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ELIZABETH SPELMAN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

ELIZABETH SPELMAN, an individual,
Plaintiff,

v.

GIOVANNI PIGOZZI, an individual; BHLA
CORP., a Delaware corporation; and DOES 1
through 20, inclusive,

Defendants.

Case No. **23STCV08795**

COMPLAINT FOR DAMAGES FOR:

- 1. DISCRIMINATION IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 2. HARASSMENT IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 3. FAILURE TO PREVENT
DISCRIMINATION AND HARASSMENT
IN VIOLATION OF GOV'T CODE
§12940(k);**
- 4. FOR DECLARATORY JUDGMENT;**
- 5. MISCLASSIFICATION OF EMPLOYEE
AS "INDEPENDENT CONTRACTOR."**
- 6. FAILURE TO PAY WAGES (CAL. LABOR
CODE §§201, 1194);**
- 7. FAILURE TO PAY MINIMUM WAGES
(CAL. LABOR CODE §§1182.12, 1194,
1194.2, 1197);**
- 8. FAILURE TO PAY OVERTIME
COMPENSATION (CAL. LABOR CODE
§§510, 1194);**
- 9. FAILURE TO PROVIDE MEAL AND
REST PERIODS (CAL. LABOR CODE
§§226.7, 512);**

10. FAILURE TO PROVIDE ITEMIZED
WAGE AND HOUR STATEMENTS (CAL.
LABOR CODE §§226, ET SEQ.);

11. WAITING TIME PENALTIES (CAL.
LABOR CODE §§201-203);

12. FAILURE TO PERMIT INSPECTION OF
PERSONNEL AND PAYROLL RECORDS
(CAL. LABOR CODE §§226 AND 1198.5);

13. PRIVATE ATTORNEY GENERAL ACT
(CAL. LABOR CODE §2699, ET SEQ);
AND

14. UNFAIR COMPETITION (BUS. & PROF.
CODE §17200 ET SEQ.)

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, ELIZABETH SPELMAN, and for causes of action against the
Defendants and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Los Angeles County, because Defendants' obligations and liability arise therein, because Defendants maintain offices and transact business within Los Angeles County, and because the work that is the subject of this action was performed by Plaintiff in Los Angeles County.

THE PARTIES

2. Plaintiff, ELIZABETH SPELMAN, is and at all times relevant hereto was a resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant GIOVANNI PIGOZZI (hereinafter referred to as "PIGOZZI") was and is an individual, who lives and works at 5771 Valley Oak Drive, in City and County of Los Angeles, State of California on occasion, and employees workers, including Plaintiff, in the County of Los Angeles, State of California.

1 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
2 hereto, Defendant BHLA CORP. (hereinafter referred to as “BHLA”) was and is a Delaware corporation
3 with its principal place of business located at 5771 Valley Oak Drive, in City and County of Los Angeles,
4 State of California.

5 5. PIGOZZI and BHLA are hereinafter collectively referred to as “Employers.”

6 6. At all times relevant herein, Employers and DOES 1-20 were Plaintiff’s employers, joint
7 employers and/or special employers within the meaning of Government Code §§12926, subdivision (d),
8 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more
9 persons and are therefore subject to the jurisdiction of this Court.

10 7. At all times relevant herein, Employers and DOES 1-20 were Plaintiff’s employers, joint
11 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
12 Commission Order No. 4-2001, and are each an “employer or other person acting on behalf of an
13 employer” as such term is used in Labor Code sections 558 and/or 558.1, and liable to Plaintiff on that
14 basis.

15 8. The true names and capacities, whether individual, corporate, associate, or otherwise, of
16 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
17 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
18 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
19 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
20 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as
21 alleged hereinafter.

22 9. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
23 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
24 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
25 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
26 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
27 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

1 10. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
2 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
3 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
4 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code
5 §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
6 each of them, including those defendants named as DOES 1-20, and each of them, formed and executed
7 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
8 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
9 actually causing Plaintiff harm.

10 11. Whenever and wherever reference is made in this complaint to any act or failure to act by
11 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
12 and/or failures to act by each Defendant acting individually, jointly and severally.

13 12. Plaintiff has filed complaints of discrimination, harassment, and failure to prevent
14 discrimination or harassment under Government Code §§12940, et seq., the California Fair Employment
15 and Housing Act (“FEHA”) with the California Department of Civil Rights (formerly the Department of
16 Fair Employment and Housing), and has satisfied Plaintiff’s administrative prerequisites with respect to
17 these and all related filings.

18
19 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

20 13. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
21 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
22 defendants have ceased to exist.

23 14. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
24 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same, including,
25 but not limited to because:

26 a. Employers are completely dominated and controlled by one another and DOES 1-
27 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
28

1 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
2 accomplish some other wrongful or inequitable purpose.

3 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
4 through one another's unlawful conduct, and by using one another as the funding source for their own
5 personal expenditures.

6 c. Employers and DOES 1-20, while really one and the same, were segregated to
7 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
8 accomplishing some other wrongful or inequitable purpose.

9 d. Employers do not comply with all requisite corporate formalities to maintain a
10 legal and separate corporate existence.

11 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
12 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
13 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and
14 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and
15 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
16 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from
17 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
18 existence of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice
19 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

20 15. Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the
21 fiction of their separate corporate existence must be disregarded.

22 16. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
23 thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
24 enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services
25 for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants
26 shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which
27 Defendants' business was and is conducted.

1 21. Moreover, throughout the course of Plaintiff's employment, through and including the
2 date of Plaintiff's wrongful termination, Employers completely controlled Plaintiff's performance,
3 including the manner in which Plaintiff was to perform Plaintiff's required duties, as follows:

4 a. Defendants provided Plaintiff with all of the equipment, tools and supplies Plaintiff
5 required to do Plaintiff's job;

6 b. Plaintiff was told what days and hours Plaintiff was required to work, where to go
7 and what to do, and worked a regular schedule;

8 c. Plaintiff was paid an hourly rate for Plaintiff's labor;

9 d. Plaintiff had no ability to turn down jobs assigned to Plaintiff by Employers; and

10 e. Employers had the right to discipline Plaintiff and to fire Plaintiff at will;

11 22. Additional factors confirming Plaintiff's status as an employee include:

12 a. Plaintiff was not engaged in a distinct occupation or business;

13 b. Plaintiff was not required to make any major investments in equipment or materials
14 to provide the services;

15 c. Plaintiff's occupation and work is usually done under the direction of the principal
16 or a supervisor;

17 d. No particular skill is required for Plaintiff's occupation;

18 e. Plaintiff was not paid by "the job," but was paid an hourly wage rate;

19 f. Plaintiff's work was part of the regular business of Employers; and

20 g. Plaintiff believed, by going to work for Employers, Plaintiff was creating an
21 employer-employee relationship;

22 h. Employers failed to comply with the Independent Contractor Reporting
23 requirements that required Employers report to the Employment Development Department ("EDD"),
24 within 20 days if Employers hired an independent contractor who is an individual or sole proprietorship,
25 who Employers have either paid, or contracted to pay, more than \$600.

26 23. Despite the aforementioned facts, between May 18, 2021 and March 6, 2022, Employers
27 illegally classified Plaintiff as an "independent contractor" instead of as an employee, and wrongfully
28

1 issued Plaintiff IRS Form W-1099 forms. Starting March 7, 2022, Employers finally began to properly
2 classify Plaintiff as an employee, and paid Plaintiff via Payroll.

3 **Misclassification as Exempt**

4 24. Even once Employers began to properly classify Plaintiff as an employee beginning
5 March 7, 2022, Employers misclassified Plaintiff as exempt, and paid Plaintiff only a “salary,” via
6 payroll check with itemized deductions and taxes withheld.

7 25. At all times relevant hereto, Plaintiff was not exempt pursuant to Labor Code §515,
8 including because:

9 a. Plaintiff’s duties and responsibilities did not involve the management of the
10 enterprise in which Plaintiff was employed or of a customarily recognized department or subdivision
11 thereof;

12 b. Plaintiff is and was not licensed or certified by the State of California nor was
13 Plaintiff primarily engaged in the practice of one of the following recognized professions: law, medicine,
14 dentistry, optometry, architecture, engineering, teaching, or accounting, nor was Plaintiff primarily
15 engaged in an occupation commonly recognized as a learned or artistic profession as such term is defined
16 by Wage Order 4;

17 c. Plaintiff’s duties and responsibilities did not involve either the performance of
18 office or non-manual work directly related to management policies or general business operations of
19 Plaintiff’s employer or Plaintiff’s employer’s customers, or the performance of functions in the
20 administration of a school system, or educational establishment or institution, or of a department or
21 subdivision thereof, in work directly related to the academic instruction or training carried on therein;

22 d. Plaintiff did not have the authority to hire or fire other employees, nor were
23 Plaintiff’s suggestions and recommendations as to the advancement and promotion or any other change
24 of status of other employees given any weight;

25 e. Plaintiff did not customarily and regularly exercise discretion and independent
26 judgment in performing Plaintiff’s work duties;

27 f. Plaintiff did not perform under only general supervision work along specialized or
28 technical lines requiring special training, experience, or knowledge;

1 g. Plaintiff did not perform under only general supervision special assignments and
2 tasks; and

3 h. Plaintiff did not spend more than one-half of Plaintiff's work time engaged in
4 exempt work.

5 26. Because Employers misclassified Plaintiff as exempt, Plaintiff was only paid a flat
6 monthly salary of \$6,400.00, rather than for each hour worked. Pursuant to Labor Code § 515(d)(2),
7 salary is deemed to provide compensation only for the employee's regular, nonovertime hours,
8 notwithstanding any private agreement to the contrary. As a result, Plaintiff was paid no wages at all, for
9 hours beyond 8 in a day, or 40 in a week. Based upon Plaintiff's salary, pursuant to Labor Code
10 §515(d)(1), Plaintiff's hourly wage rate is 1/40th of the Plaintiff's weekly salary, or \$36.92.

11 27. Because Employers misclassified Plaintiff first as an independent contractor and then as
12 an exempt employee, at no time during Plaintiff's employment was Plaintiff paid for all hours worked or
13 overtime premiums, nor was Plaintiff provided with uninterrupted 10-minute rest periods as required by
14 law, with uninterrupted meal periods as required by law, or with itemized wage statements as required
15 by law.

16 28. Between May 18, 2021 and March 6, 2022, Plaintiff occasionally worked more than 8
17 hours in a day and/or more than 40 hours in a week, but received only Plaintiff's regularly hourly wage
18 rate of \$35.00, with no overtime premium.

19 29. Between May 18, 2021 and March 6, 2022, Plaintiff was not permitted to, and not advised
20 of Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial
21 portion thereof.

22 30. Between May 18, 2021 and March 6, 2022, Plaintiff did not receive uninterrupted statutory
23 30-minute meal periods for days on which Plaintiff worked at least 5 hours, which was most days.
24 Throughout Plaintiff's employment, Plaintiff did not receive a second uninterrupted statutory 30-minute
25 meal periods for days on which Plaintiff worked at least 10 hours, which also happened occasionally.
26 During this time period, one or more of Plaintiff's 30-minute meal periods were not provided and/or
27 interrupted approximately 4-5 times per week.

1 31. Between March 7, 2022 and December 6, 2022, Plaintiff's hourly wage rate was \$36.92.
2 During this time period, Plaintiff's alleged schedule was five days per week, Monday through Friday, but
3 Employers required Plaintiff to be on-call, with her work phone with her and on, 24 hours per day, 7 days
4 per week, and berated or chastised Plaintiff if she did not answer calls or respond to texts or emails on all
5 days, at any hour, even while purportedly on vacation.

6 32. Between March 7, 2022 and December 6, 2022, Plaintiff worked approximately 128
7 unpaid hours each week, for which Plaintiff received no wages at all, not Plaintiff's hourly wage rate, or
8 even the requisite minimum wage.

9 33. Of these 128 hours, all of them constituted overtime hours as being more than 8 hours in
10 a day and 40 hours per week. Thus, between March 7, 2022 and December 6, 2022, Plaintiff worked
11 approximately 128 overtime hours each week, but was not paid for these hours at all.

12 34. Between March 7, 2022 and December 6, 2022, Plaintiff was not permitted to, and not
13 advised of Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or
14 substantial portion thereof.

15 35. Throughout Plaintiff's employment, Plaintiff did not receive uninterrupted statutory 30-
16 minute meal periods for days on which Plaintiff worked at least 5 hours, which was most days while
17 Plaintiff was misclassified as an independent contractor, and was each day Plaintiff worked when
18 misclassified as an exempt employee. Throughout Plaintiff's employment, Plaintiff did not receive a
19 second uninterrupted statutory 30-minute meal periods for days on which Plaintiff worked at least 10
20 hours, which was each day Plaintiff worked when misclassified as an exempt employee. One or more of
21 Plaintiff's 30-minute meal periods were not provided and/or interrupted approximately 7 times per week.

22 **Discrimination and Harassment**

23 36. Beginning when Plaintiff was an applicant and then continuing throughout her
24 employment, Plaintiff was subjected to a hostile work environment based on her sex. PIGOZZI exhibited
25 discriminatory behavior towards Plaintiff with no respect for physical space or personal boundaries:

- 26 a. He would call her at all hours, including while sitting on the toilet.
- 27 b. Plaintiff was forced to take PIGOZZI to doctor's appointments where he would
28 make her read and complete extensive questionnaires, forcing her to ask him about his penis, his sex life,

1 his ability to get erections or orgasms, if he derives pleasure from sex, and other information of a sexual
2 nature.

3 c. Plaintiff was provided with a laptop and cell phone for her to use to perform her
4 duties for PIGOZZI. Frequently, nude and semi-nude images of PIGOZZI and others, including nude
5 images in which PIGOZZI's genitalia was visible, and misogynistic and sexual memes would show up
6 on Plaintiff's laptop and phone that she would be forced to view.

7 d. PIGOZZI also made sexist comments and jokes, such as asking Plaintiff what she
8 was wearing and telling her that he wanted to treat her like a dog.

9 37. On one occasion, PIGOZZI asked Plaintiff to be his "secret Valentine." PIGOZZI also
10 treated Plaintiff substantially different than he treated the male employees, treating Plaintiff in a hostile,
11 demeaning and condescending manner at all times, including screaming at her and calling her stupid,
12 both publicly and privately. The abusive language and treatment at work forced her to seek psychiatric
13 care and she was treated for antidepressant and anxiety and prescribed medication for this. She had a
14 panic attack at work.

15 38. Employers also denied Plaintiff benefits that her male counterparts were offered, such as
16 health insurance benefits.

17 39. Plaintiff also witnessed PIGOZZI's misogyny towards some of her coworkers, including
18 one coworker who was biologically female but presents and identifies as male, who PIGOZZI deliberately
19 and pervasively misgendered, referring to him only as "her," defying the coworker's gender identity.
20 PIGOZZI let men in the office space use any bathroom, but Plaintiff and this employee were humiliated
21 and forced to use a small bathroom in the laundry room that was pitch dark, and forbidden to use
22 bathrooms that others were allowed to use. PIGOZZI would also berate and harass Plaintiff and this
23 employee daily, often including screenshots of them on surveillance, to criticize them and let them know
24 he was watching them at all times.

25 40. Plaintiff believes the disparate treatment, hostility, misogyny and hostile work
26 environment were because of her sex and gender. Defendants' discriminatory animus is evidenced by
27 the previously mentioned facts.
28

1 41. Defendants' conduct described herein was undertaken, authorized, and/or ratified
2 Defendants' officers, directors and/or managing agents, including, but not limited to PIGOZZI and those
3 identified herein as DOES 1 through 20, who were authorized and empowered to make decisions that
4 reflect and/or create policy for Defendants. The aforementioned conduct of said managing agents and
5 individuals was therefore undertaken on behalf of Defendants who further had advanced knowledge of
6 the actions and conduct of said individuals whose actions and conduct were ratified, authorized, and
7 approved by managing agents whose precise identities are unknown to Plaintiff at this time and are
8 therefore identified and designated herein as DOES 1 through 20, inclusive.

9 42. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
10 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
11 headaches, tension, weight loss, and other physical ailments, as well as medical expenses, expenses for
12 psychological counseling and treatment, and past and future lost wages and benefits.

13 43. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
14 commissions, benefits and loss or diminution of earning capacity.

15 44. Plaintiff claims general damages for emotional and mental distress and aggravation in a
16 sum in excess of the jurisdictional minimum of this Court.

17 45. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
18 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard
19 of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages
20 be levied against Defendants and each of them, in sums in excess of the jurisdictional minimum of this
21 Court.

22
23 **FIRST CAUSE OF ACTION**
24 **FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
25 **AGAINST ALL DEFENDANTS**

26 46. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41, inclusive, as
27 though set forth in full herein.

1 47. At all times hereto, the FEHA was in full force and effect and was binding upon
2 Defendants and each of them.

3 48. As such term is used under FEHA, “on the bases enumerated in this part” means or
4 refers to discrimination on the bases of one or more of the protected characteristics under FEHA.

5 49. FEHA requires Defendants to refrain from discriminating against an employee on the
6 basis of gender and/or sex, and to prevent discrimination on the basis of gender and/or sex from
7 occurring.

8 50. Plaintiff was a member of multiple protected classes as a result of Plaintiff’s gender
9 and/or sex.

10 51. At all times relevant hereto, Plaintiff was performing competently in the position
11 Plaintiff held with Defendants.

12 52. Plaintiff suffered the adverse employment actions of unwarranted discipline,
13 harassment, and denial of employment benefits, and was harmed thereby.

14 53. Plaintiff is informed and believes that Plaintiff’s gender, sex, and/or some combination
15 of these protected characteristics under Government Code §12926(j) were motivating reasons and/or
16 factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

17 54. Said conduct violates the FEHA, and such violations were a proximate cause in
18 Plaintiff’s damage as stated below.

19 55. The damage allegations of Paragraphs 42 through 45, inclusive, are herein incorporated
20 by reference.

21 56. The foregoing conduct of Defendants individually, or by and through their officers,
22 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
23 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
24 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff’s
25 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
26 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

27 57. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
28 attorneys’ fees and costs, including expert fees pursuant to the FEHA.

1
2
3 **SECOND CAUSE OF ACTION**
4 **FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
5 **AGAINST ALL DEFENDANTS**

6 58. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41, inclusive, as
7 though set forth in full herein.

8 59. At all times hereto, the FEHA was in full force and effect and was binding upon
9 Defendants and each of them.

10 60. As such term is used under FEHA, “on the bases enumerated in this part” means or
11 refers to harassment on the bases of one or more of the protected characteristics under FEHA.

12 61. These laws set forth in the preceding paragraph require Defendants to refrain from
13 harassing, or creating, or maintaining a hostile work environment against an employee based upon the
14 employee’s gender and/or sex, and engagement in protected activities, as set forth hereinabove.

15 62. Defendants’ harassing conduct was unwelcome by Plaintiff, and unreasonably
16 interfered with plaintiff's work performance and/or created an intimidating, hostile, or offensive
17 working environment, a reasonable person in Plaintiff’s circumstances would have considered the work
18 environment to be intimidating, hostile, offensive or abusive.

19 63. Defendants violated the FEHA and the public policy of the State of California which is
20 embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of
21 Plaintiff’s gender, sex, and/or some combination of these protected characteristics, as set forth
22 hereinabove.

23 64. The above said acts were perpetrated upon Plaintiff by a supervisor, and/or Defendants
24 knew or should have known of the conduct but failed to take immediate and appropriate corrective
25 action.

26 65. The above said acts of Defendants constitute violations of the FEHA and violations of
27 the public policy of the State of California. Such violations were a proximate cause in Plaintiff’s
28 damage as stated below.

1 66. The damage allegations of Paragraphs 42 through 45, inclusive, are herein incorporated
2 by reference.

3 67. The foregoing conduct of Defendants individually, or by and through their officers,
4 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
5 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
6 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
7 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
8 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

9 68. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
10 attorneys' fees and costs, including expert fees pursuant to the FEHA.

11
12 **THIRD CAUSE OF ACTION**
13 **FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT**
14 **IN VIOLATION OF GOV'T CODE §12940(k)**
15 **AGAINST ALL DEFENDANTS**

16 69. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41, inclusive, as
17 though set forth in full herein.

18 70. At all times hereto, the FEHA, including in particular Government Code §12940(k),
19 was in full force and effect and was binding upon Defendants. This subsection imposes a duty on
20 Defendants to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation
21 from occurring. As alleged above, Defendants violated this subsection and breached their duty by
22 failing to take all reasonable steps necessary to prevent discrimination and harassment

23 71. from occurring.

24 72. The above said acts of Defendants constitute violations of the FEHA, and were a
25 proximate cause in Plaintiff's damage as stated below.

26 73. The damage allegations of Paragraphs 42 through 45, inclusive, are herein incorporated
27 by reference.

1 74. The foregoing conduct of Defendants individually, or by and through their officers,
2 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
3 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
4 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
5 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
6 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

7 75. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
8 attorneys' fees and costs, including expert fees pursuant to the FEHA.

9
10 **FOURTH CAUSE OF ACTION**
11 **FOR DECLARATORY JUDGMENT**
12 **AGAINST ALL DEFENDANTS**

13 76. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 75, inclusive, as
14 though set forth in full herein.

15 77. Government Code §12920 sets forth the public policy of the State of California as
16 follows:

17 It is hereby declared as the public policy of this state that it is necessary to
18 protect and safeguard the right and opportunity of all persons to seek,
19 obtain, and hold employment without discrimination or abridgment on
20 account of race, religious creed, color, national origin, ancestry, physical
disability, mental disability, medical condition, genetic information,
marital status, sex, gender, gender identity, gender expression, age, or
sexual orientation.

21 It is recognized that the practice of denying employment opportunity and
22 discriminating in the terms of employment for these reasons foments
domestic strife and unrest, deprives the state of the fullest utilization of its
23 capacities for development and advancement, and substantially and
adversely affects the interests of employees, employers, and the public in
24 general.

25 Further, the practice of discrimination because of race, color, religion,
26 sex, gender, gender identity, gender expression, sexual orientation,
marital status, national origin, ancestry, familial status, source of income,
disability, or genetic information in housing accommodations is declared
27 to be against public policy.

28 It is the purpose of this part to provide effective remedies that will
eliminate these discriminatory practices.

1 This part shall be deemed an exercise of the police power of the state for
2 the protection of the welfare, health, and peace of the people of this state.

3 78. Government Code §12920.5 embodies the intent of the California legislature and states:

4 In order to eliminate discrimination, it is necessary to provide effective
5 remedies that will both prevent and deter unlawful employment practices
6 and redress the adverse effects of those practices on aggrieved persons.
7 To that end, this part shall be deemed an exercise of the Legislature's
8 authority pursuant to Section 1 of Article XIV of the California
9 Constitution.

10 79. Moreover, Government Code §12921, subdivision (a) says in pertinent part:

11 The opportunity to seek, obtain, and hold employment without
12 discrimination because of race, religious creed, color, national origin,
13 ancestry, physical disability, mental disability, medical condition, genetic
14 information, marital status, sex, gender, gender identity, gender
15 expression, age, or sexual orientation is hereby recognized as and
16 declared to be a civil right.

17 80. An actual controversy has arisen and now exists between Plaintiff and Defendants
18 concerning their respective rights and duties as it is believed that Defendants may allege that they did
19 not discriminate against Plaintiff. Plaintiff contends that Defendants did discriminate against Plaintiff
20 on the basis of Plaintiff's gender and/or sex. Plaintiff is informed and believes, and on that basis
21 alleges, that Defendants shall dispute Plaintiff's contentions.

22 81. Pursuant to Code of Civil Procedure §1060, Plaintiff desires a judicial determination of
23 Plaintiff's rights and duties, and a declaration that Defendants harassed Plaintiff on the basis of
24 Plaintiff's gender, sex, and/or some combination of these protected characteristics.

25 82. Pursuant to Code of Civil Procedure §1060, Plaintiff seeks a judicial determination of
26 Plaintiff's rights and duties, and a declaration that Plaintiff's gender and/or sex was a substantial
27 motivating factor in the decision to subject Plaintiff to the aforementioned adverse employment actions.

28 83. A judicial declaration is necessary and appropriate at this time under the circumstances
in order that Plaintiff, for Plaintiff and on behalf of employees in the State of California and in
conformity with the public policy of the State, obtain a judicial declaration of the wrongdoing of
Defendants and to condemn such discriminatory employment policies or practices prospectively.
Harris v. City of Santa Monica (2013) 56 Cal.4th 203.

1 84. A judicial declaration is necessary and appropriate at this time such that Defendants
2 may also be aware of their obligations under the law to not engage in discriminatory practices and to
3 not violate the law in the future.

4 85. Government Code §12965(b) provides that an aggrieved party, such as the Plaintiff
5 herein, may be awarded reasonable attorney's fees and costs: "In civil actions brought under this
6 section, the court, in its discretion, may award to the prevailing party, including the department,
7 reasonable attorney's fees and costs, including expert witness fees." Such fees and costs expended by
8 an aggrieved party may be awarded for the purpose of redressing, preventing, or deterring
9 discrimination and harassment.

10
11 **FIFTH CAUSE OF ACTION**
12 **FOR MISCLASSIFICATION AS "INDEPENDENT CONTRACTOR"**
13 **AGAINST ALL DEFENDANTS**

14 86. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
15 though set forth in full herein.

16 87. Pursuant to Labor Code §226.8(a)(1), it is unlawful for any person or employer to engage
17 in willful misclassification of an individual as an independent contractor. Pursuant to Labor Code
18 §226.8(b), if a court issues a determination that a person or employer has violated subdivision (a), the
19 person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and
20 not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or
21 fines permitted by law. Pursuant to Labor Code §226.8(c), if a court issues a determination that a person
22 or employer has violated subdivision (a) and the person or employer has engaged in or is engaging in a
23 pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not
24 less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for
25 each violation, in addition to any other penalties or fines permitted by law.

26 88. During the period of Plaintiff's employment with Defendants, Plaintiff was an employee
27 of Defendants, and each of them based upon their alter ego relationship, as defined by California Labor
28 Code § 350(b). However, Defendants purposefully misclassified Plaintiff as an "Independent Contractor"

1 because, by so doing, defendants lowered their cost of doing business by means of, but not limited to, the
2 following:

3 a. Defendants did not report or pay the employer's share of federal or state payroll
4 taxes with respect to any of the funds paid to Plaintiff, as required by required by federal and state law;

5 b. Defendants did not provide or pay for Workers Compensation insurance for
6 Plaintiff;

7 c. Defendants did not provide or pay for State Disability insurance for Plaintiff; and

8 d. Defendants did not provide or pay for benefits to Plaintiff that other of Defendants'
9 employees received.

10 89. As a direct and proximate result of the aforementioned violations of California law
11 committed by defendants, Plaintiff has suffered, and continues to suffer, substantial losses related to the
12 loss of the employer's share of payroll taxes, the use and enjoyment of such employee benefits, and
13 expenses and attorneys' fees in seeking to compel defendants to fully perform their obligation under state
14 law, all to their damage in amounts according to proof at time of trial, but in amounts in excess of the
15 minimum jurisdiction of this Court. Plaintiff is thus entitled to recover nominal, actual and compensatory
16 damages in amounts according to proof at time of trial, but in amounts in excess of the minimum
17 jurisdiction of this Court.

18 90. Defendants' failure to classify Plaintiff as an employee, in violation of California law, was
19 knowing and intentional. Defendants have refused to classify Plaintiff as an employee for false and
20 fraudulent reasons. The decision to misclassify Plaintiff as an "independent contractor" was made,
21 maintained, and enforced by Defendants, by and through their offices, directors and/or managing agents,
22 and was done willfully, maliciously, oppressively, and fraudulently, with the wrongful and deliberate
23 intention of injuring Plaintiff, and with a conscious disregard for Plaintiff's rights and defendants'
24 obligations under California laws, all of which has deprived Plaintiff of Plaintiff's property and legal
25 rights. Therefore, in addition to all other types of relief requested herein, Plaintiff is entitled to recover
26 punitive and exemplary damages in amounts according to proof at time of trial, but in amounts in excess
27 of the minimum jurisdiction of this Court.

1 91. Pursuant to Labor Code §226.8(b)-(c), Plaintiff seeks a determination that Defendants
2 have violated subdivision (a) and have engaged in or are engaging in a pattern or practice of these
3 violations, and seeks penalties of \$25,000 for each violation, in addition to any other penalties or fines
4 permitted by law.

5
6 **SIXTH CAUSE OF ACTION**
7 **FOR FAILURE TO PAY WAGES DUE**
8 **LABOR CODE §§201, 1182.12, 1194, 1194.2**
9 **AGAINST ALL DEFENDANTS**

10 92. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
11 though set forth in full herein.

12 93. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and
13 required by 8 Code of Regulations §11040, as set forth hereinabove. As alleged herein, Defendants
14 routinely failed to pay Plaintiff for hours worked beyond eight in a day or 40 per week, failed to pay for
15 missed meal and rest periods, and failed to pay all wages due upon separation.

16 94. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8
17 Code of Regulations §11040, and Industrial Welfare Commission Order No. 4-2001.

18 95. Plaintiff has been deprived of Plaintiff's rightfully earned compensation as a direct and
19 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to
20 recover such amounts, plus interest thereon, attorneys' fees and costs.

21 96. Labor Code §558(a) provides that any person acting on behalf of an employer who
22 violates, or causes to be violated, any statute or provision regulating hours and days of work in any order
23 of the Industrial Welfare Commission pay a civil penalty in the amount of \$50 for each underpaid
24 employee for each pay period in which the employee was underpaid in addition to an amount sufficient
25 to recover underpaid wages. Also, Labor Code §558(a) provides that, for each subsequent violation, the
26 person acting on behalf of an employer is liable in the amount of \$100 for each underpaid employee for
27 each pay period for which the employee was underpaid in addition to an amount sufficient to recover the
28 underpaid wages.

1 97. In addition to the unpaid wages, Plaintiff is entitled to civil penalties in this amount stated
2 above based upon Defendants' underpayment of minimum and overtime wages. Within the one year
3 immediately preceding the filing of this Complaint, Defendants, and each of them, violated Labor Code
4 §558 on 21 pay periods, the first of which Defendants are penalized \$50.00, and the remainder of which
5 Defendants are penalized \$100.00 each, for a total due in Labor Code §558 penalties of \$2,100.

6
7 **SEVENTH CAUSE OF ACTION**
8 **FOR FAILURE TO PAY MINIMUM WAGES**
9 **LABOR CODE §§1182.12, 1194, 1194.2, 1197**
10 **AGAINST ALL DEFENDANTS**

11 98. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
12 though set forth in full herein.

13 99. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law is
14 unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid
15 hours exceeded the minimum wage. Under California law, Plaintiff is entitled to at least the minimum
16 wage for every hour worked.

17 100. The historical minimum wage requirements in California are as follows:

18

Effective	26+ employees	1-25 employees
1/1/2023	\$15.00	\$15.00
1/1/2022	\$15.00	\$14.00
1/1/2021	\$14.00	\$13.00

19
20

21 101. In the four years immediately preceding the filing of this complaint, Employers failed and
22 refused to pay Plaintiff the legal minimum wage in the State of California, as set forth in Labor Code
23 §1182.12, in each of the following ways:

24 a. From March 7, 2022 to December 6, 2022, Plaintiff worked approximately 128
25 hours per week without getting paid anything. Therefore Plaintiff is owed \$69,888 calculated at 128
26 unpaid hours per week for 39 weeks, at \$14 per hour.

27 102. Thus, for the entirety of the time periods set forth above, Plaintiff is owed unpaid minimum
28 wages in the amount of \$69,888.00.

1 103. Defendants' failure to pay the legal minimum wage to Plaintiff as alleged herein is
2 unlawful and creates entitlement, pursuant to Labor Code §1197, to recovery by Plaintiff in a civil action
3 for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference between
4 the straight time compensation paid and applicable minimum wage, including interest thereon.

5 104. Pursuant to Labor Code §1194, Plaintiff requests that the court award reasonable
6 attorneys' fees and costs incurred by Plaintiff in this action.

7 105. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated
8 damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an
9 additional \$69,888.00, plus interest thereon

10
11 **EIGHTH CAUSE OF ACTION**
12 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
13 **LABOR CODE §§510, 1194**
14 **AGAINST ALL DEFENDANTS**

15 106. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
16 though set forth in full herein.

17 107. Labor Code §510 requires employers to pay their non-exempt employees one and one-half
18 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40
19 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12
20 hours in a single day. It also requires employers to pay their non-exempt employees overtime
21 compensation for the first eight hours of work done on the seventh consecutive day of work done in any
22 work week, and double-time compensation for any work done beyond the first eight hours on the seventh
23 consecutive day of work.

24 108. At all relevant times, Defendants required Plaintiff to work more than eight hours per
25 day and/or more than 40 hours per workweek.

26 109. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
27 compensation required by Labor Code §510, 8 Code of Regulations §11040, and Industrial Welfare
28 Commission Order No. 4-2001.

110. Defendants failed to pay Plaintiff the requisite overtime wages in each of the following ways in the four years immediately preceding the filing of this complaint:

a. From approximately May 18, 2021 to March 6, 2022, Plaintiff's hourly overtime rate was \$52.50. During this time period, Plaintiff worked 75.25 hours of overtime, but received only Plaintiff's regular hourly wage rate, no premium. Therefore, Plaintiff is owed \$17.50 for each of those hours, totaling \$1,316.88.

b. From approximately March 7, 2022 to December 6, 2022, Plaintiff worked an average of 128 hours of overtime each week, for 39 weeks, or 4,992 hours, but did not receive any wages for these hours at all. Of these 128 hours each week, 36 hours should have been paid at 1.5 times Plaintiff's regular rate, or \$55.48/hour, and the remaining 92 hours should have been paid at 2.0 times Plaintiff's regular rate, or \$73.85/hour. Therefore, less the minimum wage portion of \$14 per hour which Plaintiff has already claimed in the preceding cause of action, Plaintiff is owed \$41.38 for 36 hours for 39 weeks totaling \$58,097.52, and \$59.85 for 92 hours for 39 weeks, totaling \$214,741.80.

111. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor Code §510, 8 Code Regulations §11040, and Industrial Welfare Commission Order No. 4-2001.

112. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages of \$274,156.20, above and beyond the minimum wages sought in the preceding cause of action for these same hours.

113. Plaintiff has been deprived of Plaintiff's rightfully earned overtime compensation as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

NINTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE MEAL AND REST BREAKS
LABOR CODE §§226.7, 512
AGAINST ALL DEFENDANTS

114. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

1 115. Labor Code §512 requires employers to provide every employee with an uninterrupted
2 meal period, completely relieved of all duty, of not less than 30 consecutive minutes, for every period of
3 work exceeding five hours.

4 116. Labor Code §226.7 requires an employer to provide every employee with a paid,
5 uninterrupted rest period, completely relieved of all duty, of not less than 10 minutes, for every period
6 worked of four hours, or substantial portion thereof.

7 117. In the four years last past, Plaintiff regularly worked in excess of eight or ten hours per
8 day, and was thereby entitled to take uninterrupted one or two 30-minute meal periods and two or three
9 10-minute rest periods on each day of work.

10 118. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
11 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the
12 applicable sections of 8 Code of Regulations §11040 and Industrial Welfare Commission Order No. 4-
13 2001, as follows:

14 a. From approximately May 18, 2021 to March 6, 2022, Plaintiff's statutory 30-
15 minute meal periods were missed, interrupted or cut short approximately 5 times per week for 42 weeks,
16 or on approximately 210 days. During this same time period, Plaintiff was deprived of one or more of
17 Plaintiff's statutory 10-minute rest periods on approximately 210 days (5 days per week for 42 weeks).

18 b. From approximately March 7, 2022 to December 6, 2022, Plaintiff's statutory 30-
19 minute meal periods were missed, interrupted or cut short approximately 7 times per week for 39 weeks,
20 or on approximately 273 days. During this same time period, Plaintiff was deprived of one or more of
21 Plaintiff's statutory 10-minute rest periods on approximately 273 days (7 days per week for 39 weeks).

22 119. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
23 Code of Regulations §11040 and Industrial Welfare Commission Order No. 4-2001. Consequently,
24 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
25 whichever is greater, for each day that Plaintiff was denied such meal periods, and is owed one hour of
26 pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each day
27 that Plaintiff was denied such rest periods, calculated as follows:
28

1 a. From approximately May 18, 2021 to March 6, 2022, Defendants failed to provide
2 Plaintiff with an uninterrupted statutory meal period on approximately 210 separate days. Consequently,
3 Plaintiff is owed one hour of pay at \$35.00 for each day, or \$7,350.00, plus interest thereon, for unpaid
4 missed or interrupted meal periods. During this same time period, Defendants failed to provide Plaintiff
5 with the statutory rest period on approximately 210 separate days. Consequently, Plaintiff is owed one
6 hour of pay at \$35.00 for each day, or \$7,350.00, plus interest thereon, for unpaid rest periods. Thus,
7 Plaintiff is owed a total of \$14,700.00, plus interest thereon, for unpaid meal and rest periods for this time
8 period.

9 b. From approximately March 7, 2022 to December 6, 2022, Defendants failed to
10 provide Plaintiff with an uninterrupted statutory meal period on approximately 273 separate days.
11 Consequently, Plaintiff is owed one hour of pay at \$36.92 for each day, or \$10,080, plus interest thereon,
12 for unpaid missed or interrupted meal periods. During this same time period, Defendants failed to provide
13 Plaintiff with the statutory rest period on approximately 273 separate days. Consequently, Plaintiff is
14 owed one hour of pay at \$36.92 for each day, or \$10,080, plus interest thereon, for unpaid rest periods.
15 Thus, Plaintiff is owed a total of \$20,160.00, plus interest thereon, for unpaid meal and rest periods for
16 this time period.

17 120. Thus, the total missed meal and rest period compensation owing Plaintiff for this time
18 period is \$34,860.00.

19 121. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal and rest
20 breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

21 122. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
22 such amounts in the combined amount of \$34,860.00, pursuant to Labor Code §226.7(b), plus interest
23 thereon and costs of suit.

TENTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS
LABOR CODE §§226 ET SEQ.
AGAINST ALL DEFENDANTS

123. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

124. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-exempt employees with itemized statements showing total hours worked, hourly wages, gross wages, total deductions and net wages earned. An employer who violates these code sections is liable to its employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement at all.

125. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

126. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate wage and hour statements showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and rates in effect during each pay period and the corresponding number of hours worked at each hourly rate by Plaintiff. For the entire time and as to all of Plaintiff's wages, Defendants knowingly and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying Plaintiff via wire transfer or direct deposit without providing Plaintiff any paystubs at all, nor did Defendants advise Plaintiff how she might be able to retrieve paystubs from a computer system or other means.

127. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

128. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage, and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in

1 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
2 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
3 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
4 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
5 meal period, and rest period wages. As Plaintiff was not provided with paystubs at all, Plaintiff's
6 aforementioned injuries are presumed as a matter of law.

7 129. Plaintiff was paid on a twice monthly basis, and therefore Defendants violated Labor Code
8 §226 approximately 21 times during the one year preceding the filing of this complaint, plus the 60 days
9 for the PAGA tolling period. Consequently, Defendants are liable to Plaintiff for Plaintiff's actual
10 damages, or penalties in the statutory maximum amount of \$4,000.00, whichever is greater.

11 130. In addition thereto, for Defendant's 21 violations, Defendants are penalized \$250.00 for
12 the first violation, and the remainder of which Defendants are penalized \$1000.00 each, for a total due in
13 Labor Code §226.3 penalties of \$20,250.00.

14 131. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
15 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
16 applicable provisions, as well as attorneys' fees and costs.

17
18 **ELEVENTH CAUSE OF ACTION**
19 **FOR WAITING TIME PENALTIES**
20 **LABOR CODE §§201-203**
21 **AGAINST ALL DEFENDANTS**

22 132. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
23 though set forth in full herein.

24 133. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
25 other compensation due immediately upon termination or within 72 hours of resignation, as required.
26 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest
27 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
28

1 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-
2 203.

3 134. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
4 203.

5 135. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
6 is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and
7 more than \$43,991.21 in wait time penalties, calculated based on 30 days of Plaintiff's daily wage rate of
8 \$1,466.37, inclusive of overtime.

9 136. Based on Defendants' conduct as alleged herein, Defendants are liable for \$43,991.21 in
10 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
11 fees and costs.

12 **TWELFTH CAUSE OF ACTION**

13 **FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS**

14 **LABOR CODE §§ 226 and 1198.5**

15 **AGAINST ALL DEFENDANTS**

16 137. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
17 though set forth in full herein.

18 138. Labor Code §226(c) requires an employer, within twenty-one days of an oral or written
19 request thereof, to inspect or receive a copy of an employee's payroll records. An employer's failure to
20 do so subjects the employer to a \$750.00 penalty pursuant to Labor Code §226(f), payable to the
21 employee.

22 139. Labor Code §1198.5 requires an employer, within thirty (30) days of a written request
23 thereof, to inspect or receive a copy of an employee's personnel records. An employer's failure to do so
24 subjects the employer to a \$750.00 penalty, payable to the employee.

25 140. On February 2, 2023, Plaintiff made a written request to inspect or receive a copy of
26 Plaintiff's personnel and payroll records from Defendants, which Defendants received.

27 141. Defendants failed and refused to permit Plaintiff's inspection of Plaintiff's personnel
28 records and complete payroll records, and failed to provide a copy of Plaintiff's personnel records and

1 complete payroll records to Plaintiff within the time required by Labor Code §§ 226 and/or 1198.5, or
2 ever.

3 142. As a result of Defendants' failure and refusal to comply with Labor Code §226(c), Plaintiff
4 is entitled to recover from Defendants a civil penalty of \$750.00.

5 143. As a result of Defendants' failure and refusal to comply with Labor Code §1198.5,
6 Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00.

7 144. As a further result of Defendants' failure and refusal to comply with Labor Code §§ 226
8 and 1198.5, Plaintiff has been forced to bring this action seeking injunctive relief to obtain these files,
9 entitling Plaintiff to attorney's fees and costs pursuant to Labor Code §§ 226(h) and 1198.5(l).

10
11 **THIRTEENTH CAUSE OF ACTION**
12 **FOR PRIVATE ATTORNEY GENERAL ACT**
13 **LABOR CODE §2699**
14 **AGAINST ALL DEFENDANTS**

15 1. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth
16 in full herein.

17 2. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against
18 Defendants, on behalf of Plaintiff and other current or former employees, seeking statutory civil penalties
19 for Defendants' violations of the California Labor Code.

20 3. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and
21 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as
22 previously pleaded in this Complaint.

23 4. On February 14, 2023, more than 63 calendar days before filing this Complaint, Plaintiff
24 provided written notice by electronic submission to the Labor and Workforce Development Agency and
25 by certified mail to Defendants of the specific provisions of the California Labor Code that Defendants
26 violated, thereby satisfying the requirements of Labor Code §2699.3(a). These violations included Labor
27 Code §§ 203, 226, 226.7, 226.8, 510, 512, 1174, 1194, and 1194.2, each of which is enumerated among
28 the serious violations set forth in Labor Code §2699.5.

1 5. As of the filing of this Complaint, Plaintiff has not received any response from the Labor
2 and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently,
3 Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

4 6. As a direct and proximate result of Defendants' California Labor Code violations as set
5 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per
6 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
7 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
8 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
9 provide for a penalty, §§226.3, 226.7, 510, 512, and 558.

10 7. These penalties recoverable for Plaintiff alone totals approximately \$12,300.00. Plaintiff
11 may also seek these same penalties on behalf of all other aggrieved employees.

12 8. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered
13 civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

14
15 **FOURTEENTH CAUSE OF ACTION**
16 **FOR UNFAIR COMPETITION**
17 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**
18 **AGAINST ALL DEFENDANTS**

19 9. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
20 though set forth in full herein.

21 10. Defendants' violations of 8 Code of Regulations §11040, Industrial Welfare Commission
22 Order No. 4-2001, Labor Code §§201-203, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198.5,
23 2699, and other applicable provisions, as alleged herein, including Defendants' failure and refusal to pay
24 minimum wages, overtime wages, Defendants' failure to provide meal and rest breaks, Defendants'
25 failure to provide timely and accurate wage and hour statements, Defendants' failure to pay compensation
26 due in a timely manner upon termination or resignation, and Defendants' failure to maintain complete
27 and accurate payroll records for the Plaintiff, constitute unfair business practices in violation of Business
28 & Professions Code §§17200, et seq.

11. As a result of Defendants' unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

12. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore to the Plaintiff the overtime compensation and other monies and benefits unlawfully withheld from Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants and each of them, in an amount according to proof but estimated to be no less than \$1,000,000 as follows:

1. For a money judgment representing general damages for mental pain and anguish and emotional distress and loss of earning capacity;

2. For penalties pursuant to Labor Code §226.8(b)-(c), in the amount of no less than \$25,000;

3. For payment of unpaid minimum wage compensation pursuant to Labor Code §§1182.12, 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 4-2001, in the amount of no less than \$69,888.00;

4. For liquidated damages pursuant to Labor Code §1194.2 in the amount of \$69,888.00, plus interest;

5. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194, Industrial Welfare Commission Order No. 4-2001, and 8 Code of Regulations §11040, in the amount of no less than \$274,156.20;

6. For statutory penalties or damages pursuant to Labor Code §558 in the amount of no less than \$2,100;

7. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512, in the amount of no less than \$34,860.00;

8. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;

1 9. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
2 less than \$20,250.00;

3 10. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
4 than \$43,991.21;

5 11. For statutory penalties pursuant to Labor Code §2699(f), in the amount of no less than
6 \$12,300.00 on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants' aggrieved
7 employees, estimated to exceed \$100,000.00;

8 12. For statutory penalties pursuant to Labor Code §226(f) in the amount of no less than
9 \$750.00;

10 13. For statutory penalties pursuant to Labor Code §1198.5 in the amount of no less than
11 \$750.00;

12 14. For prejudgment interest on each of the foregoing at the legal rate from the date the
13 obligation became due through the date of judgment in this matter.

14 **WHEREFORE**, Plaintiff further seeks judgment against Defendants, and each of them, in an
15 amount according to proof, as follows:

16 15. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
17 condemning Defendants' discriminatory and harassing practices;

18 16. For punitive damages, pursuant to Civil Code §§3294 in amounts sufficient to punish
19 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

20 17. For injunctive relief compelling Defendants to report to federal and state authorities wages
21 earned by Plaintiff, and other employees, and pay all state and federal taxes owing, employer matching
22 funds, unemployment premiums, social security, Medicare, and workers' compensation premiums, all
23 this in an amount according to the proof;

24 18. For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful
25 conduct, misclassification of Plaintiff as an independent contractor, and failure to pay wages and other
26 compensation in accordance with the law;

27 19. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, Labor
28 Code and/or any other basis;

1 20. For post-judgment interest; and

2 21. For any other relief that is just and proper.

3 DATED: April 20, 2023

**LAW OFFICES OF CHRISTINA M. COLEMAN
A PROFESSIONAL CORPORATION**

5
6 By: _____

Christina M. Coleman, Esq.
Attorney for Plaintiff
ELIZABETH SPELMAN

8 **JURY TRIAL DEMANDED**

9
10 Plaintiff demands trial of all issues by jury.

11 DATED: April 20, 2023

**LAW OFFICES OF CHRISTINA M. COLEMAN
A PROFESSIONAL CORPORATION**

12
13 By: _____

Christina M. Coleman, Esq.
Attorney for Plaintiff
ELIZABETH SPELMAN