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on behalf of herself and similarly situated employees

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County of Placer
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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER**

CARMEN GARCIA, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

CALIBER HOLDINGS OF CALIFORNIA,
LLC; CALIBER HOLDINGS, LLC.;
CALIBER HOLDINGS CORPORATION;
PHILLIP TARIN, an individual; and Does
1 through 20, inclusive,

Defendants.

Case No. S-CV-0050365

COMPLAINT FOR DAMAGES:

- 1. Unlawful Discrimination on the Basis of Sex in Violation of the Fair Employment and Housing Act ("FEHA") (Cal. Gov. Code § 12940(a));**
- 2. Unlawful Discrimination on the Basis of Associational Disability in Violation of the FEHA (Cal. Gov. Code § 12940(a));**
- 3. Work Environment Harassment (Cal. Gov. Code § 12940(j));**
- 4. Failure to Engage in the Interactive Process;**
- 5. Failure to Provide a Reasonable Accommodation;**
- 6. Retaliation in Violation of the FEHA (Cal. Gov. Code § 12940(h) and § 12945.2);**

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7. **Failure to Prevent Harassment, Discrimination and Retaliation in Violation of the FEHA (Cal. Gov. Code § 12940(h),(j),(k));**
 8. **Wrongful Termination in Violation of Public Policy;**
 9. **Failure to Pay Minimum Wage;**
 10. **Failure to pay Overtime Wages;**
 11. **Failure to Provide Meal Periods;**
 12. **Failure to Provide Rest Periods;**
 13. **Failure to Reimburse Business Expenses;**
 14. **Violation of the Healthy Workplaces, Healthy Families Act (Cal. Lab. Code § 245 *et seq.*);**
 15. **Waiting Time Penalties;**
 16. **Failure to Provide Compliant Wage Statements;**
 17. **Failure to Provide Payroll Records Upon Request;**
 18. **Violation of California Unfair Competition Law (Business & Professions Code § 17200 *et seq.*);**
 19. **Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 *et seq.***

JURY TRIAL DEMANDED

Plaintiff CARMEN GARCIA (“Plaintiff”), on behalf of herself and all other similarly situated employees hereby files this Complaint against Defendants CALIBER HOLDINGS OF CALIFORNIA LLC, CALIBER HOLDINGS, LLC, CALIBER HOLDINGS CORPORATION (collectively, “Caliber”), Phillip Tarin (“Tarin”), 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.

1 2. Plaintiff was employed by Caliber at its automotive repair shop on Industrial Avenue
2 in Roseville, California from approximately November 15, 2021 until her wrongful discharge on or
3 about February 2, 2023.

4 3. Plaintiff is informed and believes, and thereon alleges, that Defendant Caliber
5 Holdings of California, LLC is a Delaware limited liability company with its principal place of
6 business in Lewisville, Texas, and is engaged in business in California. Defendant Caliber Holdings
7 of California, LLC is in the business of providing automotive collision repair and painting services.

8 4. Plaintiff is informed and believes, and thereon alleges, that Defendant Caliber
9 Holdings LLC is a Delaware limited liability company with its principal place of business in
10 Lewisville, Texas, and is engaged in business in California. Defendant Caliber Holdings LLC is in
11 the business of providing automotive collision repair and painting services.

12 5. Plaintiff is informed and believes, and thereon alleges, that Defendant Caliber
13 Holdings Corporation is a Delaware corporation with its principal place of business in Lewisville,
14 Texas, and is engaged in business in California. Defendant Caliber Holdings Corporation is in the
15 business of providing automotive collision repair and painting services.

16 6. Plaintiff is informed and believes, and thereon alleges, that Defendant Tarin is an
17 individual over the age of eighteen and is a resident of the State of California. On information and
18 belief, at all relevant times, Tarin was the General Manager at Caliber's location on Industrial
19 Avenue in Roseville, California.

20 7. Plaintiff is further informed and believes, and thereon alleges, that each of the
21 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
22 joint venturer of the remaining defendants and was acting within the course and scope of that
23 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
24 Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the
25 remaining defendants. The true names and capacities of the defendants named herein Does 1 through
26 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
27 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
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1 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
2 through 20, inclusive, when they have been determined.

3 8. The Placer County Superior Court has jurisdiction in this matter due to alleged
4 violations of California Government Code sections 12945.2 and 12940 *et seq.*, California Labor
5 Code sections 201, 203, 226, 226.7, 510, 512, 1194, and 2802, and Business and Professions Code
6 section 17200 *et seq.*, and the applicable Wage Order. The amount in controversy exceeds the
7 jurisdictional minimum of this court.

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

10 10. Plaintiff has filed a complaint of discrimination, harassment, and retaliation with the
11 State of California Civil Rights Department against Defendants within the applicable statutory
12 period and received a Notice of Right to Sue on April 24, 2023.

13 11. On April 14, 2023, Plaintiff filed her California Labor Code section 2699.3 Private
14 Attorney General Act (“PAGA”) notice with the California Labor & Workforce Development
15 Agency (“LWDA”). After the expiration of 65 days from the filing of the PAGA Notice, if the
16 LWDA does not respond, Plaintiff will have fully exhausted her administrative remedies.

17 **GENERAL ALLEGATIONS**

18 12. On or about November 15, 2021, Plaintiff, a female, was hired by Caliber as a
19 Service Advisor at its shop on Industrial Avenue in Roseville, California. As a Service Advisor,
20 Plaintiff prepared estimates and repair plans, and served as the primary point of contact for
21 customers at her shop throughout the vehicle repair process.

22 **Discrimination/Harassment Allegations**

23 13. Plaintiff was one of the only females who worked at Caliber’s Industrial Avenue
24 shop in Roseville, California. Shortly after Plaintiff’s employment commenced, the Caliber
25 General Manager who hired her and to whom she reported was replaced with a new General
26 Manger, Defendant Tarin.

27 14. Throughout her employment, Plaintiff was subjected to a continuous barrage
28 demeaning, derogatory, and harassing comments from her male colleagues. Plaintiff’s male

1 colleagues would routinely mock and mimic Plaintiff in the workplace. Caliber's management
2 was aware of the pervasive chauvinistic work environment, the acts of harassment and
3 discrimination,, but took no action to stop it.

4 15. Plaintiff's supervisors treated her in a condescending manner because of her sex.
5 To illustrate, on numerous occasions when Plaintiff would ask her Production Manager, Jesse
6 Hart, a question, he would simply brush off the Plaintiff by telling her "you're not going to get it
7 anyway." In contrast, Mr. Hart would answer questions from Plaintiff's male colleagues.

8 16. Plaintiff complained to her General Manager, Defendant Tarin, that she believed
9 that she was being treated differently than her colleagues, who were predominantly male. Rather
10 than investigating or otherwise addressing Plaintiff's complaint, Defendant Tarin dismissively
11 told Plaintiff, "No, that's not true." No investigation or other action was taken in response to
12 Plaintiff's complaint.

13 17. Over the course of her employment, it was necessary for Plaintiff to address
14 urgent and emergency situations involving her disabled son who suffered from severe emotional
15 and mental health illnesses. On several of these occasions, Plaintiff was unable to make to work
16 on time. Plaintiff informed Tarin that she may have to occasionally arrive late to work in the
17 event there was an emergency related to her son's disability. Tarin made no effort to discuss
18 possible accommodations with Plaintiff that would allow her to care of her disabled son.

19 18. On or about February 2, 2023, Plaintiff attended a meeting with Tarin, Mr. Hart,
20 and several male technicians regarding the status of multiple repairs. During that meeting,
21 Plaintiff asked a technician, Trevor (LNU), for an update on repairs to vehicle that had been
22 dropped off over a month earlier. Rather than providing the requested update, Trevor began
23 viciously mocking and mimicking Plaintiff, and told the group that Plaintiff was always
24 "whining." Plaintiff complained to the other meeting attendees that verbal abuse from Trevor
25 "isn't right." However, Plaintiff's complaint fell on deaf ears and no one, including Tarin, took
26 any action to stop Trevor from subjecting Plaintiff to the unprovoked harassment.

27 19. Later that morning, Plaintiff overheard a conversation between Trevor and Tarin
28 in which she was referred to as a "bitch." Shortly after overhearing that conversation, Tarin

1 called Plaintiff into his office and terminated her for ostensible violations of Caliber's attendance
2 policy. In reality, Plaintiff was terminated because of her sex, association with her disabled son,
3 and in retaliation for complaining about discrimination and harassment in the workplace.

4 20. Plaintiff is informed and believes, and thereon alleges, that her position was filled
5 the next day by a male employee from another shop who was promoted for the purpose of
6 replacing Plaintiff.

7 21. Plaintiff is informed and believes, and thereon alleges, that another female
8 employee quit because of the gender based hostile work environment.

9 Wage and Hour Allegations

10 22. Plaintiff and similarly situated employees worked for Caliber as non-exempt
11 employees in California. During her employment at Caliber, Plaintiff was paid on an hourly basis
12 plus production bonuses.

13 23. Defendants regularly required Plaintiff and similarly aggrieved employees to work
14 through their statutorily required meal periods. Defendants failed to provide Plaintiff and other
15 similarly situated employees a 30-minute, duty-free meal period before the end of the fifth hour
16 of work as required under the law. Plaintiff and similarly situated aggrieved employees were
17 instructed to prioritize customers and regularly missed their meal periods and/ or they were
18 provided late due the necessity of taking care of customers. Further, Defendants adjusted
19 Plaintiff's and similarly situated employees' timecards to reflect they were provided a 30-minute,
20 duty-free meal period when, in fact, no such break was provided.

21 24. When Plaintiff and similarly situated employees were provided a meal break
22 before the fifth hour of work, those meal periods were regularly interrupted within 30 minutes of
23 the start of the meal period because the Plaintiff and similarly situated employees were required
24 to assist customers, including responding to customer phone calls. Work performed during meal
25 breaks was also not compensated, resulting in unpaid off-the-clock work.

26 25. Defendants also failed to provide rest periods to Plaintiff and similarly situated
27 employees for every 4 hours worked or major fraction thereof. Caliber's management were aware
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1 this was occurring and did not ensure rest periods were provided to Plaintiff and similarly
2 situated employees in compliance with California law.

3 26. Defendants failed to pay Plaintiff and similarly situated employees for all
4 statutorily required meal and rest premiums owed for non-compliant and missed meal and rest
5 periods. When Plaintiff and similarly situated employees were paid meal and rest period
6 premiums, Defendants failed to pay them at the correct rate of pay because Defendants failed to
7 include production bonuses and other remuneration in in the calculation of meal and rest period
8 premiums.

9 27. Defendants also failed to pay Plaintiff and similarly aggrieved employees paid
10 sick leave at the correct rate of pay because Defendants failed to include production bonuses and
11 other remuneration in the calculation of paid sick leave.

12 28. On information and belief, Defendants underpaid Plaintiff and similarly situated
13 employees for other types of wages as well. Plaintiff is informed and believes, and thereon
14 alleges, that this practice resulted in the systemic underpayment of wages to Plaintiff and
15 similarly situated employees.

16 29. Additionally, Plaintiff and similarly situated employees were required to incur
17 business-related expenses for which they were not compensated. For example, Plaintiff and
18 similarly situated employees were required to use their personal cell phones for business
19 purposes, but were not reimbursed by Defendants.

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

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

27 32. Defendants also did not provide Plaintiff and similarly situated aggrieved employees
28 with payroll records upon request. Shortly after Defendants wrongfully terminated Plaintiff, Plaintiff

1 requested Defendants provide her a copy of her wage statements, but was not provided her wage
2 statements within 21 days as required by California Labor Code section 226(f).

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4 **FIRST CAUSE OF ACTION**
5 **Unlawful Discrimination on the Basis of Sex**
6 **Cal. Gov't Code § 12940(a)**
7 **(Against Defendants Caliber and DOES 1 through 20, inclusive)**

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

10 34. At all times herein mentioned, the California Fair Employment and Housing Act
11 ("FEHA") was in full force and effect and binding on Caliber. California Government Code section
12 12940(a) provides that it shall be an unlawful employment practice for an employer to discriminate
13 against an employee in the terms and conditions of her employment on the basis of her sex.

14 35. At all times mentioned herein, Caliber was an employer within the meaning of the
15 FEHA because they employed five or more persons.

16 36. During the course of her employment with the Caliber, Plaintiff, was discriminated
17 against in the terms, conditions, and privileges of employment on the basis of her sex as set forth
18 above. Plaintiff was wrongfully terminated on the basis of her sex, and for complaining about,
19 objecting to, and resisting discrimination in the workplace.

20 37. As a direct, foreseeable and proximate result of Caliber's unlawful actions, Plaintiff
21 lost wages and work benefits and will continue to lose future wages and work benefits, has been
22 required to retain attorneys and incur attorneys' fees, and other damages, and will in the future incur
23 additional damages in an amount according to proof at the time of trial, but in an amount in excess
24 of the minimum jurisdiction of this Court.

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

39. The aforementioned acts of Caliber were willful, wanton, malicious, intentional,
oppressive, and despicable, and were done in willful and conscious disregard of the rights of Plaintiff

1 and were done by officers, directors, and/or managing agents of Caliber, or with the express
2 knowledge, consent, and ratification of managerial employees of Caliber, and thereby justify the
3 awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

4 **SECOND CAUSE OF ACTION**

5 **Unlawful Discrimination on the Basis of Associational Disability**

6 **Cal. Gov't Code § 12940(a)**

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

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

10 40. California Government Code section 12940(a) provides that it shall be an unlawful
11 employment practice for an employer to discriminate against an employee because of a mental
12 disability. Under the FEHA, the term "mental disability" includes "any mental or psychological
13 disorder" that "limits a major life activity." Cal. Gov't Code § 12926(j)(1).

14 41. The FEHA prohibits an employer from taking adverse action against employees
15 based on their association with another person who is or is perceived to be disabled. *See Castro-*
16 *Ramirez v. Dependable Highway Express, Inc.*, 2 Cal. App. 5th 1028, 1036-1037 (2016).

17 42. At all times herein mentioned, Plaintiff's son suffered from a severe mental disability
18 limited a major life activity and required on-going intervention.

19 43. At all relevant times mentioned herein, Defendants knew Plaintiff's son suffered
20 from a severe mental disability.

21 44. Plaintiff was able to perform the essential job duties of her position with Caliber with
22 or without a reasonable accommodation. At all times during her employment, Plaintiff was qualified
23 to perform the duties of her position.

24 45. Plaintiff was discharged from her position with Caliber.

25 46. Plaintiff's association with her son who suffered from a severe mental disability was
26 a substantial motivating reason for Defendant's decision to terminate Plaintiff.

27 47. As a direct, foreseeable and proximate result of Caliber's unlawful conduct, Plaintiff
28 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

1 additional damages in an amount according to proof at the time of trial, but in an amount in excess
2 of the minimum jurisdiction of this Court.

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

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

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13 **THIRD CAUSE OF ACTION**
14 **Work Environment Harassment in Violation of the FEHA**
15 **Cal. Gov. Code § 12940(j)**
16 **(Against All Defendants)**

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

19 51. The FEHA, Gov. Code section 12940, subsection (j), makes it unlawful for an
20 employer, to subject an employee to harassing conduct on the basis of sex.

21 52. The harassment Plaintiff experienced while employed by Caliber described above
22 was sufficiently severe or pervasive to alter the terms and conditions of her work environment and
23 was thus unlawful under FEHA.

24 53. A reasonable woman in Plaintiff's circumstances would have considered her work
25 environment to be hostile, intimidating, offensive, oppressive, or abusive. Plaintiff considered her
26 work environment while employed by Caliber to be hostile, intimidating, offensive, oppressive, and
27 abusive.

28 54. Defendants knew or should have known, condoned, and/or participated in the
harassing conduct against Plaintiff. Plaintiff's supervisors failed to take immediate and appropriate
corrective action to stop the harassing conduct.

63. As a direct, foreseeable, and proximate result of Caliber's 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.

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

FIFTH CAUSE OF ACTION
Failure to Provide Reasonable Accommodation
Cal. Gov't Code § 12940(m)
Plaintiffs Caliber and DOES 1 through 20, inclusive)

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

66. During the course of her employment with Caliber, Plaintiff's son suffered from a severe mental disability that limited a major life activity and required on-going intervention.

67. Caliber knew Plaintiff's son suffered from severe mental disability.

68. Plaintiff was able to perform the essential duties of her position with a reasonable accommodation. At all times during her employment with Caliber, Plaintiff was qualified to perform the duties of her position.

69. As a direct, foreseeable and proximate result of Caliber's 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, but in an amount in excess of the minimum jurisdiction of this Court.

70. As a direct, foreseeable, and proximate result of Caliber's unlawful actions, Plaintiff has suffered humiliation, embarrassment, mental and emotional distress, shame, anxiety, and

1 discomfort, all of which is substantial and enduring, in an amount according to proof at the time of
2 trial.

3 71. The aforementioned acts of Caliber were willful, wanton, malicious, intentional,
4 oppressive, and despicable, and were done in willful and conscious disregard of the rights of Plaintiff
5 and were done by officers, directors, and/or managing agents of Caliber, or with the express
6 knowledge, consent, and ratification of managerial employees of Caliber, and thereby justify the
7 awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

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9 **SIXTH CAUSE OF ACTION**
10 **Retaliation in Violation of the FEHA**
11 **Cal. Gov. Code § 12940(h)**

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

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

15 73. At all relevant times, California Government Code section 12940(h) provided that it is
16 an unlawful employment practice “[f]or an employer . . . or person to discharge, expel or otherwise
17 discriminate against any person because the person has opposed any practices forbidden under this
18 part or because the person has opposed any practices forbidden under this part or because the person
19 has filed a complaint, testified, or assisted in any proceeding under this part . . .”

20 74. As set forth above, Defendants’ acts and omissions constitute violations of California
21 Government Code section 12940(h). Defendants retaliated against Plaintiff by, among other things,
22 terminating her employment, because she complained about the discriminatory and harassing conduct
23 direct toward her from her male colleagues.

24 75. As a direct, foreseeable, and proximate result of Defendants’ unlawful actions,
25 Plaintiff has suffered substantial losses in earnings and other employment benefits and has incurred
26 other economic losses.

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

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

5 **SEVENTH CAUSE OF ACTION**
6 **Failure to Prevent Discrimination, Harassment, and Retaliation**
7 **Cal. Gov't Code § 12940(k)**
8 **(Against Defendants Caliber and DOES 1 through 20, inclusive)**

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

11 79. At all times herein mentioned, the FEHA was in full force and effect and was fully
12 binding upon Defendants. Specifically, California Government Code section 12940(k) makes it an
13 unlawful employment practice for an employer to fail to take all reasonable steps necessary to
14 prevent discrimination, harassment, and retaliation based on sex and mental disability from
15 occurring.

16 80. As set forth above, while employed by Caliber, Plaintiff endured a continuous patter
17 of harassment and discrimination on the basis of her sex and associational disability, and was
18 retaliated against when she complained about such conduct.

19 81. Caliber failed to provide Plaintiff with protections required under California
20 Government Code § 12940(k) by not taking immediate and sufficient action to correct the
21 discriminatory, harassing, and retaliatory conduct directed at Plaintiff because of her race and color.

22 82. As a direct, foreseeable, and proximate result of Defendants' unlawful actions,
23 Plaintiff has suffered substantial losses in earnings and other employment benefits and has incurred
24 other economic losses.

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

28 84. Defendants committed the acts herein despicably, maliciously, fraudulently, and
oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive

1 amounting to malice, and in conscious disregard of her rights. Plaintiff is thus entitled to recover
2 punitive damages from Defendants in an amount according to proof.

3 **EIGHTH CAUSE OF ACTION**
4 **Wrongful Termination in Violation of Public Policy**
5 **(Against Defendants Caliber and DOES 1 through 20, inclusive)**

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

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

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

15 88. Plaintiff suffered discrimination, harassment, and retaliation in the workplace due to
16 her sex and associational disability. Defendants was aware this harassment and discrimination were
17 occurring and did nothing to investigate Plaintiff's complaints or ensure Plaintiff's work
18 environment was free from illegal harassment and discrimination.

19 89. As a direct, foreseeable, and proximate result of Defendants' unlawful actions,
20 Plaintiff has suffered substantial losses in earnings and other employment benefits and has incurred
21 other economic losses.

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

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

NINTH CAUSE OF ACTION
Failure to Pay Minimum Wage for All Hours Worked
(Against Defendants Caliber and DOES 1 through 20, inclusive)

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

93. Caliber was required to compensate Plaintiff with at least California's minimum wage for all hours worked. *See* Cal. Labor Code § 1194; MW Order-2021; MW Order-2022.

94. Caliber was aware of their obligation to pay the minimum wages but failed to do so.

95. Caliber's conduct described herein violates California Labor Code section 1194, and the applicable Wage Orders. As a proximate result of Caliber's conduct, Plaintiff has been damaged and deprived of minimum wages, in an amount to be established at trial. Plaintiff now seeks these wages, liquidated damages pursuant to California Labor Code section 1194.2, attorney's fees and costs, and interest pursuant to California Labor Code sections 1194.

TENTH CAUSE OF ACTION
Failure to Pay Overtime Wages
(Against Defendants Caliber and DOES 1 through 20, inclusive)

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

97. During the period Plaintiff was employed by Caliber, Caliber was required to compensate her one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See* California Labor Code §§ 510, 1194.

98. Although Plaintiff regularly worked in excess of eight (8) hours a day and/or forty (40) hours per week, Caliber failed to pay all overtime wages owed to her.

99. Plaintiff was a non-exempt employee under the administrative, executive, or professional exemptions of the applicable Wage Order and California Labor Code section 510.

100. Caliber's conduct described herein violates California Labor Code sections 510 and 1194, and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff has been damaged and deprived of overtime wages, in an amount to be established at trial. Plaintiff now seeks these wages, attorney's fees and costs, and interest pursuant to California Labor Code section 1194.

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ELEVENTH CAUSE OF ACTION

Failure to Provide Meal Periods

(Against Defendants Caliber and DOES 1 through 20, inclusive)

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

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

103. Labor Code section 510 and Wage Order 9-2001, section 10(A) require an employer to provide a meal period of not less than thirty (30) minutes for each work period of more than five (5) hours. If an employee works longer than ten (10) hours in a workday, the employer must provide a second meal period.

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

105. As a proximate cause of Caliber's failure to provide meal periods, Plaintiff is entitled to one (1) hour of pay at the regular rate of compensation for each meal period not provided, as a wage, from three (3) years of the filing of this action, in an amount to be established at trial. *See* California Labor Code § 226.7 and Wage Order 9-2001 § 10(D).

TWELTH CAUSE OF ACTION

Failure to Provide Rest Periods

(Against Defendants Caliber and DOES 1 through 20, inclusive)

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

107. Labor Code section 512 and Wage Order 9-2001 section 11(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

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

1 109. As a proximate cause of Caliber’s failure to provide rest periods, Plaintiff is entitled
2 to one (1) hour of pay at the regular rate of compensation for each rest period not provided, as a
3 wage, from three (3) years of the filing of this action, in an amount to be established at trial. *See*
4 California Labor Code § 226.7 and Wage Order 9-2001 § 11(B).

5 **THIRTEENTH CAUSE OF ACTION**
6 **Failure to Pay Reimbursement Expenses**
7 **(Against Defendants Caliber and DOES 1 through 20, inclusive)**

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

10 111. California Labor Code section 2802(a) states that “An employer shall indemnify his
11 or her employee for all necessary expenditures or losses incurred by the employee in direct
12 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
13 employer, even though unlawful, unless the employee, at the time of obeying the directions, believed
14 them to be unlawful.”

15 112. Defendants knew that Plaintiff used her personal cell phone for work purposes,
16 including for calls with customers during statutory meal and rest breaks. However, Caliber did not
17 reimburse Plaintiff for these expenses.

18 113. Caliber’s conduct described herein violated California Labor Code section 2802. As
19 a proximate result of Caliber’s conduct, Plaintiff has been damaged in an amount to be established at
20 trial, and is entitled to recover these damages, as well as interest and reasonable attorney’s fees and
21 costs, pursuant to statute.

22 **FOURTEENTH CAUSE OF ACTION**
23 **Violation of the Healthy Workplaces, Healthy Families Act**
24 **(Against Defendants Caliber and DOES 1 through 20, inclusive)**

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

27 115. 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

1 employee is entitled to sick pay wages for use of accrued sick leave pursuant to California Labor
2 Code section 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has
3 a vested right to sick pay wages, which an employer must calculate and compensate based on one of
4 two calculations: (i) “Paid sick time for nonexempt employees shall be calculated in the same
5 manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
6 whether or not the employee actually works overtime in that workweek,” or (ii) “Paid sick time for
7 nonexempt employees shall be calculated by dividing the employee’s total wages, not including
8 overtime premium pay, but the employee’s total hours worked in the full pay periods of the prior 90
9 days of employment.” Under California Labor Code sections 218 and 233, employees may sue to
10 recover underpaid sick pay wages as damages.

11 116. As a matter of policy and practice, Caliber paid sick pay wages to Plaintiff at the
12 incorrect rate of pay. Plaintiff regularly used accrued sick leave in workweeks in which she also
13 earned bonuses and other non-hourly remunerations. As a matter of policy and practice, Caliber paid
14 sick pay wages to Plaintiff at the base hourly pay, as opposed to the regular rate of pay. As a result,
15 Caliber underpaid sick pay wages to Plaintiff.

16 117. California Labor Code section 204 provides that wages generally are due and payable
17 twice during each calendar month and are to be paid no later than the payday for the next regular
18 payroll period. Consistent with California Labor Code section 204, California Labor Code section
19 246 specifically requires that, upon use of accrued sick leave, vested sick pay wages are due and to
20 be paid no later than the payday for the next regular payroll period after accrued sick leave is used as
21 paid sick time. California Labor Code section 210 provides penalties for violations California Labor
22 Code section 204 and untimely payments during employment.

23 118. As a matter of policy and practice, Caliber routinely underpaid sick pay wages and
24 thus did not timely pay Plaintiff all owing and underpaid sick pay wages.

25 119. Caliber’s conduct described herein violates California Labor Code sections 201, 202,
26 203, 204, 210, 233, and 246, amongst other provisions. As a proximate result of Caliber’s conduct,
27 Plaintiff has been damaged and deprived of sick pay wages, in an amount to be established at trial.
28

1 Plaintiff now seeks these unpaid and underpaid sick pay wages, applicable penalties, attorney's fees
2 and costs, and interest.

3 **FIFTEENTH CAUSE OF ACTION**

4 **Failure to Provide Accurate Wage Statements**

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

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

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

10 *(1) gross wages earned, (2) total hours worked by the employee,*
11 *except for any employee whose compensation is solely based on a*
12 *salary and who is exempt from payment of overtime under*
13 *subdivision (a) of Section 515 or any applicable order of the*
14 *Industrial Welfare Commission, (3) the number of piece-rate units*
15 *earned and any applicable piece rate if the employee is paid on a*
16 *piece-rate basis, (4) all deductions, provided that all deductions*
17 *made on written orders of the employee may be aggregated and*
18 *shown as one item, (5) net wages earned, (6) the inclusive dates of*
19 *the period for which the employee is paid, (7) the name of the*
20 *employee and the last four digits of his or her social security number*
21 *or an employee identification number other than a social security*
22 *number, (8) the name and address of the legal entity that is the*
23 *employer and, if the employer is a farm labor contractor, as defined*
24 *in subdivision (b) of Section 1682, the name and address of the legal*
25 *entity that secured the services of the employer, and (9) all*
26 *applicable hourly rates in effect during the pay period and the*
27 *corresponding number of hours worked at each hourly rate by the*
28 *employee. The deductions made from payment of wages shall be*
recorded in ink or other indelible form, properly dated, showing the
month, day, and year, and a copy of the statement and the record of
the deductions shall be kept on file by the employer for at least three
years at the place of employment or at a central location within the
State of California.

122. Caliber failed to provide an itemized statement or failed to provide an accurate
and complete itemized statement showing the requirements set forth in Labor Code section
226(a). Caliber failed to list on the wage statements provided to Plaintiff wage statements listing
all hours worked and the applicable rates of pay and overtime and double time rates. Plaintiff

1 alleges that Caliber failed to provide accurate itemized wage statements in accordance with
2 California Labor Code section 226(a).

3 123. Additionally, Plaintiff alleges she suffered injury as a result of Caliber's knowing
4 and intentional failure to provide accurate and complete information as required by any one or
5 more of items (1) to (9), inclusive, of California Labor Code section 226, subdivision (a), and
6 Plaintiff cannot promptly and easily determine (*i.e.* a reasonable person in each Plaintiff's
7 position would not be able to readily ascertain the information without reference to other
8 documents or information) from the wage statement alone. Cal. Lab Code § 226(e)(2)(B)(iv).
9 Moreover, Plaintiff was initially unaware that he was not being paid the correct and agreed-upon
10 hourly rate. Plaintiff is informed and believes, and thereon alleges, that Caliber had a pattern and
11 practice of underpaying Plaintiff and similarly situated employees for each hour worked under a
12 variety of pay codes.

13 124. This underpayment of wages also caused the calculations on the wage statements
14 issued to Caliber's employees to be incorrect and legally noncompliant.

15 125. As a proximate cause of Caliber's failure to provide accurate statements, Plaintiff
16 was damaged and is entitled to statutory and civil penalties under the California Labor Code, and
17 attorney's fees and costs, in an amount to be proven at trial.

18 **SIXTEENTH CAUSE OF ACTION**

19 **Waiting Time Penalties**

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

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

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

25 128. An employer who willfully fails to pay an employee wages in accordance with
26 California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of
27 up to thirty (30) days. California Labor Code § 203.
28

1 129. Plaintiff did not receive all wages at their termination or separation from
2 employment, including, but not limited to, unpaid hourly wages that Caliber underpaid, accrued
3 sick pay, overtime and double time which was paid at the incorrect rate.

4 130. Caliber knew of their obligation to pay Plaintiff and Caliber's failure to pay all
5 wages was in complete disregard of their obligations. Such conduct shows Caliber's knowledge
6 of their obligation to pay all wages owed upon termination and willful refusal.

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

10
11 **SEVENTEETH CAUSE OF ACTION**
12 **Failure to Provide Payroll Records Upon Request**
13 **(Against Defendants Caliber and DOES 1 through 20, inclusive)**

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

16 133. California Labor Code section 226(f) provides that if an employer failed to allow
17 an employee to inspect or copy records within twenty-one (21) days of the request for such
18 records, the employee is entitled to recover a \$750.00 penalty from the employer.

19 134. On or about February 20, 2023, Plaintiff requested her records, pursuant to
20 California Labor Code section 226(a), from the Caliber. Caliber failed to provide or make
21 available all records required within twenty-one days as required by California Labor Code
22 section 226(a).

23 135. As a proximate cause of the Caliber's failure to provide the requested records in a
24 timely manner, Plaintiff was damaged and is entitled to recover a \$750.00 penalty pursuant to
25 California Labor Code section 226(f), and an award of costs and reasonable attorney's fees
26 pursuant to California Labor Code section 226(h).
27
28

1 **EIGHTEENTH CAUSE OF ACTION**

2 **Unfair Competition**
3 **(Against All Defendants)**

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

6 137. California Business and Professions Code section 17200 provides that “unfair
7 competition shall mean and include any unlawful, unfair or fraudulent business act or practice
8 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.”

9 138. Defendants committed numerous violations of the California Labor Code
10 throughout the employment relationship.

11 139. Plaintiff is also informed and believes and thereon alleges that such actions and/or
12 conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and
13 Professions Code section 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products*
14 *Co.*, 23 Cal. 4th 163 (2000).

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

21 **NINETEENTH CAUSE OF ACTION**

22 **Civil Penalties Pursuant to PAGA § 2698 *et seq.***
23 **(Against Defendants Caliber and DOES 1 through 20, inclusive)**

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

26 142. Plaintiff brings this cause of action as a proxy for the State of California and in
27 this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants’ violations of
28

1 the California Labor Code, including but not necessarily limited to, those Labor Code violations
2 identified above.

3 143. On or about April 14, 2023, Plaintiff sent written notice to the LWDA regarding
4 the Caliber's violations of the California Labor Code, pursuant to Labor Code section 2698, *et*
5 *seq.*, PAGA. After the expiration of 65 days from the filing of the PAGA Notice, if the LWDA
6 does not respond, Plaintiff will have fully exhausted her administrative remedies.

7 144. If the LWDA does not respond within 65 days from the filing of the PAGA
8 Notice, Plaintiff will be entitled to recover civil penalties on behalf of the State of California and
9 all similarly situated employees for all violations of the Labor Code from April 14, 2022, through
10 trial on this matter.

11 145. During the period Plaintiff and similarly situated employees were employed by
12 Caliber, they were entitled to be paid at least the State of California's minim wage rate for each
13 they worked. *See, e.g.*, IWC Wage Order MW-2021, MW-2022; IWC Wage Order No. 9-2001,
14 section 4; Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Caliber did not pay
15 Plaintiff and similarly situated employees at least minimum wage for all hours worked. Thus,
16 Caliber and similarly situated employees were not paid at least the applicable state minimum
17 wage for all hours worked in violation of the California Labor Code.

18 146. California Labor Code sections 510 and 1194 require employers to pay employees
19 overtime for any work in excess of eight (8) hours in one workday and any work in excess of forty
20 (40) hours in any one workweek. Employers must also pay overtime for the first eight (8) hours
21 worked on the seventh day of work in any one workweek. Finally, employers must pay double time
22 for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in
23 excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff
24 and similarly situated employees worked over eight (8) hours per day and forty (40) hours per week
25 and were not paid overtime wages. Plaintiff and all similarly situated employees are entitled to
26 recover all unpaid overtime wages.

27 147. California Labor Code section 1174(d) requires employers to keep "payroll records
28 showing the hours worked daily by and the wages paid to . . . employees . . . These records shall be

1 kept in accordance with rules established for this purpose by the commission, but in any case, shall be
2 kept on file for not less than three years.” Caliber did not keep accurate information regarding all
3 hours worked by and wages paid to Plaintiff and similarly situated employees. This was in violation
4 of the California Labor Code.

5 148. California Labor Code section 226.7 and IWC Wage Order No. 9-2001, section 10(A)
6 require employers to provide employees meal periods of thirty (30) minutes per five (5) hours
7 worked. For the reasons stated above, Plaintiff and similarly situated employees were not authorized
8 and permitted to take legally compliant meal periods pursuant to California law. Caliber also failed to
9 pay meal period premiums at one hour of pay at the employees’ regular rate of pay for their failure to
10 provide meal periods.

11 149. California Labor Code section 226.7 and IWC Wage Order No. 9-2001, section 11(A)
12 require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4)
13 hours or major fraction thereof worked. For the reasons stated above, Plaintiff and similarly situated
14 employees were not authorized and permitted to take legally compliant rest periods pursuant to
15 California law in violation of the Labor Code. Caliber also failed to pay rest period premiums for
16 their failure to provide rest periods.

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

1 151. California Labor Code sections 201–203 require that all wages, including
2 minimum wages and overtime premiums, be paid to employees upon separation and/or
3 termination of employment. Here, for the reasons stated above, Plaintiff and similarly situated
4 employees did not receive all final wages due and owing to them at the time of termination or
5 seventy-two (72) hours thereafter as required by California Labor Code sections 201–203. This
6 is in violation of the California Labor Code.

7 152. California Labor Code section 2802(a) states that “An employer shall indemnify
8 his or her employee for all necessary expenditures or losses incurred by the employee in direct
9 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
10 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
11 believed them to be unlawful.” For the reasons stated above, Caliber failed to pay required
12 reimbursements to Plaintiff and similarly situated employees for required business expenses in
13 violation of the California Labor Code.

14 153. California Labor Code section 226(f) provides that an employer is required to allow
15 an employee to inspect or copy pay records within twenty-one (21) days of the request for such
16 records. Here, for the reasons stated above, Plaintiff and similarly situated employees did not receive
17 all their pay records within 21 days of the request as required by California Labor Code section
18 226(f). This is in violation of the California Labor Code.

19 154. California Labor Code section 246(l)(1) provides that paid sick leave for nonexempt
20 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
21 which the employee uses paid sick time. For the reasons stated above, Caliber failed to provide
22 Plaintiff and similarly situated aggrieved employees with paid sick leave at their regular rate of pay as
23 required by the California Labor Code.

24 155. Plaintiff is informed and believes that Caliber committed numerous other
25 violations of the California Labor Code, including but not limited to those identified in this letter.
26 Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018), Plaintiff intends
27 to seek civil penalties for all violations of the California Labor Code, whether he experienced
28 them personally or not.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. For compensatory damages, including, but not limited to, losses for lost back pay, plus interest, lost fringe benefits and future lost earnings and fringe benefits, damages for emotional distress and pain and suffering, according to proof allowed by law;
3. For statutory and civil penalties under the California Labor Code according to 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: April 24, 2023

Castle Law: California Employment Counsel, PC

By: 
Timothy B. Del Castillo
Daniel E. Richardson
Attorneys for Plaintiff CARMEN GARCIA

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JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: April 24, 2023

Castle Law: California Employment Counsel, PC

By: 

Timothy B. Del Castillo
Daniel E. Richardson
Attorneys for Plaintiff CARMEN GARCIA