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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12 **(UNLIMITED JURISDICTION)**

13 SUSAN BANUELOS,

14 *Plaintiff,*

15 vs.

16 NH SERVICES LLC; NOBLE HOUSE HOME
17 FURNISHINGS LLC; and DOES 1 to 25,
18 inclusive,

19 *Defendants.*

Case No.: 23STCV05496

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR:**

- 1) **PRIVATE ATTORNEYS
GENERAL ACT (“PAGA”);**
- 2) **SEXUAL HARASSMENT IN
VIOLATION OF FAIR
EMPLOYMENT AND HOUSING
ACT (“FEHA”);**
- 3) **RETALIATION IN VIOLATION
OF FEHA;**
- 4) **FAILURE TO PREVENT
RETALIATION IN VIOLATION
OF FEHA;**
- 5) **RETALIATION IN VIOLATION
OF LABOR CODE SECTION
1102.5;**
- 6) **WRONGFUL CONTRUCTIVE
DISCHARGE IN VIOLATION OF
PUBLIC POLICY;**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff, SUSAN BANUELOS (hereafter “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 Los Angeles in this judicial district because Defendants NH SERVICES LLC; NOBLE HOUSE HOME FURNISHINGS LLC; and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

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

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant NH SERVICES LLC is and was a California corporation, doing business in Los Angeles County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that all times herein mentioned, Defendant NOBLE HOUSE HOME FURNISHINGS LLC is and was a Delaware Corporation, doing business in Los Angeles County, California, and which employed Plaintiff. Plaintiff alleges that NH SERVICES LLC and NOBLE HOUSE HOME FURNISHINGS LLC are “joint employers” in that they both controlled wages, hours, and/or working conditions of Plaintiff and other employees. Defendants NH SERVICES LLC and NOBLE HOUSE HOME FURNISHINGS LLC are collectively referred to herein as “NH SERVICES” or “Defendant(s)”.

5. The “Aggrieved Employees” are all current and former non-exempt or hourly paid employees who worked for Defendants at any of their California locations during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

6. 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

1 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
2 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
3 and capacities of these fictitiously named defendants.

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

9 **GENERAL ALLEGATIONS**

10 8. Plaintiff started working for NH SERVICES on or around January 2021. During
11 her employment tenure, Plaintiff was classified as an hourly, non-exempt employee. Plaintiff
12 job title was “Logistics and Billing”. Plaintiff’s employment with NH SERVICES ended on or
13 around October 3, 2022, wherein Plaintiff was forced to quit her employment.

14 9. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745
15 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer,
16 Securitas Security Services USA, Inc., an onsite security provider. After about a year of
17 employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim,
18 Huff specifically alleged violations to the Labor Code requiring immediate payment of wages
19 upon termination of employment and weekly payment of wages to temporary employees. The
20 trial court determined Huff was not a temporary employee, and therefore, lacked standing to
21 bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial
22 court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the
23 issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did
24 not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
25 PAGA representative to sue for violations that the representative has personally suffered. The
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1 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
2 and others. The statute also states that an “aggrieved employee” is “any person who was
3 employed by the alleged violator and against whom one or more of the alleged violations was
4 committed.” Because at least one of the violations that Huff had alleged had affected him
5 personally, the Court of Appeal denied Securitas’ motion.
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7 10. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves
8 and other employees, it allows for suits broader than the specific violations the named
9 employee experienced. Therefore, even if the employee did not personally experience the
10 Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is
11 Plaintiff’s position that Plaintiff can equivocally bring the following labor code violations on
12 behalf of all other employees, including hourly, non-exempt employees, including drivers and
13 similar personnel, and even salaried employees.
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15 11. It is Plaintiff’s position that NH SERVICES has committed numerous labor
16 code violations against Plaintiff and other hourly, non-exempt employees who worked for NH
17 SERVICES at any of their locations in the state of California during the PAGA period.
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19 12. NH SERVICES did not provide Plaintiff and other similarly situated aggrieved
20 employees with the minimum wages to which they were entitled for all work performed and
21 did not compensate her and others for all hours worked pursuant to California Labor Code
22 sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and
23 consistently worked “off the clock” due to the company having a policy and practice of
24 rounding down the number of hours worked, which led to time shaving and Plaintiff and others
25 not being paid for all hours worked. Moreover, to the extent that Plaintiff and others worked
26 during and through their meal periods, they were not paid for that time since they were “off the
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1 clock”, which is akin to a minimum wage violation.

2 13. Due to the above “off the clock” violations above and as a matter of company
3 policy, NH SERVICES violated Labor Code §510 because it failed to pay aggrieved employees
4 overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours
5 per week throughout their employment. Employees’ actual work hours, which included the “off
6 the clock” work as described above, entitled them to overtime, however, it was not company
7 policy to keep accurate track of all hours worked and to pay employees the accurate amount of
8 overtime, especially since the “off the clock” work was not factored into the equation.
9 Furthermore, any incentive payments and/or bonus payments were not factored into employees’
10 regular rate of pay for purposes of deciphering the correct overtime rate of pay. In addition, any
11 bonus and/or incentive payments were not factored into the correct meal and rest break premium
12 pay per Ferra v. Loews. Moreover, NH SERVICES would utilize overtime hours to cover the
13 meal period violations.
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15 14. NH SERVICES violated Labor Code § 226.7 along with Industrial Welfare
16 Commission Wage Order no. 4 or 7 (also potentially wage order no. 2) because it failed to provide
17 Plaintiff and other similarly situated aggrieved employees 10-minute rest periods for every four
18 hours of work, or majority portion thereof, throughout their employment. NH SERVICES did
19 not completely relieve Plaintiff of all duty during said rest periods. NH SERVICES did not pay
20 to Plaintiff one additional hour of pay at Plaintiff’s regular rate of compensation for each workday
21 that one or more statutory rest periods was not provided. Plaintiff and others did not really receive
22 any timely, uninterrupted rest periods throughout their employment wherein they were relieved
23 of all work duties. Receiving multiple 10-minute rest periods wherein employees were relieved
24 of all duty simply did not exist at NH SERVICES and were not enforced at all. It was the normal
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1 company practice and policy to not authorize or enforce meal periods wherein employees are
2 relieved of all work duty.

3 15. NH SERVICES also violated Labor Code §§ 512 and 226.7 along with Industrial
4 Welfare Commission Wage Order No. 4 or 7 (also potentially wage order no. 2) because it failed
5 to provide Plaintiff and other similarly situated aggrieved employees the requisite 30-minute,
6 uninterrupted meal periods for every five (5) hours of work throughout their employment, and
7 Plaintiff did not validly waive said meal periods. NH SERVICES did not completely relieve
8 Plaintiff of all duties during said meal periods. NH SERVICES did not pay to Plaintiff one
9 additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or
10 more statutory meal periods was not provided. Since Plaintiff's and others' shifts were over 6
11 hours at times, any alleged "agreement" to waive their meal period would not be valid and
12 enforceable. Moreover, if Plaintiff signed an on-duty meal period agreement wherein Plaintiff
13 agreed to work through her meal period, it would also be invalid and unenforceable because the
14 nature of Plaintiff's job does not prevent her from taking a meal period. The bottom line was that,
15 much like rest periods, receiving a thirty-minute, uninterrupted meal period before the 5th hour
16 worked was not part of the company policy and practice. In fact, Plaintiff and others consistently
17 received late meal periods and or did not receive a second meal period if they worked 10 hours
18 or more. To the extent that NH SERVICES argues that employees receive meal break premium
19 pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since
20 the PAGA penalties are for the violations themselves, irrespective of whether an employee
21 received the premium payment for a missed, short, or interrupted meal period. In *Kirby v.*
22 *Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful
23 choice between providing *either* meal and rest breaks *or* an additional hour of pay." *See Kirby v.*
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1 *Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the
2 extra hour of pay does not excuse the violation; the employer has still committed a violation even
3 if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016,
4 2016 WL 1110302 at *4). As such, the work environment and culture at NH SERVICES was not
5 conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover,
6 any meal or rest break premiums paid were not compensated at the weighted average regular rate,
7 inclusive of bonuses and/or incentive payments.
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9 16. Furthermore, during the relevant time period, and due to all of the above labor
10 code violations, NH SERVICES failed to pay Plaintiff and other similarly situated aggrieved
11 employees all wages due to them within any time period specified by California Labor Code
12 section 204, including the minimum wages and overtime as described above as well as meal/rest
13 break premiums. NH SERVICES was also in violation of California Labor Code section 226(a)
14 by failing to include pertinent information on the wage statements, including but not limited to,
15 all hours worked, including the correct amount of overtime hours worked, gross wages earned,
16 net wages earned, all deductions, premium payments for meal and rest breaks, the correct legal
17 name and address of the employing entity, the beginning and end of the pay period, all applicable
18 hourly rates, and all identifying employee information, among other items. As such, NH
19 SERVICES did not provide Plaintiff and other similarly situated aggrieved employees with
20 complete, accurate itemized wage statements.
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22 17. NH SERVICES violated Labor Code § 203 because it willfully failed to pay
23 Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation
24 of employment, either immediately upon involuntary termination, or within 72 hours of
25 resignation. These earned but unpaid wages include compensation for all hours worked including
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1 minimum wages and overtime compensation, and premiums for the missed meal and rest breaks.

2 18. During the relevant time period, NH SERVICES also failed to keep accurate and
3 complete payroll records showing the actual hours worked per day (including the time for meal
4 periods) and the wages paid to Plaintiff and other aggrieved employees pursuant to California
5 Labor Code sections 1174(d).

6 19. During the relevant time period, Plaintiff and other aggrieved employees incurred
7 necessary, business-related expenses and costs that were not reimbursed by NH SERVICES.
8 These costs include, but are not limited to, uniforms and use of personal cell phones for work
9 purposes. Accordingly, NH SERVICES was in violation of California Labor Code sections 2800
10 and 2802.

12 20. On or around August 11, 2022, there was an incident wherein an Assistant
13 Manager, Luis Buenrostro, made an inappropriate comment about Plaintiff in the context of Mr.
14 Buenrostro pulling out his penis, putting it on the table, and swinging it around in order to get
15 Plaintiff's attention. Plaintiff reported the incident to Human Resources because it made her
16 extremely uncomfortable and caused her emotional distress. Also note that Plaintiff felt
17 extremely uncomfortable continuing to work with Mr. Buenrostro and continuing to take orders
18 from him. After Plaintiff made her above complaints to HR and to her management, the company
19 retaliated against her in terms of Plaintiff's work hours and in terms of allowing her to do her
20 month's end work for the company. The company essentially started micromanaging Plaintiff's
21 work and performance in an effort to make her uncomfortable and cause her to quit her
22 employment. Plaintiff's work environment became intolerable, and Plaintiff was forced to quit
23 her employment on or around October 3, 2022.

26 21. Plaintiff has exhausted her administrative remedies. Plaintiff filed a complaint
27 with the Department of Fair Employment and Housing ("DFEH"), alleging claims in this
28 complaint. The DFEH immediately issued to Plaintiff a right to sue letter.

1 **FIRST CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **Representative Claim for PAGA penalties under California Labor Code sections 203, 204**
4 **and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 2800, 2802,**
5 **2698, 2699, and the applicable Industrial Welfare Commission Wage Order**

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

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

9 23. Pursuant to law, Plaintiff provided the required written notice to the California
10 Labor & Workforce Development Agency (LWDA) and Defendants of the specific violations of
11 the California Labor Code that Defendants and DOE defendants have violated and continue to
12 violate.

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

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

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

25 27. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the
26 alleged violator and had one or more of the alleged violations committed against her, and therefore
27 is properly suited to represent the interests of all current and former non-exempt or hourly paid
28 employees who worked for Defendants at any of their California locations during the relevant
PAGA time period.

1 28. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
2 penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations
3 of numerous provisions of the California Labor Code as alleged in this Complaint.

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

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

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

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

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

23 Violations of California Labor Code sections 203, 204 and/or 204b, 210, 226, 226.3,
24 226.7, 510, 512, 558, 1174d, 1194, 1197, 1197.1, 2800, 2802, 2698, 2699 via 2698 and
25 2699, and any other Labor Codes and the applicable Wage Orders (including no. 2/4/7)
26 violated on the facts alleged in this Complaint.

27 34. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's
28 fees, costs, and civil penalties on behalf of Plaintiff and other current and former Aggrieved

1 Employees as alleged herein in an amount to be shown according to proof at trial and within the
2 jurisdictional limits of this Court.

3 **SECOND CAUSE OF ACTION**

4 **SEXUAL HARASSMENT IN VIOLATION OF FEHA**

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

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

8 36. At all times herein mentioned, FEHA, Government Code section 12900, et seq.,
9 was in

10 full force and effect and was binding on Defendants. Specifically, Government Code section
11 12940(j) prohibits an employer from sexually harassing an employee on the basis of her sex.

12 37. Assistant Manager, Luis Buenrostro was and is at all times relevant hereto an
13 employee of Defendants. The actions of Luis Buenrostro towards Plaintiff, while in the course
14 and scope of his employment with Defendants as described herein, created a hostile sexual
15 environment which materially altered Plaintiff's working conditions and which constitutes sexual
16 harassment in violation of California Government Code section 12940(j)(1).

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

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

40. 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 Defendants.

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

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

THIRD CAUSE OF ACTION

RETALIATION IN VIOLATION OF FEHA

(Plaintiff against All Named Defendants and all DOE Defendants)

43. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 42, inclusive, of this Complaint as though fully set forth herein.

44. At all times herein mentioned, Government Code section 12940 et. seq. was in full force and effect and was binding upon Defendants. Said statute imposes certain duties upon Defendants concerning discrimination, harassment and retaliation against persons, such as Plaintiff, on the basis of complaints of sexual harassment. Said statutes were intended to prevent

1 the type of injury and damage set forth herein. Plaintiff was, at all times herein mentioned, a
2 member of the class of persons intended to be protected by said statutes. As alleged above,
3 Plaintiff was retaliated against after reporting and complaining about sexually harassing behavior
4 at the workplace.

5 45. As a direct and proximate result of the conduct of Defendants, and each of them,
6 Plaintiff has been harmed in that Plaintiff has suffered the loss of wages, salary, and benefits,
7 among other things. As a result, Plaintiff has suffered such damages in an amount
8 according to proof.

9 46. As a further direct and proximate result of the conduct of Defendants, and each of
10 them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish, and
11 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered such
12 damages in an amount according to proof.

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

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

26 49. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a
27 prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
28 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has incurred

1 and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an award of
2 attorneys' fees and costs.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO PREVENT RETALIATION IN VIOLATION OF FEHA**

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

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

8 51. FEHA requires employers to take "all reasonable steps necessary to prevent
9 discrimination and harassment from occurring." (Gov. Code section 12940, subd. (k)).

10 52. As alleged above, Plaintiff was subjected to retaliation.

11 53. Defendants failed to take all reasonable steps necessary to prevent retaliation. In
12 addition, Defendants failed to remedy such retaliation when it realized and was informed that it
13 was occurring. Defendant further failed to train, supervise, and monitor its employees and agents.

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

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

21 56. As a further direct and proximate result of the conduct of Defendants, Plaintiff has
22 been harmed in that Plaintiff has suffered the intangible loss of employment-related
23 opportunities. As a result, Plaintiff has suffered such damages in an amount according
24 to proof.

25 57. As a further direct and proximate result of the conduct of Defendant, Plaintiff has
26 been harmed in that Plaintiff has suffered humiliation, mental anguish, and emotional distress,
27 and has been harmed in mind and body. As a result, Plaintiff has suffered such damages in an
28 amount according to proof.

58. The above-recited actions of Defendants was done with malice, fraud, oppression, and in reckless disregard of Plaintiff's rights under FEHA. Accordingly, Plaintiff is entitled to an award of punitive damages.

FIFTH CAUSE OF ACTION

RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5

(Plaintiff against All Defendants and DOE Defendants)

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

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

61. As discussed fully above, Plaintiff complained to Defendants about illegal conduct at the workplace, including sexual harassment she was experiencing.

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

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

64. Plaintiff requests all available relief under Labor Code § 1102.5 including

1 damages, attorney's fees, and the imposition of civil penalties of \$10,000 for each violation.

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3 **SIXTH CAUSE OF ACTION**
4 **WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC**
5 **POLICY**

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

7 65. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 64 inclusive, of this Statement of Claims as though fully set forth herein.

9 66. At all times during her employment with Defendants, Plaintiff performed her
10 duties with the utmost diligence and competence.

11 67. Plaintiff is informed and believes and thereon alleges that Defendants intentionally
12 created an environment with rampant labor code violations against Plaintiff.

13 68. Defendants intentionally created an illegal and hostile work environment and
14 atmosphere through the disparate treatment received by Plaintiff due to her complaints about
15 illegal conduct in the workplace, including sexual harassment, ultimately forcing Plaintiff to quit
16 her employment.

17 69. The employment of Plaintiff was wrongfully terminated in or October 3, 2022 in
18 violation of the fundamental public policy of the State of California with respect to retaliating
19 against an employee on account of her whistleblowing and making complaints about sexual
20 harassment in the workplace. Moreover, Plaintiff was forced to hire an attorney to assist her to
21 end these illegal activities. Said conduct violated statutory and constitutional expressions of
22 public policy including, but not limited to, California Labor Code section 1102.5, California
23 Government Code sections 12940 et seq., and the California Constitution, Article 1 section 8.

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

1 arbitration hearing.

2 71. The foregoing conduct engaged in by Defendants and each of its directors,
3 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
4 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
5 an environment free of retaliation, so as to justify the imposition of punitive damages to punish
6 and set an example of said Defendants.

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

- 10 1. For compensatory damages to Plaintiff in an amount subject to proof at trial;
- 11 2. For general damages according to proof;
- 12 3. For an award of punitive damages against Defendants according to proof;
- 13 4. For special, consequential, and liquidated damages to the extent allowed by law;
- 14 5. For the imposition of civil penalties and/or statutory penalties;
- 15 6. For PAGA penalties to the extent permitted pursuant to the Labor Code and Wage
16 Order including, but not limited to, Labor Code §§ 203, 204 and/or 204b, 210, 226,
17 226.3, 226.7, 510, 512, 558, 1174d, 1194, 1197, 1197.1, 2800, 2802, 2698, 2699 via
18 2698 and 2699
- 19 7. For restitution and disgorgement for all unfair business practices by Defendants
20 against Plaintiff in an amount subject to proof at trial;
- 21 8. For an order enjoining Defendants from further unfair and unlawful business practices
22 in violation of Business and Professions Code Sections 17200, et seq.;
- 23 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
24 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 25 10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- 26
- 27
- 28

1 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;

2 11. For maximum civil penalties available under the Labor Code and applicable Wage
3 Order against Defendants as described more particularly in the Complaint and
4 representative PAGA claims;

5 12. For all remedies available to Plaintiff under the applicable Wage Order and the
6 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
7 liquidated damages, damages, penalties, and waiting time penalties according to proof
8 to the extent permitted by law via PAGA;

9 13. For all interest as allowed by law;

10 14. For all costs and disbursements incurred in this suit;

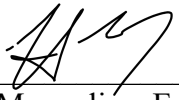
11 15. Reasonable attorney's fees where available by law, including but not limited to,
12 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
13 the Labor Code generally; FEHA, including Government Code section 12940 et. seq.
14 and/or other applicable laws; and
15

16 16. For such other and further relief as this Court may deem proper.
17

18
19 Respectfully submitted,

20 **MESSRELIAN LAW INC.**

21 Dated: March 13, 2023

22 By 
23 Harout Messrelian, Esq.
24 Attorneys for Plaintiff, SUSAN BANUELOS

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DEMAND FOR JURY TRIAL

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

DATED: March 13, 2023

MESSRELIAN LAW INC.

By 

Harout Messrelian, Esq.

Attorneys for Plaintiff Susan Banuelos