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23CV422622
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JOSE ANGEL LOPEZ,

Plaintiff,

vs.

MORENO & ASSOCIATES, INC.;
J ERNESTO MORENO; and
DOES 1 to 25, inclusive,

Defendants.

) CASE NO.:

) **COMPLAINT FOR DAMAGES FOR:**

-) 1) **FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
) 2) **FAILURE TO PAY MINIMUM**
) **WAGES;**
) 3) **FAILURE TO PAY OVERTIME;**
) 4) **FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**
) 5) **FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**
) 6) **FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) 7) **FAILURE TO GIVE REST BREAKS;**
) 8) **FAILURE TO GIVE MEAL BREAKS**
) 9) **PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) 10) **FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**
) 11) **DISCRIMINATION ON THE BASIS**
) **OF PHYSICAL DISABILITY IN**
) **VIOLATION OF THE FAIR**
) **EMPLOYMENT AND HOUSING**
) **ACT ("FEHA");**
) 12) **FAILURE TO ACCOMMODATE**
) **PHYSICAL DISABILITY IN**
) **VIOLATION OF THE FEHA;**
) 13) **FAILURE TO ENGAGE IN**
) **INTERACTIVE PROCESS TO**

) DETERMINE REASONABLE
) ACCOMMODATION IN
) VIOLATION OF THE FEHA;
) 14) RETALIATION IN VIOLATION OF
) THE FEHA;
) 15) FAILURE TO PREVENT
) DISCRIMINATION AND
) RETALIATION IN VIOLATION OF
) THE FEHA;
) 16) WRONGFUL TERMINATION IN
) VIOLATION OF PUBLIC POLICY;
) 17) VIOLATION OF CALIFORNIA
) BUSINESS AND PROFESSIONS
) CODE SECTION 17200.
) DEMAND FOR JURY TRIAL

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

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Santa Clara in this judicial district because Defendants MORENO & ASSOCIATES, INC., J ERNESTO MORENO, and DOES 1 to 25, inclusive, do business in the County of Santa Clara and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Santa Clara is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Santa Clara, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant MORENO & ASSOCIATES, INC. is and was a California corporation, doing business in Santa Clara County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant J ERNESTO MORENO is a male resident of the County of Santa Clara, State of California, and the owner, corporate officer, or managing agent/director of MORENO & ASSOCIATES, INC. Plaintiff is informed and believes and thereon alleges that J ERNESTO MORENO managed, was directly involved in the day-to-day operations of MORENO & ASSOCIATES, INC. and

1 personally controlled the hours, wages, and/or working conditions of the employees, including
2 Plaintiff and other similarly situated aggrieved employees. As such, J ERNESTO MORENO is
3 being included in this lawsuit pursuant to Labor Code Section 558.1. MORENO &
4 ASSOCIATES, INC. and J ERNESTO MORENO are hereinafter collectively referred to as
5 “Defendants”, “or “MORENO”.

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

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

18 **GENERAL ALLEGATIONS**

19 7. Plaintiff started working for Defendants on or around April 30, 2016. Plaintiff’s
20 employment ended in or around November 2022. During his employment tenure, Plaintiff was
21 classified as an hourly, non-exempt employee and his latest rate of pay was \$23.00 per hour.
22 Plaintiff was part of the night utility crew and his job duties included cleaning wooden floors by
23 removing old wax and putting new wax and also washing carpets.

24 8. It is Plaintiff’s position that Defendants have violated numerous Labor Code Sections
25 against Plaintiff and other similarly situated aggrieved employees.

26 9. MORENO did not provide Plaintiff and other aggrieved employees with compensation
27 for all hours worked and did not pay Plaintiff and others the minimum wages to which they were
28 entitled for work performed pursuant to California Labor Code sections 1194, 1197 and 1197.1.
This is so because MORENO had a policy of rounding down the hours worked by Plaintiff and

1 other aggrieved employees which translated to Plaintiff and others not being paid for all hours
2 worked, including minimum wages. Moreover, and to the extent that Plaintiff and others worked
3 through their meal periods and that time was actually deducted on their paystubs, that would also
4 be akin to a minimum wage violation.

5 10. Due to the above “off the clock” hours and Plaintiff and others not being paid for all
6 hours worked, MORENO also violated Labor Code §510 because it failed to pay Plaintiff and
7 other aggrieved employees any overtime even though they worked more than 8 hours per day,
8 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff’s and other
9 aggrieved employees’ actual work hours entitled them to overtime compensation, however,
10 MORENO did not compensate its hourly, non-exempt employees with overtime compensation.
11 In addition, MORENO did not include bonuses and/or incentive payments in calculating
12 employees’ true regular rate of pay for purposes of deciphering their correct overtime rate of
13 pay. Additionally, the incentive and bonus payments were also not factored into Plaintiff’s and
14 others’ regular rate for purposes of receiving meal and rest break premiums per the *Ferra v.*
Loews case.

15 11. MORENO also violated Labor Code § 226.7 and the appropriate Industrial Welfare
16 Commission Wage Order no. 5 because it failed to provide Plaintiff and others with 10-minute
17 rest periods for every four hours of work, or majority portion thereof, throughout their
18 employment. MORENO did not completely relieve Plaintiff and others of all duty during said
19 rest periods. MORENO did not pay to Plaintiff and others one additional hour of pay at
20 Plaintiff’s regular rate of compensation for each workday that one or more statutory rest periods
21 was not provided. It was not part of the company policy for employees such as Plaintiff and
22 others to take uninterrupted rest breaks every 4 hours worked. As such, the culture at MORENO
23 did not lend itself to the employees receiving statutory rest breaks wherein they were relieved of
24 all work duties. As such, the environment at MORENO was not conducive to receiving statutory
25 rest breaks under California law and timely, statutory rest breaks were not authorized or
26 enforced. In fact, Plaintiff was not able to take a single rest period during his employment due
27 to his schedule and workload in that Plaintiff would travel to multiple locations every day,
28 including Redwood (2 hours per day), Los Gatos (3 hours per day), Concord (2-3 hours per day)

1 and San Jose (3 hours with traffic). As such, between the actual travel time in his own personal
2 vehicle and the actual work that needed to be done, it was impossible for Plaintiff to take a
3 timely, uninterrupted rest break twice per day. The same is true for meal breaks, which is
4 discussed below.

5 12. MORENO violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
6 Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees,
7 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five
8 (5) hours of work throughout their employment. MORENO did not completely relieve
9 employees of all duty during said meal periods. MORENO did not pay to Plaintiff and its hourly,
10 non-exempt employees one additional hour of pay at their regular rate of compensation for each
11 workday that one or more statutory meal periods was not provided. Like the rest breaks, receiving
12 a timely, uninterrupted thirty-minute meal break was not part of the company culture and was
13 not enforced by MORENO, especially due to the understaffing and lack of employees to relieve
14 Plaintiff of his job duties. As such, it was the normal practice and custom of MORENO not to
15 authorize, permit, and enforce timely, uninterrupted statutory meal periods. In fact, Plaintiff was
16 not able to take a single meal period during his employment due to his schedule and workload
17 in that Plaintiff would travel to multiple locations every day, including Redwood (2 hours per
18 day), Los Gatos (3 hours per day), Concord (2-3 hours per day) and San Jose (3 hours with
19 traffic). As such, between the actual travel time in his own personal vehicle and the actual work
20 that needed to be done, it was impossible for Plaintiff to take a timely, uninterrupted meal break
21 before the 5th hour worked and wherein he was relieved of all job duties.

22 13. To the extent that MORENO argues that there is an “On Duty Meal Period Agreement”
23 in place, their argument would not hold water since the nature of Plaintiff’s work does not
24 prevent him from getting a timely, uninterrupted meal period wherein he is relieved of all work
25 duties. To the extent that MORENO argues that employees receive meal break premium pay for
26 missed meal periods, that argument is inconsequential for PAGA penalty purposes since the
27 PAGA penalties are for the violations themselves, irrespective of whether an employee received
28 the premium payment for a missed, short, or interrupted meal period. In Kirby v. Immoos Fire
Protection, Inc., the Court stated, “section 226.7 does not give employers a lawful choice

1 between providing either meal and rest breaks or an additional hour of pay.” See *Kirby v. Immoos*
2 *Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour
3 of pay does not excuse the violation; the employer has still committed a violation even if the
4 remedy for the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016
5 WL 1110302 at *4). As such, the work environment and culture at MORENO was not conducive
6 to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal
7 or rest break premiums paid were not compensated at the weighted average regular rate, inclusive
8 of bonuses and/or incentive payments.

9 14. Furthermore, during the relevant time period, and due to the labor code violations cited
10 above, MORENO failed to pay Plaintiff and others all wages due to them within any time period
11 specified by California Labor Code section 204. MORENO was also in violation of California
12 Labor Code section 226(a), by failing to include pertinent information on the wage statements,
13 including but not limited to, the full and correct name of the legal employer along with the
14 employer’s address, all hours worked (including “off the clock” hours and overtime), all
15 applicable hourly rates, gross wages earned, net wages earned, the correct start and end time of
16 the pay period, all deductions, the employee’s identifying information, and premium pay for the
17 missed meal and rest breaks. As such, MORENO did not provide Plaintiff and other similarly
18 situated aggrieved employees with complete, accurate itemized wage statements.

19 15. During the relevant time period, MORENO also failed to keep accurate and complete
20 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
21 others pursuant to California Labor Code sections 1174(d).

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

27 17. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
28 business-related expenses and costs that were not reimbursed by MORENO. These costs include,
but are not limited to, use of personal cell phones for work purposes in clocking in and out and

1 use of personal vehicles to drive to different locations in order to effectuate job duties. Plaintiff
2 was not provided actual mileage reimbursement. Accordingly, MORENO was in violation of
3 California Labor Code sections 2800 and 2802.

4 18. Moreover, MORENO failed to provide Worker's Compensation coverage for Plaintiff
5 and other aggrieved employees in violation of Labor Code Section 3700.5, failed to provide sick
6 pay in violation of Labor Code Sections 233 and 246, and did not provide a suitable rest break
7 area/facility for employees in violation of IWC Wage Order no. 5-2001, Section 13.

8 19. Furthermore, MORENO has also violated Labor Code Section 558 and has engaged in
9 business practices which violate Business and Professions Code Section 17200.

10 20. On or around November 15, 2022, Plaintiff tested positive for Covid-19 and informed
11 his supervisor, Salvador Minero, via text message of his positive test result. Once Plaintiff
12 recovered, MORENO informed him that there was "no more work" for him terminated Plaintiff's
13 employment. MORENO terminated Plaintiff's employment based on his physical disability in
14 having contracted COVID-19 and did not attempt to accommodate Claimant or engage in the
15 interactive process.

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

19 **FIRST CAUSE OF ACTION**

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

21 **(California Industrial Welfare Commission Order 5-2001, California Code of
22 Regulations Title 8 Section 11050, and California Labor Code Section 1198)**

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

24 22. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
25 1 through 21, inclusive, of this Complaint as though fully set forth herein.

26 23. At all times relevant herein, Defendants were required to compensate their employees
27 for all hours worked upon reporting for work at the appointed time stated by the employer
28 pursuant to Industrial Welfare Commission Order 5-2001, California Code of Regulations, Title
8, Section 11050.

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

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

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

9 27. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
10 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled
11 to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable
12 attorney's fees and costs of suit.

13 28. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
14 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
15 amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES**

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

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

20 29. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
21 1 through 28, inclusive, of this Complaint as though fully set forth herein.

22 30. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
23 to suffer or permit a California employee to work without paying wages at the minimum wage
24 rate for all hours worked as required by the applicable Industrial Welfare Commission
25 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title
26 8, Section 11050, subdivision 4.

27 31. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K), at all relevant times, "hours
28 worked" included "the time during which an employee is subject to the control of an employer,
and includes all the time the employee is suffered or permitted to work, whether or not required

1 to do so...”

2 32. During his employment, Plaintiff was regularly required as a matter of uniform policy
3 and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid
4 less than the minimum wage rate by Defendants for hours worked in violation of California
5 Labor Code Section 1197 and the applicable California Industrial Wage Commission wage
6 order(s).

7 33. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
8 permitted to work by Defendants. Defendants’ acts or omissions in failing to adequately
9 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
10 to believe that their acts or omissions were not contrary to California law.

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

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

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME**

20 **(California Industrial Welfare Commission Order 5-2001, California Code of
21 Regulations Title 8 Section 11050; California Labor Code Section 510)**

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

23 36. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
24 1 through 35, inclusive, of this Complaint as though fully set forth herein.

25 37. Pursuant to Industrial Welfare Commission Order No. 5-2001, Cal. Code of Regs., Title
26 8, Section 11050, for the period of Plaintiff’s employment, Defendants were required to
27 compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the
28 regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week,

1 and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a
2 day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

3 38. Plaintiff was a non-exempt employee entitled to the protections of the California
4 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,
5 Section 11050.

6 39. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a
7 single workday or forty (40) hours in a single workweek on numerous occasions.

8 40. Plaintiff was entitled to the above overtime premiums.

9 41. Defendants did not pay Plaintiff premium wages of at least one and one-half times
10 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
11 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
12 twelve (12) in a day.

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

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

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

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

21 46. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
22 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the nonpayment
23 of overtime premiums for all overtime hours worked, penalties, interest, plus reasonable
24 attorney's fees and costs of suit.

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

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1 **FOURTH CAUSE OF ACTION**

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

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

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

5 48. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
6 1 through 47, inclusive, of this Complaint as though fully set forth herein.

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

9 50. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
10 accurately reflected all information required by Labor Code Section 226, including but not
11 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
12 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
13 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed to
14 maintain and provide accurate itemized wage statements to Plaintiff in accordance with
15 California Labor Code Section 226(a).

16 51. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
17 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
18 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
19 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
20 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
21 the 3-year period immediately preceding the date this lawsuit was filed.

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

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

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FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 203)

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

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

58. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated from his employment, Defendants willfully refused and continue to refuse to pay his unpaid wages as required by Labor Code Section 203.

59. 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. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately preceding the filing of this lawsuit.

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

61. 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.

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1 **SIXTH CAUSE OF ACTION**

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

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

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

5 62. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
6 1 through 61, inclusive, of this Complaint as though fully set forth herein.

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

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

11 65. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is informed,
12 believes, and thereon alleges, that all times relevant during the liability period, Defendants
13 maintained a policy or practice of not paying Plaintiff wages for all hours worked, including
overtime hours, the minimum wage, and premium pay for missed meal and rest breaks.

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

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

20 **SEVENTH CAUSE OF ACTION**

21 **FAILURE TO GIVE REST BREAKS**

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

23 68. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
24 1 through 67, inclusive, of this Complaint as though fully set forth herein.

25 69. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 26 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which provides
27 that every employer shall authorize and permit all employees to take rest periods,
28 which insofar as practicable shall be in the middle of each work period. The

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

3 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which provides
4 that if an employer fails to provide an employee a rest period in accordance with the
5 applicable provisions of this order, the employer shall pay the employee one (1) hour
6 of pay at employee's regular rate of compensation for each workday that the rest
7 period is not provided;

8 c. Title 8 of the California Code of Regulations sections 11050(20)(A), which penalizes
9 the 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 d. California Labor Code section 226.7, which states that (a) no employer shall require
12 any employee to work during any rest period mandated by an applicable order of the
13 Industrial Welfare Commission, and (b) if an employer fails to provide an employee
14 a rest period in accordance with an applicable order of the Industrial Welfare
15 Commission, the employer shall pay the employee one (1) additional hour of pay at
16 employee's regular rate of compensation for each work day that the rest period is not
17 provided.

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

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

24 72. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees as
25 well as interest under Labor Code section 218.6.

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

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO GIVE MEAL BREAKS**

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

4 74. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
5 1 through 73, inclusive, of this Complaint as though fully set forth herein.

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

- 7 a. California Labor Code section 512(a), which requires that employees be given a 30-
8 minute uninterrupted meal break after five (5) hours of work, and a second
9 uninterrupted meal break after ten (10) hours of work;
- 10 b. California Labor Code section 226.7, which states that (a) no employer shall require
11 any employee to work during any meal period mandated by an applicable order of
12 the Industrial Welfare Commission, and (b) if any employer fails to provide an
13 employee a meal period in accordance with an applicable order of the Industrial
14 Welfare Commission, the employer shall pay the employee one (1) additional hour
15 of pay at the employee's regular rate of compensation for each workday that the meal
16 period is not provided;
- 17 c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified
18 under Title 8 of the California Code of Regulations Section 11050, which states that
19 if an employer fails to provide an employee a meal period in accordance with the
20 applicable provisions of the Wage Order, the employer shall pay the employee one
21 (1) hour of pay at the employee's regular rate of compensation for each workday that
22 the meal period is not provided;
- 23 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as
24 codified under Title 8 of the California Code of Regulations Section 11050, which
25 requires an employer to maintain records documenting its employees' meal periods;
- 26 e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as
27 codified under California Code of Regulations Section 11050, which penalizes the
28 employer \$50.00 for each initial violation, per employee, of any provision of the
Wage Order, and \$100.00 for each additional violation thereafter per employee; and

1 f. California Labor Code section 1171 and 1173, which have given the California Labor
2 Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5) as
3 enforceable law.

4 76. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
5 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
6 to take a second relieved meal break after ten (10) hours of work, as required by California law.
7 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
8 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that
9 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that
10 the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty.
11 California Labor Code section 226.7 provides that employers may not require their employees
12 to work through their meal periods. California Labor Code section 226.7 and California Code of
13 Regulations section 11050 requires that if the employer fails to provide the employee with an
14 uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each
15 workday that the meal period is not given.

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

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

22 79. 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.

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1 **NINTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **Individual and Representative Claim for PAGA penalties under California Labor Code**
4 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558,**
5 **558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5)**

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

7 80. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
8 1 through 79, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

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

86. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks penalties

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

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

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

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

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

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

23 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
24 226.3, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5
25 via 2698 and 2699, and any other Labor Codes and Industrial Welfare Commission Wage
26 Orders (Order no. 5) violated based on the facts alleged in this Complaint.

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

jurisdictional limits of this Court.

TENTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

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

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

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

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

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

ELEVENTH CAUSE OF ACTION

DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY

IN VIOLATION OF FEHA

(Plaintiff against MORENO & ASSOCIATES, INC. and all DOE defendants)

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

98. Defendants and DOES 1 to 25, inclusive, are covered employers under California’s Fair Employment and Housing Act.

99. California Government Code section 12926(m) has established a “broad definition” of physical disability: disability protections under the Fair Employment and Housing Act (“FEHA”) even extend to “perceived” physical disabilities. *Id.* Under the law of this state, “working” is a major life activity. *See* section 12926.1(c).

100. Plaintiff’s Covid-19 illness, which was debilitating, and which limited a major

1 life activity, qualifies as a disability under FEHA, and Plaintiff was entitled to its protection.

2 101. Defendants knew of Plaintiff's disability and violated California Government
3 Code section 12940 et. seq. by discriminating against Plaintiff on the basis of his disability.

4 102. 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.

9 103. 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 of
12 their workers' right to work in an environment in which personnel decisions and company
13 policies are made without regard to physical disability, so as to justify the imposition of punitive
14 damages to punish and set an example of said Defendants.

15 104. As a proximate result of the foregoing conduct, which violated the provisions of
16 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 **TWELFTH CAUSE OF ACTION**

19 **FAILURE TO ACCOMMODATE PHYSICAL DISABILITY IN VIOLATION OF**

20 **FEHA**

21 **(Plaintiff against MORENO & ASSOCIATES, INC. and all DOE defendants)**

22 105. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 104, inclusive, of this Complaint as though fully set forth herein.

24 106. California Government Code section 12940(p) provides that it is unlawful for an
25 employer to fail to make reasonable accommodation for the known physical disability of an
26 employee.

27 107. Defendants failed to make reasonable accommodation of Plaintiff's physical
28 disability of which Defendants were unequivocally aware.

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

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

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

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

13 **THIRTEENTH CAUSE OF ACTION**

14 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA**

15 **(Plaintiff against MORENO & ASSOCIATES, INC. and all DOE defendants)**

16 111. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 110, inclusive, of this Complaint as though fully set forth herein.

18 112. California Government Code section 12940(n) provides that it is unlawful for an
19 employer to fail to engage in a timely, good faith, interactive process with an employee to
20 determine effective accommodations for that employee's physical disability.

21 113. Defendants failed to engage in a timely, good faith, interactive process with
22 Plaintiff to determine effective reasonable accommodations for Plaintiff's known physical
23 disability.

24 114. 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 trial.

115. The foregoing conduct engaged in by Defendants and each of their directors,

1 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
2 ratified, and carried on with a conscious and willful disregard of their workers' right to engage
3 in the interactive process and receive reasonable accommodations, so as to justify the imposition
4 of punitive damages to punish and set an example of said Defendants.

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

8 **FOURTEENTH CAUSE OF ACTION**
9 **RETALIATION IN VIOLATION OF FEHA**

10 **(Plaintiff against MORENO & ASSOCIATES, INC. and all DOE defendants)**

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

13 118. At all times herein mentioned, Government Code section 12940 et. seq. was in
14 full force and effect and was binding upon Defendants and each of them. Said statute imposes
15 certain duties upon Defendants concerning discrimination and retaliation against persons, such
16 as Plaintiff, on the basis of physical disability or on the basis of Plaintiff requesting time off of
17 work/missing time from work due to a physical disability. Said statutes were intended to prevent
18 the type of injury and damage set forth herein. Plaintiff was, at all times herein mentioned, a
19 member of the class of persons intended to be protected by said statutes. As alleged above,
20 Plaintiff was retaliated against and terminated from his employment as a result of his physical
21 disability and being forced to miss work as a result of his physical disability.

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

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

121. In committing the foregoing acts, Defendants have been guilty of oppression,

1 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
2 punitive damages in a sum appropriate to punish and make an example out of the foregoing
3 Defendants.

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

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

17 **FIFTEENTH CAUSE OF ACTION**

18 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION**
19 **OF FEHA**

20 **(Plaintiff against MORENO & ASSOCIATES, INC. and all DOE defendants)**

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

23 125. At all times herein mentioned, FEHA, California Government Code section
24 12940(k), was in full force and effect and was binding on Defendants. This statute states that it
25 is an unlawful employment practice in California for an employer to "fail to take all reasonable
26 steps necessary to prevent discrimination and harassment from occurring."

27 126. During the course of Plaintiff's employment, Defendants failed to prevent their
28 employees, including management, from engaging in intentional actions that resulted in Plaintiff

1 being treated less favorably and eventually being terminated because of Plaintiff's protected
2 status (i.e. his physical disability). During the course of Plaintiff's employment, Defendants
3 failed to prevent their employees from engaging in unjustified employment practices against
4 employees in such protected classes. During the course of Plaintiff's employment, Defendants
5 failed to prevent a pattern and practice by its employees of intentional discrimination and
6 retaliation on the basis of physical disability, and/or other protected status and/or protected
7 activity.

8 127. Plaintiff believes and, on that basis, alleges that his physical disability and other
9 protected status and/or protected activity in informing his employer about his positive Covid-19
10 test result was a substantial motivating factor in Defendants discriminating and retaliating against
11 him and terminating his employment.

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

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

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

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1 **SIXTEENTH CAUSE OF ACTION**

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

3 **(Plaintiff against MORENO & ASSOCIATES, INC. and all DOE defendants)**

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

6 132. At all times during his employment with Defendants, Plaintiff performed his
7 duties with the utmost diligence and competence.

8 133. Plaintiff is informed and believes and thereon alleges that Defendants' decision
9 to discriminate and retaliate against him and terminate his employment, as alleged herein, was
10 motivated by Plaintiff's disability and Plaintiff having to miss work due to his disability.

11 134. Plaintiff's employment was wrongfully terminated in or around November 2022
12 in violation of the fundamental public policy of the State of California with respect to
13 discriminating and retaliating against an employee on account of his physical disability.

14 135. Moreover, Plaintiff was forced to hire an attorney to assist him to end these illegal
15 activities.

16 136. Said conduct violated statutory and constitutional expressions of public policy
17 including, but not limited to, the FEHA, California Labor Code, and the California Constitution,
18 Article 1 section 8.

19 137. As set forth above, said actions by Defendants were wrongful and in violation of
20 the fundamental principles of the public policy of the State of California as reflected in its laws,
21 objectives and policies. Said statutes and constitutional expressions of public policy include,
22 but are not limited to, the FEHA, California Labor Code, and the California Constitution, Article
23 1 section 8. These laws inure to the benefit of the public at large, and not just the private interests
24 of the employers and employees whom they govern or protect.

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

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

8 **SEVENTEENTH CAUSE OF ACTION**

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

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

11 **(Plaintiff against MORENO & ASSOCIATES, INC. and all DOE defendants)**

12 140. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 139, inclusive, of this Complaint as though fully set forth herein.

14 141. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
15 constitutes unfair and unlawful business practices under California Business and Professions
16 Code Section 17200, et seq.

17 142. Defendant's violations of California labor laws and the Labor Code, as alleged
18 above constitutes a business practice because it was done repeatedly over a significant period of
19 time in a systematic manner that was detrimental to Plaintiff and other similarly situated
20 aggrieved employees.

21 143. For the four years preceding the filing of this action, Plaintiff has suffered
22 damages and request damages and/or restitution of all monies and profits to be disgorged from
23 Defendant in an amount according to proof at time of trial, but in excess of the jurisdiction of
24 this Court.

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

- 27 1. For compensatory damages to Plaintiff in an amount subject to proof at trial;
28 2. For general damages in an amount subject to proof at trial;

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

1 pursuant to Labor Code section 2698 et seq., and the California Labor Code and/or
2 other applicable laws; and

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

4 DATED: September 11, 2023

MESSRELIAN LAW INC.

6 By Maralle Messrelia
7 Harout Messrelia, Esq.
8 Maralle Messrelia, Esq., Of Counsel
Attorneys for Plaintiff Jose Angel Lopez

9 **DEMAND FOR JURY TRIAL**

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

12 DATED: September 11, 2023

MESSRELIAN LAW INC.

14 By Maralle Messrelia
15 Harout Messrelia, Esq.
16 Maralle Messrelia, Esq., Of Counsel
Attorneys for Plaintiff Jose Angel Lopez