reasonable attorneys’
11 fees, and costs.

12 3. Additionally, Named Plaintiffs, themselves and on a representative basis, bring claims on
13 behalf of all *aggrieved employees*, which term as used herein shall refer to all employees of
14 Defendants in the State of California who were the victims of any California Labor Code violation
15 redressable under the PAGA within one year prior to the filing of the Complaint in this action.

16 **JURISDICTION AND VENUE**

17 4. Pursuant to Article VI, § 10 of the California Constitution, subject matter jurisdiction is
18 proper in the Superior Court of California, County of San Diego, State of California because
19 Plaintiffs allege claims arising under California law.

20 5. This Court has jurisdiction over the Defendants because each is an association, corporation,
21 business entity, or individual that conducts business in the State of California, County of San Diego,
22 and San Diego County is where Defendants employed Named Plaintiffs.

23 6. Pursuant to § 395 of the California Code of Civil Procedure, venue is proper in the Superior
24 Court of California for the County of San Diego, State of California, because this is where Named
25 Plaintiffs were employed, and Defendants do business in the County of San Diego.

26 **PARTIES**

27 7. Named Plaintiffs are individuals over the age of 18 and residents of the State of California.

28 8. Randstad General Partner (US) LLC. (hereafter, “Randstad”) is a Delaware limited liability

1 company doing business in the County of San Diego, California.

2 9. Taylor Lucero (hereafter, "Lucero") is an individual residing in the County of San Diego.

3 10. The true names and capacities, whether individual, corporate, associate, or otherwise of the
4 Defendants named herein as DOES 1 through 50, are unknown to Plaintiffs at this time. Plaintiffs
5 therefore sue said Defendants by such fictitious names pursuant to § 474 of the California Code of
6 Civil Procedure. Plaintiffs will seek leave to amend this Complaint to allege the true names and
7 capacities of DOES 1 through 50 when the correct identities are ascertained. Plaintiffs are informed
8 and believe, and based thereon allege, that each of the DOE Defendants is in some manner liable to
9 Plaintiffs for the events and actions alleged herein.

10 11. The term "all Defendants" and "each Defendant," as used herein, shall refer to all of the
11 named Defendants as well as DOES 1 through 50, collectively.

12 12. Plaintiffs are informed and believe, and based thereon allege, that at all times relevant herein
13 each Defendant was acting as an agent, joint venture, or as an integrated enterprise and/or alter ego
14 for each of the other Defendants, and each was a co-conspirator with respect to the acts and the
15 wrongful conduct alleged herein, so that each is responsible for the acts of the other in connection
16 with the conspiracy and in proximate connection with the other Defendants.

17 13. Plaintiffs are informed and believe, and based thereon allege, that each Defendant was
18 acting partly within and partly without the scope and course of their employment, and was acting
19 with the knowledge, permission, consent, and ratification of every other Defendant.

20 14. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants
21 was an agent, officer, director, managing general partner, managing member, owner, co-owner,
22 partner, employee, and/or representative of each of the Defendants, and were at all times material
23 hereto, acting within the purpose and scope of such agency, employment, contract and/or
24 representation, and that each of them are jointly and severally liable to Plaintiffs for the acts alleged
25 herein

26 15. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants
27 are liable to Plaintiffs under legal theories and doctrines including but not limited to (1) joint
28 employer; (2) integrated enterprise; (3) agency; and/or (4) alter ego, based in part, on the facts set

1 forth below.

2 16. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants
3 are part of an integrated enterprise and have acted or currently act as the employer and/or joint
4 employer of Plaintiffs, making each of them liable for the violations alleged herein.

5 **CLASS ACTION ALLEGATIONS**

6 17. Plaintiff seek class certification, pursuant to California Code of Civil Procedure section 382,
7 of a class of Plaintiffs consisting of the following subclasses:

- 8 a. All current and former non-exempt, hourly-paid employees of Randstad in the State of
9 California who participated in unpaid training through the “Randstad University” online
10 training system anytime from four years and 178 days prior to the filing of this action through
11 the date of preliminary approval (the “Unpaid Wage Class”); and
12 b. All members of the Unpaid Wage Class who ceased employment with Randstad at any time
13 from three years and 178 days prior to the filing of this action through the date of preliminary
14 approval (the “WT Penalty Class”); and
15 c. All current and former non-exempt, hourly-paid employees of Randstad in the State of
16 California who were not issued wage statements that accurately stated the employee’s gross
17 wages, net wages, hours worked, applicable hourly rates, or the inclusive dates of the period
18 for which the employee was paid any time from August 27, 2021 through the date of
19 preliminary approval, (the “Wage Statement Class”);
20 d. All current and former employees of Randstad in the State of California who, in the discharge
21 of their duties, incurred expenses that were not reimbursed by Randstad at any time from four
22 years and 178 days prior to the filing of this action through the date of preliminary approval
23 (the “Unreimbursed Expense Class”); and

24 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
25 that joinder of all members would be impractical, if not impossible. The identity of the members
26 of the Class is readily ascertainable by review of Randstad records, including payroll records.

27 19. **Adequacy of Representation:** The Named Plaintiffs are fully prepared to take all
28 necessary steps to represent fairly and adequately the interests of the Class defined above.

1 Named Plaintiffs' attorneys are ready, willing, and able to fully and adequately represent the Class
2 and the individual Plaintiffs. Named Plaintiffs' attorneys have prosecuted and settled wage-and-
3 hour class actions in the past and currently have wage-and-hour class actions pending in California
4 state and federal courts.

5 20. **Common Question of Law and Fact:** There are predominant common questions
6 of law and fact and a community of interest amongst Named Plaintiffs and the Class concerning
7 Ranstad's consistent and uniform policy and practice of: (a) failing to pay for time spent on training,
8 (b) failing to pay all wages on cessation of employment or within 72 hours, as applicable, (c) failing
9 to provide accurate, itemized wage statements in violation of Labor Code section 226.

10 21. **Typicality:** The claims of Named Plaintiffs are typical of the claims of all members of the
11 class in that Named Plaintiffs have suffered the harms alleged in this Complaint in a similar and
12 typical manner as the Class Members. As with other non-exempt employees, Named Plaintiffs
13 attended training that was unpaid, were not paid all wages at termination of employment, and were
14 not issued wage statements "as a detachable part of the check, draft, or voucher paying the
15 employee's wages." That is to say, Named Plaintiffs, as with the Class, were not issued wage
16 statements at all, as any wage statements were only made available to download online.
17 Additionally, even the online wage statements were inadequate as they failed to accurately state
18 Named Plaintiffs' and the Class's gross wages, net wages, hours worked, and inclusive dates of the
19 pay period. Therefore, Named Plaintiffs are members of the Class and have suffered the alleged
20 violations of Labor Code sections 201, 202, 203, 204, 226, and the UCL.

21 22. The California Labor Code upon which Plaintiffs base their claims are broadly
22 remedial in nature. These laws and labor standards serve an important public interest in
23 establishing minimum working conditions and standards in California. These laws and labor
24 standards protect the average working employee from exploitation by employers who may seek to
25 take advantage of superior economic and bargaining power in setting onerous terms and
26 conditions of employment.

27 23. The nature of this action and the format of laws available to Named Plaintiffs and
28 members of the Class identified herein make the class action format a particularly efficient and

1 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
2 file an individual lawsuit, Randstad would necessarily gain an unconscionable advantage since it
3 would be able to exploit and overwhelm the limited resources of each individual plaintiff with their
4 vastly superior financial and legal resources. Requiring each Class Member to pursue an individual
5 remedy would also discourage the assertion of lawful claims by employees who would be
6 disinclined to file an action against their former and/or current employer for real and justifiable fear
7 of retaliation and permanent damage to their careers at subsequent places employment.

8 24. The prosecution of separate actions by the individual class members, even if
9 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
10 to individual Class members against Randstad and which would establish potentially
11 incompatible standards of conduct for Randstad, and/or (b) adjudications with respect to
12 individual Class members which would, as a practical matter, be dispositive of the interest of the
13 other Class members not parties to the adjudications or which would substantially impair or
14 impede the ability of the Class members to protect their interests. Further, the claims of the
15 individual members of the Class are not sufficiently large to warrant vigorous individual
16 prosecution considering all of the concomitant costs and expenses.

17 25. Such a pattern, practice and uniform administration of corporate policy regarding
18 illegal employee compensation described herein is unlawful and creates an entitlement to
19 recovery by Named Plaintiffs and the Class identified herein, in a civil action, for unpaid wages,
20 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
21 according to the mandate of California Labor Code sections 218.5 and 226, the applicable IWC
22 Wage Orders, and Code of Civil Procedure section 1021.5.

23 26. Proof of a common business practice or factual pattern, which the Named Plaintiffs
24 experienced and are representative of, will establish the right of each of the members of the
25 Class to recovery on the causes of action alleged herein.

26 27. The Class is commonly entitled to a specific fund with respect to the compensation illegally
27 and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds
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1 being improperly withheld by Defendants. This action is brought for the benefit of the entire Class
2 and will result in the creation of a common fund.

3 **FACTS COMMON TO ALL CAUSES OF ACTION**

4 28. Randstad is in the business of recruiting individuals seeking employment and contracting with
5 clients or customers to supply workers to perform services for the clients or customers.

6 29. In other words, Randstad is a staffing company.

7 30. Randstad requires its employees to undergo training online through a system it refers to as
8 “Randstad University.”

9 31. Named Plaintiffs were each employed as a non-exempt, hourly-paid employee, with
10 job title “Staffing Manager.” Ms. Avillanoza was in this position from from April 2021 through
11 approximately August 27, 2021. Plaintiff Walker was employed in this position from March 2021
12 through approximately the end of August or beginning of September 2021.

13 32. Plaintiffs Avillanoza’s employment was fully remote until the end of April 2021.
14 Thereafter, Ms. Avillanoza’s employment was in office.

15 33. Named Plaintiffs’ direct supervisor was Defendant Taylor Lucero (hereafter,
16 sometimes “Mr. Lucero”).

17 **FACTS REGARDING SEXUAL HARASSMENT**

18 34. On Ms. Avillanoza’s first day in the office, Mr. Lucero, Ms. Avillanoza’s direct
19 supervisor, invited the “team” (the group of individuals with whom Ms. Avillanoza worked) out for
20 drinks.

21 35. During the second week Ms. Avillanoza was in the office, she was assigned to go on
22 sales calls with Mr. Lucero.

23 36. During the day, while Ms. Avillanoza was alone with Mr. Lucero while they were on
24 sales calls, Mr. Lucero began asking Ms. Avillanoza highly inappropriate questions.

25 37. Ms. Avillanoza is originally from Las Vegas, NV. Mr. Lucero began asking her a
26 series of questions about being from Las Vegas. He asked Ms. Avillanoza various questions about
27 her female friends. Eventually he asked Ms. Avillanoza which ones of her friends “got down.” Ms.
28 Avillanoza asked Mr. Lucero what he was implying. Mr. Lucero responded by laughing, and said to

1 Ms. Avillanoza words to the effect of “hook me up with your friends.”

2 38. It was clear Mr. Lucero was asking Ms. Avillanoza which ones of her friends were
3 sexually promiscuous and asking her to arrange an introduction for the purposes of facilitating sexual
4 relations between Mr. Lucero and Ms. Avillanoza’s friends.

5 39. Thereafter, Mr. Lucero would encourage Ms. Avillanoza to book a flight to Las Vegas
6 where he apparently wanted Ms. Avillanoza to set him up with her friends. Mr. Lucero even went so
7 far as to send Ms. Avillanoza his flight information, apparently in the hopes that Ms. Avillanoza
8 would arrange to be in Las Vegas with him and facilitate the relations Mr. Lucero was hoping for.

9 40. On one occasion thereafter, Mr. Lucero walked by Ms. Avillanoza’s desk where she
10 had her personal cell phone. Mr. Lucero grabbed it, picked it up and looked at the screen saver. The
11 screen saver was a photo of Ms. Avillanoza, her sister, and her friend. Mr. Lucero proceeded to
12 make inappropriate comments regarding Ms. Avillanoza and her companions, including asking
13 “who are these naughty girls?” Ms. Avillanoza asked Mr. Lucero to please not touch her personal
14 belongings.

15 41. On May 14, 2021, early in the day, some of Ms. Avillanoza’s coworkers were
16 discussing boats and the possibility of taking a boat out in San Diego. Ms. Avillanoza mentioned
17 that her boyfriend owned a boat. Mr. Lucero heard Ms. Avillanoza statement and immediately
18 began shouting that Ms. Avillanoza had a “sugar daddy” – meaning an older man who gave her
19 money or gifts in exchange for sexual favors.

20 42. Mr. Lucero was later conducting a Zoom meeting with a couple of Ms. Avillanoza’s
21 coworkers. Mr. Lucero loudly stated in the Zoom meeting that she had a “60-year-old sugar daddy.”

22 43. Mr. Lucero kept up with the remarks all day, making comments such as “you don’t
23 even have to work [because your sugar daddy supports you],” “I see how you roll, dirty girl,” and
24 “that’s why you lived in Vegas,” implying it was a town where she could attract a wealthy man who
25 would be generous financially in exchange for sexual favors.

26 44. Ms. Avillanoza thereafter called Mr. Lucero’s superiors to complain about the
27 harassment.

28 45. After she made complaints to Mr. Lucero’s superiors, Mr. Lucero no longer directed

1 harassing comments directly to Ms. Avillanoza. However, Mr. Lucero's campaign of harassment
2 did not end, and he began to retaliate against Ms. Avillanoza.

3 46. For example, Mr. Lucero called in several of Ms. Avillanoza male coworkers to his
4 office and complained to them that Ms. Avillanoza had "accused" him of sexual harassment. Mr.
5 Lucero also continued to make derogatory comments to Ms. Avillanoza coworkers about Ms.
6 Avillanoza having sugar daddies in Las Vegas, telling Ms. Avillanoza's coworkers things such as
7 "[Ms. Avillanoza] must love working out of the Las Vegas office with the older men."

8 47. Mr. Lucero, with the initial harassment and the subsequent harassment and
9 retaliation made the office a miserable place for Ms. Avillanoza to go. She absolutely hated going to
10 the office.

11 48. Ultimately, Ms. Avillanoza was forced to quit due to being so unhappy at the office
12 as a result of Mr. Lucero's conduct.

13 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14 49. Named Plaintiffs have sent, and will continue to send, their written notice to the Labor
15 Workforce Development Agency (LWDA) and Defendants of the specific sections of the California
16 Labor Code Defendants violated and continue to violate.

17 50. Named Plaintiffs will file an amended complaint once they have exhausted their
18 administrative remedies.

19 51. The Causes of Action alleged herein are appropriately suited for a Representative
20 Action under PAGA (Labor Code § 2698, et seq.) because:

- 21 a. This action alleges violations of California Labor Code provisions that provide for a
22 civil penalty to be assessed and collected by the LWDA or any departments, divisions,
23 commissions, boards, agencies, or employees;
- 24 b. Plaintiffs are "aggrieved employees" because Plaintiffs were employed
25 by the alleged violator and had one or more of the Labor Code violations
26 alleged on this Complaint committed against them; and
- 27 c. Plaintiffs will have satisfied the procedural requirements of Labor Code
28 § 2699.3, as set forth above.

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FIRST CAUSE OF ACTION
INDIVIDUAL, CLASS ACTION, AND PAGA CLAIM
FOR WAGE AND HOUR VIOLATION
Labor Code 201, 202, 203, 204, and 510 et seq.
(BY NAMED PLAINTIFFS, THE UNPAID WAGE CLASS, AND THE WT PENALTY
CLASS AGAINST RANDSTAD AND DOES 1 THROUGH 50)

52. Plaintiffs re-allege and incorporate by reference the preceding and subsequent paragraphs as though fully set forth herein.

53. Labor Code Section 204 codifies an employee’s right to be paid wages and the time within which wages must be paid.

54. Named Plaintiffs and the Unpaid Wage Class were required to undergo training off-the-clock through the Randstad University online training system.

55. When Named Plaintiffs and the Unpaid Wage Class participated in training they were subject to the control of Randstad and the training time was compensable.

56. Rather than allow employees to participate in training through Randstad University at work, while on the clock, the vast majority of the time Randstad required employees to participate in training through Randstad University on their own time, including on weekends.

57. Ms. Avillanoza recalls just one occasion on which she was allowed to participate in Randstad University training while on the clock during the workweek.

58. Randstad failed to pay Named Plaintiffs and the Unpaid Wage Class for their training time.

59. Labor Code Sections 201 and 202 place requirements on an employer to pay wages within a limited period of time upon termination of employment.

60. Labor Code Section 203 provides for the imposition of penalties on an employer who fails to pay wages on termination of employment, in violation of Labor Code Sections 201 and 202.

61. Randstad failed to pay monies owing for training time to employees upon termination of employment or within 72 hours thereof.

1 62. Such a pattern, practice and uniform administration of corporate policy as described herein is
2 unlawful and creates an entitlement to recovery by Named Plaintiffs and the Unpaid Wage Class, in
3 a civil action, for the unpaid wages owing.

4 63. Additionally, Named Plaintiffs are informed and believes that Randstad regularly failed to pay
5 wages to members of the Unpaid Wage Class within the time required by Labor Code Section 204,
6 which provides that “[l]abor performed between the 1st and 15th days, inclusive, of any calendar
7 month shall be paid for between the 16th and the 26th day of the month during which the labor was
8 performed, and labor performed between the 16th and the last day, inclusive, of any calendar month,
9 shall be paid for between the 1st and 10th day of the following month.”

10 64. Unfortunately, Randstad has failed to produce Ms. Avillanoza’s time records, thereby
11 preventing Ms. Avillanoza from understanding the schedule on which Randstad paid wages to
12 members of the Unpaid Wage Class. Named Plaintiffs suspect the schedule may involve paying
13 members of the Wage Statement Class for two days of work *before* the stated begin date of the pay
14 period, and withholding, until the next pay period, wages for the final two stated days of the pay
15 period.

16 65. Additionally, members of the WT Penalty class are entitled to waiting time penalties pursuant
17 to Labor Code Section 203 as their employment ceased without payment of the full amount of wages
18 due in the time specified by Labor Code Sections 201 and 202.

19 66. Pursuant to Labor Code § 2699, *et seq.*, and on behalf of themselves, other aggrieved
20 employees, and the State of California, Named Plaintiffs seek from Randstad a penalty of one
21 hundred dollars (\$100.00) per employee per pay period for the violations alleged in this cause of
22 action and two hundred dollars (\$200) per employee per pay period for each subsequent violation, the
23 exact amount of the applicable penalty to be established according to proof at trial. Plaintiff also
24 seeks attorney fees and costs.

SECOND CAUSE OF ACTION
INDIVIDUAL, CLASS ACTION, AND PAGA CLAIM FOR
VIOLATION OF LABOR CODE § 226
(BY NAMED PLAINTIFFS AND THE WAGE STATEMENT CLASS AGAINST
RANDSTAD AND DOES 1 THROUGH 50)

67. Plaintiffs re-allege and incorporates by reference the preceding and subsequent paragraphs as though fully set forth herein.

68. Pursuant to Lab. Code§ 226(a)(1)-(9), employers must issue wage statements to their employees that accurately include 9 distinct pieces of information. The failure to comply with just one of these 9 requirements triggers an employer's liability for statutory damages pursuant to Lab. Code § 226(e).

69. Randstad failed in its affirmative obligation to provide accurate itemized wage statements to Named Plaintiffs and the Wage Statement Class, in violation of Labor Code section 226. Named Plaintiffs and the Wage Statement Class were not issued wage statements “as a detachable part of the check, draft, or voucher paying the employee’s wages.” That is to say, Named Plaintiffs, as with the Class, were not issued wage statements at all, as any wage statements were only made available to download online. Additionally, the online wage statements for Named Plaintiffs and the Wage Statement Class were inconsistent with each other and do not accurately set forth the information required by Labor Code Section 226(a)(1), (2), (5), (6), and (9). For example, Plaintiff Avillanoza received a wage statement with pay date September 3, 3021 for the supposed pay period beginning August 23, 2021 and ending August 27, 2021 indicating 52.07 “Hrs/Units” of “Regular Earnings.” Plaintiff Avillanoza received a wage statement with pay date August 27, 2021 for the supposed pay period beginning July 26, 2021 and ending August 27, 2021 indicating 29.4 “Hrs/Units” of “Regular Earnings.”

70. Simply looking at the wage statements on their face, without any further inquiry, reveals that they are inaccurate, as the August 27, 2021 wage statement encompasses the period of time covered by the September 3, 2021 wage statement yet shows fewer hours worked than in the shorter, encompassed period.

1 71. Setting aside the fact that Named Plaintiffs and the relevant Class did not receive wage
2 statements at all since the statements were only online, Plaintiff Avillanoza's August 27, 2021 and
3 September 3, 2021 online wage statements also violated the law as follows:

- 4 a. In violation of Labor Code Section 226(a)(6), the September 3, 2021 wage statement does
5 not accurately set forth the inclusive dates of the pay period because Plaintiff Avillanoza did
6 not work 52.07 hours during the stated dates of August 23, 2021 through August 27, 2021,
7 and because August 23, 2021 through August 27, 2021 was not actually a pay period at all.
8 Similarly, the August 27, 2021 wage statement does not accurately set forth the inclusive
9 dates of the pay period because Plaintiff Avillanoza did not work 29.4 hours during the
10 stated dates of July 26, 2021 through August 27, 2021, and because July 26, 2021 through
11 August 27, 2021 was not actually a pay period at all.
- 12 b. In violation of Labor Code Section 226(a)(9), none of the wage statements Plaintiff
13 Avillanoza has access to accurately states her hourly rate. To the contrary, all of the wage
14 statements state that Plaintiff Avillanoza's "Pay Rate" is "\$0.00." Elsewhere on the wage
15 statements, displayed less prominently and missing the word "Pay" or a dollar sign ("\$"),
16 the wage statements indicate a "Rate" of "27.41."
- 17 c. In violation of Labor Code Section 226(a)(2), the September 3, 2021 wage statement does
18 not accurately indicate Plaintiff Avillanoza's hours worked because Plaintiff did not work
19 52.07 hours during the stated dates of August 23, 2021 through August 27, 2021. Similarly,
20 the August 27, 2021 wage statement does not accurately indicate Plaintiff Avillanoza's hours
21 worked because Plaintiff Avillanoza did not work 29.4 hours during the stated dates of July
22 26, 2021 through August 27, 2021.
- 23 d. In violation of Labor Code Section 226(a)(1), the September 3, 2021 wage statement does
24 not accurately indicate Plaintiff Avillanoza's gross wages because the wages reported on the
25 September 3, 2021 wage statement are based on an incorrect number of hours. Similarly, the
26 August 27, 2021 wage statement does not accurately indicate Plaintiff Avillanoza's gross
27 wages because the wages reported on the September 3, 2021 wage statement are based on
28 an incorrect number of hours.

1 e. In violation of Labor Code Section 226(a)(5), the September 3, 2021 wage statement does
2 not accurately indicate Plaintiff Avillanoza's net wages because the wages reported on the
3 September 3, 2021 wage statement are based on an incorrect number of hours. Similarly, the
4 August 27, 2021 wage statement does not accurately indicate Plaintiff Avillanoza's net
5 wages because the wages reported on the September 3, 2021 wage statement are based on
6 an incorrect number of hours.

7 72. Plaintiff Avillanoza has access to eight wage statements, and not a single one of them
8 accurately states the inclusive dates of the pay period, the pay rate, the hours worked, or the gross or
9 net wages. Thus, Randstad's failure to accurately state the dates of the pay period is a "knowing and
10 intentional failure" and is not an isolated and unintentional payroll error due to a clerical or
11 inadvertent mistake.

12 73. Randstad does not have any set of policies or procedures to ensure its pay statements
13 accurately state the information required by Labor Code Section 226(a)(1, 2, 5, 6, and 9). To the
14 contrary, Randstad's policies and procedures caused every wage statement for every member of the
15 Wage Statement class to misstate the required information.

16 74. Unfortunately, Randstad failed to produce Plaintiff Avillanoza's time records, thereby
17 preventing Plaintiff Avillanoza from understanding exactly what formula Randstad used that caused
18 such great and pervasive errors in the wage statements. However, Named Plaintiffs suspect that the
19 errors stem from a policy of paying Named Plaintiffs and members of the Wage Statement Class for
20 two days of work *before* the stated begin date of the pay period, and withholding, until the next pay
21 period, wages for the final two stated days of the pay period. As with Plaintiff Avillanoza, Plaintiff
22 Walker did not receive wage statements at all as any wage statements were available online only, and
23 were not furnished "as a detachable part of the check, draft, or voucher paying the employee's wages."
24 Setting aside the failure to produce wage statements at all, Plaintiff Walker's wage statements were
25 inaccurate as to the provisions of Labor Code Section 226(a)(1, 2, 5, 6, and 9), as they failed to
26 accurately state gross wages, net wages, inclusive dates of the pay period, hours worked, or hourly
27 rates. As with Plaintiff Avillanoza and the Wage Statement Class, Plaintiff Walker is informed and
28 believes that the great and pervasive errors in the online wage statements stem from a policy of paying

1 Named Plaintiffs and members of the Wage Statement Class for two days of work *before* the stated
2 begin date of the pay period, and withholding, until the next pay period, wages for the final two stated
3 days of the pay period.

4 75. Named Plaintiffs and the Wage Statement Class are not able to promptly and easily determine
5 from the wage statement alone the information listed in, *inter alia*, Lab. Code § 226(e)(2)(B)(i).

6 76. Such a pattern, practice and uniform administration of corporate policy as described herein is
7 unlawful and creates an entitlement to recovery by the Named Plaintiffs and the Wage Statement
8 Class in a civil action, for all damages or penalties pursuant to Labor Code section 226, including
9 interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code
10 section 226.

11 77. Pursuant to Lab. Code § 226(e)(1), Class Members are therefore entitled to a statutory penalty
12 of fifty dollars (\$50) for the initial violation, and one hundred dollars (\$100) per pay period for
13 each subsequent violation.

14 78. Pursuant to Labor Code § 2699, *et seq.*, and on behalf of themselves, other aggrieved
15 employees, and the State of California, Named Plaintiffs seek from Randstad a penalty of one
16 hundred dollars (\$100.00) per employee per pay period for the violations alleged in this cause of
17 action and two hundred dollars (\$200) per employee per pay period for each subsequent violation, the
18 exact amount of the applicable penalties to be established according to proof at trial. Plaintiffs also
19 seek attorney fees and costs.

20 **THIRD CAUSE OF ACTION**

21 **INDIVIDUAL, CLASS ACTION, AND PAGA CLAIM FOR**

22 **FAILURE TO INDEMNIFY/REIMBURSE BUSINESS EXPENSES**

23 **IN VIOLATION OF CAL. LAB. CODE SECTION 2802**

24 **(BY NAMED PLAINTIFFS AND THE UNREIMBURSED EXPENSE CLASS AGAINST** 25 **RANDSTAD AND DOES 1 THROUGH 50)**

26 79. Plaintiffs re-allege and incorporate by reference the foregoing and subsequent allegations as
27 though set forth herein.

28 80. California Labor Code § 2802 requires employers to indemnify their employees for

1 expenses and losses incurred while discharging their duties or in obedience to the directions of their
2 employer. California Labor Code § 2804 mandates that this statutory right cannot be waived.

3 81. The Unreimbursed Expense Class incurred losses in obedience to the directions of Defendants
4 including but not limited to vehicle-related expenses such as vehicle purchases and leases, fuel,
5 insurance, and maintenance, home office expenses, internet, fax machines, cell/home phone,
6 computer, computer repairs/upgrades/software, office space in their homes, gas and electric, water,
7 and other similar expenses.

8 82. Upon information and belief, Defendants maintained no consistently followed policy of
9 reimbursement for such expenses.

10 83. Evidencing the above, Named Plaintiffs were required to use a cellular phone in the discharge
11 of their duties and drove their vehicles two to three times per week, yet their final wage statements
12 reflect far too little in the way of expense reimbursement – e.g., Plaintiff Avillanoza’s wage
13 statements reflect only \$96.32 of expense reimbursement for the eight months of 2021.

14 84. The Unreimbursed Expense Class was required to purchase and provide their own equipment,
15 services, and supplies to work for Defendants.

16 85. As a direct result of Defendants' violations of California Labor Code § 2802, the Unreimbursed
17 Expense Class suffered and continues to suffer substantial losses related to unpaid expenses, the use
18 and enjoyment of monies owed, lost interest on monies owed, and attorneys' fees in an amount to be
19 proven at the time of trial.

20 86. Defendants derived an unjust and inequitable economic benefit in failing to comply
21 with the law regarding indemnification and reimbursement of employees.

22 87. The Unreimbursed Expense Class seeks restitution of all monies owed, attorney fees, and
23 costs.

24 88. Pursuant to Labor Code § 2699, *et seq.*, and on behalf of themselves, other aggrieved
25 employees, and the State of California, Named Plaintiffs seek from Randstad a penalty of one
26 hundred dollars (\$100.00) per employee per pay period for the violations alleged in this cause of
27 action and two hundred dollars (\$200) per employee per pay period for each subsequent violation, the
28

1 exact amount of the applicable penalties to be established according to proof at trial. Plaintiffs also
2 seeks attorney fees and costs.

3 **FOURTH CAUSE OF ACTION**

4 **INDIVIDUAL AND CLASS ACTION CLAIM FOR VIOLATION**

5 **OF BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.**

6 **(BY NAMED PLAINTIFFS, THE UNPAID WAGE CLASS, AND THE UNREIMBURSED**
7 **EXPENSE CLASS AGAINST RANDSTAD AND DOES 1 THROUGH 50)**

8 89. Plaintiffs re-allege and incorporates by reference the preceding and subsequent paragraphs as
9 though fully set forth herein.

10 90. Randstad has engaged and continues to engage in unfair and unlawful business practices in
11 California by failing to pay all wages due for time spent on training, as described more fully in the
12 First Cause of Action and failure to reimburse or indemnify for business expenses, as described more
13 fully in the Third Cause of Action.

14 91. Ranstad's utilization of such unfair and unlawful business practices constitutes unfair and
15 unlawful competition and provides an unfair advantage over Ranstad's competitors.

16 92. Named Plaintiffs seek, individually and on behalf of other members of the Unpaid Wage Class
17 and the Unreimbursed Expense Class, full restitution of monies, as necessary and according to proof,
18 to restore any and all monies withheld, acquired and/or converted by the Randstad by means of the
19 unfair practices complained of herein.

20 93. Named Plaintiffs are informed and believe, and based thereon allege, that at all times herein
21 mentioned Randstad has engaged in unlawful, deceptive and unfair business practices, as proscribed
22 by California Business & Professions Code section 17200, et seq., including those set forth herein
23 above, thereby depriving Named Plaintiffs and other members of the Unpaid Wage Class and the
24 Unreimbursed Expense Class monies due. Named Plaintiffs, on behalf of themselves and the
25 corresponding class, seeks payment of the monies owed.

FIFTH CAUSE OF ACTION
INDIVIDUAL AND PAGA CLAIM FOR
FAILURE TO PRODUCE PAY RECORDS
(BY NAMED PLAINTIFFS AND AGGRIEVED EMPLOYEES AGAINST
RANDSTAD AND DOES 1 THROUGH 50)

94. Plaintiffs hereby incorporates by reference and re-alleges as if fully stated herein all previous and subsequent allegations in this complaint.

95. Under Labor Code § 226(c), “[a]n employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.”

96. Plaintiff Avillanoza sent record requests to Randstad on three separate occasions. The first request was sent on March 24, 2022 by certified mail; the second request was sent by UPS with delivery tracking, which shows a date delivered on July 5, 2022. The third request was sent on August 22, 2022 via express delivery and received on August 23, 2022.

97. Ranstad failed to timely produce the records it was required to under Labor Code § 226.

98. Ranstad produced no records at all until September 2, 2022, after this litigation was filed, and then did not produce all records required.

99. Under Labor Code § 226(f), “[a] failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.”

100. Under Labor Code § 226(h), “[a]n employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney’s fees.”

101. Under Labor Code § 226(h) and otherwise, Plaintiff Avillanoza seeks the \$750 penalty, injunctive relief in the form of an order that Ranstad fully comply with its production

obligations, attorney's fees, and costs.

102. More particularly, Plaintiff Avillanoza seeks three penalties from Randstad in the amount of \$750 per penalty, as follows:

- a. One \$750 penalty for Randstad's failure to respond to the March 24, 2022 letter.
- b. One \$750 penalty for Randstad's failure to respond to the July 5, 2022 letter.
- c. One \$750 penalty for Randstad's failure to fully respond to the August 22, 2022 letter.

103. Named Plaintiffs also allege this cause of action on a representative basis pursuant to Labor Code § 2699, *et seq.*, on information and belief that other employees have been aggrieved by the same conduct alleged in this cause of action.

104. Pursuant to Labor Code § 2699, *et seq.*, and on behalf of themselves, other aggrieved employees, and the State of California, Named Plaintiffs seeks a penalty of one hundred dollars (\$100.00) per employee per pay period for the violations alleged in this cause of action and two hundred dollars (\$200) per employee per pay period for each subsequent violation, the exact amount of the applicable penalties to be established according to proof at trial. Named Plaintiffs and aggrieved employees also seek attorney fees and costs.

SIXTH CAUSE OF ACTION

INDIVIDUAL AND PAGA CLAIM FOR

FAILURE TO PRODUCE PERSONNEL FILE

(BY NAMED PLAINTIFFS AND AGGRIEVED EMPLOYEES AGAINST RANDSTAD AND DOES 1 THROUGH 50)

105. Plaintiffs hereby incorporate by reference and re-allege as if fully stated herein all previous and subsequent allegations in this complaint.

106. Under Labor Code § 1198.5, "[e]very 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... not later than 30 calendar days from the date the employer receives a written request..."

1 107. Plaintiff Avillanoza sent record requests to Randstad on three separate occasions. The first
2 request was sent on March 24, 2022 by certified mail; the second request was sent by UPS with
3 delivery tracking, which shows a date delivered on July 5, 2022. The third request was sent on August
4 22, 2022 via express delivery and received on August 23, 2022.

5 108. Ranstad failed to timely produce the records it was required to under Labor Code §
6 1198.5.

7 109. Ranstad produced no records at all until September 2, 2022, after this litigation was
8 filed, and then did not produce all records required.

9 110. Under Labor Code § 1198.5(k), "...[i]f an employer fails to permit a current or former
10 employee, or his or her representative, to inspect or copy personnel records within the times
11 specified in this section, or times agreed to by mutual agreement as provided in this section, the
12 current or former employee or the Labor Commissioner may recover a penalty of seven hundred
13 fifty dollars (\$750) from the employer."

14 111. Under Labor Code § 1198.5(l), "...[a] current or former employee may also bring an action
15 for injunctive relief to obtain compliance with this section, and may recover costs and reasonable
16 attorney's fees in such an action."

17 112. Under Labor Code § 1198.5(k),(l), and otherwise, Plaintiff Avillanoza seeks the \$750
18 penalty, injunctive relief in the form of an order that Ranstad fully comply with its production
19 obligations, attorney's fees, and costs.

20 113. More particularly, Plaintiff Avillanoza seeks three penalties from Randstad in the
21 amount of \$750 per penalty, as follows:

- 22 a. One \$750 penalty for Randstad's failure to respond to the March 24, 2022 letter.
- 23 b. One \$750 penalty for Randstad's failure to respond to the July 5, 2022 letter.
- 24 c. One \$750 penalty for Randstad's failure to fully respond to the August 22, 2022 letter.

25 114. Named Plaintiffs alleges this cause of action on a representative basis pursuant to Labor Code
26 § 2699, *et seq.*, on information and belief that other employees have been aggrieved by the same
27 conduct alleged in this cause of action.

1 115. Pursuant to Labor Code § 2699, *et seq.*, and on behalf of themselves, other aggrieved
2 employees, and the State of California, Named Plaintiffs seek a penalty of one hundred dollars
3 (\$100.00) per employee per pay period for the violations alleged in this cause of action and two
4 hundred dollars (\$200) per employee per pay period for each subsequent violation, the exact amount
5 of the applicable penalties to be established according to proof at trial. Plaintiffs also seeks attorney
6 fees and costs.

7 **SEVENTH CAUSE OF ACTION**

8 **INDIVIDUAL AND PAGA CLAIM FOR FAILURE TO PRODUCE SIGNED**
9 **INSTRUMENTS (BY NAMED PLAINTIFFS AND AGGRIEVED EMPLOYEES AGAINST**
10 **RANDSTAD AND DOES 1 THROUGH 50)**

11 116. Plaintiffs hereby incorporate by reference and re-allege as if fully stated herein all
12 previous and subsequent allegations in this complaint.

13 117. If an employee or applicant signs any instrument relating to the obtaining or holding
14 of employment, he shall be given a copy of the instrument upon request.

15 118. Plaintiff Avillanoza sent record requests to Randstad on three separate occasions. The
16 first request was sent on March 24, 2022 by certified mail; the second request was sent by UPS with
17 delivery tracking, which shows a date delivered on July 5, 2022. The third request was sent on August
18 22, 2022 via express delivery and received on August 23, 2022.

19 119. To date, Ranstad has not produced the records it was required to under Labor
20 Code § 432.

21 120. Plaintiff Avillanoza seeks injunctive relief in the form of an order that Ranstad fully
22 comply with its production obligations.

23 121. Named Plaintiffs allege this cause of action on a representative basis pursuant to Labor
24 Code § 2699, *et seq.*, on information and belief that other employees have been aggrieved by the same
25 conduct alleged in this cause of action.

26 122. Pursuant to Labor Code § 2699, *et seq.*, and on behalf of themselves, other aggrieved
27 employees, and the State of California, Plaintiffs seeks a penalty of one hundred dollars (\$100.00)
28 per employee per pay period for the violations alleged in this cause of action and two hundred dollars

1 (\$200) per employee per pay period for each subsequent violation, the exact amount of the applicable
2 penalties to be established according to proof at trial. Plaintiffs also seek attorney fees and costs.

3 **EIGHTH CAUSE OF ACTION**

4 **INDIVIDUAL CLAIM FOR REST PERIOD VIOLATION**

5 **(BY NAMED PLAINTIFFS AGAINST RANDSTAD AND DOES 1 THROUGH 50)**

6 123. Plaintiffs hereby incorporate by reference and re-allege as if fully stated herein all previous
7 and subsequent allegations in this complaint.

8 124. The applicable Wage Order and Lab. Code§ 226.7 are applicable to Named Plaintiffs'
9 employment by Randstad.

10 125. Lab. Code § 226.7 provides that no employer shall require an employee to work during any
11 rest period mandated by an applicable order of the IWC.

12 126. The applicable Wage Order provides that "[e]very employer shall authorize and permit all
13 employees to take rest periods, which insofar as practicable shall be in the middle of each work
14 period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten
15 (10) minutes net rest time per four (4) hours or major fraction thereof ' unless the total daily work
16 time is less than three and one-half (3½) hours.

17 127. Randstad willfully required Named Plaintiffs to work four (4) or more hours without
18 authorizing or permitting ten (10) minute rest periods per each four (4) hour period worked.

19 128. Specifically, Named Plaintiffs never had a " duty-free" rest period.

20 129. Furthermore, any period of rest provided to Named Plaintiffs was not timely, nor was it
21 provided for the full ten minutes required.

22 130. Randstad failed to pay Named Plaintiffs the rest period premiums due pursuant to Lab. Code
23 § 226.7.

24 131. Randstad's conduct violates the applicable Wage Order and Lab. Code§ 226.7.
25
26
27
28

1 132. Pursuant to the applicable Wage Order and Lab. Code§ 226.7(b), Named Plaintiffs are
2 entitled to recover from Randstad one (1) additional hour of pay at their regular rate of
3 compensation for each work day that any rest period was not provided.

4 **NINTH CAUSE OF ACTION**

5 **INDIVIDUAL CLAIM FOR GENDER DISCRIMINATION**

6 **(CAL GOV'T CODE §§ 12940(A))**

7 **(BY PLAINTIFF AVILLANOZA AGAINST ALL DEFENDANTS)**

8 133. Plaintiff Avillanoza re-alleges and incorporates by reference the foregoing and subsequent
9 allegations, as though set forth herein.

10 134. At all times mentioned herein, California Government Code§ 12940(a) was in full force and
11 effect and was binding on Defendants. This section provides that it is unlawful for an employer to
12 discriminate against an employee on the basis of gender.

13 135. Ms. Avillanoza performed work for Defendants, as an employee, as stated herein.
14 Defendants discriminated against Ms. Avillanoza in the terms, conditions and privileges of her
15 employment, as stated herein.

16 136. Ms. Avillanoza believes and thereon alleges that her gender was a motivating reason for
17 Defendants' discrimination against her.

18 137. As a direct, foreseeable, and proximate result of Defendants' conduct, Ms. Avillanoza has
19 sustained and continues to sustain lost earnings, employment benefits, and employment
20 opportunities, and Ms. Avillanoza has suffered economic losses in an amount to be determined at
21 trial.

22 138. As a proximate result of Defendants' willful, knowing, and intentional discrimination
23 against Ms. Avillanoza, Ms. Avillanoza has suffered and continues to suffer humiliation, emotional
24 distress, loss of reputation, and mental anguish, all to her damage in a sum to be established
25 according to proof.

26 139. As a result of Defendants' deliberate, outrageous, and despicable conduct, Ms. Avillanoza is
27 entitled to recover punitive and exemplary damages in an amount commensurate with each of
28 Defendants' wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

1 140. In addition to such other damages as may properly be recovered herein, Ms. Avillanoza is
2 entitled to recover prevailing party attorney's fees pursuant to Cal. Gov't. Code§ 12965.

3 **TENTH CAUSE OF ACTION**

4 **INDIVIDUAL CLAIM FOR SEXUAL HARASSMENT (CAL GOV'T CODE §§ 12940(J))**
5 **(BY PLAINTIFF AVILLANOZA AGAINST ALL DEFENDANTS)**

6 141. Plaintiff Avillanoza re-alleges and incorporates by reference the foregoing and subsequent
7 allegations, as though set forth herein.

8 142. Ms. Avillanoza was at all times material hereto an employee covered by California
9 Government Code § 12940 *et seq.*, which prohibits harassment in employment on the basis of
10 gender.

11 143. Defendants are, and at all times material hereto were, an employer and/or person within the
12 meaning of the Fair Employment and Housing Act and, as such, barred from harassing Ms.
13 Avillanoza on the basis of her gender, as set forth in Cal. Gov't Code§ 129400).

14 144. Ms. Avillanoza was subjected to unwanted and harassing conduct on the basis of her gender,
15 as set forth herein.

16 145. The harassing conduct was severe and pervasive, as stated herein.

17 146. A reasonable person in Ms. Avillanoza's circumstances would have considered the work
18 environment to be hostile or abusive, and Ms. Avillanoza did in fact consider the work environment
19 to be hostile or abusive.

20 147. As a direct, foreseeable, and proximate result of Defendants' conduct, Ms. Avillanoza has
21 sustained and continues to sustain substantial losses in earnings, employment benefits, and
22 employment opportunities, and Ms. Avillanoza has suffered other economic losses in an amount to
23 be determined at time of trial. Ms. Avillanoza has sought to mitigate these damages.

24 148. As a direct, foreseeable, and proximate result of Defendants' conduct, Ms. Avillanoza
25 suffered emotional distress, to her damage, in a sum to be established according to proof.

26 149. As a result of Defendants' deliberate, outrageous, despicable conduct, Ms. Avillanoza is
27 entitled to recover punitive and exemplary damages in an amount commensurate with Defendants'
28 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

1 150. In addition to such other damages as may properly be recovered herein, Ms. Avillanoza is
2 entitled to recover attorney fees and costs pursuant to Cal. Gov't. Code§ 12965.

3 **ELEVENTH CAUSE OF ACTION**

4 **INDIVIDUAL CLAIM FOR FAILURE TO PREVENT HARASSMENT AND/OR**
5 **DISCRIMINATION (Cal Gov't Code §§ 12940(k))**
6 **(BY PLAINTIFF AVILLANOZA AGAINST ALL DEFENDANTS)**

7 151. Plaintiff Avillanoza re-alleges and incorporates by reference the foregoing and subsequent
8 allegations, as though set forth herein.

9 152. Ms. Avillanoza was subjected to discriminatory and harassing conduct on the basis of her
10 gender, as set forth herein. Ms. Avillanoza was also subjected to retaliation for opposing said
11 discrimination and harassment, as described herein.

12 153. Defendants failed to take reasonable steps to prevent the discrimination, harassment, and
13 retaliation, as described herein.

14 154. As a direct, foreseeable, and proximate result of Defendants' conduct, Ms. Avillanoza has
15 sustained and continues to sustain substantial losses in earnings, employment benefits, employment
16 opportunities, and Ms. Avillanoza has suffered other economic losses in an amount to be
17 determined at time of trial. Ms. Avillanoza has sought to mitigate these damages.

18 155. As a further direct, foreseeable, and proximate result of Defendants' conduct, Ms.
19 Avillanoza has suffered and continues to suffer humiliation, emotional distress, loss of reputation,
20 and mental and physical pain and anguish, all to her damage in a sum to be established according to
21 proof.

22 156. As a result of Defendants' deliberate, outrageous, despicable conduct, Ms. Avillanoza is
23 entitled to recover punitive and exemplary damages in an amount commensurate with Defendants'
24 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

25 157. In addition to such other damages as may properly be recovered herein, Ms. Avillanoza is
26 entitled to recover attorney fees and costs pursuant Cal. Gov't. Code § 12965.

1 **TWELFTH CAUSE OF ACTION**

2 **INDIVIDUAL CLAIM FOR RETALIATION (CAL GOV'T CODE §§ 12940(H))**

3 **(BY PLAINTIFF AVILLANOZA WAGAINST ALL DEFENDANTS)**

4 158. Plaintiff Avillanoza re-alleges and incorporates by reference the foregoing and subsequent
5 allegations, as though set forth herein.

6 159. At all times mentioned herein, Cal. Gov't Code§ 12940(h) was in full force and effect and
7 was binding on Defendants. This section requires Defendants, as an employer, to refrain from
8 retaliating against any employee who has opposed any practices forbidden under Cal. Gov't Code §
9 12940, or because the employee has filed a complaint, testified, or assisted in any proceeding under
10 Cal. Gov't Code§ 12940(h).

11 160. Defendants, by and through its employees and agents, engaged in conduct that, taken as a
12 whole, materially and adversely affected the terms and conditions of Ms. Avillanoza's employment,
13 as stated herein.

14 161. Ms. Avillanoza believes and thereon alleges that her opposition to the sexual harassment and
15 discrimination was a motivating reason for Defendants engaging in conduct that, taken as a whole,
16 materially and adversely affected the terms and conditions of Ms. Avillanoza's employment, as
17 stated herein.

18 162. Defendants' conduct in retaliating against Ms. Avillanoza in the terms, conditions, and
19 privileges of her employment, as stated herein, violated Cal. Gov't Code§ 12940(h).

20 163. As a direct, foreseeable and proximate result of Defendants' conduct, Ms. Avillanoza has
21 sustained and continues to sustain substantial losses in earnings, employment benefits, employment
22 opportunities, and other economic losses in an amount to be determined at the time of trial.

23 164. As a further direct, foreseeable, and proximate result of Defendants' conduct, Ms.
24 Avillanoza has suffered and continues to suffer humiliation, emotional distress, loss of reputation,
25 and mental and physical pain and anguish, all to her damage in a sum to be established according to
26 proof.

27 165. As a result of Defendants' deliberate, outrageous, despicable conduct, Ms. Avillanoza is
28 entitled to recover punitive and exemplary damages in an amount commensurate with

Defendants' wrongful acts and sufficient to punish and deter future similar reprehensible conduct.
166. In addition to such other damages as may properly be recovered herein, Ms. Avillanoza is entitled to recover attorney fees and costs pursuant to Cal. Gov't, Code§ 12965.

THIRTEENTH CAUSE OF ACTION

INDIVIDUAL CLAIM FOR NEGLIGENT SUPERVISION

(BY PLAINTIFF AVILLANOZA AGAINST ALL DEFENDANTS)

167. Plaintiff Avillanoza re-alleges and incorporates by reference the foregoing and subsequent allegations, as though set forth herein.

168. Ms. Avillanoza performed work for Defendants as an employee, as stated herein.

169. Defendants had a legal duty to supervise all of their employees.

170. Defendants' supervisory employees took part in unlawful discriminatory, harassing, and retaliatory conduct, as stated herein.

171. Defendants knew or should have known that their employees were engaging in unlawful, discriminatory, harassing, and retaliatory practices, as stated herein.

172. Defendants failed to take reasonable steps necessary to prevent the unlawful, discriminatory, harassing, and retaliatory conduct described herein.

173. As a direct, foreseeable, and proximate result of Defendants' conduct, Ms. Avillanoza has sustained and continues to sustain substantial losses in earnings, employment benefits, employment opportunities, and Ms. Avillanoza has suffered other economic losses in an amount to be determined at time of trial.

174. As a direct, foreseeable, and proximate result of Defendants' conduct, Ms. Avillanoza has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and anguish, all to her damage in a sum to be established according to proof.

175. Ms. Avillanoza has incurred and continues to incur legal expenses and attorney's fees. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to recover prevailing party attorney fees.

1 **FOURTEENTH CAUSE OF ACTION**

2 **INDIVIDUAL CLAIM FOR RETALIATION (CAL. LABOR CODE§ 1102.5)**

3 **(BY PLAINTIFF AVILLANOZA AGAINST ALL DEFENDANTS)**

4 176. Plaintiff Avillanoza re-alleges and incorporates by reference each and every allegation
5 contained in the preceding and subsequent paragraphs as though fully set forth herein.

6 177. California Labor Code § 1102.5(b) provides:

7 “An employer, or any Person acting on behalf of the employer, shall not retaliate against an
8 employee for disclosing information, or because the employer believes that the employee
9 disclosed or may disclose information, to a government or law enforcement agency, to a
10 person with authority over the employee or another employee who has the authority to
11 investigate, discover, or correct the violation or noncompliance . . . if the employee has
12 reasonable cause to believe that the information discloses a violation of state or federal
13 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation,
14 regardless of whether disclosing the information is part of the employee's job duties.”

15 178. At all times relevant herein, Ms. Avillanoza was an employee of Defendants. Ms.
16 Avillanoza disclosed information to Defendants and/or its employees that she reasonably believed
17 constituted violations of State or Federal laws, regulations and rules.

18 179. Ms. Avillanoza’s disclosure of such information was a substantial motivating factor in
19 Defendants’ decision to retaliate and discriminate against her in the terms and conditions of her
20 employment, as described herein.

21 180. As a direct, foreseeable, and proximate result of Defendants’ conduct, Ms. Avillanoza has
22 sustained and continues to sustain substantial losses in earnings, employment benefits, employment
23 opportunities, and Ms. Avillanoza has suffered other economic losses in an amount to be
24 determined at time of trial.

25 181. As a further direct, foreseeable, and proximate result of Defendants’ conduct, Ms.
26 Avillanoza has suffered and continues to suffer humiliation, emotional distress, loss of reputation,
27 and mental and physical pain and anguish, all to her damage in a sum according to proof.
28

1 182. As a result of Defendants' deliberate, outrageous, despicable conduct, Ms. Avillanoza is
2 entitled to recover punitive and exemplary damages in an amount commensurate with Defendants'
3 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

4 183. In addition to such other damages as may properly be recovered herein, Ms. Avillanoza is
5 entitled to a \$10,000 penalty for each violation of Cal. Labor Code§ 1102.5, pursuant to Cal. Labor
6 Code§ 1102.5(f), and attorney fees pursuant to Cal. Code Civ. Proc.§ 1021.5.

7 **FIFTEENTH CAUSE OF ACTION**

8 **INDIVIDUAL CLAIM FOR WRONGFUL CONSTRUCTIVE**

9 **TERMINATION IN VIOLATION OF PUBLIC POLICY**

10 **(CAL. GOV'T CODE § 12940, *ET SEQ*)**

11 **(BY PLAINTIFF AVILLANOZA AGAINST ALL DEFENDANTS)**

12 184. Plaintiff Avillanoza re-alleges all the foregoing and subsequent allegations as though fully
13 set forth herein.

14 185. Ms. Avillanoza performed work for Defendants, as an employee, as stated herein.

15 186. Defendants' management level employees engaged in unlawful, discriminatory, harassing,
16 and retaliatory conduct, in violation of Cal. Gov't Code § 12940 *et seq.*, as stated herein.

17 187. Ms. Avillanoza opposed the unlawful discriminatory, harassing, and retaliatory conduct.

18 188. Ms. Avillanoza was subjected to working conditions that violated public policy, in that
19 Plaintiff was treated intolerably for reasons including in retaliation for opposing the harassment.

20 189. Defendants intentionally created or knowingly permitted these working conditions.

21 190. These working conditions were so intolerable that a reasonable person in Ms. Avillanoza's
22 position would have had no reasonable alternative except to resign.

23 191. Ms. Avillanoza resigned because of these working conditions.

24 192. The working conditions were a substantial factor in causing Ms. Avillanoza's harm.

25 193. Such actions are unlawful, in violation of public policy of the State of California, and have
26 resulted in damage and injury to Ms. Avillanoza, as alleged herein.

27 194. As a direct, foreseeable, and proximate result of Defendants' conduct, Ms. Avillanoza has
28 sustained and continues to sustain substantial losses in earnings, employment benefits, employment

opportunities, and Ms. Avillanoza has suffered other economic losses in an amount to be determined at time of trial.

195. As a direct, foreseeable, and proximate result of Defendants' conduct, Ms. Avillanoza has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental anguish, all to her damage in a sum to be established according to proof.

196. As a result of Defendants' deliberate, outrageous, despicable conduct, Ms. Avillanoza is entitled to recover punitive and exemplary damages in an amount commensurate with Defendants' wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

197. In addition to such other damages as may properly be recovered herein, Ms. Avillanoza is entitled to recover prevailing party attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief against Defendants, jointly and severally, and judgment against Defendants as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class as described herein;
3. For an order appointing counsel for Plaintiff as class counsel;
4. Upon the First Cause of Action, on an individual and class action basis, for damages, including wages owed, and penalties pursuant to California Labor Code Sections 201, 202, 204, and 510, for costs, attorney fees, and interest, for waiting time penalties pursuant to Labor Code Section 203, and, on a representative basis, for penalties pursuant to Cal. Lab. Code Section 2699, *et seq.* on behalf of Named Plaintiffs and other aggrieved employees.
5. Upon the Second Cause of Action, on an individual and class action basis, for damages or penalties pursuant to California Labor Code section 226, and, on a representative basis, for penalties pursuant to Cal. Lab. Code Section 2699, *et seq.* on behalf of Named Plaintiffs and other aggrieved employees, and for costs and attorneys' fees.
6. Upon the Third Cause of Action, on an individual and class action basis, for restitution and reimbursement of expenses incurred in the discharge of duties of employment, and for attorney fees

1 and costs, and, on a representative basis, for penalties pursuant to Cal. Lab. Code Section 2699, *et*
2 *seq.* on behalf of Named Plaintiffs and other aggrieved employees, and for costs and attorneys' fees.

3 7. Upon the Fourth Cause of Action, on an individual and class action basis, for restitution to
4 Named Plaintiffs and other similarly affected members of the general public of all funds unlawfully
5 acquired by Defendants by means of any acts or practices declared by this Court to be in violation
6 of Business & Professions Code section 17200, *et seq.*, and for costs and attorneys' fees;

7 8. On the Fifth Cause of Action, on an individual basis, for penalties, attorney fees, and costs, and, on
8 a representative basis, for penalties pursuant to Cal. Lab. Code Section 2699, *et seq.* on behalf of
9 Plaintiff and other aggrieved employees, and for costs and attorneys' fees.

10 9. On the Sixth Cause of Action, on an individual basis, for penalties, attorney fees, and costs, and,
11 on a representative basis, for penalties pursuant to Cal. Lab. Code Section 2699, *et seq.* on behalf of
12 Named Plaintiffs and other aggrieved employees, and for costs and attorneys' fees.

13 10. On the Seventh Cause of Action, on an individual basis, for penalties, attorney fees, and costs,
14 and, on a representative basis, for penalties pursuant to Cal. Lab. Code Section 2699, *et seq.* on
15 behalf of Named Plaintiffs and other aggrieved employees, and for costs and attorneys' fees.

16 11. On the Eighth Cause of Action, on an individual basis, one additional hour of pay at Named
17 Plaintiffs' regular rate of compensation for each work day that any rest period was not provided;
18 attorney fees; costs; interest.

19 12. Upon the Ninth through Fourteenth causes of action, for special damages, general damages,
20 punitive damages, attorney fees, costs, interest, penalties, and all other remedies available
21 under the law, including, without limitation, Gov't, Code§ 12965, and Cal. Code Civ. Pro. §
22 1021.5, and/or other applicable laws;

23 13. On the Thirteenth Cause of Action, for a \$10,000 penalty for each violation of Cal. Labor Code§
24 1102.5, pursuant to Cal. Labor Code§ 1102.5(f), and attorney fees pursuant to Cal. Code Civ. Proc. §
25 1021.5.

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1 14. On all causes of action, for attorneys' fees and costs as provided by all applicable law,
2 including, *inter alia*, California Labor Code sections 218.5 and 226, and Code of Civil Procedure §
3 1021.5

4 Dated: September 14, 2022

The Law Office of Ian Pancer

6 By: Ian Pancer

7 Ian Pancer, Esq.

8 Attorneys for Plaintiff