

MARALLE MESSRELIAN (SBN 316974)
maralle@mmlawapc.com
MM LAW, APC
500 N. Central Ave., Ste 840
Glendale, CA 91203
Telephone (818) 810-7747
Facsimile (818) 230-9018

Attorneys for Plaintiff,
AMAIRANI GOMEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
(UNLIMITED JURISDICTION)

AMAIRANI GOMEZ,

Plaintiff,

vs.

FOCUS INDUSTRIES, INC., a California
corporation; STAN SHIBATA, an individual;
and DOES 1 to 25, inclusive,

Defendant(s).

Case No.: 30-2023-01336931-CU-OE-CXC
Judge Randall J. Sherman
COMPLAINT FOR DAMAGES FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 8) Failure to Provide Personnel Records;
- 9) Failure to Provide Pay Records;
- 10) Civil Penalties (Lab. Code §§ 2698, *et seq.*);
- 11) Discrimination on the Basis of Race, National Origin, and/or Ancestry In Violation of the Fair Employment Housing Act (“FEHA”) (Gov. Code § 12940(a));

- 12) Sexual Harassment in Violation of the Fair Employment and Housing Act (“FEHA”)(Gov. Code § 12940(j));
- 13) Retaliation in Violation of the FEHA (Gov. Code, § 12940(h));
- 14) Failure To Prevent, Investigate, and Remedy Harassment and Retaliation in Violation of the FEHA; (Gov. Code, §§ 12940(j)(1) & (k))
- 15) Negligent Hiring, Retention, Supervision, & Training;
- 16) Intentional Infliction of Emotional Distress;
- 17) Negligent Infliction of Emotional Distress;
- 18) Wrongful Constructive Discharge In Violation of Public Policy; and
- 19) Unfair Competition (Bus. & Prof. Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

COMES NOW Plaintiff, AMAIRANI GOMEZ (hereafter “Plaintiff”), and complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 1-2001 (hereafter “the Wage Order”), the Business and Professions Code, and public policy against FOCUS INDUSTRIES, INC., STAN SHIBATA, and DOES 1-25, inclusive (collectively “FOCUS” or “Defendants”).

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court and this action is properly filed in the County of Orange because Defendants FOCUS INDUSTRIES, INC., STAN SHIBATA, and DOES 1-25, inclusive, do business in the County of Orange and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Orange is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

THE PARTIES

3. Plaintiff Amairani Gomez is a resident of Orange County, California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11010 and an “Aggrieved Employee” within the meaning of Labor Code Section 2699(c).

4. Defendant FOCUS INDUSTRIES, INC. is and was a California corporation, doing business in Orange County, and which employed Plaintiff. As such, it is a citizen of California based on Plaintiff’s information and belief.

5. Defendant STAN SHIBATA (“SHIBATA”) is a citizen of California based on Plaintiff’s information and belief.

6. In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

7. Based on Plaintiff’s information and belief, Defendant STAN SHIBATA is a natural person, and an owner, director, officer, and/or managing agent of FOCUS INDUSTRIES, INC., who directly or indirectly, or through his agent, employed or exercised control over the wages, hours, or working conditions of Plaintiff and the Aggrieved Employees (defined below). Therefore, he is liable to Plaintiff and the Aggrieved Employees for his violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, 1194, and 2802 pursuant to Labor Code section 558.1.

8. The “Aggrieved Employees” are all current and former non-exempt or hourly paid employees who worked for Defendants in California during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-25, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants when ascertained.

10. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining Defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

11. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or are attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

12. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved Employees in accordance with applicable California labor laws as alleged herein.

GENERAL ALLEGATIONS

13. FOCUS began to employ Plaintiff in or around November 2022 as an assembly worker at its facility located at 25301 Commercentre Drive in Lake Forest, California. FOCUS continuously employed Plaintiff in that capacity until on or about March 31, 2023 when her employment ended.

14. At all relevant times, FOCUS issued wages to Plaintiff and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times, FOCUS classified Plaintiff and all of the other Aggrieved Employees as non-exempt employees

1 entitled to the protections of the Labor Code and the Wage Order. During her tenure, Plaintiff
2 generally worked five days a week from 7:00 a.m. to 3:30 p.m., and her latest rate of pay was
3 approximately \$15.50 per hour.

4 15. FOCUS failed to pay Plaintiff and other Aggrieved Employees for all time
5 worked or subject to its control. This is so because FOCUS had a policy wherein it would
6 disproportionately round down the number of hours worked, resulting in “time shaving” and
7 further resulting in Aggrieved Employees not being paid for all hours worked. All of
8 Plaintiff’s pay stubs consistently state eighty (80) hours worked during the pay period.
9 Furthermore, and to the extent that Plaintiff and others worked through their meal periods
10 while “off the clock”, they were not compensated for all hours worked, which would be akin
11 to a minimum wage violation. “Off the clock” work also included Plaintiff receiving phone
12 calls or text message on her personal cell phone from supervisor Maria Melendez either before
13 or after her shifts to discuss work-related issues, including coverage.

14 16. Due to the above “off the clock” violations, FOCUS failed to pay Plaintiff and
15 the Aggrieved Employees properly-calculated overtime wages. The Aggrieved Employees’
16 actual work hours, which included the “off the clock” work as described above, entitled them to
17 overtime, however, it was not company policy to keep accurate track of all hours worked and to
18 pay employees the accurate amount of overtime, especially since the “off the clock” work was
19 not factored into the equation. Furthermore, any incentive payments and/or bonus payments
20 were not factored into employees’ regular rate of pay for purposes of deciphering the correct
21 overtime rate of pay. In addition, any bonus and/or incentive payments were not factored into
22 the correct meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021)
23 11 Cal. 5th 858, 863.

24 17. FOCUS failed to provide all compliant meal periods and authorize and permit
25 all compliant rest periods to which Plaintiff and the other Aggrieved Employees were entitled.
26 Plaintiff and other Aggrieved Employees were entitled to take off-duty, uninterrupted 30-
27 minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-
28 minute rest periods for every four hours or major fraction thereof worked. However, Plaintiff

1 and the Aggrieved Employees did not always receive their meal periods on time. Moreover,
2 even when Plaintiff and other Aggrieved Employees would be clocked out for a meal period or
3 would be on their rest breaks, FOCUS staff would interrupt them with questions about work
4 related matters. On information and belief, FOCUS did not provide premium wages for these
5 meal and rest break violations; if FOCUS did provide premium wages, they were not paid at
6 the correct rate, as explained above.

7 18. FOCUS failed to reimburse Plaintiff and the other Aggrieved Employees for
8 business expenses they incurred in direct consequence of the discharge of their duties. FOCUS
9 did not provide personal protective equipment (PPE), including gloves or safety glasses, to its
10 employees. During her employment, Plaintiff purchased gloves and other Aggrieved
11 Employees had to purchase aprons and protective glasses. However, FOCUS did not provide
12 these items and did not reimburse Plaintiff and the other Aggrieved Employees for these
13 expenses. FOCUS also required Plaintiff and the other Aggrieved Employees to use their own
14 personal cell phones to communicate with office staff concerning work matters. FOCUS did
15 not reimburse Plaintiff or the other employees for their mobile phone expenses. Accordingly,
16 FOCUS was in violation of California Labor Code sections 2800 and 2802.

17 19. FOCUS failed to pay its employees all wages due to them within any time
18 period specified by California Labor Code section 204, including the minimum wages and
19 overtime as described above as well as meal/rest break premiums. FOCUS did not provide
20 Plaintiff and other Aggrieved Employees accurate, itemized wage statements. Wage statements
21 must include, among other things, total hours worked by the employee. Labor Code §
22 226(a)(2). FOCUS issued wage statements that inaccurately reflected total hours worked, gross
23 and net wages earned, and the number of hours worked at each hourly rate because of
24 FOCUS's failure to properly pay wages as explained herein. Labor Code §§ 226(a)(1), (2), (5),
25 (9). FOCUS' failure to maintain accurate records as to the hours worked daily by employees
26 also constitutes a violation of Labor Code section 1174(d).

27 20. Finally, because FOCUS did not properly pay all wages earned as explained
28 herein, FOCUS also failed to pay final wages owed to Plaintiff and other Aggrieved Employees

1 in violation of Labor Code section 203. These earned but unpaid wages include minimum
2 wages and compensation for all hours worked, overtime compensation, premium pay for
3 missed meal and rest breaks, and business expense reimbursement, among others.

4 21. During her employment tenure, Plaintiff was sexually harassed by “Hernei”, a
5 male worker in charge of Plaintiff’s work area. Since approximately December 2022, Hernei
6 consistently made sexually charged comments to Plaintiff. Hernei would consistently tell
7 Plaintiff that he is a "mujeriego" (ladies man/has sexual relations with multiple women), "que
8 bonitas piernas" (you've got beautiful legs), "que bonitas pompis" (you've got a nice butt), "que
9 mujeron" (what a woman), "me encantan tus ojos y tus labios" (I love your eyes and lips), "te
10 quiero morder las labios" (I want to bite your lips). Such comments made Plaintiff very
11 uncomfortable and Plaintiff told Hernei she would be reporting his behavior to supervisor
12 Maria Melendez and requesting that she be moved. Hernei told Plaintiff that Ms. Melendez
13 wouldn't do anything because she does what he wants as Hernei is very knowledgeable and he's
14 in charge of helping all the other women who work in that area. He told her "no me pueden
15 decir ni hacer nada porque yo soy el que manda aqui" (Nobody can tell me or do anything
16 because I'm the boss here). Plaintiff reported Hernei’s conduct to supervisor Melendez, who
17 informed Plaintiff that she would have to continue working with him and that he’d try to stop
18 talking to her like that. However, after Plaintiff’s complaint, Hernei’s behavior became worse.
19 Hernei began using signs and gestures, and also grabbed Plaintiff and touched her
20 inappropriately. Hernei told Plaintiff, "me encantaria tener sexo contigo" (I'd love to have sex
21 with you), "cuando nos vemos afuera en el break?" (When are we going to see each other
22 outside during our break?), "vamos a almorzar juntas" (let's have lunch together). Hernei also
23 told Plaintiff that his only temptation was to bite her lips. When Plaintiff had to clean and bend
24 over, Hernei would say "que linda vista tengo frente ami" (what a nice view). Plaintiff told
25 Hernei to calm down because she’d tell the supervisor again, and Hernei stated to her again that
26 they wouldn't take Plaintiff away from him. Plaintiff once again reported Hernei’s unlawful
27 behavior to supervisor Melendez and asked her if she could take a position working with her
28 directly because the previous employee had just quit. Maria Melendez told Plaintiff that it

1 wasn't possible since she needed a person who speaks English, and told Plaintiff that she
2 needed Plaintiff to stay in her current role. (Interestingly, the position Plaintiff had requested
3 was given to a new girl who doesn't speak English). One of Plaintiff's coworkers, Sebastian, an
4 English speaker, offered to speak with the Human Resources manager, Sherleen (last name
5 unknown), to see if Plaintiff could take another position where she could work alone and not
6 around Hernei. In response, Sherleen (HR) got upset with Plaintiff for sending others to speak
7 on her behalf. Plaintiff explained that Sebastian had only offered to help due to the language
8 barrier, and asked Sherleen if she could work in shipping since English is not a requirement in
9 the shipping department. Sherleen told Plaintiff the shipping position was not available for her
10 as English is required for that job as well (Plaintiff believes otherwise). As such, Plaintiff had
11 to continue working with Hernei. On or around March 28, 2023, due to Hernei's harassing
12 behavior, Plaintiff once again asked HR for a change in position. However, HR simply moved
13 Plaintiff to another table in the same area where she remained in Hernei's vicinity. The
14 situation simply became intolerable for Plaintiff. Plaintiff had reported the unlawful conduct on
15 three (3) different occasions to her supervisor and to HR (Sherleen) to no avail. The hostile
16 work environment and FOCUS's lack of investigation and failure to prevent harassment caused
17 Plaintiff a great deal of anxiety and stress and made it difficult for Plaintiff to continue
18 working there. Consequently, Plaintiff was forced to quit her job on or around March 31, 2023.

19 22. Plaintiff has exhausted her administrative remedies. Prior to the filing of this
20 lawsuit, Plaintiff filed a complaint with the Department of Fair Employment and Housing
21 ("DFEH"), alleging claims in this complaint. The DFEH immediately issued to Plaintiff a right
22 to sue letter.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

25 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

26 **(By Plaintiff against all Defendants)**

27 23. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

28 24. At all relevant times, Plaintiff was a non-exempt employee of Defendants and

1 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,
2 and the Wage Order.

3 25. Section 2(G) of the Wage Order defines “hours worked” as “the time during
4 which an employee is subject to the control of an employer, and includes all the time the
5 employee is suffered or permitted to work, whether or not required to do so.”

6 26. Section 3 of the Wage Order states:

7 (A) Daily Overtime - General Provisions

8 (1) The following overtime provisions are applicable to
9 employees 18 years of age or over and to employees 16 or
10 17 years of age who are not required by law to attend
11 school and are not otherwise prohibited by law from
12 engaging in the subject work. Such employees shall not
13 be employed more than eight (8) hours in any workday or
14 more than 40 hours in any workweek unless the employee
15 receives one and one-half (1 ½) times such employee’s
16 regular rate of pay for all hours worked over 40 hours in
17 the workweek. Eight (8) hours of labor constitutes a day’s
18 work. Employment beyond eight (8) hours in any
19 workday or more than six (6) days in any workweek is
20 permissible provided the employee is compensated for
21 such overtime at not less than:

22 (a) One and one-half (1 ½) times the employee’s
23 regular rate of pay for all hours worked in excess
24 of eight (8) hours up to and including 12 hours in
25 any workday, and for the first eight (8) hours
26 worked on the seventh (7th) consecutive day of
27 work in a workweek.

28 (b) Double the employee’s regular rate of pay for
all hours worked in excess of 12 hours in any
workday and for all hours worked in excess of
eight (8) hours on the seventh (7th) consecutive
day of work in a workweek.

(c) The overtime rate of compensation required to
be paid to a nonexempt full-time salaried
employee shall be computed by using the
employee’s regular hourly salary as one-fortieth
(1/40) of the employee’s weekly salary.

27. Section 4 of the Wage Order requires an employer to pay non-exempt employees

1 at least the minimum wage set forth therein for all hours worked, which consist of all hours that
2 an employer has actual or constructive knowledge that employees are working.

3 28. Labor Code section 510 states:

4 Eight hours of labor constitutes a day's work. Any work in excess
5 of eight hours in one workday and any work in excess of 40
6 hours in any one workweek and the first eight hours worked on
7 the seventh day of work in any one workweek shall be
8 compensated at the rate of no less than one and one-half times the
9 regular rate of pay for an employee. Any work in excess of 12
10 hours in one day shall be compensated at the rate of no less than
11 twice the regular rate of pay for an employee. In addition, any
12 work in excess of eight hours on any seventh day of a workweek
13 shall be compensated at the rate of no less than twice the regular
14 rate of pay of an employee. Nothing in this section requires an
15 employer to combine more than one rate of overtime
16 compensation in order to calculate the amount to be paid to an
17 employee for any hour of overtime work.

18 29. California Labor Code § 1194 invalidates any agreement between an employer
19 and an employee to work for less than the minimum wage required under the applicable Wage
20 Order.

21 30. California Labor Code § 1197 makes it unlawful for an employer to pay an
22 employee less than the minimum wage required under the applicable Wage Order for all hours
23 worked during a payroll period.

24 31. California Labor Code § 1198 makes it unlawful for an employer to employ an
25 employee under conditions that violate the Wage Order.

26 32. In conjunction, these provisions of the California Labor Code require employers
27 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
28 for all hours worked, including unrecorded hours when the employer knew or reasonably should
have known that employees were working during those hours. (*See Morillion v. Royal Packing*
Co. (2000) 22 Cal.4th 575, 585.)

33. Defendants required Plaintiff to work in excess of eight (8) hours in one workday
and forty (40) hours in one workweek without compensating her for such time worked at the
premium rates required by California law.

34. As described more fully above, Defendants failed to pay all minimum, regular, overtime, and double time wages to Plaintiff because Defendants paid wages based on rounded times, did not pay for off-the-clock work, and failed to pay overtime and double time wages based on correct regular rates of pay.

35. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount, subject to proof, to the extent that she was not paid the full amount of wages earned during each pay period during the applicable limitations period, including minimum, overtime, and double-time wages.

36. As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution for unpaid wages which Defendants failed to pay her at the rates set forth herein, interest thereon, and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§ 1194.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Lab. Code §§ 226.7 and 1198)

(By Plaintiff against all Defendants)

37. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

38. At all relevant times during the applicable limitations period, Plaintiff was a non-exempt employee of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 1198, and the Wage Order.

39. Labor Code § 1198 states,

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

40. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction

thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

41. In addition, Labor Code Section 226.7 states

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

42. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

43. Defendants failed to authorize and permit Plaintiff to take compliant rest periods and failed to pay one hour of correctly-calculated premium pay for each day such a rest period was not provided.

44. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount subject to proof to the extent she was not paid additional wages owed for all rest breaks not provided to her.

45. By reason of the above, Plaintiff is entitled to premium wages for workdays in which one or more rest breaks were not provided to her pursuant to California Labor Code § 226.7, plus interest and costs.

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(Lab. Code §§ 226.7, 512, and 1198)

46. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

48. Labor Code § 1198 states,

49. In relevant part, Labor Code Section 512 states

50. In relevant part, Section 11 of the Wage Order states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee...

13

employee's regular rate of compensation for each workday that the meal period is not provided.

51. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day she worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also entitled to a second 30-minute meal period when she worked more than ten (10) hours in a workday.

52. During the relevant time period, Defendants failed to provide Plaintiff with compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

53. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount subject to proof to the extent she was not paid additional wages owed for all meal periods not provided to her.

54. By reason of the above, Plaintiff is entitled to premium wages for workdays in which one or more meal periods were not provided to her pursuant to California Labor Code § 226.7, plus interest and costs.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiff against all Defendants)

55. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

56. At all relevant times, Plaintiff was a non-exempt employee of Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the Wage Order.

57. In pertinent part, California Labor Code § 2802(a) states:

An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.

58. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

1 59. At all relevant times during the applicable limitations period, Plaintiff purchased
2 gloves for work and used her own personal cell phone to communicate with management
3 concerning work matters. However, Defendants did not provide these items and did not
4 reimburse Plaintiff for these business expenses.

5 60. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
6 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
7 Defendants' failure to indemnify Plaintiff for the reasonable expenses she incurred in the course
8 of performing her duties.

9 61. By reason of the above, Plaintiff is entitled to reimbursement for all necessary
10 expenditures and losses and interest due and owing to within three years (3) of the date of the
11 filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §
12 2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

13 **FIFTH CAUSE OF ACTION**

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

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

16 **(By Plaintiff against all Defendants)**

17 62. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

20 64. Defendants knowingly and intentionally did not furnish Plaintiff with pay stubs
21 that accurately reflected all information required by Labor Code Section 226, including but not
22 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
23 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
24 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed
25 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with
26 California Labor Code Section 226(a).

27 65. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover
28 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a

1 violation occurs and one hundred dollars (\$100) per employee for each violation in a
2 subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000),
3 plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of
4 action pursuant to the 1-year period immediately preceding the date this lawsuit was filed.

5 66. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
6 sustained damages, including loss of earnings, in an amount to be established at trial. As a
7 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
8 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
9 and attorney's fees pursuant to statute.

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

13 **SIXTH CAUSE OF ACTION**

14 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

15 **(California Labor Code Sections 201-203)**

16 **(By Plaintiff against all Defendants)**

17 68. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

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

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

28 72. After Plaintiff's employment with Defendants ended, Defendants willfully

1 refused and continue to refuse to pay her unpaid wages as required by Labor Code Section 203.

2 73. Under this cause of action, Plaintiff prays for penalties due under the statutes
3 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
4 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years
5 immediately preceding the filing of this lawsuit.

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

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

12 **SEVENTH CAUSE OF ACTION**

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

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

15 **(By Plaintiff against all Defendants)**

16 76. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

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

22 79. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
23 informed, believes, and thereon alleges, that all times relevant during the applicable limitations
24 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours
25 worked, including the minimum wage, overtime hours, double time hours, and premium pay
26 for missed meal and rest breaks.

27 80. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
28 an amount, subject to proof, to the extent she was not paid all wages each pay period. The

1 precise amount of unpaid wages is not presently known to Plaintiff but can be determined
2 directly from Defendants' records or indirectly based on information from Defendants' records.

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

6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE PERSONNEL RECORDS**

8 **(Plaintiff against Defendants)**

9 82. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

10 83. Labor Code section 1198.5 dictates "every current and former employee, or his
11 or her representative, has the right to inspect and receive a copy of the personnel records that
12 the employer maintains relating to the employee's performance or to any grievance concerning
13 the employee."

14 84. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the
15 employer shall make the contents of those personnel records available for inspection to the
16 current or former employee, or his or her representative, at reasonable intervals and at
17 reasonable times..." On information and belief, Defendants intentionally failed to provide
18 Plaintiff with personnel records when requested by Plaintiff via letter on April 10, 2023, as
19 required by law. Plaintiff requested her personnel records in accordance with California Labor
20 Code section 1198.5(k) on April 10, 2023 via certified U.S. mail.

21 85. Defendants failed to provide Plaintiff with an opportunity to inspect or copy her
22 records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has
23 suffered and continues to suffer substantial losses related to Defendants' failure to provide
24 personnel records.

25 86. Plaintiff seeks all available remedies for Defendants' violations including, but
26 not limited to penalties, and costs to the extent permitted by law and according to proof at trial.
27 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
28 amount of \$750.00, along with costs and attorney's fees.

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE PAY RECORDS**

3 **(Plaintiff against all Defendants)**

4 87. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

5 88. Labor Code section 226 sub-section (b) dictates “an employer...shall afford
6 current and former employees the right to inspect or copy records pertaining to their
7 employment, upon reasonable request to the employer...”

8 89. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer
9 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
10 pertaining to a current or former employee shall comply with the request as soon as practicable,
11 but no later than 21 calendar days from the date of the request.” On information and belief,
12 Defendants intentionally failed to provide Plaintiff with pay records when requested by
13 Plaintiff via letter, on April 10, 2023, and as required by law. Plaintiff requested her pay
14 records in accordance with California Labor Code section 226 on April 10, 2023, via U.S.
15 certified mail. Defendants failed to provide Plaintiff with an opportunity to inspect or copy her
16 pay records within 21 days.

17 90. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered
18 and continues to suffer substantial losses related to Defendants’ failure to provide pay records.
19 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
20 amount of \$750.00, along with costs and attorney’s fees.

21 91. Plaintiff seeks all available remedies for Defendants’ violations including, but
22 not limited to, penalties and costs to the extent permitted by law and according to proof at trial.

23 **TENTH CAUSE OF ACTION**

24 **CIVIL PENALTIES**

25 **(Lab. Code §§ 2698, *et seq.*)**

26 **(By Plaintiff against all Defendants)**

27 92. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

28 93. Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of

1 2004 (“PAGA”) because she was employed by Defendants during the applicable statutory
2 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.
3 Plaintiff seeks to recover on her own behalf, on behalf of the State of California, and on behalf
4 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by
5 PAGA, plus reasonable attorney’s fees and costs.

6 94. During the applicable time period, Defendants violated California Labor Code
7 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1102.5, 1174, 1194, 1197, 1198, and
8 2802.

9 95. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
10 behalf of themselves and other current or former employees, to bring a civil action to recover
11 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

12 96. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
13 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants’
14 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1,
15 1102.5, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the
16 following amounts:

17 A. For violations of California Labor Code § 204, one hundred dollars
18 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
19 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
20 established by California Labor Code § 210).

21 B. For violations of California Labor Code § 226(a), two hundred fifty
22 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
23 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
24 established by California Labor Code § 226.3).

25 C. For violations of California Labor Code §§ 510, 512, and 558.1, fifty
26 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars
27 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
28 established by California Labor Code § 558).

1 D. For violations of California Labor Code § 1174, five hundred dollars
2 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
3 California Labor Code § 1174.5).

4 E. For violations of California Labor Code § 1197, one hundred dollars
5 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
6 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,
7 per pay period (regardless of whether the initial violations were intentionally committed)
8 (penalty amounts established by California Labor Code § 1197.1).

9 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
10 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period
11 for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per
12 pay period for each subsequent violation (penalty amounts established by California Labor
13 Code § 2699(f)(2)).

14 97. Plaintiff has complied with the procedures for bringing suit specified in
15 California Labor Code § 2699.3. By letter dated April 10, 2023, Plaintiff filed written notices
16 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
17 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
18 to have been violated, including the facts and theories to support the alleged violations. Plaintiff
19 accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to
20 take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff
21 anticipates that the LWDA will provide written notice to Plaintiff informing her that it does not
22 intend to investigate these allegations.

23 98. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
24 Employees are entitled to an award of civil penalties and reasonable attorney’s fees and costs in
25 connection with their claims for civil penalties.

26 ///

27 ///

28 ///

ELEVENTH CAUSE OF ACTION
DISCRIMINATION ON THE BASIS OF RACE, NATIONAL ORIGIN, AND/OR
ANCESTRY IN VIOLATION OF FEHA
(Gov. Code, §12940(a))
((By Plaintiff against all Defendants except SHIBATA))

99. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

100. Plaintiff was and is at all times relevant hereto an employee covered by Government Code § 12926(c).

101. Defendants were at all times relevant hereto employers who employed five or more persons within the meaning of Government Code § 12926(d), and California Government Code §§ 12940, et seq., was in full force and effect and was binding on Defendants.

102. As described above, Defendants discriminated against Plaintiff by refusing to transfer her to two other available positions, that Plaintiff was otherwise qualified to perform, because she did not speak English.

103. As a proximate result of the conduct of the Defendants, Plaintiff has suffered and will continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary loss according to proof. Plaintiff has also suffered and will continue to suffer physical and emotional injuries, including nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's damages will be ascertained at trial.

104. In committing the foregoing acts, Defendants have been guilty of oppression, fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to punitive damages in a sum appropriate to punish and make an example out of the foregoing Defendants.

105. The acts of oppression, fraud, and/or malice, were engaged in by employees of Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each

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

9 106. The FEHA provides for an award of reasonable attorneys' fees and costs
10 incurred by a prevailing Plaintiff in an action brought under its provisions. Plaintiff has
11 employed and will continue to employ attorneys for the initiation and prosecution of this
12 action. Plaintiff has incurred and will continue to incur attorneys' fees and costs herein.
13 Plaintiff is entitled to an award of attorneys' fees and costs.

14 **TWELFTH CAUSE OF ACTION**

15 **SEXUAL HARASSMENT IN VIOLATION OF THE FEHA**

16 **(Gov. Code § 12940(j)(1))**

17 **(By Plaintiff against all Defendants except SHIBATA)**

18 107. Plaintiff incorporates by reference each and every paragraph of this Complaint
19 as if fully alleged herein.

20 108. Plaintiff was and is at all times relevant hereto an employee covered by
21 Government Code section 12926(c).

22 109. Defendants were at all times relevant hereto employers within the meaning of
23 Government Code section 12926(d) and, as such, required by FEHA to take all reasonable
24 steps to prevent harassment and discrimination from occurring and to ensure a workplace free
25 from sexual harassment.

26 110. "Hernei" was at all times relevant hereto an employee of FOCUS and a
27 "supervisor" within the meaning of Government Code section 12926(t). The actions of the
28 maintenance supervisor, "Victor", towards Plaintiff, while in the course and scope of his

1 employment with POSADA as described herein, created a hostile sexual environment which
2 materially altered Plaintiff's working conditions and which constitutes sexual harassment in
3 violation of California Government Code section 12940(j)(1).

4 111. Under the FEHA, employers must take all reasonable steps to prevent
5 discrimination and harassment from occurring. Cal. Gov. Code §§ 12940(j)(l) and (k).
6 Employers must help ensure a workplace free from sexual harassment by posting in the
7 workplace a poster made available by the Department of Fair Employment and Housing. *Id.*

8 112. If an employer has failed to take such preventative measures, that employer can
9 be held liable for the harassment. Cal. Code. Regs., tit. 2, §7287.6(b)(3).

10 113. Employers are strictly liable for harassment by their supervisors or agents. (See
11 Cal. Code Regs., tit. 2, § 11019(b)(3).) Additionally, the harasser can be held personally liable
12 for damages. (See Cal. Gov. Code, § 12940(j)(3).)

13 114. As described above, Hernei sexually harassed Plaintiff, repeatedly during her
14 employment by making sexually charged comments and inappropriately touching Plaintiff.
15 Hernei was a supervisor and/or an agent of the other Defendants. Therefore, the other
16 Defendants are strictly liable for Defendant Hernei's harassment.

17 115. The acts taken toward Plaintiff were carried out by and/or ratified by
18 Defendants and/or managing agent employees of Defendants, acting in a despicable,
19 oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to
20 injure and damage Plaintiff, thereby justifying an award to her of punitive damages in a sum
21 appropriate to punish and make an example of Defendants.

22 116. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
23 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and
24 emotional distress. Plaintiff is informed and believes and thereon alleges that she will continue
25 to experience said emotional suffering for a period in the future she cannot presently ascertain,
26 all in an amount subject to proof at the time of trial.

27 117. The FEHA provides for an award of reasonable attorneys' fees and costs
28 incurred by a prevailing Plaintiff in an action brought under its provisions. Plaintiff has

1 employed and will continue to employ attorneys for the initiation and prosecution of this
2 action. Plaintiff has incurred and will continue to incur attorneys' fees and costs herein.
3 Plaintiff is entitled to an award of attorneys' fees and costs.

4 **THIRTEENTH CAUSE OF ACTION**
5 **RETALIATION IN VIOLATION OF THE FEHA**
6 **(Gov. Code, § 12940(h))**

7 **(By Plaintiff against all Defendants except SHIBATA)**

8 118. Plaintiff incorporates by reference each and every paragraph of this Complaint
9 as if fully alleged herein.

10 119. The California Fair Employment and Housing Act (FEHA), Government Code
11 section 12900 et seq., makes it an unlawful employment practice for an employer to discharge,
12 expel, or otherwise discriminate against any person because the person has opposed any
13 practices forbidden by it. (*Id.* § 12940(h).)

14 120. As alleged above, Plaintiff was retaliated against and eventually resigned from
15 her employment due to the hostile working conditions FOCUS subjected her to after reporting
16 and complaining about Hernei's consistent sexually harassing behavior at the workplace.
17 Defendants retaliated against Plaintiff and refused to transfer Plaintiff to two other available
18 positions that Plaintiff was otherwise qualified for. Plaintiff had no other choice but to resign
19 from her employment.

20 121. The acts taken toward Plaintiff were carried out by and/or ratified by
21 Defendants and/or managing agent employees of Defendants acting in a despicable,
22 oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to
23 injure and damage Plaintiff, thereby justifying an award to her of punitive damages in a sum
24 appropriate to punish and make an example of Defendants.

25 122. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
26 harmed in that Plaintiff has suffered actual, consequential and incidental financial losses,
27 including without limitation, loss of salary and benefits, and the intangible loss of
28 employment-related opportunities and damage to her professional reputation, all in an amount

1 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with
2 prejudgment interest pursuant to Civil Code sections 3287 and/or 3288 and/or any other
3 provision of law providing for prejudgment interest.

4 123. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
5 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and
6 emotional distress. Plaintiff is informed and believes and thereon alleges that he will continue
7 to experience said emotional suffering for a period in the future he cannot presently ascertain,
8 all in an amount subject to proof at the time of trial.

9 124. The FEHA provides for an award of reasonable attorneys' fees and costs
10 incurred by a prevailing Plaintiff in an action brought under its provisions. Plaintiff has
11 employed and will continue to employ attorneys for the initiation and prosecution of this
12 action. Plaintiff has incurred and will continue to incur attorneys' fees and costs herein.
13 Plaintiff is entitled to an award of attorneys' fees and costs.

14 **FOURTEENTH CAUSE OF ACTION**

15 **FAILURE TO PREVENT, INVESTIGATE, AND REMEDY DISCRIMINATION,**
16 **HARASSMENT AND RETALIATION IN VIOLATION OF THE FEHA**

17 **(Gov. Code, §§ 12940(j)(1) & (k))**

18 **(By Plaintiff against all Defendants except SHIBATA)**

19 125. Plaintiff incorporates by reference each and every paragraph of this Complaint
20 as if fully alleged herein.

21 126. Plaintiff was and is at all times relevant hereto an employee covered by
22 Government Code § 12926(c).

23 127. Defendants were at all times relevant hereto employers who employed five or
24 more persons within the meaning of Government Code § 12926(d) and California Government
25 Code §§ 12940, et seq., was in full force and effect and was binding on Defendants.

26 128. It is unlawful for an employer to not take immediate and appropriate corrective
27 action against harassment of an employee that the employer knows or should have known
28 about. (Gov. Code, § 12940(j)(1).) It is also unlawful for an employer to not take all reasonable

1 steps necessary to prevent discrimination and harassment from occurring. (Id. § 12940(k).) If
2 an employer has failed to take such preventative measures, that employer can be held liable for
3 the harassment. (Cal. Code. Regs., tit. 2, § 7287.6(b)(3).)

4 129. As described above, Defendants subjected Plaintiff to unlawful discrimination,
5 sexual harassment, and retaliation in violation of Cal. Gov. Code § 12940(j)(1) and (k).

6 130. Plaintiff is informed and believes and thereupon alleges that Defendants knew or
7 reasonably should have known of Hernei's consistent sexual harassment against Plaintiff. In
8 fact, Plaintiff complained about the sexual harassment she was experiencing on three separate
9 occasions to both her supervisor and FOCUS's Human Resources department. To Plaintiff's
10 knowledge, Defendants took no meaningful or adequate disciplinary action to address the
11 harassment.

12 131. Plaintiff is informed and believes and thereupon alleges that Defendants failed
13 to provide adequate training to its executives, supervisors, and managers. Defendants should
14 have provided training and instruction to Hernei, as well as its other supervisors and
15 management, on the laws pertaining to discrimination, sexual harassment, and retaliation.
16 Defendants failed to do so. As a result, Defendants failed to take all reasonable steps necessary
17 to prevent or stop the harassment and retaliation from occurring.

18 132. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
19 harmed in that Plaintiff has suffered actual, consequential and incidental financial losses,
20 including without limitation, loss of salary and benefits, and the intangible loss of
21 employment-related opportunities and damage to her professional reputation, all in an amount
22 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with
23 prejudgment interest pursuant to Civil Code Sections 3287 and/or § 3288 and/or any other
24 provision of law providing for prejudgment interest.

25 133. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
26 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and
27 emotional distress. Plaintiff is informed and believes and thereon alleges that she will continue
28 to experience said emotional suffering for a period in the future she cannot presently ascertain,

1 all in an amount subject to proof at the time of trial.

2 134. The acts taken toward Plaintiff were carried out by and/or ratified by
3 Defendants and/or managing agent employees of Defendants acting in a despicable,
4 oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to
5 injure and damage Plaintiff, thereby justifying an award to her of punitive damages in a sum
6 appropriate to punish and make an example of Defendants.

7 135. FEHA provides for an award of reasonable attorneys' fees and costs incurred
8 by a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and
9 will continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
10 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
11 award of attorneys' fees and costs.

12 **FIFTEENTH CAUSE OF ACTION**

13 **NEGLIGENT HIRING, RETENTION, SUPERVISION, AND TRAINING**

14 **(By Plaintiff against all Defendants except SHIBATA)**

15 136. Plaintiff incorporates by reference each and every paragraph of this Complaint
16 as if fully alleged herein.

17 137. Defendants owed a duty of care to Plaintiff to appoint, hire, retain, supervise,
18 and train persons who would not engage in harassing, retaliatory, or discriminatory conduct.
19 Defendants owed a duty of care to Plaintiff not to retain managers or employees who would
20 harass or retaliate against employees for engaging in protected activities. Defendants owed a
21 duty of care to Plaintiff to supervise their managers and employees closely to ensure that they
22 would refrain from harassing and retaliating against Plaintiff. Defendants owed a duty of care
23 to Plaintiff to train their managers and employees not to engage in harassment, retaliation, or
24 discrimination.

25 138. As described above, Defendants breached these duties. During Plaintiff's
26 employment tenure, Hernei repeatedly and consistently sexually harassed Plaintiff. Upon
27 information and belief, FOCUS, by and through its agents and employees, knew or reasonably
28 should have known through reasonable investigation, of Hernei's propensity for sexually

1 harassing behavior.

2 139. Defendants negligently hired, retained and/or failed to adequately train and
3 supervise Hernei in his position, wherein he was able to commit the wrongful acts complained
4 of herein against Plaintiff. Defendants failed to provide reasonable supervision of Hernei
5 despite knowing of his propensities for sexually harassing behavior.

6 140. Defendants engaged in these acts alleged herein and/or condoned, permitted,
7 authorized, and/or ratified the conduct of their employees and agents and are vicariously liable
8 for the wrongful conduct of their employees and agents for this cause of action.

9 141. As a result of the above-described conduct, Plaintiff has suffered and continues
10 to suffer a great amount of stress, anxiety, humiliation, embarrassment, loss of sleep, loss of
11 confidence, loss of self-esteem, and general discomfort.

12 142. As a proximate cause of Defendants' negligent hiring, retention, supervision,
13 and training of their managers and employees, Plaintiff has suffered and continues to suffer
14 damages, including losses of earnings and benefits, according to proof.

15 **SIXTEENTH CAUSE OF ACTION**

16 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

17 **(By Plaintiff against all Defendants)**

18 143. Plaintiff incorporates by reference each and every paragraph of this Complaint
19 as if fully alleged herein.

20 144. The conduct of Hernei and Defendants set forth above was extreme and
21 outrageous.

22 145. The conduct of Hernei and Defendants was an abuse of their authority and
23 substantially and negatively affected Plaintiff's employment interests.

24 146. Hernei's and Defendants' conduct was intended to cause severe emotional
25 distress, or was done in conscious disregard of the probability that it would cause such
26 distress.

27 147. The above-described unlawful conduct did in fact cause Plaintiff to suffer
28 severe emotional and physical distress. As a proximate result of Hernei's and Defendants'

1 conduct, Plaintiff has suffered and continues to suffer anxiety, humiliation, mental anguish and
2 emotional distress. Plaintiff will continue to suffer for a period in the future she cannot
3 presently ascertain, all in an amount subject to proof at the time of trial.

4 148. Defendants' misconduct was done intentionally, in a malicious, fraudulent,
5 oppressive manner, entitling Plaintiff to punitive damages.

6 **SEVENTEENTH CAUSE OF ACTION**

7 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

8 **(By Plaintiff against all Defendants)**

9 149. Plaintiff incorporates by reference each and every paragraph of this Complaint
10 as if fully alleged herein.

11 150. As an employee of Defendants, Plaintiff was owed a duty of care by Hernei
12 and Defendants to ensure that Plaintiff was not exposed to foreseeable harms.

13 151. Defendants knew, or should have known, that Plaintiff was being subjected to
14 sexual harassment and retaliation and that the failure to exercise due care to prevent a
15 harassing and retaliatory course of conduct could and would cause Plaintiff to suffer severe
16 emotional distress.

17 152. Defendants failed to exercise their duty of care to prevent their employees,
18 managers, supervisors, and/or officers from harassing and retaliating against Plaintiff as
19 alleged above.

20 153. The conduct of Hernei and Defendants set forth above was an abuse of their
21 authority and substantially and negatively affected Plaintiff's employment interests.

22 154. The conduct of Hernei and Defendants was negligent and did in fact cause
23 Plaintiff to suffer severe emotional distress.

24 155. As a direct and proximate result of the aforementioned acts and omissions of
25 Defendants, Plaintiff has been caused to and did in fact suffer severe and extreme mental and
26 emotional distress, including but not limited to anguish, humiliation, embarrassment, loss of
27 confidence, fright, depression, and anxiety, the exact nature and extent of which are not now
28 known to her, but in an amount to be proved at trial.

156. Defendants' misconduct was done intentionally, in a malicious, fraudulent, oppressive manner, entitling Plaintiff to punitive damages.

EIGHTEENTH CAUSE OF ACTION

WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY

(By Plaintiff against all Defendants except SHIBATA)

157. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

158. At all times during her employment with FOCUS, Plaintiff performed her duties with the utmost diligence and competence.

159. Defendants intentionally created an illegal work environment and atmosphere by harassing Plaintiff based on her sex/gender, not paying her overtime, and not paying her the minimum wage, and violating numerous labor code sections as outlined in this Complaint, thereby not giving Plaintiff an opportunity to work in an environment free of sexual harassment, retaliation, and labor code violations. This situation became intolerable for Plaintiff and Plaintiff had no alternative but to quit her job.

160. The employment of Plaintiff was constructively wrongfully terminated on or around March 31, 2023 in violation of the fundamental public policy of the State of California with respect to sexually harassing an employee on account of her sex, retaliating against an employee for reporting sexual harassment at the workplace, and violating numerous labor code sections, including not compensating Plaintiff for all hours worked, not compensating Plaintiff the minimum wage, not compensating Plaintiff overtime wages, not reimbursing Plaintiff for business expenses incurred in the course of performing her duties, not providing Plaintiff accurate, itemized wage statements, and not paying Plaintiff wages owed every pay period and upon the separation of employment, among others. Moreover, Plaintiff was forced to hire an attorney to assist her to end these illegal activities. Said conduct violated statutory and constitutional expressions of public policy including, FEHA, the California Labor Code and the California Constitution, Article 1 section 8.

161. As set forth above, said actions by Defendants were wrongful and in violation of the fundamental principles of the public policy of the State of California as reflected in its

1 laws, objectives and policies. Said statutes and constitutional expressions of public policy
2 include, but are not limited to, the California Labor Code. These laws inure to the benefit of
3 the public at large, and not just the private interests of the employers and employees whom
4 they govern or protect.

5 162. As a direct and proximate result of the aforementioned acts and omissions of
6 Defendants, Plaintiff suffered general and compensatory damages, including but not limited
7 to, loss of income (past and future), loss of employment benefits (past and future), general and
8 compensatory damages (past and future), mental pain and anguish and emotional distress (past
9 and future), and will continue to suffer in the future, in an amount to be proved at trial.

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

15 **NINETEENTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

17 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

18 **((By Plaintiff against all Defendants except SHIBATA))**

19 164. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20 165. At all relevant times during the applicable limitations period, Plaintiff has been
21 an employee of Defendants and entitled to the benefits and protections of the Business and
22 Professions Code §§ 17200, *et seq.*

23 166. The unlawful conduct of Defendants alleged herein amounts to and constitutes
24 unfair competition within the meaning of California Business & Professions Code §§ 17200,
25 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
26 unfairly gained a competitive advantage over other comparable companies doing business in
27 California that comply with their legal obligations to, among other things, refrain from
28 harassing and retaliatory practices and prevent harassment and retaliation, pay their employees

1 premium wages for workdays in which they did not provide employees with one or more meal
2 and rest periods, indemnify them for all business expenses incurred during the course of
3 performing their duties, and pay them all wages earned.

4 167. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
5 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all
6 hours worked, failed to provide her with premium wages for missed meal and rest periods, and
7 failed to reimburse Plaintiff for all expenses she incurred in the course of performing her
8 duties.

9 168. Pursuant to California Business & Professions Code § 17203, Plaintiff is
10 entitled to restitution of all monies rightfully belonging to her that Defendants did not pay her
11 or otherwise retained by means of their unlawful and unfair business practices.

12 169. Plaintiff is entitled to reasonable attorneys' fees in connection with her unfair
13 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial
14 benefit doctrine and/or the common fund doctrine.

15 170. Accordingly, with respect to this cause of action, Plaintiff prays for the herein
16 stated relief, and an award of all reasonable costs and attorneys' fees, including interest
17 thereon, as permitted by law, all in amounts subject to proof.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 20 1. For compensatory damages including lost past and future wages, commissions, and all
21 other sums of money, including employment benefits, together with interest on said
22 amounts, and any other economic injury to Plaintiff, according to proof;
- 23 2. For general damages according to proof;
- 24 3. For special and consequential damages to the extent allowed by law;
- 25 4. For punitive and exemplary damages against Defendant FOCUS INDUSTRIES, INC. in
26 an amount subject to proof;
- 27 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
28 subject to proof at trial;

6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
7. proof at trial;
8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
- fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
10. For maximum civil penalties available under the Labor Code and applicable Wage
- Order against Defendants as described more particularly in the Complaint;
11. For restitution and disgorgement for all unfair business practices by Defendant FOCUS
- INDUSTRIES, INC. against Plaintiff in an amount according to proof;
12. For an order enjoining Defendant FOCUS INDUSTRIES, INC. from further unfair and
- unlawful business practices in violation of Business and Professions Code Sections
- 17200, et seq.;
13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
- Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
- damages, damages, penalties, and waiting time penalties according to proof to the
- extent permitted by law;
14. For the imposition of civil penalties and/or statutory penalties;
15. For all interest as allowed by law;
16. For all costs and disbursements incurred in this suit;
17. Reasonable attorney's fees where available by law, including but not limited to,
- pursuant to, Code of Civil Procedure section 1021.5, Labor Code section 1102.5(j),
- and/or other applicable laws; and

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

DEMAND FOR JURY TRIAL

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

Dated: July 17, 2023

MM LAW, APC

By Maralle Messreliah
Maralle Messreliah, Esq.
Attorney for Plaintiff,
AMAIRANI GOMEZ