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County of Santa Cruz
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

IRMA TAPIA,

Plaintiff,

vs.

POSADA ASSOCIATES; LA POSADA;
KALCO PROPERTIES INC.; and DOES 1
to 25, inclusive,

Defendants.

) CASE NO.: 23CV00355

) **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 OWED**
) **EVERY PAY PERIOD;**
) 6) **FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**
) 7) **FAILURE TO GIVE REST BREAKS;**
) 8) **FAILURE TO GIVE MEAL BREAKS;**
) 9) **FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES;**
) 10) **PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) 11) **SEXUAL HARASSMENT IN**
) **VIOLATION OF THE FAIR**
) **EMPLOYMENT AND HOUSING**
) **ACT ("FEHA");**
) 12) **RETALIATION IN VIOLATION OF**
) **THE FEHA;**
) 13) **FAILURE TO PREVENT**
) **HARASSMENT AND RETALIATION**
) **IN VIOLATION OF THE FEHA;**
) 14) **RETALIATION IN VIOLATION OF**

) **LABOR CODE SECTION 1102.5;**
) **15) NEGLIGENT RETENTION AND**
) **SUPERVISION;**
) **16) WRONGFUL CONSTRUCTIVE**
) **DISCHARGE IN VIOLATION OF**
) **PUBLIC POLICY;**
) **17) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

) **DEMAND FOR JURY TRIAL**
)
)
)
)

COMES NOW Plaintiff, IRMA TAPIA (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Santa Cruz in this judicial district because Defendants LA POSADA, POSADA ASSOCIATES, KALCO PROPERTIES INC., and DOES 1 to 25, inclusive, (collectively "Defendant(s)" or "POSADA") do business in the County of Santa Cruz, and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the County of Santa Cruz, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant LA POSADA was and is a business operating in the County of Santa Cruz, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant POSADA ASSOCIATES was and is a business operating in the County of Santa Cruz, State of California, and which employed Plaintiff.

5. Plaintiff is informed and believes that at all times herein mentioned, Defendant KALCO PROPERTIES INC. was and is a California corporation operating in the County of Santa Cruz, State of California, and which employed Plaintiff.

6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

1 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
2 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
3 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
4 for the conduct alleged herein. Upon discovering the true names and capacities of these
5 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
6 capacities of these fictitiously named defendants. Unless otherwise alleged in this complaint,
7 Plaintiff is informed, and on the basis of that information and belief, alleges that at all times
8 herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged,
9 were acting within the course, scope, and under the authority of their agency, employment, or
10 representative capacity, with the consent of his/her codefendants.

11 **GENERAL ALLEGATIONS**

12 7. Plaintiff began working in the housekeeping department of POSADA in our around
13 November of 2018. Plaintiff's employment ended on or around December 27, 2022. During her
14 employment tenure, Plaintiff was classified as an hourly, non-exempt employee and her latest
15 rate of pay is \$18.50 per hour.

16 8. It is Plaintiff's position that POSADA has committed numerous labor code violations
17 against Plaintiff and other hourly, non-exempt employees who worked at any of POSADA's
18 locations in the state of California during the PAGA period.

19 9. POSADA did not provide Plaintiff and other similarly situated aggrieved employees with
20 the minimum wages to which they were entitled for all work performed and did not compensate
21 her and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and
22 1197.1. To the extent that Plaintiff and others worked through their meal periods and while
23 clocked out, the latter would also be a minimum wage violation since Plaintiff and others were
24 not compensated for that time. Moreover, the company had a policy and practice of rounding
25 down the number of hours worked, which led to time shaving and Plaintiff and others not being
26 paid for all hours worked in violation of minimum wage laws.

27 10. Due to the above "off the clock" violations above, POSADA violated Labor Code §510
28 because it failed to pay Plaintiff and other similarly situated aggrieved employees overtime, even
though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week

1 throughout their employment. Plaintiff's and others' actual work hours, which included the "off
2 the clock" work as described above, entitled them to overtime, however, it was not company
3 policy to keep accurate track of all hours worked and to pay employees the accurate amount
4 overtime, especially since the "off the clock" work was not factored into the equation.
5 Furthermore, any incentive payments and/or bonus payments, which were received by Plaintiff
6 and others, were not factored into Plaintiff's and other employees' regular rate of pay for
7 purposes of deciphering the correct overtime rate of pay. Additionally, the incentive and bonus
8 payments were also not factored into Plaintiff's regular rate for purposes of receiving meal and
9 rest break premiums per the Ferra v. Loews case.

10 11. POSADA violated Labor Code § 226.7 along with Industrial Welfare Commission Wage
11 Order no. 4/5 because it failed to provide Plaintiff and other similarly situated aggrieved
12 employees 10-minute rest periods for every four hours of work, or majority portion thereof,
13 throughout their employment. POSADA did not completely relieve Plaintiff of all duty during
14 said rest periods. POSADA did not pay to Plaintiff one additional hour of pay at Plaintiff's
15 regular rate of compensation for each workday that one or more statutory rest periods was not
16 provided. In fact, it was not part of POSADA's culture for employees such as Plaintiff and others
17 to take at least two 10-minute rest break every day wherein they are relieved of all work duties.
18 The latter was due to understaffing of employees and employees such as Plaintiff being too busy
19 to be able to take timely, uninterrupted rest breaks. In short, it was not part of the company policy
20 or practice to abide by consistent, ten-minute rest periods every four hours worked wherein
21 employees were relieved of all work duties.

22 12. POSADA also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
23 Commission Wage Order No. 4/5 because it failed to provide Plaintiff and other similarly
24 situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five
25 (5) hours of work throughout their employment, and Plaintiff did not validly waive said meal
26 periods. POSADA did not completely relieve Plaintiff of all duties during said meal periods.
27 POSADA did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of
28 compensation for each workday that one or more statutory meal periods was not provided. If
POSADA had Plaintiff sign a meal period waiver, it would not be valid and enforceable since

1 Plaintiff and others generally worked more than a 6-hour shift. If POSADA had Plaintiff sign an
2 on-duty meal period agreement wherein Plaintiff agreed to work through her meal period, it
3 would also be invalid and unenforceable because the nature of Plaintiff's job does not prevent
4 her from taking a meal period. As was the case with rest periods, timely, uninterrupted meal
5 breaks were definitively not part of the POSADA's culture as Plaintiff and others would take
6 their meal periods late and after the 5th hour worked or the meal periods would be interrupted
7 by work obligations. The meal periods were not authorized and were not enforced. To the extent
8 that POSADA argues that employees receive meal break premium pay for missed meal periods,
9 that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for
10 the violations themselves, irrespective of whether an employee received the premium payment
11 for a missed, short, or interrupted meal period. In Kirby v. Immoos Fire Protection, Inc., the
12 Court stated, "section 226.7 does not give employers a lawful choice between providing either
13 meal and rest breaks or an additional hour of pay." See Kirby v. Immoos Fire Protection, Inc.,
14 (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse
15 the violation; the employer has still committed a violation even if the remedy for the violation
16 has been paid. See Wert v. U.S. Bancorp. (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4).
17 As such, the work environment and culture at POSADA was not conducive to receiving
18 consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break
19 premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses
20 and/or incentive payments.

21 13. Furthermore, during the relevant time period, and due to all of the above labor code
22 violations, POSADA failed to pay Plaintiff and other similarly situated aggrieved employees all
23 wages due to them within any time period specified by California Labor Code section 204,
24 including the minimum wages and overtime as described above as well as meal/rest break
25 premiums. POSADA was also in violation of California Labor Code section 226(a) by failing to
26 include pertinent information on the wage statements, including but not limited to, all hours
27 worked, gross wages earned, net wages earned, all deductions, premium payments for meal and
28 rest breaks, the correct legal name and address of the employing entity, the beginning and end
of the pay period, all applicable hourly rates, and all identifying employee information, among

1 other items. As such, POSADA did not provide Plaintiff and other similarly situated aggrieved
2 employees with complete, accurate itemized wage statements.

3 14. POSADA violated Labor Code § 203 because it willfully failed to pay other similarly
4 situated aggrieved employees earned and due wages upon separation of employment, either
5 immediately upon involuntary termination, or within 72 hours of resignation. These earned but
6 unpaid wages include compensation for all hours worked including minimum wages and
7 overtime compensation, tips, and premiums for the missed meal and rest breaks.

8 15. During the relevant time period, POSADA also failed to keep accurate and complete
9 payroll records showing the actual hours worked per day (including the time for meal periods)
10 and the wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code
11 sections 1174(d).

12 16. During the relevant time period, Plaintiff and other aggrieved employees incurred
13 necessary, business-related expenses and costs that were not reimbursed by POSADA. These
14 costs include, but are not limited to, uniforms, and use of personal cell phones for work.
15 Accordingly, POSADA was in violation of California Labor Code sections 2800 and 2802.

16 17. In addition, during Plaintiff's employment tenure, Plaintiff was subjected to sexual
17 harassment. POSADA's maintenance supervisor, "Victor", who is also the right-hand man of
18 Julie Rivera, POSADA's manager, Julie Rivera, was consistently sexually harassing Plaintiff
19 throughout the last year of her employment. Victor would consistently tell Plaintiff how pretty
20 she is, that she has beautiful eyes, that he is attracted to her, that he loves her, would make
21 comments regarding her hair, would consistently try to hug her, and would always go into the
22 rooms where Plaintiff was present and cleaning just to be near her and be in close proximity to
23 her. Victor would also wait for Plaintiff where they fixed the housekeeping carts and block her
24 entrance/exit and Plaintiff would have no choice but to go through/below his arm. Victor would
25 make excuses for why he was alone in the same room as Plaintiff but based on his behavior and
26 inappropriate comments to Plaintiff, it was clear that Victor was trying to be close to Plaintiff.
27 Plaintiff repeatedly told Victor to stop making such comments, to leave, and stop coming into
28 the rooms she was working in. Plaintiff informed her manager Paula Acevedo of the sexual
harassment she was experiencing.

1 18. In or around August 2022, Plaintiff reported the sexual harassment to the manager of
2 La Posada Retirement Community, Julie Rivera ("Rivera"). Plaintiff's housekeeping manager,
3 Paula Acevedo and coworker Monse accompanied Plaintiff when she went to speak with Rivera
4 and Monse helped translate for Plaintiff. After hearing Plaintiff's concerns, Rivera just said "its
5 ok!", told Plaintiff that she had known Victor for twenty years and that she trusted him and that
6 Victor only jokes like that. She then grabbed Plaintiff by the shoulder and led her out of the
7 office. Although Plaintiff had asked Rivera to keep this conversation confidential, Rivera
8 informed Victor about everything Plaintiff had said to her. Victor confronted Plaintiff and
9 proceeded to tell her "I told you Julie would not believe you." A few days later, Rivera arranged
10 for a meeting with Plaintiff, Paula, and Victor. Plaintiff expressed her concerns about not having
11 a translator present and that she felt uncomfortable with just Victor there, but Rivera told her
12 "don't worry Victor can translate." Not surprisingly, Victor denied everything, claimed it was
13 a "joke", and Rivera essentially brushed off Plaintiff's reports of the sexual harassment and
14 hostile work environment. As such, nothing was done by POSADA to investigate Plaintiff's
15 claims and the hostile work environment became even worse. Due to Plaintiff rejecting Victor's
16 sexual advances and also complaining about the sexual harassment, Victor, along with Sonia,
17 set out to make Plaintiff's work environment difficult in an effort to get her fired or force her to
18 quit. Victor and Sonia would consistently bully Plaintiff and insult her, calling her ugly, fat,
19 hypocritical, gossipy, etc. Sonia was very aggressive towards Plaintiff and would always yell,
20 belittle her, and mock her. Knowing Plaintiff was uncomfortable with Victor's advances, she
21 would ask Victor to go hug Plaintiff and would make comments like "Victor likes fat women"
22 referring to Victor's obsession with Plaintiff. When they were short staffed, Sonia would refuse
23 to help Plaintiff so that she suffers. Rivera supported Victor and Sonia and treated them better
24 and better as they continued to harass and hurt Plaintiff. When Plaintiff would place the
25 maintenance orders for the rooms, they would get "lost" and not carried out unless Sonia asked
26 for them. Also, residents' room arrangements could take months, unless Sonia requested it.
27 Furthermore, during the holidays, the elderly residents would make donations/gifts that were
28 then given to employees and Plaintiff's name was called as a recipient of one of these checks
from the residents. Rivera took Plaintiff's check since she was not at work to receive it and told

1 her coworkers that she would mail it to Plaintiff. To date, Plaintiff has not received this check.
2 The hostile work environment became unbearable for Plaintiff. POSADA's lack of
3 investigation and failure to prevent harassment caused Plaintiff a great deal of anxiety and stress
4 and made it difficult for Plaintiff to return back to work. Due to the hostile work environment
5 and retaliation she was experiencing, Plaintiff was forced to resign from her employment on or
6 around December 27, 2022.

7 19. Pursuant to California Government Code section 12960, Plaintiff has exhausted her
8 administrative remedies. Plaintiff filed a complaint with the Department of Fair Employment
9 and Housing ("DFEH"), alleging claims in this complaint. The DFEH immediately issued to
10 Plaintiff a right to sue letter.

11 **FIRST CAUSE OF ACTION**

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

13 **(California Industrial Welfare Commission Order 4/5-2001, California Code of
14 Regulations Title 8 Section 11040/11050, and California Labor Code Section 1198)**

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

16 20. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
17 1 through 19, inclusive, of this Complaint as though fully set forth herein.

18 21. At all times relevant herein, Defendants were required to compensate their employees for
19 all hours worked upon reporting for work at the appointed time stated by the employer pursuant
20 to Industrial Welfare Commission Order 4/5-2001, California Code of Regulations, Title 8,
21 Section 11040/11050.

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

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

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

1 25. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
2 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled
3 to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable
4 attorney's fees and costs of suit.

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

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY MINIMUM WAGES**

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

11 **(Plaintiff against all named Defendants and all DOE defendants)**

12 27. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
13 1 through 26, inclusive, of this Complaint as though fully set forth herein.

14 28. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
15 to suffer or permit a California employee to work without paying wages at the minimum wage
16 rate for all hours worked as required by the applicable Industrial Welfare Commission
17 (hereinafter "IWC") Wage Order No. 4/5-2001, codified at California Code of Regulations, Title
18 8, Section 11040/11050, subdivision 4.

19 29. Pursuant to IWC Wage Order no. 4/5-2001, subdivision 2(K), at all relevant times,
20 "hours worked" included "the time during which an employee is subject to the control of an
21 employer, and includes all the time the employee is suffered or permitted to work, whether or
22 not required to do so..."

23 30. During her employment, Plaintiff was regularly required as a matter of uniform policy
24 and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid
25 less than the minimum wage rate by Defendants for hours worked in violation of California
26 Labor Code Section 1197 and the applicable California IWC wage order(s).

27 31. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
28 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants to

1 believe that their acts or omissions were not contrary to California law.

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

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

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME**

12 **(California Industrial Welfare Commission Order 4/5-2001, California Code of
13 Regulations Title 8 Section 11040/11050)**

14 **(Plaintiff against all named Defendants and all DOE defendants)**

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

17 35. Pursuant to Industrial Welfare Commission Order No. 4/5-2001, California Code of
18 Regulations, Title 8, Section 11040/11050, for the period of Plaintiff's employment, Defendants
19 were required to compensate Plaintiff for all overtime, which is calculated at one and one-half
20 (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40)
21 hours in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve
22 (12) hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day
23 in a week.

24 36. Plaintiff was a non-exempt employee entitled to the protections of the California
25 Industrial Welfare Commission Order No. 4/5-2001, California Code of Regulations, Title 8,
26 Section 11040/11050.

27 37. Plaintiff worked more than eight (8) hours in a single workday, more than twelve (12)
28 hours in a single day, or forty (40) hours in a single workweek on numerous occasions.

38. Plaintiff was entitled to the above overtime premiums.

1 39. Defendants did not pay Plaintiff premium wages of at least one and one-half times
2 Plaintiff's regular rate of pay for hours worked past eight (8) in a day or two times Plaintiff's
3 regular rate of pay for hours worked past twelve (12) in a day.

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

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

8 42. Defendants know or should know the actual dates of overtime worked, the amount of
9 overtime worked, and the amount of unpaid overtime due.

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

12 44. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
13 Regulations, Title 8, Sections 11040/11050, Plaintiff is entitled to recover damages for the
14 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
reasonable attorney's fees and costs of suit.

15 45. 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 46. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
23 1 through 45, inclusive, of this Complaint as though fully set forth herein.

24 47. 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 48. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
27 accurately reflected all information required by Labor Code Section 226, including but not
28 limited to, gross wages earned, including overtime, net wages earned, total hours worked by the

1 employee, all deductions, and premium pay for missed meal breaks and rest breaks. Therefore,
2 Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in
3 accordance with California Labor Code Section 226(a).

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

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

15 51. 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 trial.

17 **FIFTH CAUSE OF ACTION**

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

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

20 **(Plaintiff against all named Defendants and all DOE defendants)**

21 52. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
22 1 through 51, inclusive, of this Complaint as though fully set forth herein.

23 53. California Labor Code Section 204 establishes the fundamental right of all employees
24 in the State of California to be paid wages in a timely fashion for their work.

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

27 55. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
28 informed, believes, and thereon alleges, that all times relevant during the liability period,
Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,

1 including overtime hours and the minimum wage along with premiums for missed meal breaks
2 and rest breaks.

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

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

9 **SIXTH CAUSE OF ACTION**

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

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

12 **(Plaintiff against all named Defendants and all DOE defendants)**

13 58. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
14 1 through 57, inclusive, of this Complaint as though fully set forth herein.

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

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

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

25 62. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
26 continue to refuse to pay their unpaid wages as required by Labor Code Section 203.

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

1 the filing of this lawsuit.

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

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

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO GIVE REST BREAKS**

9 **(Plaintiff against all named Defendants and all DOE defendants)**

10 66. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
11 1 through 65, inclusive, of this Complaint as though fully set forth herein.

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

- 13 a. Title 8 of the California Code of Regulations Sections 11040/11050(12)(A), which
14 provides that every employer shall authorize and permit all employees to take rest
15 periods, which insofar as practicable shall be in the middle of each work period. The
16 authorized rest period time shall be based on the total hours worked daily at the rate
17 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- 18 b. Title 8 of the California Code of Regulations Sections 11040/11050(12)(B), which
19 provides that if an employer fails to provide an employee a rest period in accordance
20 with the applicable provisions of this order, the employer shall pay the employee one
21 (1) hour of pay at employee's regular rate of compensation for each workday that the
22 rest period is not provided;
- 23 c. Title 8 of the California Code of Regulations sections 11040/11050(20)(A), which
24 penalizes the employer \$50.00 for each initial violation, per employee, of any
25 provision of the Wage Order, and \$100.00 for each additional violation thereafter per
26 employee; and
- 27 d. California Labor Code section 226.7, which states that (a) no employer shall require
28 any employee to work during any rest period mandated by an applicable order of the
Industrial Welfare Commission, and (b) if an employer fails to provide an employee

1 a rest period in accordance with an applicable order of the Industrial Welfare
2 Commission, the employer shall pay the employee one (1) additional hour of pay at
3 employee's regular rate of compensation for each work day that the rest period is not
4 provided.

5 68. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest
6 break after every four (4) hours of work or major fraction thereof, as required by California law.

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

11 70. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
12 fees as well as interest under Labor Code section 218.6.

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

16 **EIGHTH CAUSE OF ACTION**

17 **FAILURE TO GIVE MEAL BREAKS**

18 **(Plaintiff against all named Defendants and all DOE defendants)**

19 72. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
20 1 through 71, inclusive, of this Complaint as though fully set forth herein.

21 73. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 22 a. California Labor Code section 512(a), which requires that employees be given a 30-
23 minute uninterrupted meal break after five (5) hours of work, and a second
24 uninterrupted meal break after ten (10) hours of work;
- 25 b. California Labor Code section 226.7, which states that (a) no employer shall require
26 any employee to work during any meal period mandated by an applicable order of
27 the Industrial Welfare Commission, and (b) if any employer fails to provide an
28 employee a meal period in accordance with an applicable order of the Industrial
Welfare Commission, the employer shall pay the employee one (1) additional hour

of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;

- c. California Industrial Welfare Commission Order Nos. 4/5 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11040/11050, which states that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- d. California Industrial Welfare Commission Wage Order Nos. 4/5 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11040/11050, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order Nos. 4/5 Section 20(A), as codified under California Code of Regulations Section 11040/11050, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4/5) as enforceable law.

74. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order Nos. 4/5, as codified under California Code of Regulations Sections 11040/11050 et. seq. requires that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty. California Labor Code section 226.7 provides that employers may not require their employees to work through their meal periods. California Labor Code section 226.7 and California Code of Regulations section 11040/11050 requires that if the employer fails to provide

1 the employee with an uninterrupted meal period, the employer must pay the employee one (1)
2 hour of pay for each work day that the meal period is not given.

3 75. 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 the
6 foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

7 76. 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 77. 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 trial.

11 **NINTH CAUSE OF ACTION**

12 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

13 **(Plaintiff against all named Defendants and DOE Defendants)**

14 78. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
1 through 77, inclusive, of this Complaint as though fully set forth herein.

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

18 80. Beginning at least 3 years prior to the filing of this complaint, in order to discharge her
19 duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of
20 completing her job duties, which were not reimbursed by Defendants. These costs include, but
21 are not limited to, uniforms, as well as personal cell phone for work purposes. Plaintiff is entitled
22 to reimbursement for these necessary expenditures, plus interest and attorney's fees and costs,
23 under Labor Code section 2802.

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1 under California Labor Code sections 2698 and 2699 because of Defendants' violations of
2 numerous provisions of the California Labor Code as alleged in this Complaint.

3 88. Plaintiff therefore has exhausted all administrative remedies required of her under
4 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
5 cause of action and pursue penalties in a representative action for Defendants' violations of the
6 Labor Code.

7 89. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants
8 for violating the Labor Code.

9 90. California Labor Code section 558 establishes a civil penalty as follows: Any employer
10 or other person action on behalf of an employer who violates, or causes to be violated, a section
11 of this chapter or any provision regulating hours and days of work in any order of the Industrial
12 Welfare Commission (including the "Hours and Days of Work" section of the Wage Order) shall
13 be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each underpaid
14 employee for each pay period for which the employee was underpaid... (2) for each subsequent
15 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which
16 the employee was underpaid...

17 91. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
18 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
19 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
20 employees in this specific cause of action under the Private Attorneys General Act.

21 92. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
22 the following:

23 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
24 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, via 2698 and 2699 and
25 any other Labor Codes and Industrial Welfare Commission Wage Order Provisions (nos.
26 4/5) violated based on the facts alleged in this Complaint.

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

limits of this Court.

ELEVENTH CAUSE OF ACTION

SEXUAL HARASSMENT IN VIOLATION OF THE FEHA

(Plaintiff against Defendant POSADA and all DOE defendants)

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

95. At all times herein mentioned, FEHA, Government Code section 12900, et seq., was in full force and effect and was binding on Defendants. Specifically, Government Code section 12940(j) prohibits an employer from sexually harassing an employee on the basis of her sex.

96. POSADA's maintenance supervisor, Victor, was and is at all times relevant hereto an employee of POSADA and a "supervisor" as that term is fined in the Fair Employment and Housing Act (FEHA, Government Code section 12926(t). The actions of the maintenance supervisor, "Victor", towards Plaintiff, while in the course and scope of his employment with POSADA as described herein, created a hostile sexual environment which materially altered Plaintiff's working conditions and which constitutes sexual harassment in violation of California Government Code section 12940(j)(1).

97. 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 harassment.

98. As a proximate result of the conduct of the Defendants, Plaintiff has suffered and will continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary loss according to proof. Plaintiff has also suffered and will continue to suffer physical and emotional injuries, including nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's damages will be ascertained at trial.

99. In committing the foregoing acts, Defendants have been guilty of oppression, fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to punitive damages in a sum appropriate to punish and make an example out of the foregoing

1 Defendants.

2 100. The acts of oppression, fraud, and/or malice, were engaged in by employees of
3 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
4 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
5 wrongful conduct for which an award of punitive damages is sought, and/or was personally
6 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
7 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
8 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
9 to punitive and exemplary damages against each of the Defendants in accordance with California
10 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant.

11 101. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
12 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
13 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
14 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
15 award of attorneys' fees and costs.

16 **TWELFTH CAUSE OF ACTION**

17 **RETALIATION IN VIOLATION OF THE FEHA**

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

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

21 103. At all times herein mentioned, Government Code section 12940 et. seq. was in
22 full force and effect and was binding upon Defendants and each of them. Said statute imposes
23 certain duties upon Defendants concerning harassment and retaliation against persons, such as
24 Plaintiff, on the basis of sex/gender or due to complaints of sexual harassment. Said statutes were
25 intended to prevent the type of injury and damage set forth herein. Plaintiff was, at all times
26 herein mentioned, a member of the class of persons intended to be protected by said statutes. As
27 alleged above, Plaintiff was retaliated against and eventually resigned from her employment due
28 to the hostile working conditions POSADA subjected her to after reporting and complaining
about Victor's consistent sexually harassing behavior at the workplace.

1 104. As a direct and proximate result of Defendants' conduct, Plaintiff has been
2 harmed in that Plaintiff has suffered the loss of wages, salary, and benefits, among other things.
3 As a result, Plaintiff has suffered such damages in an amount according to proof.

4 105. As a further direct and proximate result of the conduct of Defendants, and each
5 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
6 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
7 such damages in an amount according to proof.

8 106. In committing the foregoing acts, Defendants have been guilty of oppression,
9 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
10 punitive damages in a sum appropriate to punish and make an example out of the foregoing
11 Defendants.

12 107. The acts of oppression, fraud, and/or malice, were engaged in by employees of
13 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
14 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
15 wrongful conduct for which an award of punitive damages is sought, and/or was personally
16 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
17 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
18 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
19 to punitive and exemplary damages against each of the Defendants in accordance with California
20 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant

21 108. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
22 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
23 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
24 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
25 award of attorneys' fees and costs.

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1 **THIRTEENTH CAUSE OF ACTION**

2 **FAILURE TO PREVENT HARASSMENT AND RETALIATION IN VIOLATION OF**
3 **FEHA**

4 **(Plaintiff against All Names Defendants and all DOE defendants)**

5 109. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 108, inclusive, of this Complaint as though fully set forth herein.

7 110. At all times herein mentioned, FEHA, California Government Code section
8 12940(k), was in full force and effect and was binding on Defendants. This statute states that it
9 is an unlawful employment practice in California for an employer to “fail to take all reasonable
10 steps necessary to prevent discrimination and harassment from occurring.”

11 111. As alleged above, Plaintiff was subjected to sexual harassment and retaliation.

12 112. Defendants failed to take all reasonable steps necessary to prevent harassment
13 and retaliation. In addition, POSADA failed to remedy such harassment and retaliation.
14 POSADA further failed to train, supervise, and monitor its employees and agents.

15 113. The failure of Defendants to prevent harassment and retaliation created and
16 encouraged an environment where such harassment was condoned, encouraged, tolerated,
17 sanctioned, and/or ratified.

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

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

28 116. As a proximate result of the foregoing conduct, which violated the provisions of
Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney’s

1 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

2 **FOURTEENTH CAUSE OF ACTION**

3 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

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

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

7 118. At all times material to this Complaint, California Labor Code § 1102.5 was in
8 effect and binding on Defendants. This section requires Defendants to refrain from retaliating
9 against an employee for refusing to participate in an activity that he/she reasonably believes
10 would result in a violation of state or federal statute, or a violation or noncompliance with a
11 state or federal rule or regulation. California Labor Code section 1102.5 also requires
12 Defendants to refrain from retaliating against an employee for disclosing information to a
13 person with authority over the employee if the employee has reasonable cause to believe that
14 the information discloses a violation of state or federal statute, or a violation of or
15 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing
the information is part of the employee's job duties.

16 119. As discussed fully above, Plaintiff complained to Defendants about Victor's
17 sexually harassing behavior at the workplace.

18 120. Defendants retaliated against Plaintiff for her whistleblowing, as alleged above,
19 all in violation of Labor Code § 1102.5.

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

25 122. Plaintiff requests all available relief under Labor Code § 1102.5 including
26 damages and the imposition of civil penalties of \$10,000 for each violation as well as attorney's
27 fees.

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1 **FIFTEENTH CAUSE OF ACTION**

2 **NEGLIGENT RETENTION AND SUPERVISION**

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

4 123. Plaintiff re-alleges and incorporates by reference each and every allegation in
5 paragraphs 1 through 122, inclusive, of this Complaint as though fully set forth herein.

6 124. Upon information and belief, POSADA, by and through its agents and
7 employees, knew or reasonably should have known through reasonable investigation, of
8 maintenance supervisor Victor's propensity for sexually harassing behavior.

9 125. Defendants had a duty not to hire or retain Victor, provide proper training to him
10 and provide reasonable supervision of him.

11 126. Defendants negligently hired, retained and/or failed to adequately train and
12 supervise Victor in his management position, wherein he was able to commit the wrongful acts
13 complained of herein against Plaintiff. Defendants failed to provide reasonable supervision of
14 Victor despite knowing of his propensities for sexually harassing behavior.

15 127. As a result of the above-described conduct, Plaintiff has suffered and continues
16 to suffer a great amount of stress, anxiety, humiliation, embarrassment, loss of sleep, loss of
17 confidence, loss of self-esteem, and general discomfort.

18 128. Defendants engaged in these acts alleged herein and/or condoned, permitted,
19 authorized, and/or ratified the conduct of their employees and agents and are vicariously liable
20 for the wrongful conduct of their employees and agents for this cause of action.

21 **SIXTEENTH CAUSE OF ACTION**

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

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

24 129. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 128, inclusive, of this Complaint as though fully set forth herein.

26 130. At all times during her employment with Defendant POSADA, Plaintiff
27 performed her duties with the utmost diligence and competence.

28 131. Defendants intentionally created an illegal work environment and atmosphere
by harassing Plaintiff based on her sex/gender, not paying her overtime, and not paying her the

1 minimum wage, and violating numerous labor code sections as outlined in this Complaint,
2 thereby not giving Plaintiff an opportunity to work in an environment free of sexual harassment,
3 retaliation, and labor code violations. This situation became intolerable for Plaintiff and Plaintiff
4 had no alternative but to quit her job.

5 132. The employment of Plaintiff was constructively wrongfully terminated on or
6 around December 27, 2022 in violation of the fundamental public policy of the State of
7 California with respect to sexually harassing an employee on account of her sex, retaliating
8 against an employee for reporting sexual harassment at the workplace, and violating numerous
9 labor code sections, including not compensating Plaintiff for all hours worked, not compensating
10 Plaintiff the minimum wage, not compensating Plaintiff overtime wages, not reimbursing
11 Plaintiff for business expenses incurred in the course of performing her duties, not providing
12 Plaintiff accurate, itemized wage statements, and not paying Plaintiff wages owed every pay
13 period and upon the separation of employment, among others. Moreover, Plaintiff was forced to
14 hire an attorney to assist her to end these illegal activities. Said conduct violated statutory and
15 constitutional expressions of public policy including, FEHA, the California Labor Code and the
California Constitution, Article 1 section 8.

16 133. As set forth above, said actions by Defendants were wrongful and in violation of
17 the fundamental principles of the public policy of the State of California as reflected in its laws,
18 objectives and policies. Said statutes and constitutional expressions of public policy include,
19 but are not limited to, FEHA, California Labor Code and the California Constitution, Article 1
20 section 8. These laws inure to the benefit of the public at large, and not just the private interests
21 of the employers and employees whom they govern or protect.

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

27 135. The foregoing conduct engaged in by corporate Defendants and each of their
28 directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was

1 authorized, ratified, and carried on with a conscious and willful disregard of their workers' right
2 to work in an environment free of retaliation due to whistleblowing, so as to justify the imposition
3 of punitive damages to punish and set an example of said Defendants.

4 **SEVENTEENTH CAUSE OF ACTION**

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

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

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

8 136. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 135, inclusive, of this Complaint as though fully set forth herein.

10 137. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
11 constitutes unfair and unlawful business practices under California Business and Professions
12 Code Section 17200, et seq.

13 138. Defendant's violations of the FEHA, California labor laws, and the Labor Code
14 constitutes a business practice because it was done repeatedly over a significant period of time
15 in a systematic manner that was detrimental to Plaintiff and others.

16 139. For the four years preceding the filing of this action, Plaintiff has suffered
17 damages and request damages and/or restitution of all monies and profits to be disgorged from
18 corporate defendant POSADA in an amount according to proof at
19 time of trial, but in excess of the jurisdiction of this Court.

20 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
21 follows:

- 22 1. For compensatory damages including lost past and future wages, regular wages,
23 overtime, and all other sums of money, including employment benefits, together with
24 interest on said amounts, and any other economic injury to Plaintiff, according to proof;
- 25 2. For general damages according to proof;
- 26 3. For special and consequential damages to the extent allowed by law;
- 27 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
28 at trial;
5. For an award of punitive damages against Defendants according to proof;

6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
8. For restitution and disgorgement for all unfair business practices by Defendants against Plaintiff in an amount subject to proof at trial;
9. For an order enjoining Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
12. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claim;
13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law via PAGA;
14. For the imposition of civil penalties and/or statutory penalties;
15. For all interest as allowed by law;
16. For all costs and disbursements incurred in this suit;
17. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, Labor Code section 1102.5, the Labor Code, FEHA; and/or other applicable laws; and

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1 18. For such other and further relief as this Court may deem proper.

2 **DATED:** February 10, 2023

MESSRELIAN LAW INC.

3 By Maralle Messrelian
4 Harout Messrelian, Esq.
5 Maralle Messrelian, Esq., Of Counsel
6 Attorneys for Plaintiff Irma Tapia

7 **DEMAND FOR JURY TRIAL**

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

9 **DATED:** February 10, 2023

MESSRELIAN LAW INC.

10 By Maralle Messrelian
11 Harout Messrelian, Esq.
12 Maralle Messrelian, Esq., Of Counsel
13 Attorneys for Plaintiff Irma Tapia
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