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By _____, Deputy
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on behalf of herself and similarly situated employees
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12 **SUPERIOR COURT OF CALIFORNIA**
13 **FOR THE COUNTY OF SACRAMENTO**
14

15 _____)
RAYNA CUELLAR, individually and on)
16 behalf of all others similarly situated,)
17 Plaintiffs,)
18 vs.)
19 BLOWN AWAY 1, LLC; BLOWN AWAY)
20 2, LLC; and Does 1 through 20, inclusive,)
21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

Case No.

COMPLAINT FOR DAMAGES:

1. Unlawful Discrimination on the Basis of a Disability in Violation of the Fair Employment and Housing Act ("FEHA") (Cal. Gov. Code § 12940(a));
2. Failure to Engage in the Interactive Process;
3. Failure to Provide a Reasonable Accommodation;
4. Retaliation in Violation of the FEHA (Cal. Gov. Code § 12940(h) and § 12945.2);
5. Failure to Prevent Discrimination in Violation of the FEHA (Cal. Gov. Code § 12940(h),(j),(k));
6. Retaliation in Violation of Cal. Lab. Code § 1102.5;
7. Wrongful Termination in Violation of Public Policy;

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8. Failure to Provide Meal Periods;
 9. Failure to Provide Rest Periods;
 10. Violation of the Healthy Workplaces, Healthy Families Act (Cal. Lab. Code § 245 *et seq.*);
 11. Failure to Provide Compliant Wage Statements;
 12. Waiting Time Penalties;
 13. Violation of California Unfair Competition Law (Business & Professions Code § 17200 *et seq.*);
 14. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 *et seq.*

JURY TRIAL DEMANDED

Plaintiff RAYNA CUELLAR ("Plaintiff"), on behalf of herself and all other similarly situated employees hereby files this Complaint against Defendants BLOWN AWAY 1, LLC, BLOWN AWAY 2, LLC, and Does 1 through 20 (collectively referred to as "Defendants").

Plaintiff alleges the following:

PARTIES AND JURISDICTION

1. Plaintiff is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint was a resident of the State of California.

2. Plaintiff was employed by Defendants as a hair stylist from approximately June 2022 until her wrongful discharge in December 2022.

3. Plaintiff is informed and believes, and thereon alleges, that Defendant Blown Away 1, LLC is a California limited liability company with its principal place of business in Sacramento, California. Defendant Blown Away 1, LLC is in the business of providing hair styling services.

4. Plaintiff is informed and believes, and thereon alleges, that Defendant Blown Away 2, LLC is a California limited liability company with its principal place of business in Sacramento, California. Defendant Blown Away 2, LLC is in the business of providing hair styling services.

1 5. Plaintiff is further informed and believes, and thereon alleges, that each of the
2 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
3 joint venturer of the remaining defendants and was acting within the course and scope of that
4 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
5 Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the
6 remaining defendants. The true names and capacities of the defendants named herein Does 1 through
7 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
8 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
9 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
10 through 20, inclusive, when they have been determined.

11 6. The Sacramento County Superior Court has jurisdiction in this matter due to alleged
12 violations of California Government Code sections 12945.2 and 12940 *et seq.*, California Labor
13 Code sections 201, 203, 226, 226.7, 510, 512, and 1194, and Business and Professions Code section
14 17200 *et seq.*, and the applicable Wage Order. The amount in controversy exceeds the jurisdictional
15 minimum of this court.

16 7. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some
17 of the wrongful acts and violations of law asserted herein occurred within Placer County.

18 8. Plaintiff has filed a complaint of discrimination, harassment, and retaliation with the
19 State of California Civil Rights Department against Defendants within the applicable statutory
20 period and received a Notice of Right to Sue on May 1, 2023.

21 9. On March 29, 2023, Plaintiff filed her California Labor Code section 2699.3 Private
22 Attorney General Act ("PAGA") notice with the California Labor & Workforce Development
23 Agency ("LWDA"). After the expiration of 65 days from the filing of the PAGA Notice, if the
24 LWDA does not respond, Plaintiff will have fully exhausted her administrative remedies.

25 **GENERAL ALLEGATIONS**

26 10. In June 2022, Plaintiff was hired by Defendants as a hair stylist at Defendants'
27 hair salon in Roseville, California.

1 11. In approximately August 2022, Plaintiff complained to her supervisor that she
2 believed co-workers had been stealing her tips. Because of these complaints, Plaintiff was
3 subsequently transferred to Defendants' Sacramento salon on or about September 21, 2022.

4 Disability Discrimination Allegations

5 12. Since her childhood, Plaintiff has suffered from periodic seizures that can cause
6 uncontrollable shaking, impaired vision, and loss of consciousness. On occasion, Plaintiff's
7 seizures are so severe that she must seek emergency medical attention.

8 13. On or about November 21, 2022, Plaintiff suffered from a severe seizure that
9 required Plaintiff to be hospitalized.

10 14. On or about November 22, 2022, after being released from the hospital, Plaintiff
11 informed her supervisor, Kristine Hyde, that she had to be hospitalized because of a severe
12 seizure and requested to take the next day off for a follow-up doctor's appointment. However,
13 Ms. Hyde refused to allow Plaintiff to take time for her follow-up medical appointment because
14 of the anticipated rush around the Thanksgiving holiday. Ms. Hyde told Plaintiff that she could
15 take time off to her doctor after the holiday. Despite having just been released from the hospital,
16 Plaintiff went to work the next day and rescheduled her follow-up medical appointment for the
17 following week because Defendants refused to allow her to take time off from work to see her
18 doctor that week.

19 15. "Bartenders" at Defendants' salons typically schedule typically schedule the
20 stylists' meal and rest breaks. Approximately a week and a half after her hospitalization, Plaintiff
21 was informed by the bartender when she arrived at work that her meal break at been scheduled
22 for 9:45 a.m., which was approximately an hour and half after her start time. However, since
23 Plaintiff could not drive because of her seizures, she had planned on having her boyfriend bring
24 her lunch around noon. Plaintiff told the bartender of her predicament regarding her lunch break
25 and the bartender agreed to move her meal break to 11:45 a.m.

26 16. At approximately 11:45 a.m., Plaintiff clocked out to take her scheduled meal
27 break. As Plaintiff was walking out of Defendants' salon to get her lunch, Ms. Hyde began
28 yelling at her to return to work. Plaintiff turned around to explain to Ms. Hyde that she was only

1 leaving to take her scheduled lunch break, but Ms. Hyde continued to yell at and berate Plaintiff
2 in front of customers for taking her meal break. When Plaintiff protested that she was only taking
3 her lunch break, Ms. Hyde told Plaintiff that she was fired, physically grabbed Plaintiff, and
4 escorted her out of the salon without even giving Plaintiff an opportunity to collect her
5 belongings.

6 17. Plaintiff received her final paycheck via mail several days her termination.

7 Wage and Hour Allegations

8 18. Plaintiff and similarly situated employees worked for Defendants as non-exempt
9 employees at Defendants' hair salons in the State of California. While employed by Defendants,
10 Plaintiff was paid on an hourly basis plus bonuses.

11 19. Defendants regularly required Plaintiff and similarly situated employees to work
12 through their statutorily required meal periods. Defendants failed to provide Plaintiff and other
13 similarly situated employees a 30-minute, duty-free meal period before the end of the fifth hour
14 of work as required under the law. Plaintiff and similarly situated employees regularly missed
15 their meal periods and/or they were provided late due to the necessity of taking care of customers
16 and/ or because there was inadequate staffing. Plaintiff informed Defendants' management by
17 text message that she could not take her lunch break because there were too many customers. In
18 response, Defendants' management told Plaintiff by text message, "Ok, thanks. It was a good day
19 then" but did not take any further action to ensure Plaintiff and similarly situated employees
20 received their statutorily required meal periods.

21 20. Defendants also failed to provide rest periods to Plaintiff and similarly situated
22 employees for every 4 hours worked or major fraction thereof. Defendants' management were
23 aware this was occurring and did not ensure rest periods were provided to Plaintiff and similarly
24 situated employees in compliance with California law.

25 21. Plaintiff and similarly situated employees were instructed by Defendants to clean
26 and perform miscellaneous tasks when there was a lull between customers or when she was
27 supposed to be on a statutorily mandated break. Plaintiff and similarly situated employees were
28 further instructed by Defendants not to sit during breaks.

1 22. Defendants failed to pay Plaintiff and similarly situated employees for all
2 statutorily required meal and rest premiums owed for non-compliant and missed meal and rest
3 periods.

4 23. As a result of the violations listed above, Defendants did not provide Plaintiff and
5 similarly situated employees legally compliant wage statements noting, among other things, total
6 hours worked, gross wages earned, the amount of meal and rest period premium pay owed.

7 24. Defendants also did not provide Plaintiff and similarly situated aggrieved
8 employees all wages owed upon their termination or within seventy-two (72) hours of their
9 separation from employment. Plaintiff was not paid for all hours worked after her termination
10 and still has not received all wages earned.

11
12 **FIRST CAUSE OF ACTION**
13 **Unlawful Discrimination on the Basis of Disability**
14 **Cal. Gov't Code § 12940(a)**
 (Against All Defendants)

15 39. Plaintiff realleges and incorporates by reference the allegations in each Paragraph
16 above as though fully set forth herein.

17 40. California Government Code section 12940(a) provides that it shall be an unlawful
18 employment practice for an employer to discriminate against an employee because of a physical
19 disability. "It is the intent of the Legislature that the definitions of physical disability . . . be construed
20 so that applicants and employees are protected from discrimination due to an actual or perceived
21 physical or mental impairment that is disabling, potentially disabling, or perceived as disabling or
22 potentially disabling." Cal. Gov't Code § 12926.1(b). The FEHA specifically defines "physical
23 disability" as including "seizure disorder." Cal. Gov't Code § 12926.1(c).

24 41. At all times herein mentioned, Plaintiff suffered from a physical disability that limited
25 a major life activity and required on-going intervention.

26 42. At all relevant times mentioned herein, Defendants knew Plaintiff suffered from a
27 physical disability.
28

1 43. Plaintiff was able to perform the essential job duties of her position with Defendants
2 with or without a reasonable accommodation. At all times during her employment, Plaintiff was
3 qualified to perform the duties of her position.

4 44. Defendant failed to accommodate Plaintiff's physical disability and failed to engage
5 in the interactive process to determine how best to accommodate Plaintiff's physical disability.

6 45. Plaintiff was discharged from her position with Defendants.

7 46. Plaintiff's physical disability was a substantial motivating reason for Defendants'
8 decision to terminate Plaintiff.

9 47. As a direct, foreseeable and proximate result of Defendants' unlawful conduct,
10 Plaintiff lost wages and work benefits and will continue to lose future wages and work benefits, has
11 been required to retain attorneys and incur attorneys' fees, and other damages, and will in the future
12 incur additional damages in an amount according to proof at the time of trial, but in an amount in
13 excess of the minimum jurisdiction of this Court.

14 48. As a direct, foreseeable, and proximate result of Defendants' unlawful actions,
15 Plaintiff has suffered humiliation, embarrassment, mental and emotional distress, shame, anxiety,
16 and discomfort, all of which is substantial and enduring, in an amount according to proof at the time
17 of trial.

18 49. The aforementioned acts of Defendants were willful, wanton, malicious, intentional,
19 oppressive, and despicable, and were done in willful and conscious disregard of the rights of Plaintiff
20 and were done by officers, directors, and/or managing agents of Defendants, or with the express
21 knowledge, consent, and ratification of managerial employees of Defendants, and thereby justify the
22 awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

23 **SECOND CAUSE OF ACTION**
24 **Failure to Engage in the Interactive Process**
25 **Cal. Gov't Code § 12940(n)**
 (Against All Defendants)

26 50. Plaintiff realleges and incorporates by reference the allegations in each Paragraph
27 above as though fully set forth herein.
28

1 51. At all times herein mentioned, Plaintiff suffered from a physical disability that limited
2 a major life activity and required on-going intervention.

3 52. Defendants knew Plaintiff had a physical disability.

4 53. Plaintiff requested that Defendants provide a reasonable accommodation for her
5 physical disability. Plaintiff was willing to enter into the interactive process to determine an effective
6 reasonable accommodation.

7 54. Defendants failed to engage in a timely, good-faith interactive process to determine an
8 effective reasonable accommodation for Plaintiff, and then terminated Plaintiff's employment.

9 55. As a direct, foreseeable and proximate result of Defendants' unlawful actions, Plaintiff
10 lost wages and work benefits and will continue to lose future wages and work benefits, has been
11 required to retain attorneys and incur attorneys' fees, and other damages, and will in the future incur
12 additional damages in an amount according to proof at the time of trial, but in an amount in excess of
13 the minimum jurisdiction of this Court.

14 56. As a direct, foreseeable, and proximate result of Defendants' unlawful actions, Plaintiff
15 has suffered humiliation, embarrassment, mental and emotional distress, shame, anxiety, and
16 discomfort, all of which is substantial and enduring, in an amount according to proof at the time of
17 trial.

18 57. The aforementioned acts of Defendants were willful, wanton, malicious, intentional,
19 oppressive, and despicable, and were done in willful and conscious disregard of the rights of Plaintiff
20 and were done by officers, directors, and/or managing agents of Defendants, or with the express
21 knowledge, consent, and ratification of managerial employees of Defendants, and thereby justify the
22 awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

23
24 **THIRD CAUSE OF ACTION**
25 **Failure to Provide Reasonable Accommodation**
26 **Cal. Gov't Code § 12940(m)**
27 **(Against All Defendants)**

28 58. Plaintiff realleges and incorporates by reference the allegations in each Paragraph
above as though fully set forth herein.

1 59. At all times herein mentioned, Plaintiff suffered from a physical disability that limited
2 a major life activity and required on-going intervention.

3 60. Defendants knew Plaintiff had a physical disability.

4 61. Plaintiff was able to perform the essential duties of her position with a reasonable
5 accommodation. At all times during her employment with Defendant, Plaintiff was qualified to
6 perform the duties of her position.

7 62. Defendants failed to accommodate Plaintiff's physical disability.

8 63. As a direct, foreseeable and proximate result of Defendants' unlawful actions, Plaintiff
9 lost wages and work benefits and will continue to lose future wages and work benefits, has been
10 required to retain attorneys and incur attorneys' fees, and other damages, and will in the future incur
11 additional damages in an amount according to proof at the time of trial, but in an amount in excess of
12 the minimum jurisdiction of this Court.

13 64. As a direct, foreseeable, and proximate result of Defendants' unlawful actions, Plaintiff
14 has suffered humiliation, embarrassment, mental and emotional distress, shame, anxiety, and
15 discomfort, all of which is substantial and enduring, in an amount according to proof at the time of
16 trial.

17 65. The aforementioned acts of Defendants were willful, wanton, malicious, intentional,
18 oppressive, and despicable, and were done in willful and conscious disregard of the rights of Plaintiff
19 and were done by officers, directors, and/or managing agents of Defendants, or with the express
20 knowledge, consent, and ratification of managerial employees of Defendants, and thereby justify the
21 awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

22
23 **FOURTH CAUSE OF ACTION**
24 **Retaliation in Violation of the FEHA**
25 **Cal. Gov. Code § 12940(h)**
26 **(Against All Defendants)**

27 66. Plaintiff realleges and incorporates by reference the allegations in each Paragraph
28 above as though fully set forth herein.

 67. At all relevant times, California Government Code section 12940(h) provided that it is
an unlawful employment practice "[f]or an employer . . . or person to discharge, expel or otherwise

1 discriminate against any person because the person has opposed any practices forbidden under this
2 part or because the person has opposed any practices forbidden under this part or because the person
3 has filed a complaint, testified, or assisted in any proceeding under this part . . .”

4 68. As set forth above, Defendants’ acts and omissions constitute violations of California
5 Government Code section 12940(h). Defendants retaliated against Plaintiff by, among other things,
6 terminating her employment, because she requested an accommodation for her disability.

7 69. As a direct, foreseeable, and proximate result of Defendants’ unlawful actions,
8 Plaintiff has suffered substantial losses in earnings and other employment benefits and has incurred
9 other economic losses.

10 70. As a further direct, foreseeable, and proximate result of Defendants’ unlawful actions,
11 Plaintiff has suffered emotional distress, humiliation, shame, anxiety, and embarrassment, all to her
12 damage in an amount to be proven at time of trial.

13 71. The aforementioned acts of Defendants were willful, wanton, malicious, intentional,
14 oppressive, and despicable, and were done in willful and conscious disregard of the rights of
15 Plaintiff and were done by officers, directors, and/or managing agents of Defendants, or with the
16 express knowledge, consent, and ratification of managerial employees of Defendants, and thereby
17 justify the awarding of punitive and exemplary damages in an amount to be determined at the time
18 of trial.

19 **FIFTH CAUSE OF ACTION**
20 **Failure to Prevent Discrimination and Retaliation**
21 **Cal. Gov’t Code § 12940(k)**
22 **(Against All Defendants)**

23 72. Plaintiff realleges and incorporates by reference the allegations in each Paragraph
24 above as though fully set forth herein.

25 73. At all times herein mentioned, the FEHA was in full force and effect and was fully
26 binding upon Defendants. Specifically, California Government Code section 12940(k) makes it an
27 unlawful employment practice for an employer to fail to take all reasonable steps necessary to
28 prevent discrimination and retaliation based on a physical disability from occurring.

1 74. As set forth above, Defendants discriminated against Plaintiff on the basis her
2 physical disability and retaliated against her for requesting an accommodation.

3 75. Defendants failed to provide Plaintiff with protections required under California
4 Government Code section 12940(k) by not taking immediate and sufficient action to correct the
5 discriminatory and retaliatory conduct directed at Plaintiff because of her disability.

6 76. As a direct, foreseeable, and proximate result of Defendants' unlawful actions,
7 Plaintiff has suffered substantial losses in earnings and other employment benefits and has incurred
8 other economic losses.

9 77. As a further direct, foreseeable, and proximate result of Defendants' unlawful actions,
10 Plaintiff has suffered emotional distress, humiliation, shame, anxiety, and embarrassment, all to her
11 damage in an amount to be proven at time of trial.

12 78. Defendants committed the acts herein despicably, maliciously, fraudulently, and
13 oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive
14 amounting to malice, and in conscious disregard of her rights. Plaintiff is thus entitled to recover
15 punitive damages from Defendants in an amount according to proof.

16 **SIXTH CAUSE OF ACTION**
17 **Retaliation in Violation of Cal. Lab. Code § 1102.5**
 (Against All Defendants)

18 79. Plaintiff realleges and incorporates by reference the allegations in each Paragraph
19 above as though fully set forth herein.

20 80. California Labor Code section 1102.5 prohibits retaliation against an employee for
21 disclosing information to a person with authority over the employee, where the employee has
22 reasonable cause to believe that the information discloses a violation of state or federal statute or a
23 violation or noncompliance with a state or federal rule or regulation. Labor Code § 1102.5 further
24 prohibits retaliation against an employee for refusing to participate in an activity that would result in
25 a violation of state or federal statute or a violation or noncompliance with a state or federal rule or
26 regulation.

27 ///

28 ///

81. Plaintiff expressed concerns to Defendants about her belief that tip stealing was occurring in the workplace, Defendants' failure to provide statutorily required meal and rest breaks, and Defendants' refusal to allow Plaintiff to use accrued paid sick leave.

82. Defendants retaliated against and wrongfully terminated Plaintiff for expressing concerns about tip stealing in the workplace, Defendants' failure to provide statutorily required meal and rest breaks, Defendants' failure to allow Plaintiff to use accrued paid sick leave, and for going on a statutorily required meal break.

83. As a direct, foreseeable, and proximate result of the Defendants' unlawful actions, Plaintiff lost wages and work benefits and will continue to lose future wages and work benefits, has been required to retain attorneys and incur attorneys' fees, and other damages, and will in the future incur additional damages in an amount according to proof at the time of trial.

84. As a direct, foreseeable, and proximate result of the Defendants' unlawful actions, Plaintiff has suffered humiliation, embarrassment, mental and emotional distress, shame, anxiety, and discomfort, all of which is substantial and enduring, in an amount according to proof at the time of trial.

85. Additionally, as a proximate cause of the Defendants' unlawful retaliation against Plaintiff in violation of California Labor Code 1102.5, Plaintiff is entitled to recover a civil penalty of up to \$10,000 for each violation pursuant to California Labor Code section 1102.5(f), and an award of costs and reasonable attorney's fees pursuant to California Labor Code section 1102.5(j).

SEVENTH CAUSE OF ACTION
Wrongful Termination in Violation of Public Policy
(Against All Defendants)

86. Plaintiff realleges and incorporates by reference the allegations in each Paragraph above as though fully set forth herein.

87. Plaintiff's employment was terminated in violation of fundamental public policies of the State of California. It is, and at all times relevant to this action it has been, the law and fundamental public policy of the state of California to prevent discrimination in employment. *See City of Moorpark v. Sup. Ct.* (Dillon), 18 Cal. 4th 1143 (1998).

1 88. Termination of Plaintiff's employment was a violation of public policy (a "nexus"
2 exists between the termination and Plaintiff's protected status). Accordingly, Plaintiff was
3 unlawfully terminated in violation of the fundamental public policies of the state of California.

4 89. Plaintiff suffered discrimination and retaliation in the workplace due to her disability.
5 Defendants were aware this discrimination was occurring and did nothing to investigate Plaintiff's
6 complaints or ensure Plaintiff's work environment was free from illegal discrimination.

7 90. As a direct, foreseeable, and proximate result of Defendants' unlawful actions,
8 Plaintiff has suffered substantial losses in earnings and other employment benefits and has incurred
9 other economic losses.

10 91. As a further direct, foreseeable, and proximate result of Defendants' unlawful actions,
11 Plaintiff has suffered emotional distress, humiliation, shame, anxiety, and embarrassment, all to her
12 damage in an amount to be proven at time of trial.

13 92. Defendants committed the acts herein despicably, maliciously, fraudulently, and
14 oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive
15 amounting to malice, and in conscious disregard of her rights. Plaintiff is thus entitled to recover
16 punitive damages from Defendants in an amount according to proof.

17 **EIGHTH CAUSE OF ACTION**
18 **Failure to Provide Meal Periods**
19 **(Against All Defendants)**

20 93. Plaintiff realleges and incorporates by reference the allegations in each Paragraph
21 above as though fully set forth herein.

22 94. An employer must provide an employee a meal period in accordance with the
23 applicable Wage Order and Labor Code sections 226.7 and 512.

24 95. Labor Code section 510 and Wage Order 2-2001, section 11(A) require an employer
25 to provide a meal period of not less than thirty (30) minutes for each work period of more than five
26 (5) hours. If an employee works longer than ten (10) hours in a workday, the employer must provide
27 a second meal period.

28 96. Plaintiff alleges that Defendants failed to provide Plaintiff with meal breaks of at least
thirty (30) minutes for several work periods that Plaintiff worked more than five (5) hours in a day,

1 or to take a second meal break of at least thirty (30) minutes for several work periods that Plaintiff
2 worked more than ten (10) hours in a day.

3 97. As a proximate cause of Defendants' failure to provide meal periods, Plaintiff is
4 entitled to one (1) hour of pay at the regular rate of compensation for each meal period not provided,
5 as a wage, from three (3) years of the filing of this action, in an amount to be established at trial. *See*
6 California Labor Code § 226.7 and Wage Order 2-2001 § 11(D).

7
8 **NINTH CAUSE OF ACTION**

9 **Failure to Provide Rest Periods**

10 **(Against Defendants and DOES 1 through 20, inclusive)**

11 98. Plaintiff realleges and incorporates by reference the allegations in each Paragraph
12 above as though fully set forth herein.

13 99. Labor Code section 512 and Wage Order 2-2001 section 12(A) require an employer
14 to provide a rest period of not less than ten (10) minutes for each work period of more than four (4)
15 hours or a major fraction thereof.

16 100. Plaintiff alleges that Defendants failed to provide rest breaks of at least ten (10)
17 minutes for each work period that she worked more than four (4) hours.

18 101. As a proximate cause of Defendants' failure to provide rest periods, Plaintiff is
19 entitled to one (1) hour of pay at the regular rate of compensation for each rest period not provided,
20 as a wage, from three (3) years of the filing of this action, in an amount to be established at trial. *See*
21 California Labor Code § 226.7 and Wage Order 2-2001 § 12(B).

22 **TENTH CAUSE OF ACTION**

23 **Violation of the Healthy Workplaces, Healthy Families Act**

24 **(Against All Defendants)**

25 102. Plaintiff realleges and incorporates by reference the allegations in each Paragraph
26 above as though fully set forth herein.

27 103. California Labor Code section 233 provides that an employer must permit an
28 employee to use accrued sick leave in accordance with California Labor Code section 246.5 at the
employee's then current rate of entitlement. California Labor Code section 246 provides that an
employee is entitled to sick pay wages for use of accrued sick leave pursuant to California Labor

1 Code section 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has
2 a vested right to sick pay wages, which an employer must calculate and compensate based on one of
3 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the same
4 manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
5 whether or not the employee actually works overtime in that workweek," or (ii) "Paid sick time for
6 nonexempt employees shall be calculated by dividing the employee's total wages, not including
7 overtime premium pay, but the employee's total hours worked in the full pay periods of the prior 90
8 days of employment."

9 104. "An employer shall not deny an employee the right to use sick leave or discharge,
10 threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using,
11 or attempting to exercise the right to use, sick leave to attend to an illness ... or for any other reason
12 specified in subdivision (a) of Section 246.5." Cal. Lab. Code § 233(c).

13 105. Defendants refused to allow Plaintiff to use accrued paid sick leave to, *inter alia*, seek
14 medical diagnosis and treatment related to a health condition.

15 106. Defendants' conduct described herein violates California Labor Code sections 233,
16 246, and 246.5 amongst other provisions. As a proximate result of Defendants' conduct, Plaintiff
17 has been damaged and deprived of sick pay wages, in an amount to be established at trial. Plaintiff
18 now seeks these damages, applicable penalties, attorney's fees and costs, and interest.

19 **ELEVENTH CAUSE OF ACTION**
20 **Failure to Provide Accurate Wage Statements**
21 **(Against All Defendants)**

22 107. Plaintiff realleges and incorporates by reference the allegations in each Paragraph
23 above as though fully set forth herein.

24 108. According to Labor Code section 226(a), an employer must provide an itemized
25 statement to an employee, semi-monthly or at the time of each payment of wages, showing:

26 *(1) gross wages earned, (2) total hours worked by the employee,*
27 *except for any employee whose compensation is solely based on a*
28 *salary and who is exempt from payment of overtime under*
subdivision (a) of Section 515 or any applicable order of the
Industrial Welfare Commission, (3) the number of piece-rate units
earned and any applicable piece rate if the employee is paid on a

1 *piece-rate basis, (4) all deductions, provided that all deductions*
2 *made on written orders of the employee may be aggregated and*
3 *shown as one item, (5) net wages earned, (6) the inclusive dates of*
4 *the period for which the employee is paid, (7) the name of the*
5 *employee and the last four digits of his or her social security number*
6 *or an employee identification number other than a social security*
7 *number, (8) the name and address of the legal entity that is the*
8 *employer and, if the employer is a farm labor contractor, as defined*
9 *in subdivision (b) of Section 1682, the name and address of the legal*
10 *entity that secured the services of the employer, and (9) all*
11 *applicable hourly rates in effect during the pay period and the*
12 *corresponding number of hours worked at each hourly rate by the*
13 *employee. The deductions made from payment of wages shall be*
14 *recorded in ink or other indelible form, properly dated, showing the*
15 *month, day, and year, and a copy of the statement and the record of*
16 *the deductions shall be kept on file by the employer for at least three*
17 *years at the place of employment or at a central location within the*
18 *State of California.*

12 109. Defendants failed to provide an itemized statement or failed to provide an accurate
13 and complete itemized statement showing the requirements set forth in Labor Code section
14 226(a). Defendants failed to list on the wage statements provided to Plaintiff, *inter alia*, the
15 correct amount of meal and rest premiums owed. Plaintiff alleges that Defendants failed to
16 provide accurate itemized wage statements in accordance with California Labor Code section
17 226(a).

18 110. Additionally, Plaintiff alleges she suffered injury as a result of Defendants'
19 knowing and intentional failure to provide accurate and complete information as required by any
20 one or more of items (1) to (9), inclusive, of California Labor Code section 226, subdivision (a),
21 and Plaintiff cannot promptly and easily determine (*i.e.* a reasonable person in each Plaintiff's
22 position would not be able to readily ascertain the information without reference to other
23 documents or information) from the wage statement alone. Cal. Lab Code § 226(e)(2)(B)(iv).

24 111. As a proximate cause of Defendants' failure to provide accurate statements,
25 Plaintiff was damaged and is entitled to statutory and civil penalties under the California Labor
26 Code, and attorney's fees and costs, in an amount to be proven at trial.

27 **TWELTH CAUSE OF ACTION**
28 **Waiting Time Penalties**
(Against All Defendants)

112. Plaintiff realleges and incorporates by reference the allegations in each Paragraph above as though fully set forth herein.

113. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. California Labor Code § 201.

114. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. California Labor Code § 203.

115. Plaintiff did not receive all wages at her termination or separation from employment.

116. Defendants knew of their obligation to pay Plaintiff and Defendants' failure to pay all wages was in complete disregard of their obligations. Such conduct shows Defendants' knowledge of their obligation to pay all wages owed upon termination and willful refusal.

117. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

THIRTEENTH CAUSE OF ACTION
Unfair Competition
(Against All Defendants)

118. Plaintiff realleges and incorporates by reference the allegations in each Paragraph above as though fully set forth herein.

119. California Business and Professions Code section 17200 provides that “unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.”

120. Defendants committed numerous violations of the California Labor Code throughout the employment relationship.

121. Plaintiff is also informed and believes and thereon alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and

1 Professions Code section 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products*
2 *Co.*, 23 Cal. 4th 163 (2000).

3 122. As a direct and legal result of Defendants' conduct, as alleged herein, pursuant to
4 the UCL (including B&P Code § 17203), Plaintiff is entitled to restitution as a result of their
5 unfair business practices, including, but not limited to, public injunctive relief, pursuant to B&P
6 Code § 17203, and interest and penalties pursuant to B&P §§ 17203, 17208, violations of Labor
7 Code §§ 1194, 226, and 226.7, all in an amount as yet unascertained but subject to proof at trial,
8 for four (4) years from the filing of this Action.

9
10 **FOURTEENTH CAUSE OF ACTION**
11 **Civil Penalties Pursuant to PAGA § 2698 *et seq.***
12 **(Against All Defendants)**

13 123. Plaintiff realleges and incorporates by reference the allegations in each Paragraph
14 above as though fully set forth herein.

15 124. Plaintiff brings this cause of action as a proxy for the State of California and in
16 this capacity, seeks penalties on behalf of all similarly situated employees for Defendants'
17 violations of the California Labor Code, including but not necessarily limited to, those California
18 Labor Code violations identified above.

19 125. On or about March 29, 2023, Plaintiff sent written notice to the LWDA regarding
20 the Defendants' violations of the California Labor Code, pursuant to Labor Code section 2698, *et*
21 *seq.*, PAGA. After the expiration of 65 days from the filing of the PAGA Notice, if the LWDA
22 does not respond, Plaintiff will have fully exhausted her administrative remedies.

23 126. If the LWDA does not respond within 65 days from the filing of the PAGA
24 Notice, Plaintiff will be entitled to recover civil penalties on behalf of the State of California and
25 all similarly situated employees for all violations of the Labor Code from March 29, 2022,
26 through trial on this matter.

27 127. Labor Code section 226.7 and IWC Wage Order No. 2-2001, section 11(A)
28 require employers to provide employees meal periods of thirty (30) minutes per five (5) hours
worked. For the reasons stated above, Plaintiff and similarly situated employees were not

1 authorized and permitted to take legally compliant meal periods pursuant to California law.
2 Defendants also failed to pay meal period premiums for its failure to provide meal periods.

3 128. Labor Code section 226.7 and IWC Wage Order No. 2-2001, section 12(A) require
4 employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or
5 major fraction thereof worked. For the reasons stated above, Plaintiff and similarly situated
6 employees were not authorized and permitted to take legally compliant rest periods pursuant to
7 California law in violation of the Labor Code. Defendants also failed to pay rest period premiums for
8 their failure to provide rest periods.

9 129. Labor Code section 226 requires employers to furnish to employees with “an
10 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
11 the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the
12 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
13 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
14 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee
15 and only the last four digits of his or her social security number or an employee identification
16 number other than a social security number, (8) the name and address of the legal entity that is
17 the employer . . . and (9) all applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate by the employee” For the
19 reasons stated above, Defendants failed to comply with these requirements with respect to
20 Plaintiff and similarly situated employees in violation of the Labor Code.

21 130. Labor Code sections 201–203 require that all wages, including minimum wages
22 and meal and rest period premiums, be paid to employees upon separation and/or termination of
23 employment. Here, for the reasons stated above, Plaintiff and similarly situated employees did
24 not receive all final wages due and owing to them at the time of termination or seventy-two (72)
25 hours thereafter as required by Labor Code sections 201–203. This is in violation of the Labor
26 Code.

27 131. IWC Wage Order No. 2-2001, section 14(A) requires employers to provide all
28 working employees with suitable seats when the nature of the work reasonably permits the use of

1 seats. IWC Wage Order No. 2-2001, section 14(b) further requires that when employees are not
2 engaged in the active duties of their employment and the nature of the work requires standing, an
3 adequate number of suitable seats shall be placed in reasonable proximity to the work area and
4 employees shall be permitted to use such seats when it does not interfere with the performance of
5 their duties. Defendants failed to provide sufficient seating in reasonable proximity to its work
6 areas and did not allow Plaintiff and similarly situated aggrieved employees use available seats
7 when the work reasonable permitted or there was a lull between customers in violation of IWC
8 Wage Order No. 2-2001.

9 132. Labor Code section 246.5 requires an employer to provide 3 days of paid sick
10 leave to employees who have worked more than 30 days for the employer within a year after
11 commencement of employment with the employer. Defendants failed to provide paid sick leave
12 or equivalent paid time off to Plaintiff and similarly situated employees. Defendants also
13 disciplined and/ or terminated its employees for requesting to use accrued paid sick leave. These
14 practices are in violation of the Labor Code.

15 133. Plaintiff is informed and believes that Defendants committed numerous other
16 violations of the California Labor Code, including but not limited to those identified in this letter.
17 Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018), Plaintiff intends
18 to seek civil penalties for all violations of the California Labor Code, whether she experienced
19 them personally or not.

20 **DAMAGES**

21 WHEREFORE Plaintiff requests relief as follows:

- 22 1. A jury trial;
- 23 2. For compensatory damages, including, but not limited to, losses for lost back pay,
24 plus interest, lost fringe benefits and future lost earnings and fringe benefits,
25 damages for emotional distress and pain and suffering, according to proof allowed
26 by law;
- 27 3. For statutory and civil penalties under the California Labor Code according to
28 proof allowed by law;

4. For punitive damages allowed by law;
5. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's fees;
6. For injunctive relief;
7. For an award of prejudgment and post-judgment interest; and
8. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

Dated: May 2, 2023

Castle Law: California Employment Counsel, PC

By: 

Timothy B. Del Castillo
Kent L. Bradbury
Daniel E. Richardson
Attorneys for Plaintiff RAYNA CUELLAR

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JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: May 2, 2023

Castle Law: California Employment Counsel, PC

By: 

Timothy B. Del Castillo
Kent L. Bradbury
Daniel E. Richardson
Attorneys for Plaintiff RAYNA CUELLAR