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Attorney for Plaintiff,
ELIDA MARTIN

Assigned for All Purposes
Judge Lon Hurwitz
Dept. CX103

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ELIDA MARTIN, an individual,

Plaintiff,

v.

CONTACTABILITY. COM LLC D/B/A
SMARTFINANCIAL., a California limited
liability company; STEPHANIE SCHNEIDER,
an individual; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 30-2023-01347335-CU-WT-CXC

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. **RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
4. **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT AND RETALIATION IN VIOLATION OF GOV'T CODE §12940(k);**
5. **FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
6. **FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
7. **RETALIATION (LAB. CODE §98.6);**
8. **RETALIATION (LAB. CODE §§1102.5, 1102.6);**

- 1 9. WRONGFUL TERMINATION IN
2 VIOLATION OF PUBLIC POLICY;
3 10. FOR DECLARATORY JUDGMENT;
4 11. FAILURE TO PAY ALL WAGES DUE
5 AND IMPROPER DEDUCTIONS (CAL.
6 LABOR CODE §§ 200, 201, 204, 221, 351);
7 12. FAILURE TO INDEMNIFY FOR
8 NECESSARY BUSINESS EXPENSES (CAL.
9 LABOR CODE § 2802);
10 13. FAILURE TO PROVIDE ITEMIZED
11 WAGE AND HOUR STATEMENTS (CAL.
12 LABOR CODE §§ 226, ET SEQ.);
13 14. WAITING TIME PENALTIES (CAL.
14 LABOR CODE §§ 201-203);
15 15. PRIVATE ATTORNEY GENERAL ACT
(CAL. LABOR CODE § 2699, ET SEQ.);
16 AND
17 16. UNFAIR COMPETITION (BUS. & PROF.
18 CODE §17200 ET SEQ.)

19 DEMAND OVER \$25,000

20 [DEMAND FOR JURY TRIAL]

21 COMES NOW PLAINTIFF, ELIDA MARTIN and for causes of action against the
22 Defendants and each of them, alleges as follows:

23 **JURISDICTION**

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

28 **THE PARTIES**

2. Plaintiff, ELIDA MARTIN, is and at all times relevant hereto was a resident of the State
of California.

1 3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
2 hereto, Defendant CONTACTABILITY. COM LLC D/B/A SMARTFINANCIAL (hereinafter referred
3 to as “CONTACTABILITY” or “Employer”) was and is a California limited liability company doing
4 business at 1901 Newport Blvd., Suite 300, Costa Mesa, California.

5 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
6 hereto, Employers owned and operated a private insurance sales website.

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

11 6. At all times relevant herein, CONTACTABILITY and DOES 1-20 were Plaintiff’s
12 employers, joint employers and/or special employers within the meaning of the Labor Code and Industrial
13 Welfare Commission Order No. 4-2001, and are each an “employer or other person acting on behalf of
14 an employer” as such term is used in Labor Code section 558, 558.1, and 1197.1, and liable to Plaintiff
15 on that basis.

16 7. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
17 hereto, Defendant STEPHANIE SCHNEIDER was and is an individual resident of the County of Orange,
18 State of California, and are hereinafter individually referred to by last name. The SCHNEIDER was
19 CONTACTABILITY’s manager, corporate agent, supervisor, and/or employee.

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

27 9. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
28 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,

1 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
2 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
3 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
4 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

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

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

17 12. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to prevent
18 discrimination or retaliation, failure to accommodate, failure to engage in the interactive process, and
19 wrongful termination under Government Code §§12940, et seq., the California Fair Employment and
20 Housing Act (“FEHA”) with the California Department of Fair Employment and Housing (“DFEH”),
21 and has satisfied Plaintiff’s administrative prerequisites with respect to these and all related filings.

22
23 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

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

1 13. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
2 purported corporate existence, CONTACTABILITY and DOES 1-20 are, in reality, one and the same as
3 CONTACTABILITY, including, but not limited to because:

4 a. CONTACTABILITY is completely dominated and controlled by DOES 1-20,
5 who personally committed the frauds and violated the laws as set forth in this complaint, and who have
6 hidden and currently hide behind CONTACTABILITY to perpetrate frauds, circumvent statutes, or
7 accomplish some other wrongful or inequitable purpose.

8 ///

9 b. DOES 1-20 derive actual and significant monetary benefits by and through
10 CONTACTABILITY's unlawful conduct, and by using CONTACTABILITY as the funding source for
11 their own personal expenditures.

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

15 d. CONTACTABILITY does not comply with all requisite corporate formalities to
16 maintain a legal and separate corporate existence.

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

27 14. Accordingly, CONTACTABILITY constitutes the alter ego of DOES 1-20, and the fiction
28 of their separate corporate existence must be disregarded.

1 15. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
2 thereon alleges that CONTACTABILITY and DOES 1-20 are Plaintiff's joint employers by virtue of a
3 joint enterprise, and that Plaintiff was an employee of CONTACTABILITY, and DOES 1-20. Plaintiff
4 performed services for each and every one of Defendants, and to the mutual benefit of all Defendants,
5 and all Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the manner
6 in which Defendants' business was and is conducted.

7 16. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
8 between DOES 1-20 and CONTACTABILITY, (1) there is an express or implied agreement of
9 assumption pursuant to which DOES 1-20 agreed to be liable for the debts of CONTACTABILITY, (2)
10 the transaction between DOES 1-20 and CONTACTABILITY amounts to a consolidation or merger of
11 the two corporations, (3) DOES 1-20 is a mere continuation of CONTACTABILITY, or (4) the transfer
12 of assets to DOES 1-20 is for the fraudulent purpose of escaping liability for CONTACTABILITY's
13 debts. Accordingly, DOES 1-20 are the successors of CONTACTABILITY, and are liable on that basis.

14
15 **FACTUAL ALLEGATIONS**

16 **WAGE & HOUR ALLEGATIONS**

17 17. At all relevant times, CONTACTABILITY promised to pay Plaintiff a base salary of
18 \$65,000 per year, paid on a semi-monthly basis. CONTACTABILITY also promised to pay Plaintiff
19 non-discretionary performance bonuses up to \$10,000 per year, paid on a quarterly basis. Additionally,
20 Plaintiff received other company and fringe benefits, such as health benefits totaling approximately
21 \$2,789,75, paid time off, etc.

22 18. Plaintiff is owed non-discretionary bonuses in an amount according to proof.

23 19. Throughout Plaintiff's employment, Plaintiff was required to use her cell phone, home
24 internet, and other personal appliances for work, and CONTACTABILITY never reimbursed Plaintiff
25 for work-related business expenses in violation of Labor Code § 2802.

26 20. Throughout Plaintiff's employment, CONTACTABILITY violated Labor Code § 221 by
27 collecting and/or receiving from Plaintiff, and other aggrieved employees, part of their wages paid by
28 EMPLOYERS to said employees.

1 21. CONTACTABILITY violated Labor Code §§ 204 and 223 because CONTACTABILITY
2 failed to pay wages/bonuses for all hours worked and paid at least twice during each calendar month to
3 employees as required “by contract” under Labor Code section 223, as well as an improper collection of
4 wages paid to an employee under Labor Code section 221. *Gonzales v. Downtown LA Motors*, 215 Cal.
5 App. 4th 36 (2d App. Dist. Mar. 6, 2013).

6 22. Throughout Plaintiff’s employment, Plaintiff was not provided with paystubs that
7 complied with Labor Code §226, as CONTACTABILITY consistently provided incorrect and inaccurate
8 paystubs that failed to properly itemize, regular, hours worked for said wages, commissions, sick time,
9 tips, among other inaccurate information.

10 23. Plaintiffs are informed and believe, and thereon allege, that they themselves and other
11 employees were subject to the same violations and, therefore, are aggrieved employees within the
12 meaning of California Labor Code §2699. Thus, Plaintiff, as an aggrieved employee, brings an action
13 against Defendants, on behalf of themselves and other current and former employees.

14 24. *Additionally, pursuant to Huff v. Securitas Security Services USA, Inc.* (2018) 23
15 Cal.App.5th 745, as aggrieved employees, Plaintiffs may investigate and pursue claims and penalties on
16 behalf of other aggrieved employees for other violations that they were not personally “aggrieved” by.

17 **FEHA AND RETALIATION UNDER THE LABOR CODE ALLEGATIONS**

18 25. On or about February 21, 2022, CONTACTABILITY hired Plaintiff to work as a Talent
19 Acquisition Specialist. Plaintiff was a full-time, non-exempt employee, and performed all of Plaintiff’s
20 job duties satisfactorily before Plaintiff was wrongfully terminated on or about February 21, 2023.

21 26. When CONTACTABILITY first hired Plaintiff, she was allowed to work remotely, and
22 on or about May 2022, CONTACTABILITY required Plaintiff to travel to work once per month.

23 27. On or about September 18, 2022, Plaintiff suffered an injury that required surgery.
24 Plaintiff’s injury caused the major life activity of working to be more difficult, thus constituting a
25 disability.

26 28. Plaintiff was restricted from working from on or about September through early-
27 November 2022.

29. Upon Plaintiff returning to work, in a retaliatory fashion, CONTACTABILITY issued Plaintiff a written warning for work performance and changed her work duties.

30. On or about December 2022, CONTACTABILITY increased the measurement of Plaintiff's performance metric, making it more difficult for Plaintiff to achieve her performance goals.

31. On or about December 13, 2022, CONTACTABILITY issued Plaintiff a second written warning. The second warning issued by CONTACTABILITY also required Plaintiff to meet certain expectations, and on information and belief, no other employee was held to the same standard.

32. Furthermore, CONTACTABILITY issued commissions to Plaintiff's coworkers performing the same work but refused to issue Plaintiff the same commission based on Plaintiff's medical leave.

33. On or about February 3, 2023, after Plaintiff questioned why she did not receive her promised bonus, CONTACTABILITY asserted that the bonus was discretionary.

34. On or about February 10, 2023, CONTACTABILITY issued Plaintiff another written warning based on incorrect information.

35. Upon CONTACTABILITY ignoring Plaintiff's explanation of the errors which led to improper reporting, Plaintiff escalated her concern to other supervisors.

36. Shortly thereafter, on or about February 21, 2023, CONTACTABILITY wrongfully terminated Plaintiff.

37. On information and belief, the written warnings issued by CONTACTABILITY were at the behest and direction of SCHNEIDER based on Plaintiff's medical leave and/or disability, real or perceived, and Plaintiff's complaints of not receiving her nondiscretionary bonus.

38. On information and belief, SCHNEIDER engaged in harassing conduct against Plaintiff based on personal gratification, intentional meanness, bigotry, or other personal motives.

GENERAL ALLEGATIONS

39. At all relevant times, Defendants failed to properly engage in a good faith interactive process in an effort to properly accommodate Plaintiff's disability and/or medical condition such that Plaintiff could continue working for Defendants.

1 40. At all relevant times, Defendants failed to reasonably accommodate Plaintiff even though
2 Plaintiff was able to perform the essential job duties of Plaintiff's position or another position with or
3 without accommodations.

4 41. Plaintiff's termination was substantially motivated by Plaintiff's disability or perceived
5 disability, medical condition or perceived medical condition, medical leave or anticipated medical leave,
6 request for accommodation, and/or engagement in protected activities, without any discussion of
7 disability accommodations or any good faith attempt to engage in the interactive process with Plaintiff.
8 Defendants' discriminatory animus is evidenced by the previously mentioned facts.

9 42. Defendants' conduct described herein was undertaken, authorized, and/or ratified
10 Defendants' officers, directors and/or managing agents, including SCHNEIDER, but not limited to and
11 those identified herein as DOES 1 through 20, who were authorized and empowered to make decisions
12 that reflect and/or create policy for Defendants. The aforementioned conduct of said managing agents
13 and individuals was therefore undertaken on behalf of Defendants who further had advanced knowledge
14 of the actions and conduct of said individuals whose actions and conduct were ratified, authorized, and
15 approved by managing agents whose precise identities are unknown to Plaintiff at this time and are
16 therefore identified and designated herein as DOES 1 through 20, inclusive.

17 43. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
18 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
19 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
20 counseling and treatment, and past and future lost wages and benefits.

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

23 45. Plaintiff claims general damages for emotional and mental distress and aggravation in a
24 sum in excess of the jurisdictional minimum of this Court.

25 46. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
26 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard
27 of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages
28

1 be levied against Defendants and each of them, in sums in excess of the jurisdictional minimum of this
2 Court.

3
4 **FIRST CAUSE OF ACTION**
5 **FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
6 **AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE**

7 47. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 42, inclusive, as
8 though set forth in full herein.

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

11 49. As such term is used under FEHA, "on the bases enumerated in this part" means or
12 refers to discrimination on the bases of one or more of the protected characteristics under FEHA.

13 50. FEHA requires Defendants to refrain from discriminating against an employee on the
14 basis of disability and/or medical condition, real or perceived, and to prevent discrimination and
15 harassment on the basis of disability and/or medical condition, real or perceived, use of or anticipated
16 use of medical leave, and engagement in protected activities from occurring.

17 51. Plaintiff was a member of multiple protected classes as a result of Plaintiff's disability,
18 medical condition and/or the perception that Plaintiff was suffering from a disability and/or medical
19 condition.

20 52. At all times relevant hereto, Plaintiff was performing competently in the position
21 Plaintiff held with Defendants.

22 53. Plaintiff suffered the adverse employment actions of unlawful harassment,
23 discrimination, failure to accommodate, failure to investigate, remedy, and/or prevent discrimination,
24 failure to reinstate and/or return to work, and termination, and was harmed thereby.

25 54. Plaintiff is informed and believes that Plaintiff's disability and/or medical condition,
26 real and perceived, use of or anticipated use of medical leave and/or some combination of these
27 protected characteristics under Government Code §12926(j) were motivating reasons and/or factors in
28 the decisions to subject Plaintiff to the aforementioned adverse employment actions.

1 55. Said conduct violates the FEHA, and such violations were a proximate cause in
2 Plaintiff's damage as stated below.

3 56. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated
4 by reference.

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

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

13
14 **SECOND CAUSE OF ACTION**
15 **FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
16 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

17 59. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 42, inclusive, as
18 though set forth in full herein.

19 60. At all times hereto, the FEHA was in full force and effect and was binding upon
20 Defendants and each of them.

21 61. As such term is used under FEHA, "on the bases enumerated in this part" means or
22 refers to harassment on the bases of one or more of the protected characteristics under FEHA.

23 62. These laws set forth in the preceding paragraph require Defendants to refrain from
24 harassing, or creating, or maintaining a hostile work environment against an employee based upon the
25 employee's disability and/or medical condition, real or perceived, use of or anticipated use of medical
26 leave medical leave, and engagement in protected activities, as set forth hereinabove.

1 63. Defendants' harassing conduct was severe or pervasive, was unwelcome by Plaintiff,
2 and a reasonable person in Plaintiff's circumstances would have considered the work environment to
3 be hostile or abusive.

4 64. Defendants violated the FEHA and the public policy of the State of California which is
5 embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of
6 Plaintiff's disability and/or medical condition, real or perceived, use of or anticipated use of medical
7 leave, engagement in protected activities, and/or some combination of these protected characteristics,
8 as set forth hereinabove.

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

12 66. The above said acts of Defendants constitute violations of the FEHA and violations of
13 the public policy of the State of California. Such violations were a proximate cause in Plaintiff's
14 damage as stated below.

15 67. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated
16 by reference.

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

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

THIRD CAUSE OF ACTION
FOR RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE

70. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 42, inclusive, as though set forth in full herein.

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

72. These laws set forth in the preceding paragraph require Defendants to refrain from retaliating against an employee for engaging in protected activity.

73. Plaintiff engaged in the protected activities of requesting accommodation, requesting medical leave and/or exercising Plaintiff's right to medical leave, and complaining about and protesting Defendants' discriminatory and harassing conduct towards Plaintiff based upon Plaintiff's disability, medical condition, real or perceived, and use of or anticipated use of medical leave.

74. Plaintiff suffered the adverse employment actions of unlawful harassment, discrimination, failure to accommodate, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate and/or return to work, and termination, and was harmed thereby.

75. Plaintiff is informed and believes that Plaintiff's conduct of requesting accommodation, requesting medical leave and/or exercising Plaintiff's right to medical leave, complaining about and protesting about Defendants' discriminatory and harassing conduct, and/or some combination of these factors, were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

76. Defendants violated the FEHA by retaliating against Plaintiff and terminating Plaintiff for attempting to exercise Plaintiff's protected rights, as set forth hereinabove.

77. Plaintiff is informed and believes, and based thereon alleges, that the above acts of retaliation committed by Defendants were done with the knowledge, consent, and/or ratification of, or at the direction of, each other Defendant and the other Managers.

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

1 79. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated
2 by reference.

3 80. 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 81. 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 **FOURTH CAUSE OF ACTION**
13 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION**
14 **IN VIOLATION OF GOV'T CODE §12940(k)**
15 **AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE**

16 82. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 42, inclusive, as
17 though set forth in full herein.

18 83. 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, harassment and retaliation from
23 occurring.

24 84. 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 85. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated
27 by reference.
28

1 86. 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 87. 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
11 **FIFTH CAUSE OF ACTION**
12 **FOR FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS**
13 **IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
14 **AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE**

15 88. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 42, inclusive, as
16 though set forth in full herein.

17 89. At all times hereto, the FEHA, including in particular Government Code §12940(m),
18 was in full force and effect and was binding upon Defendants. This subsection imposes an ongoing
19 duty on Defendants to make reasonable accommodation for the known physical disability and/or
20 medical condition of an employee.

21 90. At all relevant times, Plaintiff was a member of a protected class within the meaning of,
22 in particular, Government Code §§12940(a) & 12986(1) et seq. because Plaintiff had a disability, a
23 physical condition that affected Plaintiff's major life activities, and medical condition of which
24 Defendants had both actual and constructive knowledge.

25 91. At all times herein, Plaintiff was willing and able to perform the duties and functions of
26 the position in which Plaintiff was employed, or could have performed the duties and functions of that
27 position with reasonable accommodations. At no time would the performance of the functions of the
28 employment position, with a reasonable accommodation for Plaintiff's disability or medical condition,

1 actual or as it was perceived by Defendants, have been a danger to Plaintiff's or any other person's
2 health or safety. Accommodation of Plaintiff's disability or disability or medical condition, real or
3 perceived by Defendants, would not have imposed an undue hardship on Defendants. Defendants
4 failed and refused to accommodate Plaintiff's disability, failed to engage in the interactive process with
5 Plaintiff and continue to violate this obligation, up to and including the date of Plaintiff's termination
6 or, if Defendant contends Plaintiff was never terminated, through the present and ongoing.

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

9 93. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated
10 by reference.

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

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

19
20 **SIXTH CAUSE OF ACTION**
21 **FOR FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS**
22 **IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
23 **AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE**

24 96. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 42, inclusive, as
25 though set forth in full herein.

26 97. At all times hereto, the FEHA, including in particular Government Code §12940(n),
27 was in full force and effect and was binding upon Defendants. This subsection imposes an ongoing
28 duty on Defendants to engage in a timely, good faith, interactive process with the employee to

1 determine effective reasonable accommodations, if any, in response to a request for reasonable
2 accommodation by an employee with a known physical disability or known medical condition and/or
3 becoming aware of the employee's need for accommodation.

4 98. At all relevant times, Plaintiff was a member of a protected class within the meaning of,
5 in particular, Government Code §§12940(a) & 12986(1) et seq. because Plaintiff had a physical
6 disability that affected Plaintiff's major life activities, and medical condition of which Defendants had
7 both actual and constructive knowledge.

8 99. Plaintiff reported the disability to Defendants and informed Defendants of her weekly
9 treatments that took place every Thursday, triggering Defendants' obligation to engage in the interactive
10 process with Plaintiff, but at all times herein, Defendants failed and refused to do so. Thereafter, despite
11 Defendants continuing obligation to engage in the interactive process with Plaintiff, despite Plaintiff's
12 submission of a doctors' notes identifying Plaintiff's condition and Plaintiff's desire to continue
13 working in some capacity, Defendants failed and refused to have any dialogue with Plaintiff
14 whatsoever, on any of these occasions, and Defendants violated, and continued to violate this obligation
15 up to and including the date of Plaintiff's termination or, if Defendant contends Plaintiff was never
16 terminated, through the present and ongoing.

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

19 101. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated
20 by reference.

21 102. The foregoing conduct of Defendants individually, and/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.

27 103. 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 **SEVENTH CAUSE OF ACTION**

2 **RETALIATION**

3 **LABOR CODE §98.6**

4 **AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE**

5 104. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 42, inclusive, as
6 though set forth in full herein.

7 105. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against an
8 employee for political activities; for complaining that he or she is owed unpaid wages, for
9 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
10 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's
11 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
12 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private
13 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code. Thus,
14 Section 98.6 prohibits an employer from discharging or in any manner discriminating or retaliating
15 against an employee who, among other things, has exercised her or her rights under that Chapter,
16 including the right to take rest breaks, and/or made a written or oral complaint that he or she is owed
17 unpaid wages. An employee who has been discharged or retaliated against in violation of Labor Code
18 §98.6 is entitled to recovery of a civil penalty against the employer in an amount not exceeding ten
19 thousand dollars (\$10,000.00) for each violation of that section.

20 106. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was
21 terminated from Plaintiff's employment with Defendants as a result of Plaintiff's complaints about not
22 receiving her nondiscretionary bonus.

23 107. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
24 Defendants, and Defendants' officers and/or managing agents, including SCHNEIDER and those
25 identified herein as DOES 1-20, who were authorized and empowered to make decisions that reflect
26 and/or create policy for Defendants. The aforementioned conduct of said managing agents and individuals
27 was therefore undertaken on behalf of Defendants. Defendants further had advanced knowledge of the
28 actions and conduct of said individuals whose actions and conduct were ratified, authorized, and approved

1 by managing agents whose precise identities are unknown to Plaintiff at this time and are therefore
2 identified and designated herein as DOES 1-20, inclusive.

3 108. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated
4 by reference.

5 109. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed
6 \$10,000.00 for Defendants' violations of Labor Code § 98.6.

7 110. Because the acts taken toward Plaintiff were carried out by managerial employees acting
8 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's rights and
9 in order to injure and damage Plaintiff, Plaintiff requests that punitive damages be levied against
10 Defendants and each of them, in sums in excess of the jurisdictional minimum of this court.

11
12 **EIGHTH CAUSE OF ACTION**

13 **FOR RETALIATION**

14 **IN VIOLATION OF LABOR CODE §§ 1102.5, 1102.6**

15 **AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE**

16 111. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 42, inclusive, as
17 though set forth in full herein .

18 112. At all relevant times, Labor Code §1102.5(a) was in full force and effect, and was
19 binding on Defendants. This law prohibits an employer, or any person acting on behalf of the employer,
20 from discharging an employee or in any manner discriminating or retaliating against, or taking any
21 adverse action against, an employee because, among other things, the employee disclosed information
22 to a government or law enforcement agency, or to a person with authority over the employee or another
23 employee who has the authority to investigate, discover, or correct the violation or noncompliance, if
24 the employee has reasonable cause to believe that the information discloses a violation of state or
25 federal statute, or violation of or noncompliance with a local, state, or federal rule or regulation,
26 regardless of whether disclosing the information is part of the employee's job duties. Pursuant to Labor
27 Code §1102.5(f), in addition to other penalties, an employer that is a corporation or limited liability
28

1 company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of
2 this section.

3 113. Defendants subjected Plaintiff to the adverse employment action, including without
4 limitation, termination because Plaintiff reported the suspected violations of California Law and the
5 Labor Code to Plaintiff's supervisors, including that Plaintiff was due and did not receive her
6 nondiscretionary bonus.

7 114. Plaintiff was terminated from his employment with Defendants as a result of his exercise
8 of his rights under Labor Code section §§98.6, 1102.5. Defendants' retaliatory animus is evidenced by,
9 among other things, the following facts: (1) Plaintiff's disciplinary actions and termination occurred
10 following Plaintiff making complaints about conduct he believed was unlawful, (2) there were no
11 legitimate performance issues or any other legitimate reason for Plaintiff's termination; and (3) Plaintiff
12 was terminated only days after Plaintiff's complaints and engagement in protected activity.

13 115. Plaintiff's reports of these violations were a motivating and contributing factor for the
14 adverse employment actions by Defendants against Plaintiff.

15 116. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
16 Defendants, and Defendants' officers and/or managing agents, including SCHNEIDER and those
17 identified herein as DOES 1-20, who were authorized and empowered to make decisions that reflect
18 and/or create policy for Defendants. The aforementioned conduct of said managing agents and individuals
19 was therefore undertaken on behalf of Defendants. Defendants further had advanced knowledge of the
20 actions and conduct of said individuals whose actions and conduct were ratified, authorized, and approved
21 by managing agents whose precise identities are unknown to Plaintiff at this time and are therefore
22 identified and designated herein as DOES 1-20, inclusive.

23 117. Said conduct violates Labor Code Labor Code §§1102.5, and 1102.6, and such
24 violations were a proximate cause in Plaintiff's damages as hereinabove stated.

25 118. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed
26 \$10,000.00 for Defendants' violations of Labor Code § 1102.5.

27 119. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated
28 by reference.

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

7
8 **NINTH CAUSE OF ACTION**
9 **FOR WRONGFUL TERMINATION**
10 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
11 **AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE**

12 121. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 42, inclusive, as
13 though set forth in full herein.

14 122. At all relevant times mentioned in this complaint, the FEHA was in full force and effect
15 and was binding on Defendants. This law requires Defendants to refrain, among other things, from
16 discriminating against any employee on the basis of disability, medical condition, real or perceived,
17 and use of medical leave, and from retaliating against any employee who engages in protected activity.

18 123. At all times mentioned in this complaint, it was a fundamental policy of the State of
19 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of
20 disability, medical condition, real or perceived, use of medical leave and/or engagement in protected
21 activity.

22 124. Plaintiff believes and thereon alleges that Plaintiff's disability and/or medical condition,
23 real or perceived, use of medical leave, engagement in protected activity with respect to these protected
24 classes, and/or some combination thereof, were factors in Defendants' conduct as alleged hereinabove.

25 125. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's use of
26 medical leave and/or Plaintiff's status as a protected member of the class under FEHA was a proximate
27 cause in Plaintiff's damages as stated below.

1 126. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
2 employment on the basis of disability, medical condition, real or perceived, or use of medical leave,
3 Plaintiff's complaining of harassment and discrimination due to these protected classes, Plaintiff's
4 engagement in protected activity, and/or some combination of these factors, were a proximate cause in
5 Plaintiff's damages as stated below.

6 127. At all relevant times mentioned in this complaint, Labor Code §98.6 was in full force
7 and effect and was binding upon Defendants and each of them. This law prohibits retaliation against
8 employees who complain about unpaid wages and/or attempt to exercise the rights under the Labor
9 Code. Labor Code §98.6 reflects the State's broad public policy interest in protecting the rights of
10 individual employees and job applicants who could not otherwise afford to protect themselves from
11 violations of the Labor Code.

12 128. At all relevant times mentioned in this complaint, Labor Code §1102.5 was in full force
13 and effect and was binding upon Defendants and each of them. This law prohibits retaliation against
14 employees who disclose reasonable suspicions of illegal activity or conduct by their employer to a
15 government or law enforcement agency, or to employer itself. Labor Code §1102.5 reflects the State's
16 broad public policy interest in encouraging workplace "whistleblowers," who may without fear of
17 retaliation report concerns regarding an employer's suspected illegal conduct, irrespective of whether
18 the reporting is made to governmental agencies or to the employer itself, and irrespective of whether
19 the employee's suspicions are correct that the challenged conduct actually violates some law. Indeed,
20 the law in California is that an employee's good faith but mistaken belief in the illegality of his co-
21 workers', supervisor's, and employer's conduct is protected from employer retaliation in the whistle-
22 blowing context.

23 129. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's
24 engagement in protected activities under Labor Code §§ 98.6 and/or 1102.5 was a proximate cause in
25 Plaintiff's damages as stated below.

26 130. The above said acts of Defendants constitute violations of the FEHA, Labor Code,
27 Government Code and the public policy of the State of California embodied therein as set forth above.

1 Defendants violated these laws by discriminating, harassing, and retaliating against Plaintiff and
2 terminating Plaintiff's employment in retaliation for exercise of protected rights.

3 131. At all times mentioned in this complaint, it was a fundamental policy of the State of
4 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of
5 medical leave, in violation of FEHA, and/or engagement in protected activity.

6 132. The damage allegations of Paragraphs 43 through 46, inclusive, are herein incorporated
7 by reference.

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

14
15 **TENTH CAUSE OF ACTION**

16 **FOR DECLARATORY JUDGMENT**

17 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

18 134. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 133, inclusive, as
19 though set forth in full herein.

20 135. Government Code §12920 sets forth the public policy of the State of California as
21 follows:

22 It is hereby declared as the public policy of this state that it is necessary to
23 protect and safeguard the right and opportunity of all persons to seek,
24 obtain, and hold employment without discrimination or abridgment on
25 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.

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

Further, the practice of discrimination because of race, color, religion, 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 to be against public policy.

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

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

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

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

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

The opportunity to seek, obtain, and hold employment without discrimination because 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 is hereby recognized as and declared to be a civil right.

138. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties as it is believed that Defendants may allege that they did not discriminate and retaliate against Plaintiff; that Plaintiff was not terminated as a result of Plaintiff's disability and/or perceived disability, medical condition or perceived medical condition, use of or anticipated use of medical leave, engagement in protected activities, and/or some combination of these protected characteristics. Plaintiff contends that Defendants did discriminate and retaliate against Plaintiff on the basis of Plaintiff's disability and/or perceived disability, medical condition or perceived medical condition, use of or anticipated use of medical leave, engagement in protected activities, and/or some combination of these protected characteristics; and that Plaintiff was retaliated against and, ultimately wrongfully terminated as a result of Plaintiff's age, medical condition, disability and/or perceived disability, medical condition or perceived medical condition, use of or anticipated use of medical leave, engagement in protected activities, and/or some combination of these protected

1 characteristics. Plaintiff is informed and believes, and on that basis alleges, that Defendants shall
2 dispute Plaintiff's contentions.

3 139. Pursuant to Code of Civil Procedure §1060, Plaintiff desires a judicial determination of
4 Plaintiff's rights and duties, and a declaration that Defendants harassed Plaintiff on the basis of
5 Plaintiff's age, perceived disability, disability, medical condition, perceived medical condition,
6 engagement in protected activities, and/or some combination of these protected characteristics.

7 140. Pursuant to Code of Civil Procedure §1060, Plaintiff seeks a judicial determination of
8 Plaintiff's rights and duties, and a declaration that Plaintiff's age, perceived disability, medical
9 condition, perceived medical condition, disability, use of or anticipated use of medical leave
10 engagement in protected activities, and/or some combination of these protected characteristics was a
11 substantial motivating factor in the decision to subject Plaintiff to the aforementioned adverse
12 employment actions.

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

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

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

ELEVENTH CAUSE OF ACTION
FOR FAILURE TO PAY WAGES DUE
LABOR CODE §§201, 204
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

144. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24, inclusive, as though set forth in full herein.

145. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and required by 8 Code of Regulations §11040, as set forth hereinabove. As alleged herein, Defendants failed to pay nondiscretionary bonuses after the bonus was due and owed to Plaintiff.

146. Defendants violated Labor Code §§ 204 and 223 because Defendants failed to pay wages for all hours worked paid at least twice during each calendar month to employees as required “by contract” under Labor Code section 223, as well as an improper collection of wages paid to an employee under Labor Code section 221. *Gonzales v. Downtown LA Motors*, 215 Cal. App. 4th 36 (2d App. Dist. Mar. 6, 2013).

147. Defendants, as a pattern and practice in uniform administration of corporate policy with regard to Plaintiff and the other aggrieved employees, required Plaintiff and the other aggrieved employees to perform labor without compensation.

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

149. Plaintiff has been deprived of Plaintiff’s rightfully earned 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.

150. Pursuant to Labor Code § 218.6 and Civil Code § 3287, Plaintiff and the other aggrieved employees seek recovery of pre-judgment interest on all amounts recovered herein.

151. Labor Code §558(a) provides that any person acting on behalf of an employer who violates, or causes to be violated, any statute or provision regulating hours and days of work in any order of the Industrial Welfare Commission pay a civil penalty in the amount of \$50 for each underpaid employee for each pay period in which the employee was underpaid in addition to an amount sufficient

1 to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the person acting
2 on behalf of an employer is liable in the amount of \$100 for each underpaid employee for each pay period
3 for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

4
5 **TWELFTH CAUSE OF ACTION**
6 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
7 **LABOR CODE §§226, 226.3 1174 ET SEQ.**
8 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

9 152. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24, inclusive, as
10 though set forth in full herein .

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

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

22 155. At all relevant times, Defendants failed to provide Plaintiff with timely and accurate wage
23 and hour statements showing gross wages earned, total hours worked, all deductions made, net wages
24 earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and rates in
25 effect during each pay period and the corresponding number of hours worked at each hourly rate by
26 Plaintiff. Not one of the paystubs that Plaintiff received complied with Labor Code §226, and contained
27 almost none of the required information, including hours actually worked.

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

1 157. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
2 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
3 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
4 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
5 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
6 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
7 meal period, and rest period wages.

8 158. Plaintiff was paid on a bi-weekly basis, and therefore Defendants violated Labor Code
9 §226 approximately twenty-six (26) times during the last year that Plaintiff worked for Defendants.
10 Consequently, Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory
11 maximum amount of \$4,000.00, whichever is greater.

12 159. In addition, thereto, Plaintiff is entitled civil penalties pursuant to Labor Code §226.3 in
13 the amount of \$25,250.00 (\$250.00 + \$1,000.00 x 25 subsequent pay periods).

14 160. 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 **THIRTEENTH CAUSE OF ACTION**
19 **FOR FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES**
20 **LABOR CODE §2802**
21 **AGAINST EMPLOYER AND DOES 1 THROUGH 20, INCLUSIVE**

22 161. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24, inclusive, as
23 though set forth in full herein.

24 162. Pursuant to Labor Code §450(a), "no employer...may compel or coerce any employee...to
25 patronize his or her employer, or any other person, in the purchase of anything of value."

26 163. Pursuant to Labor Code §2802(a), "an employer shall indemnify his or her employee for
27 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
28 his or her duties, or of his or her obedience to the directions of the employer."

1 164. Plaintiff was required by Defendants to expend Plaintiff's personal funds because of the
2 duties required by Defendants, as alleged hereinabove, including but not limited to Plaintiff's cell phone
3 expenses and home internet for EMPLOYERS's business purposes.

4 165. Pursuant to Labor Code §2802(a), Defendants are legally required to reimburse Plaintiff
5 for all necessary expenditures incurred in the performance of Plaintiff's duties.

6 166. EMPLOYERS did not provide Plaintiff a business cellphone in the field to use, making
7 Plaintiff have to use her own personal cell phone which she was never reimbursed for in violation of
8 Labor Code §§ 2802 and 2804.

9 167. Plaintiff is therefore entitled to reimbursement for usage of her cell phone.

10 168. As a proximate result of the aforementioned violations of Labor Code §§450(a) and
11 2502(a), Plaintiff is entitled to recover from Defendants the unpaid balance of all of the necessary
12 aforementioned expenditures.

13 169. As a proximate result of the aforementioned violations of Labor Code §§450(a) and
14 2502(a), Plaintiff has been damaged in an amount according to proof at the time of trial.

15 170. Pursuant to Labor Code §2802(b), Plaintiff requests that the Court award interest at the
16 same rate as judgments in civil actions, accruing from the date on which Plaintiff incurred the necessary
17 expenditure or loss.

18 171. Pursuant to Labor Code §2802(c), Plaintiff requests that the Court award Plaintiff
19 reasonable attorneys' fees and costs incurred in this action.

20
21 **FOURTEENTH CAUSE OF ACTION**

22 **FOR WAITING TIME PENALTIES**

23 **LABOR CODE §§201-203**

24 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

25 172. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24, inclusive, as
26 though set forth in full herein .

27 173. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
28 other compensation due immediately upon termination or within 72 hours of resignation, as required.

1 These wages refer to, at a minimum, unpaid overtime compensation, that Defendants should have paid,
2 but did not pay to Plaintiff during the term of Plaintiff's employment and which were, at the latest, due
3 within the time restraints of Labor Code §§201-203.

4 174. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
5 203.

6 175. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
7 is entitled to payment of Plaintiff's bonus, as previously pleaded herein, calculated based on 30 days of
8 Plaintiff's daily wage rate in an amount according to proof.

9 176. Based on Defendants' conduct as alleged herein, Defendants are liable for an amount
10 according to proof in statutory penalties pursuant to Labor Code §203 and other applicable provisions, as
11 well as attorneys' fees and costs.

12
13 **FIFTEENTH CAUSE OF ACTION**
14 **FOR PRIVATE ATTORNEY GENERAL ACT**
15 **LABOR CODE §2699**
16 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

17 177. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 176, inclusive, as
18 though set forth in full herein.

19 178. Under Labor Code §2699, Plaintiffs, as an aggrieved employee, may bring an action
20 against Defendants, on behalf of himself and other current or former employees, seeking statutory civil
21 penalties for Defendants' violations of the California Labor Code.

22 179. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and
23 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as
24 previously pleaded in this Complaint.

25 180. On March 28, 2023, more than 65 calendar days before filing this Complaint, Plaintiffs
26 provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail
27 to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
28 satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ 200,

201, 202, 203, 204, 221, 226, 226.3, 558, and 1102.5, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

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

182. Further, as of the filing of this Complaint, Plaintiffs have not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of the actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor Code §2699.

183. *Additionally, pursuant to Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, as aggrieved employees, Plaintiffs may investigate and pursue claims and penalties on behalf of other aggrieved employees for other violations that they were not personally “aggrieved” by.

PENALTIES

184. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) (or any of its departments, divisions, commissions, board agency or employees), such civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees) and Labor Code §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil penalties, as follows:

a) As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of one hundred dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation; and

1 b) As applicable, civil penalties under Labor Code §558 (in addition to and entirely
2 independent and apart from any other penalty provided for in the Labor Code), for violations of Labor
3 Code §§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the
4 aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and
5 \$100 for each subsequent violation for each underpaid employee for each pay period for which the
6 employee was underpaid; and also an additional amount sufficient to recover under paid wages as
7 penalties, with all wages recovered pursuant to Labor Code §557 paid to the aggrieved employees.
8 Within the one year immediately preceding the filing of this Complaint, Defendants, and each of them,
9 violated Labor Code §558 on 26 pay periods, the first of which Defendants are penalized \$50.00, and the
10 remainder of which Defendants are penalized \$100.00 each, for a total due in Labor Code §558 penalties
11 of \$2,550.00;

12 c) As applicable, civil penalties under Labor Code §98.6 (in addition to and entirely
13 independent and apart from any other penalty provided for in the Labor Code), for violations of Labor
14 Code §98.6, in the amount of \$10,000 per aggrieved employee for each violation of this section, to be
15 awarded to the employee or employees who suffered the violation;

16 d) As applicable, civil penalties under Labor Code §§201-203 (in addition to and entirely
17 independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee
18 who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor
19 Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same
20 rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30)
21 days;

22 e) As applicable, Labor Code §204 (in addition to an entirely independent and apart from
23 any other penalty provided in the Labor Code), for any aggrieved employee who Defendants failed to
24 pay all earned wages during employment, in the amount of a civil penalty of \$100 for the initial violation,
25 and \$200 for each aggrieved employee per pay period for each subsequent violation plus 25 percent of
26 the amount unlawfully withheld; and

27 f) As applicable, civil penalties under Labor Code §221 (in addition to an entirely
28 independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee

1 who Defendants failed to pay all earned wages during employment, in the amount of a civil penalty of
2 \$100 for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent
3 violation;

4 g) As applicable, Labor Code §§551 and 552 (in addition to and entirely independent and
5 apart from any other penalty provided in the Labor Code), for any aggrieved employee who Defendants
6 failed to pay overtime wages during employment, in the amount of a civil penalty of \$100 for the initial
7 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation plus 25
8 percent of the amount unlawfully withheld;

9 h) As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely
10 independent and apart from any other civil penalty provided in the Labor Code), for each violation of
11 Labor Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation
12 and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

13 i) As applicable, civil penalties under Labor Code §1102.5 (in addition to and entirely
14 independent and apart from any other penalty provided in the Labor Code) for violations of Labor Code
15 §1102.5, in the amount of \$10,000 for each aggrieved employee for each violation; and

16 j) As applicable, any and all additional applicable civil penalties and sums as provided by
17 the Labor Code and/or other relevant statutes.

18 185. In addition, Plaintiffs seek and are entitled to seventy-five percent (75%) of all penalties
19 obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and
20 employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%)
21 to the aggrieved employees.

22 186. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek
23 recovery of pre-judgment interest on all amounts recovered herein.

24 187. As a direct and proximate result of Defendants' California Labor Code violations as set
25 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per
26 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
27 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
28

1 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
2 provide for a penalty, §§ 200, 226.3 and 558.

3 188. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek
4 recovery of pre-judgment interest on all amounts recovered herein.

5 189. Further, Plaintiffs are entitled; to recover reasonable attorneys' fees and costs pursuant to
6 Labor Code §§2699(g)(1) and any other applicable statute.

7
8 **SIXTEENTH CAUSE OF ACTION**

9 **FOR UNFAIR COMPETITION**

10 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

11 **AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE**

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

14 191. Defendants' violations of 8 Code of Regulations §11040, Industrial Welfare Commission
15 Order No. 4-2001, Labor Code §§201-203, 204, 226, 2699, and other applicable provisions, as alleged
16 herein, including Defendants' failure and refusal to comply with the FEHA, constitute unfair business
17 practices in violation of Business & Professions Code §§17200, et seq.

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

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

24
25 **PRAYER FOR RELIEF**

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

1 1. For a money judgment representing compensatory damages including lost wages,
2 earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money,
3 together with interest on these amounts; for other special damages; and for general damages for mental
4 pain and anguish and emotional distress and loss of earning capacity;

5 2. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than \$10,000.00;

6 3. For civil penalties pursuant to Labor Code § 1102.5 in the amount of no less than
7 \$10,000.00;

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

9 5. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
10 less than \$25,250.00;

11 6. For waiting time penalties pursuant to Labor Code §§201-203 in the amount according to
12 proof;

13 7. For statutory penalties pursuant to Labor Code §2699(f), in the amount of no less than an
14 amount according to proof on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants'
15 aggrieved employees, estimated to exceed \$500,000.00;

16 8. For civil penalties under Labor Code §210, in addition to and entirely independent and
17 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
18 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
19 each subsequent violation, plus 25 percent of the amount unlawfully withheld;

20 9. For civil penalties under Labor Code §§ 210 and 225.5, in addition to and entirely
21 independent and apart from any other penalty provided in the Labor Code, for each violation of Labor
22 Code §§204, 221 and 223, in the amount of \$100 for each aggrieved employee per pay period for each
23 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation or for each
24 willful or intentional violation, in addition to 25 percent of the amount unlawfully withheld;

25 10. For civil penalties under Labor Code §§203 and/or 256, in addition to and entirely
26 independent and apart from any other penalty provided in the Labor Code, in the amount of one day of
27 pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination,
28 until payment was/is made, up to a maximum of thirty (30) days;

1 11. For civil penalties under Labor Code §§551 and 552, in addition to and entirely
2 independent and apart from any other penalty provided in the Labor Code, in the amount of \$100 for each
3 aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay
4 period for each subsequent violation;

5 12. For reasonable attorneys' fees and costs incurred pursuant to Labor Code §2699(g)(1) and
6 any other applicable statute; and

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

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

11 14. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
12 condemning Defendants' discriminatory practices;

13 15. For injunctive relief barring Defendants' discriminatory employment policies and
14 practices in the future, and restoring Plaintiff to Plaintiff's former position with Defendants;

15 16. For injunctive relief compelling Defendants to report to federal and state authorities wages
16 earned by Plaintiffs, and other employees, and pay all state and federal taxes owing, employer matching
17 funds, unemployment premiums, social security, Medicare, and workers' compensation premiums, all
18 this in an amount according to proof.

19 17. For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful
20 conduct, failure to pay wages and other compensation in accordance with the law;

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

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

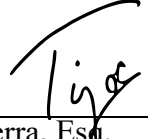
25 20. For post-judgment interest; and

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

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3
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5 DATED: August 30, 2023

GUERRA & CASILLAS LLP

6
7 By:



Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Guile Gomez, Esq.
Attorneys for Plaintiff
ELIDA MARTIN

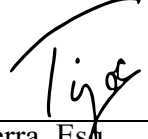
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10
11 **JURY TRIAL DEMANDED**

12 Plaintiff demands trial of all issues by jury.

13 DATED: August 30, 2023

GUERRA & CASILLAS LLP

14
15 By:



Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Guile Gomez, Esq.
Attorneys for Plaintiff
ELIDA MARTIN