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Electronically FILED by
Superior Court of California,
County of Los Angeles
11/06/2023 12:16 PM
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Executive Officer/Clerk of Court,
By S. Ruiz, Deputy Clerk

Attorneys for Plaintiff Elba Russo

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ELBA RUSSO,

Plaintiff,

vs.

WEST HOLLYWOOD HEALTHCARE
AND WELLNESS CENTRE LP;
COUNTRY VILLA WILSHIRE)
HEALTHCARE CENTER; AND SHLOMO
RECHNITZ; and DOES 1 to 25, inclusive,

Defendants.

) CASE NO: **23STCV27188**

)

) **COMPLAINT DAMAGES FOR:**

)

) **1) FAILURE TO COMPENSATE FOR ALL
HOURS WORKED;**

)

) **2) FAILURE TO PAY MINIMUM WAGES;**

)

) **3) FAILURE TO PAY OVERTIME;**

)

) **4) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS;**

)

) **5) FAILURE TO PAY WAGES WHEN
EMPLOYMENT ENDS;**

)

) **6) FAILURE TO PAY WAGES OWED
EVERY PAY PERIOD;**

)

) **7) FAILURE TO GIVE REST BREAKS;**

)

) **8) FAILURE TO GIVE MEAL BREAKS**

)

) **9) FAILURE TO REIMBURSE BUSINESS
EXPENSES;**

)

) **10) VIOLATION OF CA B&P CODE § 17200**

)

) **11) PRIVATE ATTORNEYS GENERAL
ACT ("PAGA");**

)

) **12) DISCRIMINATION ON THE BASIS OF
DISABILITY IN VIOLATION OF FAIR**

)

) **EMPLOYMENT AND HOUSING ACT**

)

) **("FEHA");**

)

) **13) FAILURE TO ACCOMMODATE
DISABILITY IN VIOLATION OF FEHA;**

)

) **14) FAILURE TO ENGAGE IN
INTERACTIVE PROCESS TO**

)

) **DETERMINE REASONABLE**

)

) **ACCOMMODATION IN VIOLATION
OF FEHA;**

)

) **15) RETALIATION IN VIOLATION OF**

) **FEHA;**
) **16) FAILURE TO PREVENT**
) **DISCRIMINATION AND**
) **RETALIATION IN VIOLATION OF**
) **FEHA;**
) **17) WRONGFUL TERMINATION IN**
) **VIOLATION OF PUBLIC POLICY**
)
)
) **DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, Elba Russo (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants, WEST HOLLYWOOD HEALTHCARE AND WELLNESS CENTRE LP; COUNTRY VILLA WILSHIRE HEALTHCARE CENTER; SHLOMO RECHNITZ; and DOES 1 to 25, (collectively "Defendants"), inclusive do business in the County of Los Angeles and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action.

2. Moreover, Plaintiff's damages sought herein exceed \$25,000.

3. Plaintiff, ELBA RUSSO, is a female resident of the County of Los Angeles, State of California.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant WEST HOLLYWOOD HEALTHCARE AND WELLNESS CENTRE LP (hereinafter "WHHWC") is and was a business entity, form unknown, doing business in Los Angeles County, California, and which employed Plaintiff as a Dietary Aid.

5. Plaintiff is informed and believes that at all times herein mentioned, Defendant COUNTRY VILLA WILSHIRE HEALTHCARE CENTER (hereinafter "CVWHC") is and was a business entity, form unknown, doing business in Los Angeles County, California, and

1 which employed Plaintiff as a Dietary Aid. WHHWC and CVWHC are considered joint
2 employers in that they each controlled the wages, hours, and/or working conditions of Plaintiff
3 and other employees.

4 6. Plaintiff is informed and believes that at all times herein mentioned, Defendant,
5 SHLOMO RECHNITZ (“RECHNITZ”) is a male resident of the County of Los Angeles, State
6 of California and the owner, managing agent/director of WHHWC and CVWHC. RECHNITZ
7 is being included in this complaint pursuant to Labor Code Section 558.1 in that he was
8 involved in the day-to-day operations of the businesses and controlled the wages, hours, and/or
9 working conditions of Plaintiff and other employees. WHHWC, CVWHC and RECHNITZ are
10 collectively referred to herein as “WHHWC” or “Defendant(s)”.

12 7. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
13 associate of those Defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
14 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
15 Defendants, numbers 1 to 25, reside in the State of California and are in some manner
16 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
17 these fictitiously named Defendants, Plaintiff will amend this complaint to show the true
18 names and capacities of these fictitiously named Defendants.

20 8. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
21 that information and belief, alleges that at all times herein mentioned, each of the remaining
22 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
23 under the authority of their agency, employment, or representative capacity, with the consent
24 of his/her codefendants.

26 **GENERAL ALLEGATIONS**

27 9. Plaintiff started working at WHHWC as a Dietary Aid on or around March 25, 2020.
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1 Plaintiff's employment with WHHWC ended on or around March 2023. Plaintiff was an
2 hourly, non-exempt employee.

3 10. Defendants have committed numerous labor code violations. In the case of Huff v.
4 Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as
5 a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite
6 security provider. After about a year of employment, Huff resigned. Huff then filed suit against
7 Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code
8 requiring immediate payment of wages upon termination of employment and weekly payment
9 of wages to temporary employees. The trial court determined Huff was not a temporary
10 employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a
11 motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then
12 appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA
13 claim and sue for Labor Code violations that did not directly affect him. Securitas
14 unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for
15 violations that the representative has personally suffered. The PAGA statute states that an
16 "aggrieved employee" is able to file suit on behalf of themselves and others. The statute also
17 states that an "aggrieved employee" is "any person who was employed by the alleged violator
18 and against whom one or more of the alleged violations was committed." Because at least one
19 of the violations that Huff had alleged had affected him personally, the Court of Appeal denied
20 Securitas' motion.

21 11. In sum, since PAGA allows Plaintiff to bring suit on behalf of both themselves and
22 other employees, it allows for suits broader than the specific violations the named employee
23 experienced. Therefore, even if the employee did not personally experience the Labor Code
24 violations, the employer may still be liable under PAGA. Consequently, it is our position that
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1 Plaintiff can equivocally bring the following labor code violations on behalf of all other
2 employees, including ALL hourly, non-exempt employees who worked for WHHWC at any of
3 their California locations, irrespective of job duties or job titles.

4 12. WHHWC has violated the following Labor Code Sections against Plaintiff and other
5 similarly situated aggrieved employees, who include all non-exempt, hourly employees who
6 worked for WHHWC at their various locations in the State of California during the relevant
7 PAGA period.

8
9 13. WHHWC violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to
10 pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including
11 the statutory minimum wage for all hours worked and for “off the clock” work. This is so
12 because Plaintiff and others would work through meal breaks even though they were clocked
13 out and “off the clock”. The latter would be akin to a minimum wage violation wherein
14 Plaintiff and others were not paid for all hours worked. In addition, WHHWC had a company
15 policy wherein they would disproportionately round down the number of hours worked by
16 Plaintiff and other aggrieved employees, resulting in “time shaving” and further resulting in
17 aggrieved employees not being paid for all hours worked.

18
19 14. Due to the above “off the clock” violations and due to company policy, WHHWC also
20 violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees
21 overtime compensation, even though they worked more than 8 hours per day, 12 hours per day,
22 and/or 40 hours per week throughout their employment. Plaintiff’s and other aggrieved
23 employees’ actual work hours entitled them to overtime compensation, however, WHHWC did
24 not compensate its hourly, non-exempt employees with the correct amount of overtime.
25 Furthermore, WHHWC failed to include bonuses/incentive payments in calculating Plaintiff’s
26 and other employees’ regular rate of pay for use in deciphering the correct overtime rate of
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1 pay. Additionally, the incentive and bonus payments were also not factored into our client's
2 and others' regular rate for purposes of receiving meal and rest break premiums per the Ferra v.
3 Loews case.

4 15. WHHWC also violated Labor Code § 226.7 and the appropriate Industrial Welfare
5 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated
6 aggrieved employees with 10-minute rest periods for every four hours of work, or majority
7 portion thereof, throughout their employment. WHHWC did not completely relieve Plaintiff
8 and others of all duty during said rest periods. WHHWC did not pay to Plaintiff and others one
9 additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or
10 more statutory rest periods was not provided. It was not part of the company policy for
11 employees such as Plaintiff to take timely, consistent, uninterrupted rest breaks, at least twice
12 per shift. Moreover, it would not have been possible for employees such as Plaintiff to take
13 such rest breaks due to having consistent job duties with respect to patients and being short-
14 staffed with too many patients. As such, the culture as well as the policies and procedures of
15 WHHWC did not lend itself to the employees receiving statutory rest breaks wherein they were
16 relieved of all work duties. The environment at WHHWC was not conducive to receiving at
17 least two statutory rest breaks under California law and timely, uninterrupted statutory rest
18 breaks were not authorized or enforced.

21 16. WHHWC violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
22 Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees,
23 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every
24 five (5) hours of work throughout their employment. WHHWC did not completely relieve
25 Plaintiff and other employees of all duty during said meal periods. WHHWC did not pay to
26 Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate
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1 of compensation for each workday that one or more statutory meal periods was not provided.
2 The hourly, non-exempt employees would often not be able to receive their meal periods
3 before the 5th hour worked due to the nature of their work and due to having too many patients
4 to monitor. The latter was the same reason that Plaintiff and others were not able to take
5 uninterrupted and complete meal periods wherein they were relieved of all work duties.
6 Furthermore, and as alluded to above, the hourly employees would also have to work through
7 their statutory breaks due to the workload. Like the rest breaks, receiving a thirty-minute
8 uninterrupted and timely meal break was not part of the company culture and was not enforced
9 by WHHWC. Consequently, it was the normal practice and custom of WHHWC not to
10 authorize, permit, and enforce timely statutory meal periods.
11

12 17. If WHHWC had Plaintiff sign a meal period waiver, it would not be valid and
13 enforceable since Plaintiff and others generally worked more than a 6-hour shift (even if by
14 several minutes) and because the waiver was not in writing and did not provide for the client
15 and others to revoke the meal period waiver agreement. If WHHWC had Plaintiff sign an on-
16 duty meal period agreement wherein our client agreed to work through the meal periods or stay
17 on the premises during meal periods, it would be invalid and unenforceable because the nature
18 of Plaintiff's job does not prevent her from taking a meal period. Moreover, any such "on
19 duty" meal period agreement did not allow for our client to revoke such an agreement even if it
20 was signed. If WHHWC argues that Plaintiff and others were actually paid for their meal
21 breaks, the latter would not mean there was no violation since Plaintiff and others were
22 essentially denied any meal breaks for them to rest and get something to eat. The solution for
23 WHHWC is not to keep their employees from taking meal periods, but to hire additional staff
24 and "breakers" to make sure that their medical staff and caregivers receive statutory breaks.
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1 18. To the extent that WHHWC argues that employees receive meal break premium pay for
2 missed meal periods, that argument is inconsequential for PAGA penalty purposes since the
3 PAGA penalties are for the violations themselves, irrespective of whether an employee
4 received the premium payment for a missed, short, or interrupted meal period. In *Kirby v.*
5 *Immoos Fire Protection, Inc.*, the Court stated, “section 226.7 does not give employers a lawful
6 choice between providing *either* meal and rest breaks *or* an additional hour of pay.” See
7 *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original).
8 Thus, the extra hour of pay does not excuse the violation; the employer has still committed a
9 violation even if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp.*, (S.D.
10 Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at
11 WHHWC was not conducive to receiving consistent, timely, statutory meal breaks under
12 California law. Moreover, any meal or rest break premiums paid were not compensated at the
13 weighted average regular rate, inclusive of bonuses and/or incentive payments.
14

15 19. Furthermore, during the relevant time period, and due to the above labor code violations,
16 WHHWC failed to pay Plaintiff and other similarly situated aggrieved employees all wages due
17 to them within any time period specified by California Labor Code section 204. In fact, Plaintiff
18 and other hourly, non-exempt employees were consistently paid late and more than 7 days after
19 the end of the respective designated pay periods. WHHWC was also in violation of California
20 Labor Code section 226(a) by failing to include pertinent information on the wage statements,
21 including but not limited to, the correct hourly rate, all hours worked, overtime hours worked,
22 correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and
23 rest breaks, all deductions, the correct start and end of the pay period, all employee identifying
24 information, the correct name and address of the legal employer, and reimbursement for business
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1 expenses, among others. As such, WHHWC did not provide Plaintiff and other similarly situated
2 aggrieved employees with complete, accurate itemized wage statements.

3 20. During the relevant time period, WHHWC also failed to keep accurate and complete
4 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
5 others pursuant to California Labor Code sections 1174(d).

6 21. WHHWC also violated Labor Code § 203 because it willfully failed to pay Plaintiff and
7 other similarly situated aggrieved employees earned and due wages upon separation of
8 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
9 These earned but unpaid wages include compensation for all hours worked, including minimum
10 wages, overtime compensation, and premium pay for missed meal and rest breaks. The Labor
11 Code section 203 violation was committed on or around March 12, 2023 in that Plaintiff did not
12 receive her full and complete final wage check, which included her compensation for all hours
13 worked and for all meal and rest premium payments she was owed throughout her employment
14 tenure for late, short, missed, or interrupted meal and rest periods.
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16 22. During the relevant time period, Plaintiff and other aggrieved employees incurred
17 necessary, business-related expenses and costs that were not reimbursed by WHHWC. These
18 costs include, but are not limited to, use of personal phones for business-related purposes and
19 uniforms. Accordingly, WHHWC was in violation of California Labor Code sections 2800 and
20 2802.
21

22 23. Furthermore, Defendants have also violated Labor Code Section 558 and has engaged in
23 business practices which violate Business and Professions Code Section 17200.
24

25 24. In addition, WHHWC violated the Fair Employment and Housing Act (FEHA) in that
26 Plaintiff was terminated in a retaliatory fashion for taking time off of work due to her physical
27 disabilities, including orthopedic and musculoskeletal injuries and disabilities. WHHWC failed
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1 to accommodate Plaintiff's known disabilities, failed to engage in the interactive process, and in
2 fact terminated Plaintiff's employment on March 12, 2023, while Plaintiff was still off of work
3 due to her disabilities and scheduled to come back in just 3 days on March 15, 2023.
4 Consequently, Plaintiff claims discrimination under FEHA, retaliation under FEHA, failure to
5 accommodate under FEHA, failure to engage in the interactive process under FEHA, wrongful
6 termination in violation of public policy, among others.

7
8 25. Each of the aforementioned violations, except the violations for inaccurate pay
9 statements under Labor Code section 226(a), is among the enumerated serious violations set
10 forth in Labor Code § 2699.5, for which there is no statutory right to cure.

11 26. Please take notice that, based upon the above-mentioned violations, and in addition to
12 the penalties provided by those specific sections themselves, Plaintiff also intends to seek
13 penalties under the following Labor Code sections which themselves are inviolable but provide
14 for recovery of penalties for violating one or more of the above-mentioned Labor Code
15 sections: Labor Code §§ 558, 226.3, 1197.1.

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17 27. Each of the aforementioned violations, except those under Labor Code Section 226, is
18 among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is
19 no statutory right to cure.

20 28. Based upon the above-mentioned violations, and in addition to the penalties provided
21 by those specific sections themselves, Plaintiff also intends to seek penalties under the
22 following Labor Code sections which themselves are inviolable but provide for recovery of
23 penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code
24 §§ 558, 226.3, 1197.1. **Plaintiff has exhausted all of her administrative remedies and on**
25 **November 6, 2023, received a Notice of Closure and Right to Sue from the Civil Rights**
26 **Department of the State of California.**
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FIRST CAUSE OF ACTION
FAILURE TO COMPENSATE FOR ALL HOURS WORKED
(California Industrial Welfare Commission Order 5-2001, California Code of Regulations Title 8 Section 11050, and California Labor Code Section 1198)
(Plaintiff against all named Defendants and all DOE Defendants)

29. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 28, inclusive, of this Complaint as though fully set forth herein.

30. At all times relevant herein, Defendants were required to compensate its employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 5-2001, California Code of Regulations, Title 8, Section 11050.

31. For the three (3) years preceding filing of this action, Defendants failed to compensate Plaintiff for all hours worked. Under the aforementioned wage order and regulations, Plaintiff is to recover compensation for all hours worked but not paid by Defendants for the three (3) years preceding the filing of this Complaint.

32. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court and not less than \$100,000. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable attorney's fees and costs of suit.

33. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs which will equal an amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

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SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(California Labor Code Sections 1194, 1194.2, 1197)
(Plaintiff against all named Defendants and all DOE Defendants)

34. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 33, inclusive, of this Complaint as though fully set forth herein.

35. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the minimum wage rate for all hours worked as required by the applicable Industrial Welfare Commission (hereinafter "IWC") Wage Order 5-2001, codified at California Code of Regulations, Title 8, Section 11050, subdivision 4.

36. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K), at all relevant times, "hours worked" included "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so..."

37. During his employment, Plaintiff was regularly required as a matter of uniform policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid less than the minimum wage rate by Defendants for hours worked in violation of California Labor Code Section 1197 and the applicable California Industrial Wage Commission wage order(s).

38. Plaintiff was, at all relevant times, under the control of Defendants and suffered or permitted to work by Defendants. Defendants' acts or omissions in failing to adequately compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants to believe that their acts or omissions were not contrary to California law.

39. For all hours worked by Plaintiff for which she was paid less than the minimum wage rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum

1 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
2 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
3 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

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

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8 **THIRD CAUSE OF ACTION**
9 **FAILURE TO PAY OVERTIME**
10 **(California Industrial Welfare Commission Order 5-2001, California Code of Regulations Title 8 Section 11050, and California Labor Code Section 1198)**
11 **(Plaintiff against all named Defendants and all DOE Defendants)**

12 41. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 40, inclusive, of this Complaint as though fully set forth herein.

14 42. Pursuant to Industrial Welfare Commission Order No. 5-2001, Cal. Code of Regs., Title
15 8, Section 11050, for the period of Plaintiff's employment, Defendants were required to
16 compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the
17 regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a
18 week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours
19 in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

20 43. Plaintiff was a non-exempt employee entitled to the protections of the California
21 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,
22 Section 11050.

23 44. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a
24 single workday or forty (40) hours in a single workweek on numerous occasions.

25 45. Plaintiff was entitled to the above overtime premiums.

26 46. Defendants did not pay Plaintiff premium wages of at least one and one-half times
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1 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
2 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
3 twelve (12) in a day.

4 47. Defendants did not pay Plaintiff premium wages of at least one and one-half times
5 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

6 48. Plaintiff worked at least one pay period in which he was not properly paid overtime
7 within the three (3) years prior to the initiation of this lawsuit.

8 49. Defendants know or should know the actual dates of overtime worked, the amount of
9 overtime worked, and the amount of unpaid overtime due.

10 50. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
11 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
12 Court.

13 51. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
14 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the
15 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
16 reasonable attorney's fees and costs of suit.

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

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22 **FOURTH CAUSE OF ACTION**
23 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
24 **(California Labor Code Section 226)**
25 **(Plaintiff against all named Defendants and all DOE Defendants)**

26 53. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 52, inclusive, of this Complaint as though fully set forth herein.

28 54. Pursuant to California Labor Code Section 226, every employer must furnish each

1 employee an itemized statement of wages and deductions at the time of payment of wages.

2 55. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
3 accurately reflected all information required by Labor Code Section 226, including but not
4 limited to, gross wages earned, including overtime, minimum wages, and premium pay for
5 missed meal and rest breaks, net wages earned, total hours worked by the employee, and all
6 deductions. Therefore, Defendants failed to maintain and provide accurate itemized wage
7 statements to Plaintiff in accordance with California Labor Code Section 226(a).
8

9 56. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
10 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
11 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
12 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
13 reasonable attorney's fees.

14 57. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
15 sustained damages, including loss of earnings, in an amount to be established at trial. As a
16 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
17 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
18 and attorney's fees pursuant to statute.
19

20 58. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
21 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
22 trial.
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24 **FIFTH CAUSE OF ACTION**
25 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**
26 **(California Labor Code Sections 201, 203)**
27 **(Plaintiff against all named Defendants and all DOE Defendants)**

28 59. Plaintiff re-alleges and incorporates by reference each and every allegation in
paragraphs 1 through 58, inclusive, of this Complaint as though fully set forth herein.

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

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

6 62. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
7 without abatement or reduction, any wages of an employee whose employment ends, the wages
8 of the employee shall continue as a penalty from the due date at the same rate until paid or until
9 an action is commenced; however, the wages shall not continue for more than 30 days for
10 failure to pay an employee owed wages.
11

12 63. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
13 continue to refuse to pay her unpaid wages as required by Labor Code Section 203.

14 64. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
15 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
16 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
17 preceding the filing of this lawsuit.
18

19 65. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
20 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
21 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.
22

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

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SIXTH CAUSE OF ACTION
FAILURE TO PAY WAGES OWED EVERY PAY PERIOD
(California Labor Code Section 204)
(Plaintiff against all named Defendants and all DOE Defendants)

67. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 66, inclusive, of this Complaint as though fully set forth herein.

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

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

70. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is informed, believes, and thereon alleges, that all times relevant during the liability period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked, including overtime hours, the minimum wage, and premium pay for missed meal and rest breaks.

71. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount, subject to proof, to the extent he was not paid all wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined directly from Defendants' records or indirectly based on information from Defendants' records.

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

SEVENTH CAUSE OF ACTION
FAILURE TO GIVE REST BREAKS
(Plaintiff against all named Defendants and all DOE Defendants)

73. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 72, inclusive, of this Complaint as though fully set forth herein.

1 74. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 2 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which
3 provides that every employer shall authorize and permit all employees to take rest
4 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
5 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
6 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which
7 provides that if an employer fails to provide an employee a rest period in
8 accordance with the applicable provisions of this order, the employer shall pay the
9 employee one (1) hour of pay at employee's regular rate of compensation for each
10 workday that the rest period is not provided;
11 c. Title 8 of the California Code of Regulations sections 11050(20)(A), which
12 penalizes the employer \$50.00 for each initial violation, per employee, of any
13 provision of the Wage Order, and \$100.00 for each additional violation thereafter
14 per employee; and
15 d. California Labor Code section 226.7, which states that (a) no employer shall require
16 any employee to work during any rest period mandated by an applicable order of
17 the Industrial Welfare Commission, and (b) if an employer fails to provide an
18 employee a rest period in accordance with an applicable order of the Industrial
19 Welfare Commission, the employer shall pay the employee one (1) additional hour
20 of pay at employee's regular rate of compensation for each work day that the rest
21 period is not provided.

22 75. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest
23 break after every four (4) hours of work or major fraction thereof, as required by California
24 law.

25 76. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
26 regulations, and wage orders alleged in this cause of action along with any allowable interest,
27 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
28 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

77. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
fees as well as interest under Labor Code section 218.6.

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

EIGHTH CAUSE OF ACTION
FAILURE TO GIVE MEAL BREAKS
(Plaintiff against all named Defendants and all DOE Defendants)

79. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 78, inclusive, of this Complaint as though fully set forth herein.

80. Plaintiff brings this cause of action under the following laws, for the following reasons:

- a. California Labor Code section 512(a), which requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;
- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11050, which states that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11090, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as codified under California Code of Regulations Section 11050, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5) as enforceable law.

81. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 5, as codified under California Code of Regulations Section 11090 et. seq. requires that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and

1 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
2 duty. California Labor Code section 226.7 provides that employers may not require their
3 employees to work through their meal periods. California Labor Code section 226.7 and
4 California Code of Regulations section 11050 requires that if the employer fails to provide the
5 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
6 of pay for each workday that the meal period is not given.

7
8 82. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
9 regulations, and wage orders alleged in this cause of action along with any allowable interest,
10 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
11 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

12 83. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees
13 as well as interest under Labor Code section 218.6.

14 84. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
15 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
16 trial.
17

18 **NINTH CAUSE OF ACTION**
19 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
20 **(Plaintiff against All Named Defendants and all DOE defendants)**

21 85. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 84, inclusive, of this Complaint as though fully set forth herein.

23 86. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties."

26 87. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
27 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
28 of completing his job duties, which were not reimbursed by Defendant. These expenses

1 include, but are not limited to, use of personal cell phones for work purposes and uniforms.

2 88. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
3 and attorney's fees and costs, under Labor Code section 2802.

4 **TENTH CAUSE OF ACTION**
5 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**
6 **(California Business and Professions Code Section 17200)**
7 **(Plaintiff against All Named Defendants and all DOE Defendants)**

8 89. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 88, inclusive, of this Complaint as though fully set forth herein.

10 90. By virtue of the alleged statutes, regulations, and laws in this complaint, the acts of
11 Defendants constitutes unfair and unlawful business practices under California Business and
12 Professions Code Section 17200, et seq.

13 91. Defendant's violations of California labor laws and the Labor Code as well as the Fair
14 Employment and Housing Act (FEHA) constitutes a business practice because it was done
15 repeatedly over a significant period of time in a systematic manner that was detrimental to
16 Plaintiff and others.

17 92. For the four years preceding the filing of this action, Plaintiff has suffered damages
18 and request damages and/or restitution of all monies and profits to be disgorged from
19 Defendants in an amount according to proof at time of trial, but in excess of the
20 jurisdiction of this Court.

21 **ELEVENTH CAUSE OF ACTION**
22 **PRIVATE ATTORNEYS GENERAL ACT**
23 **Individual and Representative Claim for PAGA penalties under California Labor Code**
24 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,**
25 **1194, 1197, 1198, 2802)**
26 **(Against all Named Defendants and all DOE Defendants)**

27 93. Plaintiff re-alleges and incorporates by reference each and every allegation in
28 paragraphs 1 through 92, inclusive, of this Complaint as though fully set forth herein.

1 94. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
2 Defendants of the specific violations of the California Labor Code that Defendants and DOE
3 Defendants have violated and continue to violate.

4 95. Pursuant to California Labor code section 2699.3, no response was received from the
5 LWDA within 65 days of the postmark date of the above-alleged letter.

6 96. Plaintiff therefore has exhausted all administrative remedies required of her under
7 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
8 cause of action and pursue penalties in a representative action for Defendants' violations of the
9 Labor Code.
10

11 97. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
12 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
13 departments, divisions, commissions, boards, agencies, or employees for violation of the code
14 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
15 on behalf of herself or herself and other current or former employees pursuant to the
16 procedures specified in California Labor Code section 2699.3.
17

18 98. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
19 violator and had one or more of the alleged violations committed against her, and therefore is
20 properly suited to represent the interests of other current and former employees including all
21 hourly, non-exempt employees who worked for Defendant in the State of California during the
22 PAGA period.
23

24 99. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
25 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
26 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

27 100. Plaintiff therefore has exhausted all administrative remedies required of her under
28

1 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
2 cause of action and pursue penalties in a representative action for Defendants' violations of the
3 Labor Code.

4 101. California Labor Code section 2699 et seq. imposes penalties upon culpable
5 Defendants for violating the Labor Code.

6 102. California Labor Code section 558 establishes a civil penalty as follows: Any
7 employer or other person action on behalf of an employer who violates, or causes to be
8 violated, a section of this chapter or any provision regulating hours and days of work in any
9 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
10 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
11 dollars (\$50) for each underpaid employee for each pay period for which the employee was
12 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
13 employee for each pay period for which the employee was underpaid ...;

14 103. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
15 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
16 seeking individual/victim specific relief or underpaid wages under this particular cause of
17 action.

18 104. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
19 the following:

20 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
21 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802 via 2698 and 2699 and
22 any other Labor Codes and Industrial Welfare Commission Wage Orders (Order no. 5 violated
23 based on the facts alleged in this Complaint.

24 105. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
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costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

TWELFTH CAUSE OF ACTION
DISCRIMINATION ON THE BASIS OF DISABILITY IN VIOLATION OF FEHA
(Plaintiff against WEST HOLLYWOOD HEALTHCARE AND WELLNESS
CENTRE LP; COUNTRY VILLA WILSHIRE HEALTHCARE CENTER
and all DOE Defendants)

106. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 105, inclusive, of this Complaint as though fully set forth herein.

107. Defendants and DOES 1 to 25, inclusive, are covered employers under California's Fair Employment and Housing Act.

108. California Government Code section 12926(m) has established a "broad definition" of "physical disability": disability protections under the Fair Employment and Housing Act ("FEHA") even extend to "perceived" disabilities. *Id.* Under the law of this state, "working" is a major life activity. *See* section 12926.1(c).

109. Plaintiff's orthopedic and musculoskeletal injuries, affecting her neck, back, shoulders, arms, hands, upper and lower extremities, which were debilitating, and which limited a major life activity, qualify as disabilities under FEHA, and Plaintiff was entitled to its protection.

110. Defendants knew of Plaintiff's disabilities and violated California Government Code section 12940 et. seq. by discriminating against Plaintiff on the basis of her disability.

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

1 112.The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
2 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
3 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
4 their workers' right to work in an environment in which personnel decisions and company
5 policies are made without regard to physical disability, so as to justify the imposition of punitive
6 damages to punish and set an example of said Defendants.

7
8 113.As a proximate result of the foregoing conduct, which violated the provisions
9 of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
10 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
11 of trial.

12 **THIRTEENTH CAUSE OF ACTION**
13 **FAILURE TO ACCOMMODATE DISABILITY IN VIOLATION OF FEHA**
14 **(Plaintiff against WEST HOLLYWOOD HEALTHCARE AND WELLNESS**
15 **CENTRE LP; COUNTRY VILLA WILSHIRE HEALTHCARE CENTER**
16 **and all DOE Defendants)**

17 114.Plaintiff re-alleges and incorporates by reference each and every allegation
18 in paragraphs 1 through 113, inclusive, of this Complaint as though fully set forth herein.

19 115.California Government Code section 12940(p) provides that it is unlawful for
20 an employer to fail to make reasonable accommodation for the known physical disability of an
21 employee.

22 116.Defendants failed to make reasonable accommodation of Plaintiff's physical
23 disabilities of which Defendants were unequivocally aware.

24 117.As a direct and proximate result of the aforementioned acts and omissions
25 of Defendants, Plaintiff suffered general and compensatory damages, including but not limited
26 to, loss of income (past and future), loss of employment benefits (past and future), general and
27 compensatory damages (past and future), mental pain and anguish and emotional distress (past
28

1 and future), and will continue to suffer in the future, in an amount to be proved at the time of
2 trial.

3 118.The foregoing conduct engaged in by Defendants and each of their
4 directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was
5 authorized, ratified, and carried on with a conscious and willful disregard of their workers' right
6 to receive reasonable accommodations, so as to justify the imposition of punitive damages to
7 punish and set an example of said Defendants.

8 119.As a proximate result of the foregoing conduct, which violated the provisions
9 of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
10 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
11 of the trial.
12

13 **FOURTEENTH CAUSE OF ACTION**
14 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA**
15 **(Plaintiff against WEST HOLLYWOOD HEALTHCARE AND WELLNESS**
16 **CENTRE LP; COUNTRY VILLA WILSHIRE HEALTHCARE CENTER**
17 **and all DOE Defendants)**

18 120.Plaintiff re-alleges and incorporates by reference each and every allegation
19 in paragraphs 1 through 119, inclusive, of this Complaint as though fully set forth herein.

20 121.California Government Code section 12940(n) provides that it is unlawful for
21 an employer to fail to engage in a timely, good faith, interactive process with an employee
22 to determine effective accommodations for that employee's physical disability.

23 122.Defendants failed to engage in a timely, good faith, interactive process
24 with Plaintiff to determine effective reasonable accommodations for Plaintiff's known
25 disabilities.

26 123.As a direct and proximate result of the aforementioned acts and omissions
27 of Defendants, Plaintiff suffered general and compensatory damages, including but not limited
28 to, loss of income (past and future), loss of employment benefits (past and future), general and

1 compensatory damages (past and future), mental pain and anguish and emotional distress (past
2 and future), and will continue to suffer in the future, in an amount to be proved at the time of
3 trial.

4 124.The foregoing conduct engaged in by Defendants and each of their
5 directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was
6 authorized, ratified, and carried on with a conscious and willful disregard of their workers' right
7 to engage in the interactive process and receive reasonable accommodations, so as to justify the
8 imposition of punitive damages to punish and set an example of said Defendants.

9
10 125.As a proximate result of the foregoing conduct, which violated the provisions
11 of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
12 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
13 of trial.

14
15 **FIFTEENTH CAUSE OF ACTION**
16 **RETALIATION IN VIOLATION OF FEHA**
17 **(Plaintiff against WEST HOLLYWOOD HEALTHCARE AND WELLNESS**
18 **CENTRE LP; COUNTRY VILLA WILSHIRE HEALTHCARE CENTER**
19 **and all DOE Defendants)**

20 126.Plaintiff re-alleges and incorporates by reference each and every allegation
21 in paragraphs 1 through 125, inclusive, of this Complaint as though fully set forth herein.

22 127.At all times herein mentioned, Government Code section 12940 et. seq. was
23 in full force and effect and was binding upon Defendants and each of them. Said statute imposes
24 certain duties upon Defendants concerning discrimination and retaliation against persons, such
25 as Plaintiff, on the basis of physical disability or on the basis of Plaintiff requesting time off of
26 work/missing time from work and using/attempting to use sick days due to her disabilities. Said
27 statutes were intended to prevent the type of injury and damage set forth herein. Plaintiff was, at
28 all times herein mentioned, a member of the class of persons intended to be protected by said

1 statutes. As alleged above, Plaintiff was retaliated against and terminated as a result of her
2 physical disabilities and request for accommodations as a result of her physical disabilities.

3 128.As a direct and proximate result of Defendants' conduct, Plaintiff has
4 been harmed in that Plaintiff has suffered the loss of wages, salary, and benefits, among other
5 things. As a result, Plaintiff has suffered such damages in an amount according to proof.

6 129.As a further direct and proximate result of the conduct of Defendants, and each of
7 them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
8 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
9 such damages in an amount according to proof.

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

14 131.The acts of oppression, fraud, and/or malice, were engaged in by employees
15 of Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of
16 each employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
17 wrongful conduct for which an award of punitive damages is sought, and/or was personally
18 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
19 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
20 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
21 to punitive and exemplary damages against each of the Defendants in accordance with California
22 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant

23 132.FEHA provides for an award of reasonable attorneys' fees and costs incurred by a
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1 prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
2 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
3 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
4 award of attorneys' fees and costs.

5 **SIXTEENTH CAUSE OF ACTION**
6 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN**
7 **VIOLATION OF FEHA**
8 **(Plaintiff against WEST HOLLYWOOD HEALTHCARE AND WELLNESS**
9 **CENTRE LP; COUNTRY VILLA WILSHIRE HEALTHCARE CENTER**
10 **and all DOE Defendants)**

11 133.Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 132, inclusive, of this Complaint as though fully set forth herein.

13 134.At all times herein mentioned, FEHA, California Government Code section
14 12940(k), was in full force and effect and was binding on Defendants. This statute states that it
15 is an unlawful employment practice in California for an employer to “fail to take all reasonable
16 steps necessary to prevent discrimination and harassment from occurring.”

17 135.During the course of Plaintiff's employment, Defendants failed to prevent their
18 employees, including management, from engaging in intentional actions that resulted in Plaintiff
19 being treated less favorably and eventually being terminated because of Plaintiff's protected
20 status (i.e. her physical disabilities) and for engaging in protected activity in taking requesting
21 accommodations and/or sick days. During the course of Plaintiff's employment, Defendants
22 failed to prevent their employees from engaging in unjustified employment practices against
23 employees in such protected classes. During the course of Plaintiff's employment, Defendants
24 failed to prevent a pattern and practice by its employees of intentional discrimination and
25 retaliation on the basis of physical disability, and/or other protected status and/or protected
26 activity.

27 136.Plaintiff believes and, on that basis, alleges that her physical disabilities and
28

1 other protected status and/or protected activity in informing her employer about her disabilities
2 and about the medications she was on and requesting accommodations was a substantial
3 motivating factor in Defendants' employees' discriminating against her and retaliating against
4 her.

5 137.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 to,
7 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 the time of
10 trial.
11

12 138.The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
13 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
14 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
15 their workers' right to work in an environment in which personnel decisions and company
16 policies are made without regard to physical disability and without regard to requests for
17 accommodation at the workplace, so as to justify the imposition of punitive damages to punish
18 and set an example of said Defendants.
19

20 139.As a proximate result of the foregoing conduct, which violated the provisions of
21 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
22 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
23 of trial.
24

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SEVENTEENTH CAUSE OF ACTION
WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
**(Plaintiff against WEST HOLLYWOOD HEALTHCARE AND WELLNESS
CENTRE LP; COUNTRY VILLA WILSHIRE HEALTHCARE CENTER
and all DOE Defendants)**

140. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 139, inclusive, of this Complaint as though fully set forth herein.

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

142. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and actions to treat her differently and ultimately terminate her as alleged herein, was motivated by Plaintiff's disabilities and Plaintiff's request for accommodations as a result of her physical disabilities. Defendants intentionally created the aforementioned retaliation, thereby not giving Plaintiff an opportunity to work in an environment free of retaliation and discrimination.

143. The employment of Plaintiff was wrongfully terminated on or around March 2023 in violation of the fundamental public policy of the State of California with respect to retaliating against an employee on account of her physical disability and request for accommodations. 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, the Fair Employment and Housing Act, Government Code section 12940 et. Seq. and California Labor Code section 233/246, and the California Constitution, Article 1 section 8.

144. 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 laws, objectives and policies. Said statutes and constitutional expressions of public policy include, but are not limited to, FEHA, Government Code sections 12940 et seq., California Labor Code

1 sections 233 and 246, and the California Constitution, Article 1 section 8. These laws inure to
2 the benefit of the public at large, and not just the private interests of the employers and
3 employees whom they govern or protect.

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

10 146. The foregoing conduct engaged in by Defendants and each of their directors, officers
11 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
12 and carried on with a conscious and willful disregard of their workers' right to work in an
13 environment free of retaliation due to physical disability and requesting accommodations due
14 to physical disabilities, so as to justify the imposition of punitive damages to punish and set an
15 example of said Defendants.
16

17 **WHEREFORE**, Plaintiff prays for Judgment against Defendants, and each of them, as
18 follows:

19 1. For compensatory damages in an amount subject to proof at trial but not less than
20 \$500,000;

21 2. For special and consequential damages to the extent allowed by law in an amount
22 subject to proof at trial but not less than \$500,000;

23 3. For general damages according to proof at trial but not less than \$750,000;

24 4. For an award of punitive damages against corporate Defendants according to proof;

25 5. For damages for minimum wages and overtime not paid to Plaintiff in an amount
26 subject to proof at trial but not less than \$100,000;
27
28

1 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
2 subject to proof at trial but not less than \$4,000;

3 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
4 proof at trial but not less than \$25,000;

5 8. For restitution and disgorgement for all unfair business practices by corporate
6 Defendants against Plaintiff in an amount subject to proof at trial;

7 9. For an order enjoining corporate Defendants from further unfair and unlawful business
8 practices in violation of Business and Professions Code Sections 17200, et seq.;

9 10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
10 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period in an amount
11 subject to proof at trial but not less than \$25,000;

12 11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
13 fraction thereof when Plaintiff did not receive a ten (10) minute rest break in an amount
14 subject to proof at trial but not less than \$25,000;

15 12. For maximum civil penalties available under the Labor Code and applicable Wage
16 Order against Defendants as described more particularly in the Complaint and representative
17 PAGA claim;

18 13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
19 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages,
20 damages, penalties, and waiting time penalties according to proof to the extent permitted by
21 law;

22 14. For the imposition of civil penalties and/or statutory penalties in an amount subject to
23 proof at trial but not less than \$5,000,000;

24 15. For all interest as allowed by law;

1 16. For all costs and disbursements incurred in this suit;

2 17. Reasonable attorney's fees where available by law, including but not limited to,
3 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
4 Government Code section 12940 et seq., and/or other applicable laws; and

5 18. For such other and further relief as this Court may deem proper.
6

7 DATED: November 6, 2023

LAW OFFICES OF SEVAG NIGOGHOSIAN

8
9 By

Sevag Nigoghossian, Esq.

10 Attorneys for Plaintiff, Elba Russo

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
13
14

15 DATED: November 6, 2023

LAW OFFICES OF SEVAG NIGOGHOSIAN

16
17 By

Sevag Nigoghossian, Esq.

18 Attorneys for Plaintiff, Elba Russo
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