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ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

01/19/2023

Clerk of the Court

BY: JEFFREY FLORES

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

CGC-23-604128

EDENILSON CARMONA HENRIQUEZ,) CASE NO.:

Plaintiff,

vs.

H MART SAN FRANCISCO LLC; and
DOES 1 to 25, inclusive,

Defendants.

) **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) FAILURE TO PROVIDE**
) **PERSONNEL RECORDS;**
) **12) FAILURE TO PROVIDE PAY**
) **RECORDS;**
) **13) DISCRIMINATION ON THE BASIS**
) **OF RACE, NATIONAL ORIGIN,**
) **AND/OR ANCESTRY IIN**
) **VIOLATION OF THE FAIR**
) **EMPLOYMENT AND HOUSING**
) **ACT ("FEHA") (GOV. CODE §**

) 12940(A));
) 14) HARASSMENT ON THE BASIS OF
) RACE, NATIONAL ORIGIN,
) AND/OR ANCESTRY IN
) VIOLATION OF FEHA (GOV. CODE
) § 12940(J));
) 15) FAILURE TO PREVENT,
) INVESTIGATE, AND REMEDY
) DISCRIMINATION AND
) HARASSMENT IN VIOLATION OF
) FEHA (GOV. CODE, §§ 12940(J)(1) &
) (K));
) 16) NEGLIGENT RETENTION AND
) SUPERVISION;
) 17) WRONGFUL TERMINATION IN
) VIOLATION OF PUBLIC POLICY;
) 18) VIOLATION OF CALIFORNIA
) BUSINESS AND PROFESSIONS
) CODE SECTION 17200.
)
)
) DEMAND FOR JURY TRIAL
)

COMES NOW Plaintiff, EDENILSON CARMONA HENRIQUEZ (hereinafter
“Plaintiff”), and alleges:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of San Francisco in this judicial district because Defendants H MART SAN FRANCISCO LLC and DOES 1 to 25, inclusive, (collectively “Defendant(s)” or “H MART”) do business in the County of San Francisco, and because Defendants’ obligations and liabilities arise therein. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of Daly City, County of San Mateo, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant H MART SAN FRANCISCO LLC was and is a California limited liability company doing business in the County of San Francisco, State of California, and which employed Plaintiff.

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE

defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

GENERAL ALLEGATIONS

5. Plaintiff started working for H Mart sometime in 2021. Plaintiff's employment was terminated on or around September 24, 2022. During his employment tenure, Plaintiff was a produce stocker and was classified as an hourly, non-exempt employee. Plaintiff's last rate of pay was approximately \$ 15.80 per hour.

6. It is Plaintiff's position that H MART has committed numerous labor code violations against Plaintiff and other hourly, non-exempt employees who worked for H MART at any of their California locations during the relevant PAGA period.

7. H MART did not provide Plaintiff and other aggrieved employees with compensation for all hours worked and did not pay Plaintiff and others the minimum wages to which they were entitled for work performed pursuant to California Labor Code sections 1194, 1197 and 1197.1. This is so because H MART had a policy of rounding down the hours worked by Plaintiff and other aggrieved employees which translated to Plaintiff and others not being paid for all hours worked, including minimum wages. In addition, since Plaintiff's meal periods were consistently interrupted due to understaffing and work obligations, he was not paid the minimum wage for these "off the clock" hours.

8. Due to the above "off the clock" hours, H MART also violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees any overtime even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and other aggrieved employees' actual work hours entitled them to overtime compensation, however, H MART did not compensate its hourly, non-exempt

1 employees with the correct amount of overtime. Moreover, the company did not include
2 bonuses/incentive pay in calculating the regular rate of pay of employees for purposes of
3 deciphering the overtime rate of pay. Additionally, the incentive and bonus payments were also
4 not factored into Plaintiff's regular rate for purposes of receiving meal and rest break premiums
5 per the Ferra v. Loews case.

6 9. H MART also violated Labor Code § 226.7 and the appropriate Industrial Welfare
7 Commission Wage Order no. 7 because it failed to provide Plaintiff and others with 10-minute
8 rest periods for every four hours of work, or majority portion thereof, throughout their
9 employment. H MART did not completely relieve Plaintiff and others of all duty during said
10 rest periods. H MART did not pay to Plaintiff and others one additional hour of pay at Plaintiff's
11 regular rate of compensation for each workday that one or more statutory rest periods was not
12 provided. It was not part of the company policy for employees such as Plaintiff and others to
13 take uninterrupted rest breaks every 4 hours worked. As such, the culture at H MART did not
14 lend itself to the employees receiving statutory rest breaks wherein they were relieved of all work
15 duties. Due to understaffing and there not being enough personnel to relieve Plaintiff and others,
16 Plaintiff and others would either not receive the rest breaks or their rest breaks were short and
17 interrupted due to having to tend to work needs, including when new merchandise would come
18 in. As such, the environment at H MART was not conducive to receiving statutory rest breaks
19 under California law and timely, statutory rest breaks were not authorized or enforced.

20 10. H MART violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
21 Commission Wage Order no. 7 because it failed to provide hourly, non-exempt employees,
22 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five
23 (5) hours of work throughout their employment. H MART did not completely relieve employees
24 of all duty during said meal periods. H MART did not pay to Plaintiff and its hourly, non-exempt
25 employees one additional hour of pay at their regular rate of compensation for each workday that
26 one or more statutory meal periods was not provided. Like the rest breaks, receiving a timely,
27 uninterrupted thirty-minute meal break was not part of the company culture and was not enforced
28 by H MART especially due to the understaffing and lack of employees to relieve Plaintiff of his
job duties. As such, it was the normal practice and custom of H MART not to authorize, permit,

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

28 11. Furthermore, during the relevant time period, and due to the labor code violations cited
above, H MART failed to pay Plaintiff and others all wages due to them within any time period

1 specified by California Labor Code section 204. H MART was also in violation of California
2 Labor Code section 226(a), by failing to include pertinent information on the wage statements,
3 including but not limited to, the full and correct name of the legal employer along with the
4 employer's address, all hours worked (including "off the clock" hours and overtime), all
5 applicable hourly rates, gross wages earned, net wages earned, the correct start and end time of
6 the pay period, all deductions, the employee's identifying information, and premium pay for the
7 missed meal and rest breaks. As such, H MART did not provide Plaintiff and other similarly
8 situated aggrieved employees with complete, accurate itemized wage statements.

9 12. During the relevant time period, H MART also failed to keep accurate and complete
10 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
11 others pursuant to California Labor Code sections 1174(d).

12 13. H MART also violated Labor Code § 203 because it willfully failed to pay Plaintiff and
13 other similarly situated aggrieved employees earned and due wages upon separation of
14 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
15 These earned but unpaid wages include payment for all hours worked (including the minimum
16 wage), overtime compensation, and premium pay for missed meal and rest breaks.

17 14. Also, during the relevant time period, Plaintiff and other aggrieved employees incurred
18 necessary, business-related expenses and costs that were not reimbursed by H MART. These
19 costs include, but are not limited to, uniforms. Accordingly, H MART was in violation of
20 California Labor Code sections 2800 and 2802.

21 15. In addition, H MART did not provide a suitable rest break area/facility for employees in
22 violation of IWC Wage Order no. 7-2001, Section 13.

23 16. Moreover, throughout Plaintiff's employment tenure, Plaintiff's supervisor, Judy, a
24 Korean female, would consistently harass Plaintiff by making complaints regarding Plaintiff's
25 ethnicity and national origin in that Plaintiff was from El Salvador. Judy would consistently
26 make comments to Plaintiff, such as "since you are Salvadorian you don't like to work", "don't
27 need you because you don't like to work since you are Salvadorian". Plaintiff believes that his
28 hours were cut due to his race/ethnicity and as a way to get Plaintiff to quit his employment.
Moreover, Judy would falsely accuse Plaintiff of wrongdoing and would give him warnings and

unwarranted disciplinary action.

17. Pursuant to California Government Code section 12960, Plaintiff has exhausted his administrative remedies. Plaintiff filed a complaint with the Department of Fair Employment and Housing (“DFEH”), alleging claims in this complaint. The DFEH immediately issued to Plaintiff a right to sue letter.

FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

**(California Industrial Welfare Commission Order 7-2001, California Code of Regulations Title 8 Section 11070, and California Labor Code Section 1198)
(Plaintiff against all named defendants and all DOE defendants)**

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

19. At all times relevant herein, Defendants were required to compensate its employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 7-2001, California Code of Regulations, Title 8, Section 11070.

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

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

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

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

24. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
2 amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

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

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

7 25. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
8 1 through 24, inclusive, of this Complaint as though fully set forth herein.

9 26. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
10 to suffer or permit a California employee to work without paying wages at the minimum wage
11 rate for all hours worked as required by the applicable Industrial Welfare Commission
12 (hereinafter "IWC") Wage Order No. 7-2001, codified at California Code of Regulations, Title
13 8, Section 11070, subdivision 4.

14 27. Pursuant to IWC Wage Order no. 7-2001, subdivision 2(G), at all relevant times, "hours
15 worked" included "the time during which an employee is subject to the control of an employer,
16 and includes all the time the employee is suffered or permitted to work, whether or not required
17 to do so..."

18 28. During his employment, Plaintiff was regularly required as a matter of uniform policy
19 and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid
20 less than the minimum wage rate by Defendants for hours worked in violation of California
21 Labor Code Section 1197 and the applicable California IWC wage order(s).

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

26 30. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate
27 by Defendants, Plaintiff is entitled to not less than the applicable California minimum wage rate
28 and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount equal to unpaid
minimum wages and interests thereon. Pursuant to Labor Code Section 1194, Plaintiff is also

1 entitled to attorney's fees, costs and interests according to proof.

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

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PAY OVERTIME**

7 **(California Industrial Welfare Commission Order 7-2001, California Code of**

8 **Regulations Title 8 Section 11070)**

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

10 32. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 31, inclusive, of this Complaint as though fully set forth herein.

12 33. Pursuant to Industrial Welfare Commission Order No. 7-2001, California Code of
13 Regulations, Title 8, Section 11070, for the period of Plaintiff's employment, Defendants were
14 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
15 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
16 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
17 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
18 week.

19 34. Plaintiff was a non-exempt employee entitled to the protections of the California
20 Industrial Welfare Commission Order No. 7-2001, California Code of Regulations, Title 8,
21 Section 11070.

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

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

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

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

1 39. Plaintiff worked at least one pay period in which he was not properly paid overtime
2 within the three (3) years prior to the initiation of this lawsuit.

3 40. Defendants know or should know the actual dates of overtime worked, the amount of
4 overtime worked, and the amount of unpaid overtime due.

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

7 42. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
8 Regulations, Title 8, Sections 11070, Plaintiff is entitled to recover damages for the nonpayment
9 of overtime premiums for all overtime hours worked, penalties, interest, plus reasonable
10 attorney's fees and costs of suit.

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

14 **FOURTH CAUSE OF ACTION**

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

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

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

18 44. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
19 1 through 43, inclusive, of this Complaint as though fully set forth herein.

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

22 46. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
23 accurately reflected all information required by Labor Code Section 226, including but not
24 limited to, gross wages earned, including overtime, net wages earned, total hours worked by the
25 employee, all deductions, and premium pay for missed meal breaks and rest breaks. Therefore,
26 Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in
27 accordance with California Labor Code Section 226(a).

28 47. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation

occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to the 1-year period immediately preceding the date this lawsuit was filed.

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES OWED EVERY PAY PERIOD

(California Labor Code Section 204)

(Plaintiff against all named Defendants and all DOE defendants)

50. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 49, inclusive, of this Complaint as though fully set forth herein.

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

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

53. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is 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, including overtime hours and the minimum wage along with premiums for missed meal breaks and rest breaks.

54. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount, subject to proof, to the extent he was not paid all wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined directly from

1 Defendants' records or indirectly based on information from Defendants' records.

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

4 **SIXTH CAUSE OF ACTION**

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

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

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

8 56. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
9 1 through 55, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

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

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

63. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

2 **SEVENTH CAUSE OF ACTION**

3 **FAILURE TO GIVE REST BREAKS**

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

5 64. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
6 1 through 63, inclusive, of this Complaint as though fully set forth herein.

7 65. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 8 a. Title 8 of the California Code of Regulations Sections 11070(12)(A), which provides
9 that every employer shall authorize and permit all employees to take rest periods,
10 which insofar as practicable shall be in the middle of each work period. The
11 authorized rest period time shall be based on the total hours worked daily at the rate
12 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- 13 b. Title 8 of the California Code of Regulations Sections 11070(12)(B), which provides
14 that if an employer fails to provide an employee a rest period in accordance with the
15 applicable provisions of this order, the employer shall pay the employee one (1) hour
16 of pay at employee's regular rate of compensation for each workday that the rest
17 period is not provided;
- 18 c. Title 8 of the California Code of Regulations sections 11070(20)(A), which penalizes
19 the employer \$50.00 for each initial violation, per employee, of any provision of the
20 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- 21 d. California Labor Code section 226.7, which states that (a) no employer shall require
22 any employee to work during any rest period mandated by an applicable order of the
23 Industrial Welfare Commission, and (b) if an employer fails to provide an employee
24 a rest period in accordance with an applicable order of the Industrial Welfare
25 Commission, the employer shall pay the employee one (1) additional hour of pay at
26 employee's regular rate of compensation for each work day that the rest period is not
27 provided.

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

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

5 68. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
6 fees as well as interest under Labor Code section 218.6.

7 69. 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 **EIGHTH CAUSE OF ACTION**

11 **FAILURE TO GIVE MEAL BREAKS**

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

13 70. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
14 1 through 69, inclusive, of this Complaint as though fully set forth herein.

15 71. Plaintiff brings this cause of action under the following laws, for the following
16 reasons:

- 17 a. California Labor Code section 512(a), which requires that employees be given a 30-
18 minute uninterrupted meal break after five (5) hours of work, and a second
19 uninterrupted meal break after ten (10) hours of work;
- 20 b. California Labor Code section 226.7, which states that (a) no employer shall require
21 any employee to work during any meal period mandated by an applicable order of
22 the Industrial Welfare Commission, and (b) if any employer fails to provide an
23 employee a meal period in accordance with an applicable order of the Industrial
24 Welfare Commission, the employer shall pay the employee one (1) additional hour
25 of pay at the employee's regular rate of compensation for each workday that the meal
26 period is not provided;
- 27 c. California Industrial Welfare Commission Order No. 7 section 11(B), as codified
28 under Title 8 of the California Code of Regulations Section 11070, which states that
if an employer fails to provide an employee a meal period in accordance with the

1 applicable provisions of the Wage Order, the employer shall pay the employee one
2 (1) hour of pay at the employee's regular rate of compensation for each workday that
3 the meal period is not provided;

- 4 d. California Industrial Welfare Commission Wage Order No. 7 Section 7(A)(3), as
5 codified under Title 8 of the California Code of Regulations Section 11070, which
6 requires an employer to maintain records documenting its employees' meal periods;
- 7 e. California Industrial Welfare Commission wage order No. 7 Section 20(A), as
8 codified under California Code of Regulations Section 11070, which penalizes the
9 employer \$50.00 for each initial violation, per employee, of any provision of the
10 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- 11 f. California Labor Code section 1171 and 1173, which have given the California
12 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 7)
13 as enforceable law.

14 72. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
15 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
16 take a second relieved meal break after ten (10) hours of work, as required by California law.
17 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
18 7, as codified under California Code of Regulations Sections 11070 et. seq. requires that
19 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that
20 the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty.
21 California Labor Code section 226.7 provides that employers may not require their employees
22 to work through their meal periods. California Labor Code section 226.7 and California Code of
23 Regulations section 11070 requires that if the employer fails to provide the employee with an
24 uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each
25 work day that the meal period is not given.

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

1 74. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
2 fees as well as interest under Labor Code section 218.6.

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

5 **NINTH CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

8 76. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
9 1 through 75, inclusive, of this Complaint as though fully set forth herein.

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

13 78. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
14 his duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of
15 completing his job duties, which were not reimbursed by Defendants. These costs include, but
16 are not limited to, uniforms. Plaintiff is entitled to reimbursement for these necessary
17 expenditures, plus interest and attorney's fees and costs, under Labor Code section 2802.

18 **TENTH CAUSE OF ACTION**

19 **PRIVATE ATTORNEYS GENERAL ACT**

20 **Individual and Representative Claim for PAGA penalties under California Labor Code**
21 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,**
22 **1194, 1197, 1198, 2802)**

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

24 79. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
25 1 through 78, inclusive, of this Complaint as though fully set forth herein.

26 80. Pursuant to law, on October 25, 2022 Plaintiff provided the required written notice to the
27 LWDA and Defendants of the specific violations of the California Labor Code that Defendants
28 and DOE defendants have violated and continue to violate.

81. Pursuant to California Labor code section 2699.3, no response was received from the

1 LWDA within 65 days of the postmark date of the above-alleged letter.

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

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

12 84. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
13 violator and had one or more of the alleged violations committed against him, and therefore is
14 properly suited to represent the interests of other current and former hourly, non-exempt
15 employees who worked for H MART at any of their California locations during the relevant
16 PAGA Period.

17 85. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks penalties
18 under California Labor Code sections 2698 and 2699 because of Defendants' violations of
19 numerous provisions of the California Labor Code as alleged in this Complaint.

20 86. Plaintiff therefore has exhausted all administrative remedies required of him under
21 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
22 cause of action and pursue penalties in a representative action for Defendants' violations of the
23 Labor Code.

24 87. California Labor Code section 2699 et seq. imposes penalties upon culpable
25 Defendants for violating the Labor Code.

26 88. California Labor Code section 558 establishes a civil penalty as follows: Any employer
27 or other person action on behalf of an employer who violates, or causes to be violated, a section
28 of this chapter or any provision regulating hours and days of work in any order of the Industrial
Welfare Commission (including the "Hours and Days of Work" section of the Wage Order) shall

1 be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each underpaid
2 employee for each pay period for which the employee was underpaid... (2) for each subsequent
3 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which
4 the employee was underpaid...

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

9 90. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
10 the following:

11 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
12 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802 via 2698 and 2699 and
13 any other Labor Codes and Industrial Welfare Commission Wage Order Provisions (no. 7)
14 violated based on the facts alleged in this Complaint.

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

19 **ELEVENTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE PERSONNEL RECORDS**

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

22 92. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 91, inclusive, of this Complaint as though fully set forth herein.

24 93. Labor Code section 1198.5 dictates "every current and former employee, or his
25 or her representative, has the right to inspect and receive a copy of the personnel records that
26 the employer maintains relating to the employee's performance or to any grievance concerning
27 the employee."

28 94. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the
employer shall make the contents of those personnel records available for inspection to the

1 current or former employee, or his or her representative, at reasonable intervals and at reasonable
2 times...” On information and belief, Defendants intentionally failed to provide Plaintiff with
3 personnel records when requested by Plaintiff via letters on October 25, 2022, as required by
4 law. Plaintiff requested his personnel records in accordance with California Labor Code section
5 1198.5(k) on October 25, 2022, via U.S. certified mail, return receipt requested.

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

10 96. Plaintiff seeks all available remedies for Defendants’ violations including, but
11 not limited penalties, and costs to the extent permitted by law and according to proof at trial.
12 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
13 amount of \$750.00, along with costs and attorney’s fees.

14 **TWELFTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE PAY RECORDS**

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

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

19 98. Labor Code section 226 sub-section (b) dictates “an employer...shall afford current and
20 former employees the right to inspect or copy records pertaining to their employment, upon
21 reasonable request to the employer...”

22 99. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer who
23 receives a written or oral request to inspect or copy records pursuant to subdivision (b)
24 pertaining to a current or former employee shall comply with the request as soon as practicable,
25 but no later than 21 calendar days from the date of the request.” On information and belief,
26 Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff
27 via certified letter, return receipt requested, on October 25, 2022, and as required by law.
28 Plaintiff requested his pay records in accordance with California Labor Code section 226 on
October 25, 2022, via certified mail. Defendants failed to provide Plaintiff with an opportunity

1 to inspect or copy his pay records within 21 days.

2 100. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
3 and continues to suffer substantial losses related to Defendants' failure to provide pay records.

4 101. Pursuant to Labor Code section 226, Plaintiff prays for judgment against
5 Defendants in the amount of \$750.00, along with costs and attorney's fees. Plaintiff seeks all
6 available remedies for Defendants' violations including, but not limited penalties, and costs to
7 the extent permitted by law and according to proof at trial.

8 **THIRTEENTH CAUSE OF ACTION**
9 **DISCRIMINATION ON THE BASIS OF RACE, NATIONAL ORIGIN, AND/OR**
10 **ANCESTRY IN VIOLATION OF FEHA**

11 **(Gov. Code § 12940(a))**

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

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

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

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

21 105. FEHA prohibits discrimination in all aspects of employment including hiring,
22 termination and terms and conditions based on race or color. (See Gov. Code, § 12940(a).)

23 106. An employer who fails to remedy problems of which it has actual or
24 constructive knowledge may be held liable for discrimination despite the existence of a formal
25 policy against discrimination. (See Gov. Code, § 12940(k).)

26 107. As described above, Defendants discriminated against Plaintiff while
27 Defendants employed Plaintiff based on his race.

28 108. 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

1 employment practices in violation of the announced policy of this State against such practices.
2 Furthermore, they failed to take immediate and appropriate corrective action to prevent this
3 discrimination.

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

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

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

18 **FOURTEENTH CAUSE OF ACTION**

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

20 **ANCESTRY IN VIOLATION OF FEHA**

21 **(Gov. Code § 12940(j))**

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

23 112. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 111, inclusive, of this Complaint as though fully set forth herein.

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

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

1 racial harassment.

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

5 116. As described above, Plaintiff's manager, Judy, racially discriminated against
6 and harassed Plaintiff repeatedly during his employment by inappropriately making racist
7 comments towards him about his Salvadorian ethnicity. Judy was a supervisor and/or an agent
8 of Defendants. Therefore, Defendants are strictly liable for Judy's harassment.

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

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

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

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

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FIFTEENTH CAUSE OF ACTION

**FAILURE TO PREVENT, INVESTIGATE, AND REMEDY HARASSMENT AND
DISCRIMINATION IN VIOLATION OF FEHA**

(Gov. Code, §§ 12940(j)(1) & (k))

(Plaintiff against all named defendants and all DOE defendants)

121. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 120, inclusive, of this Complaint as though fully set forth herein.

122. It is unlawful for an employer to not take immediate and appropriate corrective action against harassment of an employee that the employer knows or should have known about. (Gov. Code, § 12940(j)(1).) It is also unlawful for an employer to not take all reasonable steps necessary to prevent discrimination and harassment from occurring. (Id. § 12940(k).) If an employer has failed to take such preventative measures, that employer can be held liable for the harassment. (Cal. Code. Regs., tit. 2, § 7287.6(b)(3).)

123. Plaintiff is informed and believes and thereon alleges that Defendants knew or reasonably should have known of Judy's racial discrimination and harassment and that she should not have been permitted to work in Plaintiff's presence.

124. Plaintiff is informed and believes and thereon alleges that Defendants failed to provide adequate training to their owners, supervisors, and managers. Defendants should have provided training and instruction to Judy on the laws pertaining to harassment and discrimination. Defendants failed to do so. As a result, Defendants failed to take all reasonable steps necessary to prevent or stop the harassment and discrimination from occurring.

125. The failure of Defendants, and each of them, to prevent harassment and discrimination, created and encouraged an environment where such harassment and discrimination was condoned, encouraged, tolerated, sanctioned, and/or ratified.

126. As a direct and proximate result of the unlawful conduct of Defendants, and each of them, Plaintiff has been harmed in that Plaintiff has suffered the loss of wages, salary, benefits, and additional amounts of money. As a result, Plaintiff has suffered such damages in an amount according to proof.

127. As a further direct and proximate result of the conduct of Defendants, and each

1 of them, Plaintiff has been harmed in that Plaintiff has suffered the intangible loss of
2 employment related opportunities. As a result, Plaintiff has suffered such damages in an amount
3 according to proof.

4 128. The above-recited actions of Defendants, and each of them, were done with
5 malice, fraud, oppression, and in reckless disregard of Plaintiff's rights under FEHA.
6 Accordingly, Plaintiff is entitled to an award of punitive damages.

7 **SIXTEENTH CAUSE OF ACTION**

8 **NEGLIGENT RETENTION AND SUPERVISION**

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

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

12 130. Upon information and belief, Defendants, by and through their agents and
13 employees, knew or reasonably should have known through reasonable investigation of Judy's
14 propensities for racial harassment.

15 131. Defendants had a duty not to hire or retain Judy, provide proper training
16 to her, and provide reasonable supervision of her.

17 132. Defendants negligently hired, retained and/or failed to adequately train and
18 supervise Judy in her position as a manager/supervisor, wherein Judy was able to commit the
19 wrongful acts complained of herein against Plaintiff. Defendants failed to provide reasonable
20 supervision of Judy despite knowing of her propensities for engaging in racial harassment.

21 133. Defendants engaged in these acts alleged herein and/or condoned, permitted,
22 authorized, and/or ratified the conduct of their employees and agents and are vicariously liable
23 for the wrongful conduct of its employees and agents for this cause of action.

24 **SEVENTEENTH CAUSE OF ACTION**

25 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

26 **(Against all Named Defendants and all DOE Defendants)**

27 134. Plaintiff re-alleges and incorporates by reference each and every allegation in
28 paragraphs 1 through 133 inclusive, of this Complaint as though fully set forth herein.

135. At all times during his employment with Defendants, Plaintiff performed his

1 duties with the utmost diligence and competence.

2 136. Plaintiff is informed and believes and thereon alleges that Defendants'
3 decisions to terminate his employment, as alleged herein, was motivated by Plaintiff's race.
4 Plaintiff is further informed and believes and thereon alleges that any other reasons proffered
5 by Defendants were and are pretextual in nature. Defendants intentionally created the
6 aforementioned discrimination and harassment, thereby not giving Plaintiff an opportunity to
7 work in an environment free of discrimination and harassment.

8 137. The employment of Plaintiff was wrongfully terminated approximately on or
9 around September 24, 2022 in violation of the fundamental public policy of the State of
10 California with respect to discriminating and harassing an employee based on his race. Plaintiff
11 was forced to hire an attorney to assist him to end these illegal activities. Said conduct violated
12 statutory and constitutional expressions of public policy including, but not limited to, California
13 Government Code sections 12940 et seq., and the California Constitution, Article 1 section 8.

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

20 139. 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.

25 140. The foregoing conduct engaged in by Defendants and each of their directors,
26 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
27 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
28 an environment free of retaliation, and where workers do not get retaliated against for
complaining about illegal activities at the workplace, so as to justify the imposition of punitive

1 damages to punish and set an example of said Defendants.

2 **EIGHTEENTH CAUSE OF ACTION**

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

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

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

6 141. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 140, inclusive, of this Complaint as though fully set forth herein.

8 142. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
9 constitute unfair and unlawful business practices under California Business and Professions
10 Code Section 17200, et seq.

11 143. Defendant's violations of the FEHA and the California Labor Code constitutes
12 a business practice because it was done repeatedly over a significant period of time in a
13 systematic manner that was detrimental to Plaintiff.

14 144. The aforementioned acts of Defendants was willful, wanton, malicious,
15 intentional, oppressive, and despicable and was done in willful and conscious disregard of the
16 rights, welfare, and safety of Plaintiff, and was done by managerial agents and employees of
17 Defendant and DOES 1 to 25, and with the express knowledge, consent, and ratification of
18 managerial agents and employees of Defendants and DOES 1 to 25, thereby justifying the
19 awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

20 145. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
21 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of
22 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et
23 seq.

24 146. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
25 multiple damages as specifically provided in California Business and Professions Code section
26 17200 et seq.

27 147. For the four years preceding the filing of this action, Plaintiff has suffered
28 damages and requests damages and/or restitution of all monies and profits to be disgorged
from Defendants in an amount according to proof at time of trial, but in excess of the

jurisdiction of this Court.

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

1. For compensatory damages including lost past and future wages, regular wages, overtime, and all other sums of money, including employment benefits, together with interest on said amounts, and any other economic injury to Plaintiff, according to proof;
2. For general damages according to proof;
3. For special and consequential damages to the extent allowed by law;
4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
5. For an award of punitive damages against Defendant H MART 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 Defendant H MART against Plaintiff in an amount subject to proof at trial;
9. For an order enjoining Defendant H MART 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

1 damages, damages, penalties, and waiting time penalties according to proof to the
2 extent permitted by law via PAGA;

3 14. For the imposition of civil penalties and/or statutory penalties;

4 15. For all interest as allowed by law;

5 16. For all costs and disbursements incurred in this suit;

6 17. Reasonable attorney's fees where available by law, including but not limited to,
7 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
8 Labor Code section 1102.5, the Labor Code, FEHA; and/or other applicable laws; and

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

10 **DATED:** January 17, 2023

MESSRELIAN LAW INC.

11 By Maralle Messrelia
12 Harout Messrelia, Esq.
13 Maralle Messrelia, Esq., Of Counsel
14 Attorneys for Plaintiff Edenilson Carmona
15 Henriquez

16 **DEMAND FOR JURY TRIAL**

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

18 **DATED:** January 17, 2023

MESSRELIAN LAW INC.

19 By Maralle Messrelia
20 Harout Messrelia, Esq.
21 Maralle Messrelia, Esq., Of Counsel
22 Attorneys for Plaintiff Edenilson Carmona
23 Henriquez
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