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ELECTRONICALLY FILED
 Superior Court of California
 County of Alameda
 10/02/2023

Chad Finke, Executive Officer / Clerk of the Court

By: D. Drew Deputy

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **COUNTY OF ALAMEDA**

12 SABRINA NORSWORTHY, an individual;) Case No.: 23-CV-027464

13 Plaintiff,

14 vs.

15 HUNGRY MARKETPLACE, INC. a)
 16 Delaware corporation; ANA DE SANTIAGO,)
 17 an individual; and DOES 1 through 50,)
 18 inclusive.)

19 Defendants.)

FIRST AMENDED COMPLAINT FOR:

1. Sex Discrimination Based on Pregnancy in Violation of Cal. Gov. Code § 12900 et seq.;
2. Disability Discrimination in Violation of Cal. Gov. Code Section 12900 et seq.;
3. Failure to Prevent Discrimination and Harassment in Violation of Cal. Gov. Code Section 12900 et seq.;
4. Failure to Engage in Good Faith Interactive Process in Violation of Cal. Gov. Code § 12900 et seq.;
5. Failure to Accommodate in Violation of Cal. Gov. Code Section 12900 et seq.;
6. Retaliation in Violation of Cal. Gov. Code Section 12900 et seq.;
7. Wrongful Termination In Violation of Public Policy (Count I);
8. Wrongful Termination In Violation of Public Policy (Count II);
9. Failure to Provide Meal Periods in Violation of Cal. Lab. Code § 226.7;
10. Failure to Provide Rest Periods in Violation of Cal. Lab. Code § 226.7;

- 1) 11. Waiting Time Penalties in Violation of
2) Cal. Labor Code §§ 201, 203;
3) 12. Failure to Provide Accurate Wage
4) Statements in Violation of Cal. Lab.
5) Code § 226;
6) 13. PAGA Civil Penalties for Failure to
7) Timely Pay Earned Wages in Violation
8) of Cal. Lab. Code §§ 204, 210, 558, and
9) 2698 et seq.
10) 14. PAGA Civil Penalties for Failure to Pay
11) Overtime Compensation in Violation of
12) Cal. Lab. Code §§ 510, 1194, 1198, 558
13) and 2698 et seq.
14) 15. PAGA Civil Penalties for Failure to Pay
15) Provide Meal Periods in Violation of
16) Cal. Lab. Code §§ 226.7 and 2698 et seq.
17) 16. PAGA Civil Penalties for Failure to
18) Provide Rest Periods in Violation of Cal.
19) Lab. Code §§ 226.7 and 2698 et seq.
20) 17. PAGA Civil Penalties for Failure to
21) Provide Accurate Wage Statements in
22) Violation of Cal. Lab. Code §§ 226,
23) 226.3, 558, and 2698 et seq.
24) 18. PAGA Civil Penalties for Failure to
25) Reimburse Business Expenditures in
26) Violation of Cal. Lab. Code §§ 2802,
27) 558, and 2698 et seq.
28) 19. PAGA Civil Penalties for Failure to Pay
all Earned Wages in Violation of Cal.
Lab. Code §§ 202, 203, 256, 558, and
2698 et seq.
20. PAGA Civil Penalties for Failure to
Comply with Cal. Lab. Code §§ 1174
and 2698 et seq.
21. PAGA Civil Penalties for Failure to
Comply with Cal. Lab. Code §§ 1197,
1198, 1199 and 2698 et seq.
22. PAGA Civil Penalties for Failure to
Comply with Cal. Lab. Code §§ 226.8
and 2698 et seq.

1 Plaintiff alleges:

2 **PARTIES**

3 1. Plaintiff, Sabrina Norsworthy (“Plaintiff” herein), is, and at all relevant times was,
4 a resident of Alameda County, California.

5 2. Plaintiff is informed and believes, and based thereon alleges, that Defendant
6 Hungry Marketplace, Inc. (“Hungry”) is, and at all relevant times was, a corporation organized
7 and existing under the laws of the state of Delaware, qualified to do business in the state of
8 California, with its principal place of business located at 4420 N Fairfax Dr. #102, Arlington,
9 Virginia 22203. Defendants are registered to do business within the state of California and
10 provide services in both Los Angeles, California and San Francisco, California.

11 3. Plaintiff is informed and believes, and based thereon alleges, that Defendant Ana
12 de Santiago (“Santiago”) is, and at all relevant times was, a resident of Alameda County,
13 California. At all relevant times herein, Santiago was an employee of Hungry and the supervisor
14 to Plaintiff who controlled the wages, hours, and working conditions of Plaintiff.

15 4. Plaintiff is ignorant of the true names and capacities of the defendants sued herein
16 as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
17 Plaintiff will amend this Complaint to allege the true names and capacities of said defendants
18 when ascertained. Plaintiff is informed and believes, and based thereon allege, that each of the
19 fictitiously named defendants is responsible in some manner for the occurrences herein alleged,
20 and that Plaintiff’s damages as herein alleged were proximately caused by said defendants.
21 (Hungry, Santiago, and DOES 1 through 50 shall collectively herein be referred to as
22 “Defendants”).

23 5. At all relevant times herein, Defendants employed Plaintiff, within the meaning of
24 California Government Code § 12926(d). Plaintiff was employed by Defendants and worked at
25 Defendant’s facility located at 2000 Maritime Street, Oakland, California 94607 until, as alleged
26 herein, Plaintiff’s employment was constructively terminated in or about June 2022 for unlawful
27 reasons in violation of the California Fair Employment and Housing Act (“FEHA,” California
28 Government Code § 12900 et seq.) and in violation of California public policy.

6. Unless otherwise alleged in this Complaint, Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants sued herein was, at all relevant times hereto, the employer, owner, principal, franchisee, proxy, agent, employee, supervisor, representative, manager, managing agent, joint employer, and/or alter ego of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with express and implied permission, consent, and knowledge. The above Defendants, managing agents, and supervisors aided, abetted, condoned, permitted, willfully ignored, approved, authorized, and/or ratified the unlawful acts described herein, and each and every one of the acts and omissions alleged herein were performed by, and/or are attributable to all Defendants.

JURISDICTION

7. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned, Defendants, and each of them, were doing business in the State of California such that the exercise of jurisdiction by this Court would not be inconsistent with the Constitution of the State of California and/or the United States of America.

8. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure Section 410.10.

9. The total amount in controversy for claims of Plaintiff is more than Twenty-Five Thousand Dollars (\$25,000). In addition, Plaintiff asserts no claims under federal law, with all causes of action named herein being based exclusively under California law.

VENUE

10. Plaintiff is informed and believes, and based thereon alleges, that venue is proper in Alameda County because Defendants, and each of them, have conducted business within the County of Alameda and a substantial portion of the wrongful acts complained of occurred therein.

GENERAL ALLEGATIONS

11. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

Plaintiff's Employment:

12. Defendants employed Plaintiff from on or about April 15, 2022, until on or about August 3, 2022 (the "Employment Period").

13. Hungry is a meal delivery service company that operates throughout the United States. Hungry partners with chefs all over the country to provide home meal delivery services, catering, food truck services, and culinary pop-ups in major cities. Hungry worked with another company called Good Egg, which provided an on-site location for Hungry to store their delivery vans, and Hungry workers such as Plaintiff reported to this site to start and end their shifts. If the Hungry vans were out of service, employees of Hungry were permitted to make their deliveries utilizing Good Egg vans. Despite driving a company vehicle for work, Plaintiff was required to fill the vehicle with gas at her own expense and did not receive reimbursement for the gas charges incurred.

14. Plaintiff was a hard-working and successful delivery driver who performed her job competently during the Employment Period and was a dedicated member of the team. Throughout her Employment Period, Plaintiff was provided with a set work schedule, was required to show up to a warehouse on each workday, load the meals into a delivery vehicle provided by Hungry, and was required to drive and make deliveries to various locations on the date(s) and time(s) as instructed by Hungry. Plaintiff's day-to-day tasks included, but were not limited to, loading the delivery vehicle, driving, and delivering products as per the locations and schedules directed by her supervisor Santiago.

15. Moreover, throughout her employment, Plaintiff was improperly classified as an independent contractor. Plaintiff is further informed and believes that all other non-exempt California employees of Hungry were similarly misclassified as independent contractors.

1 ***Plaintiff's Protected Status:***

2 16. Plaintiff is a female employee who became pregnant during the Employment
3 Period. As a result of her pregnancy, Plaintiff requested a reasonable accommodation from
4 Defendants. In response, Plaintiff suffered discrimination, retaliation, and was ultimately
5 wrongfully constructively terminated due to her gender, sex, pregnancy and request for
6 accommodation, i.e., for belonging to a protected class and for engaging in protected activities.
7 Consequently, Plaintiff is a protected employee, as defined under California Law. (See. Cal.
8 Gov't Code § 12940, *et seq.*).

9 ***Plaintiff's Job Performance:***

10 17. Plaintiff was an exemplary employee of Defendants throughout the entirety of the
11 Employment Period. Plaintiff faced no disciplinary actions or had any negative performance
12 evaluations or negative comments from her supervisors or peers. Plaintiff was efficient, reliable,
13 and made all her deliveries in a timely manner. Though her time at Hungry was brief, Plaintiff
14 performed her duties competently and was willing to work hard in order to make ends meet.

15 ***Defendants' Discriminatory, and Retaliatory Conduct:***

16 18. Defendants' standard practice was to have delivery drivers, like Plaintiff, work
17 their shifts without providing them rest or meal breaks. During the Employment Period, Plaintiff
18 did not receive the rest or meal breaks she was entitled to as the vast majority of her shifts were
19 6-8 hours long. Despite sacrificing her rest and meal periods, Plaintiff performed her work
20 diligently to keep this job and maintain a stable income.

21 19. In addition to forcing Plaintiff to work through her meal and rest breaks, Hungry
22 discriminated against Plaintiff for disclosing to Hungry that she was pregnant and was retaliated
23 against for requesting to be placed on light duty.

24 20. In order to receive her work schedule and for other work-related correspondence,
25 Plaintiff would routinely text message with her supervisor Santiago. On or about June 18, 2022,
26 Plaintiff was discussing a reimbursement for putting gas in the delivery van she was driving.
27 Plaintiff then sent Santiago text message that read: "*And would it be possible to keep my job but*
28 *be on light duty or something I'm ten weeks pregnant.*"

1 21. Plaintiff never received any response to this message as neither Santiago nor
2 anyone on behalf of Defendants attempted to engage in the good faith interactive process with
3 Plaintiff to determine if her request could be reasonably accommodated. Rather, Plaintiff was
4 immediately removed from the schedule without any notice and was not given another shift for
5 the next six weeks.

6 22. Plaintiff reached out several times a week asking why she was taken off the
7 schedule and when she would be given another shift, with no response from Defendants. Plaintiff
8 received no response from Santiago or anyone else on behalf of Defendant. Plaintiff was not
9 asked for a physician's note requesting light duty, and no conversations took place as to whether
10 her request for light duty could be reasonable accommodated. Plaintiff did not receive any other
11 work shifts from Defendant after her message to Santiago on June 18, 2022. Plaintiff quickly
12 began to struggle to pay her bills, buy groceries, etc.

13 23. On or about August 2, 2022, Plaintiff sent Santiago the following message: "*Am I*
14 *fired for being pregnant I haven't got a response from you or anybody and I have bills to pay.*"
15 This message prompted Santiago to finally respond after six (6) weeks wherein Santiago
16 requested a doctor's note that stated Plaintiff was cleared to come into work. Santiago made this
17 request despite the fact that she never requested or received a doctor's note stating that Plaintiff
18 was not cleared to work.

19 24. Plaintiff told Santiago that Plaintiff had not received any communication for over
20 six weeks since she told Santiago that she was pregnant, and that Plaintiff was not given any
21 shifts or sick pay, to which Santiago responded by requesting a doctor's note and saying, "*Once I*
22 *receive [the doctor's note] we will go on from there.*" Plaintiff reiterated that she needed to work
23 to pay her bills and that Santiago was not explaining why Plaintiff was removed from the
24 schedule nor why she needed a doctor's note. Plaintiff reminded Santiago that she had always
25 been cleared to work. Plaintiff had only requested an accommodation of light duty, and no
26 discussion ever took place.

1 25. Ultimately on or about August 5, 2022, Plaintiff had still yet to be given any work
2 shifts from Defendant. As such, Plaintiff informed Santiago that after six weeks of not
3 responding to her or giving her any work, Plaintiff had been forced to find other work.

4 26. Although Plaintiff may have stated that she resigned and found other work,
5 Plaintiff was constructively terminated. Plaintiff had disclosed that she was pregnant and
6 requested being on light duty. In response, Defendants wrongfully discriminated against Plaintiff
7 by removing her from the works schedule, failed to have any conversation about whether they
8 could accommodate her request, and did not give her any work for over six (6) weeks, effectively
9 terminating her for being pregnant and requesting an accommodation.

10 ***Exhaustion of Administrative Remedies:***

11 27. At all applicable times mentioned herein, Defendants regularly employed five or
12 more persons in California, bringing Defendants subject to the provisions of the Fair
13 Employment and Housing Act (“FEHA”).

14 28. Plaintiff has adequately exhausted all of his administrative remedies under the
15 FEHA and obtained a valid “right to sue” letter against Defendants from the Department of Fair
16 Employment and Housing.

17 29. Furthermore, Plaintiff, by virtue of her employment with Defendants, is an
18 “aggrieved employee” within the meaning of California Labor Code § 2699(c), with standing to
19 bring an action under PAGA, and has suffered one or more of the Labor Code violations set forth
20 herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and
21 former aggrieved employees of Defendants, the civil penalties provided by PAGA.

22 30. Plaintiff seeks to recover the civil penalties through a representative action
23 permitted by PAGA, therefore class certification of the PAGA claims is not required.

24 31. Plaintiff is informed and believes, and based thereon alleges that Defendants have
25 violated, and continue to violate, provisions of the California Labor Code and applicable Wage
26 Orders.

27 32. Plaintiff has exhausted her administrative remedies by timely filing PAGA
28 administrative charges in strict accordance with the PAGA statute, and for the purposes of

1 exhausting her administrative remedies, on or about June 22, 2023 (“Exhibit A”). More than sixty-
2 five days elapsed, and neither the LWDA nor Defendants responded to the exhaustion.

3 33. As such, pursuant to California Labor Code 2699.3, Plaintiff may, as a matter of
4 right amend her existing complaint to add a cause of action under PAGA within sixty (60) days
5 after Plaintiff has adequately exhausted her administrative remedies under PAGA as set forth
6 herein. (Lab. C. § 2699.3(a)(2)(C).)

7
8 **FIRST CAUSE OF ACTION**

9 (Sex Discrimination in Violation of Cal. Gov. Code Section 12900 et seq.

10 by Plaintiff Against Hungry and DOES 1-50)

11 34. Plaintiff alleges and incorporates herein by this reference each and every
12 allegation set forth in all previous paragraphs of this Complaint.

13 35. There existed an employer-employee relationship between Plaintiff and
14 Defendants during the Employment Period and, at all times herein, Plaintiff was duly qualified
15 and performed her employment duties in a satisfactory manner.

16 36. At all relevant times, Plaintiff was a member of a protected class within the
17 meaning of FEHA because of her sex, which includes pregnancy, any medical conditions related
18 to pregnancy, childbirth, or medical conditions related to childbirth. (Cal. Gov. Code § 12926
19 subd. (r)(1).)

20 37. It is unlawful for an employer to discriminate against an employee based on the
21 employee’s “race, religious creed, color, national origin, ancestry, physical disability, mental
22 disability, medical condition, genetic information, marital status, sex, gender, gender identity,
23 gender expression, age, sexual orientation, or military and veteran status of any person” or to
24 “discharge the person from employment... or to discriminate against the person in compensation
25 or in terms, conditions, or privileges of employment.” (Cal. Gov. Code § 12940(a)).

26 38. Plaintiff was, at all times herein, an “employee” covered by Government Code §
27 12900 et seq.
28

1 39. Defendants were at all relevant times hereto “employers” within the meaning of
2 Government Code § 12900 et seq.

3 40. Plaintiff’s sex and/or other characteristics protected by FEHA were motivating
4 factors in Defendants’ adverse treatment of Plaintiff, as set forth in detail herein above.

5 41. As alleged herein above, Defendants discriminated against Plaintiff based on her
6 pregnancy and request for accommodations due to her pregnancy. In response to learning of
7 Plaintiff’s pregnancy and request for accommodation, Defendants removed Plaintiff from the
8 work schedule, stopped scheduling her for shifts, and stopped communicating with Plaintiff for
9 over six weeks after Defendants learned Plaintiff was pregnant. Defendants effectively
10 terminated Plaintiff’s employment by not giving her work for over six (6) weeks in response to
11 learning about her pregnancy.

12 42. Defendants’ conduct as alleged herein violated FEHA and Defendants committed
13 unlawful employment practices, including, without limitation, discriminating against Plaintiff by
14 materially affecting the terms and conditions of her employment, in whole or in part on the basis
15 of Plaintiff’s sex and/or other protected characteristics in violation of Government Code § 12900
16 et seq.

17 43. As a proximate result of Defendants’ willful, knowing, and intentional
18 discrimination against Plaintiff, Plaintiff has suffered and continues to suffer humiliation,
19 emotional distress, and physical and mental pain and anguish, all to her damage in a sum
20 according to proof at the time of trial.

21 44. Plaintiff has incurred and continues to incur legal expenses and attorney’s fees
22 pursuant to Government Code § 12965(b). Plaintiff is entitled to recover reasonable attorney’s
23 fees and costs in an amount according to proof at the time of trial.

24 45. Defendants’ conduct was willful, knowing, malicious, and intentional and done in
25 reckless disregard of the damaging consequences to Plaintiff. Defendants’ conduct evidenced a
26 conscious disregard of Plaintiff’s rights. Plaintiff is thus entitled to recover actual, compensatory,
27 punitive, and exemplary damages in amounts according to proof at time of trial.

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46. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

48. Because FEHA requires only a “limitation” on a major life activity, evidence of a temporary or short-term impairment qualifies an employee as disabled under FEHA, thereby affording said employee the protections provided to disabled persons under FEHA. (*Diaz v. Fed. Express Corp.*, (2005) 373 F.Supp.2d 1034, 1051-1052).

49. Plaintiff's pregnancy resulted in the temporary inability to perform the full duties of her job, thus causing a short-term limitation on a major life activity. Because Plaintiff's pregnancy caused a short-term disability, Plaintiff is a member of a protected class within the meaning of FEHA and is entitled to its guarantees of full and equal access to employment.

50. It is unlawful for an employer to discriminate against an employee based on the employee's "race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person" or to "discharge the person from employment... or to discriminate against the person in compensation or in terms, conditions, or privileges of employment." (Cal. Gov't Code § 12940(a)).

51. Plaintiff was, at all times herein, an “employee” covered by California Government Code § 12900 et seq.

52. Defendants were at all relevant times hereto “employers” within the meaning of California Government Code § 12900 et seq.

1 53. Plaintiff's short-term disability and/or other characteristics protected by FEHA
2 were motivating factors in Defendant's adverse treatment of Plaintiff, as set forth in detail herein
3 above.

4 54. Plaintiff has performed competently and has gone above and beyond in his
5 position, has suffered an adverse employment action, and the circumstances give rise to the
6 discriminatory conduct from Defendants.

7 55. As alleged herein above, Plaintiff notified Defendants that she was pregnant and
8 requested the reasonable accommodation of light duty. Defendants did not respond to Plaintiff's
9 request for light duty. Instead, upon receiving Plaintiff's request for light duty, Defendants
10 immediately removed Plaintiff from the work schedule, stopped scheduling her for future shifts,
11 and stopped communicating with Plaintiff for over six weeks until Plaintiff asked if she was fired
12 for being pregnant. Defendants then demanded a doctor's note stating Plaintiff was cleared to
13 work, despite the fact that Plaintiff was never not cleared to work and never applied for any
14 leave. Plaintiff was then forced to resign her employment with Defendants and seek other
15 employment to support herself financially.

16 56. Defendants' conduct as alleged herein violated FEHA and Defendants committed
17 unlawful employment practices, including, without limitation, discriminating against Plaintiff by
18 materially affecting the terms and conditions of his employment, in whole or in part on the basis
19 of Plaintiff's mental disability in violation of California Government Code § 12900 et seq.

20 57. As a direct, foreseeable, and proximate result of Defendants' actions, Plaintiff has
21 suffered and continues to suffer aggravation of her injuries, substantial losses in earnings and job
22 benefits, humiliation, emotional distress, and physical and mental pain and anguish all to her
23 damage in a sum according to proof at the time of trial.

24 58. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees
25 pursuant to Government Code § 12965(b). Plaintiff is entitled to recover reasonable attorneys'
26 fees and costs in an amount according to proof at the time of trial.

27 59. Defendants' conduct was willful, knowing, malicious, intentional, and done in
28 reckless disregard of the damaging consequences to Plaintiff. Defendants' conduct evidenced a

conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover actual, compensatory, punitive, and exemplary damages in amounts according to proof at time of trial.

THIRD CAUSE OF ACTION

(Failure to Prevent Discrimination in Violation of Cal. Gov. Code Section 12900 et seq. by Plaintiff Against Hungry and DOES 1-50)

60. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

61. At all relevant times, there existed an employer-employee relationship between Plaintiff and Defendants.

62. At all relevant times, Defendants were employers who regularly employed five or more persons within the meaning of California Government Code § 12900 et seq.

63. At all applicable times herein, Gov. Code § 12900 et seq. was in full force and effect and binding on Defendants.

64. California law requires that employers take reasonable steps to prevent and correct wrongful behavior, including, but not limited to, discriminatory behavior. (*See* Gov. Code § 12940(k)) (In it unlawful "For an employer... to fail to take all reasonable steps necessary to prevent harassment from occurring.")). Pursuant to this statute, Defendants were required to take all reasonable steps to prevent discrimination against Plaintiff based on Plaintiff's sex and/or other protected characteristics.

65. As alleged herein above, throughout the Employment Period, Defendants failed to prevent Defendants and their agents, supervisors, employees, and others from engaging in intentional actions that resulted in Plaintiff being treated less favorably because of Plaintiff's protected status (i.e., sex, disability).

66. Plaintiff is informed and believes, and based thereon alleges, that her sex, disability, and/or other characteristics protected by FEHA were substantial motivating factors in Defendants' adverse treatment of Plaintiff. Despite knowing its legal obligations, Defendants did nothing to prevent the rampant discrimination that Plaintiff suffered.

67. Defendants knew, or reasonably should have known of the other Defendants and their agents, supervisors and employees' unlawful discrimination of Plaintiff, and that Defendants should have restrained such other Defendants from engaging in such conduct.

68. As a direct, foreseeable, and proximate result of Defendants' actions, Plaintiff has suffered and continues to suffer aggravation of her injuries, substantial losses in earnings and job benefits, humiliation, emotional distress, and physical and mental pain and anguish all to her damage in a sum according to proof at the time of trial.

69. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees pursuant to Government Code § 12965(b). Plaintiff is entitled to recover reasonable attorneys' fees and costs in an amount according to proof at the time of trial.

70. Defendants' conduct was willful, knowing, malicious, intentional, and done in reckless disregard of the damaging consequences to Plaintiff. Defendants' conduct evidenced a conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover actual, compensatory, punitive, and exemplary damages in amounts according to proof at time of trial.

FOURTH CAUSE OF ACTION

(Failure to Engage in Good Faith Interactive Process in Violation of Cal. Gov. Code § 12900 et seq. by Plaintiff Against Hungry and DOES 1-50)

71. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

72. At all relevant times, there existed an employer-employee relationship between Plaintiff and Defendants, and at all times herein, Plaintiff was duly qualified and performed her employment duties in a satisfactory manner.

73. At all applicable times herein, Cal. Gov. Code § 12900 et seq. was in full force and effect and binding on Defendants.

74. Under Government Code § 12940(n), it is unlawful for an employer to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable

1 accommodation by an employee or applicant with a known physical or mental disability or
2 known medical condition.

3 75. As alleged herein above, on or about June 18, 2022, Plaintiff made a request to
4 Defendants to be placed on light duty due to her pregnancy. Defendants subsequently failed to
5 have any conversation with Plaintiff about whether or not her request could be accommodated,
6 and/or any type of accommodation that could potentially be offered to her, nor did Defendants
7 request a physician's note from Plaintiff. Instead, Defendants simply removed Plaintiff from the
8 work schedule without notice for over six (6) weeks. Only upon Plaintiff asking if she had been
9 terminated due to her pregnancy on or about August 2, 2022, did Defendants respond, requesting
10 a medical note stating that Plaintiff was cleared to return to work. However, Plaintiff had always
11 been cleared to work.

12 76. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
13 failure to engage in timely, good faith, interactive process was a substantial factor in causing
14 harm to Plaintiff as alleged herein above.

15 77. As a direct, foreseeable, and proximate result of Defendants' actions, Plaintiff has
16 suffered and continues to suffer aggravation of her injuries, substantial losses in earnings,
17 benefits, humiliation, emotional distress, and physical and mental pain and anguish all to her
18 damage in a sum according to proof at the time of trial.

19 78. Plaintiff has incurred and continues to incur legal expenses and attorney's fees
20 pursuant to Government Code § 12965(b). Plaintiff is entitled to recover reasonable attorney's
21 fees and costs in an amount according to proof at the time of trial.

22 79. Defendants' conduct was willful, knowing, malicious, and intentional and done in
23 reckless disregard of the damaging consequences to Plaintiff. Defendants' conduct evidenced a
24 conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover actual, compensatory,
25 punitive, and exemplary damages in amounts according to proof at time of trial.

1 **FIFTH CAUSE OF ACTION**

2 (Failure to Accommodate in Violation of Cal. Gov. Code Section 12900 et seq.
3 by Plaintiff Against Hungry and DOES 1-50)

4 80. Plaintiff alleges and incorporates herein by this reference each and every
5 allegation set forth in all previous paragraphs of this Complaint.

6 81. At all relevant times, there existed an employer-employee relationship between
7 Plaintiff and Defendants.

8 82. At all relevant times, Defendants were employers who regularly employed five or
9 more persons within the meaning of California Government Code § 12900 et seq.

10 83. At all applicable times herein, Gov. Code § 12900 et seq. was in full force and
11 effect and binding on Defendants.

12 84. Under California Government Code § 12940(m), it is unlawful for an employer to
13 fail to make reasonable accommodations for an employee with a disability. Even where an
14 employer can show a pattern of successful accommodation, a single failure to accommodate an
15 employee's disability may be actionable for a failure to accommodate. (*A.M. v. Albertsons, LLC.*,
16 (2009) 178 Cal.App.4th 455, 456-57).

17 85. As alleged herein above, on or about June 18, 2022, Plaintiff made a request to
18 Defendants to be placed on light duty due to her pregnancy. Defendants subsequently failed to
19 have any conversation with Plaintiff to request a physician's note, about whether or not her
20 request could be accommodated, and/or any type of accommodation that could potentially be
21 offered to her. Instead, Defendants simply removed Plaintiff from the work schedule without
22 notice for over six (6) weeks, effectively forcing Plaintiff's resignation.

23 86. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
24 failure to accommodate was a substantial factor in the exacerbation of Plaintiff's injuries and the
25 harm caused to him as alleged herein above.

26 87. As a proximate result of Defendants' actions, Plaintiff has suffered and continues
27 to suffer aggravation of her injuries, substantial losses in earnings and job benefits, humiliation,
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1 emotional distress, and physical and mental pain and anguish all to her damage in a sum
2 according to proof at the time of trial.

3 88. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees
4 pursuant to Government Code § 12965(b). Plaintiff is entitled to recover reasonable attorneys'
5 fees and costs in an amount according to proof at the time of trial.

6 89. Defendants' conduct was willful, knowing, malicious, and intentional and done in
7 reckless disregard of the damaging consequences to Plaintiff. Defendants' conduct evidenced a
8 conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover actual, compensatory,
9 punitive, and exemplary damages in amounts according to proof at time of trial.

10 11 **SIXTH CAUSE OF ACTION**

12 (Retaliation in Violation of Cal. Gov. Code Section 12900 et seq. by Plaintiff

13 Against Hungry and DOES 1-50)

14 90. Plaintiff alleges and incorporates herein by this reference each and every
15 allegation set forth in all previous paragraphs of this Complaint.

16 91. At all relevant times, there existed an employer-employee relationship between
17 Plaintiff and Defendants, and at all times herein, Plaintiff was duly qualified and performed her
18 employment duties in a satisfactory manner.

19 92. At all applicable times herein, Cal. Gov. Code § 12900 et seq. was in full force
20 and effect and binding on Defendants.

21 93. California Government Code § 12940(h) provides that it is unlawful to retaliate
22 against a person "because the person has opposed any practices forbidden under [Government
23 Code Sections 12900-12966]". It is also unlawful to retaliate or otherwise discriminate against a
24 person for requesting an accommodation for disability, regardless of whether the accommodation
25 was granted. (See Cal. Gov't Code § 12940(m)(2)).

26 94. As alleged herein above, Plaintiff was pregnant during the Employment Period.
27 Due to her pregnancy, Plaintiff also suffered from a temporary disability resulting in her request
28 for reasonable accommodations (i.e., light duty). Upon learning of Plaintiff's pregnancy and

1 request for accommodation, Defendants removed her from the work schedule, stopped
2 scheduling her for shifts moving forward, and stopped all communications with Plaintiff for over
3 six weeks, effectively constructively terminating Plaintiff's employment.

4 95. As a proximate result of Defendants' actions, Plaintiff has suffered and continues
5 to suffer aggravation of her injuries, substantial losses in earnings and job benefits, humiliation,
6 emotional distress, and physical and mental pain and anguish all to her damage in a sum
7 according to proof at the time of trial.

8 96. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees
9 pursuant to Government Code § 12965(b). Plaintiff is entitled to recover reasonable attorneys'
10 fees and costs in an amount according to proof at the time of trial.

11 97. Defendants' conduct was willful, knowing, malicious, and intentional and done in
12 reckless disregard of the damaging consequences to Plaintiff. Defendants' conduct evidenced a
13 conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover actual, compensatory,
14 punitive, and exemplary damages in amounts according to proof at time of trial.

15 16 **SEVENTH CAUSE OF ACTION**

17 (Constructive Wrongful Termination in Violation of Public Policy (Count I)

18 by Plaintiff Against Hungry and DOES 1-50)

19 98. Plaintiff alleges and incorporates herein by this reference each and every
20 allegation set forth in all previous paragraphs of this Complaint.

21 99. At all relevant times herein, there existed an employer-employee relationship
22 between Plaintiff and Defendants during the Employment Period. At all relevant times herein,
23 Plaintiff was duly qualified and performed his employment duties in a satisfactory manner.

24 100. Under California law, employers are prohibited from intentionally creating or
25 knowingly permitting working conditions so intolerable or aggravated that a reasonable person in
26 the employee's position would be compelled to resign. (*Turner v. Anheuser-Busch, Inc.* (1994) 7
27 Cal.4th 1238, 1251). Further, at all relevant times to this action, Cal. Gov. Code § 12900 et seq.
28 and California Constitution Art I., § 8 were in full force and effect and binding on Defendants.

1 Government Code § 12900 et seq. prohibits an employer from retaliating against employees who
2 request a disability related accommodation. (Cal. Gov't Code § 12900(m)(2)). Government Code
3 § 12900 et seq. evinces a policy that benefits society at large, was well-established at the time of
4 Plaintiff's discharge, and is substantial and fundamental.

5 101. The acts of Defendants in refusing to provide Plaintiff any work and failing to
6 schedule Plaintiff with any work shifts for over six (6) weeks rendered Plaintiff unable to survive
7 without pay, thereby creating hostile and/or intolerable working conditions to the extent that
8 Plaintiff was constructively terminated from her employment when forced to resign on or about
9 August 3, 2022.

10 102. As set forth herein above, Plaintiff's request for accommodation (i.e., request for
11 light duty) was a substantial motivating reasons for Defendants' decision to constructively
12 terminate Plaintiff's employment.

13 103. As a direct and proximate cause of the Defendants' acts and omissions, Plaintiff
14 has suffered and continues to suffer general damages consisted of compensation for having to
15 endure an intolerable work environment, in an amount to be proven at trial.

16 104. As a direct and proximate cause of the Defendants' actions, Plaintiff has suffered
17 and continues to suffer aggravation of her injuries, substantial losses in earnings and job benefits,
18 humiliation, emotional distress, and physical and mental pain and anguish all to her damage in an
19 amount to be proven at trial.

20 105. Defendants' conduct was willful, knowing, malicious, and intentional and done in
21 reckless disregard of the damaging consequences to Plaintiff. Defendants' conduct evidenced a
22 conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover actual, compensatory,
23 punitive, and exemplary damages in an amount to be proven at trial.

24 106. Plaintiff is informed and believes, and based thereon alleges, that the actions of
25 Defendants' employees, officers, directors, and/or managing agents were undertaken with the
26 prior approval, consent, and authorization of Defendants and were subsequently authorized and
27 ratified by it as well as by and through its officers, directors, and/or managing agents.

1 **EIGHTH CAUSE OF ACTION**

2 (Wrongful Constructive Termination in Violation of Public Policy (Count II)

3 by Plaintiff Against Hungry and DOES 1-50)

4 107. Plaintiff alleges and incorporates herein by this reference each and every
5 allegation set forth in all previous paragraphs of this Complaint.

6 108. At all relevant times, there existed an employer-employee relationship between
7 Plaintiff and Defendants. At all relevant times, Plaintiff was duly qualified and performed his
8 employment duties in a satisfactory manner.

9 109. Under California law, employers are prohibited from intentionally creating or
10 knowingly permitting working conditions so intolerable or aggravated that a reasonable person in
11 the employee's position would be compelled to resign. (*Turner v. Anheuser-Busch, Inc.* (1994) 7
12 Cal.4th 1238, 1251).

13 110. Further, at all relevant times to this action, Government Code § 12900 et seq. was
14 in full force and effect and was binding upon Defendants. Defendants' constructive termination
15 of Plaintiff was in violation of fundamental public policies, articulated in Government Code §
16 12900 et seq. and Article I, § 8 of the California Constitution. Specifically, that the policy behind
17 the prevention of discrimination protects Plaintiff and the public at large, is substantial and
18 fundamental, was well established at the time of Plaintiff's discharge, and can form the basis of a
19 common law wrongful termination claim. (*Stevenson v. Superior Court (Huntington Mem.*
20 *Hosp.*), (1997) 16 Cal.4th 880, 889; *Phillips v. St. Mary Regional Medical Center*, (2002) 96
21 Cal.App.4th 218, 227.)

22 111. The acts of Defendants in refusing to provide Plaintiff any work and failing to
23 schedule Plaintiff with any work shifts for over six (6) weeks rendered Plaintiff unable to survive
24 without pay, thereby creating hostile and/or intolerable working conditions to the extent that
25 Plaintiff was constructively terminated from her employment when forced to resign on or about
26 August 3, 2022.

27 112. Plaintiff's sex, disability, pregnancy and/or other protected characteristics were a
28 substantial motivating reason for Defendants' decision to terminate Plaintiff's employment.

1 113. As a direct and proximate cause of the Defendants' acts and omissions, Plaintiff
2 has suffered and continues to suffer general damages consisted of compensation for having to
3 endure an intolerable work environment, in an amount to be proven at trial.

4 114. As a direct and proximate cause of the Defendants' actions, Plaintiff has suffered
5 and continues to suffer aggravation of her injuries, substantial losses in earnings and job benefits,
6 humiliation, emotional distress, and physical and mental pain and anguish all to her damage in an
7 amount to be proven at trial.

8 115. Defendants' conduct was willful, knowing, malicious, and intentional and done in
9 reckless disregard of the damaging consequences to Plaintiff. Defendants' conduct evidenced a
10 conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover actual, compensatory,
11 punitive, and exemplary damages in an amount to be proven at trial.

12 116. Plaintiff is informed and believes, and based thereon alleges, that the actions of
13 Defendants' employees, officers, directors, and/or managing agents were undertaken with the
14 prior approval, consent, and authorization of Defendants and were subsequently authorized and
15 ratified by it as well as by and through its officers, directors, and/or managing agents.

16
17 **NINTH CAUSE OF ACTION**

18 (Failure to Provide Compensation to Employee Not Provided with Meal Periods in Violation of
19 Cal. Lab. Code 226.7 by Plaintiff against Defendants and DOES 1 - 50)

20 117. Plaintiff alleges and incorporates herein by this reference each and every
21 allegation set forth in all previous paragraphs of this Complaint.

22 118. During the Employment Period, Defendants failed to provide Plaintiff with thirty
23 (30) minute "duty free" meal periods as required by Labor Code §§ 226.7, 512 and Section 11 of
24 IWC Wage Order No. 9-2001.

25 119. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
26 period of more than five (5) hours without providing a meal period of not less than thirty (30)
27 minutes in which the employee is relieved of all of his or her duties. An employer may not
28 employ an employee for a work period of more than ten (10) hours per day without providing the

1 employee a second meal period of not less than thirty (30) minutes, except that if the total hours
2 worked is no more than twelve (12) hours in a day, the second meal period may be waived by
3 mutual consent of the employer and the employee only if the first period was not waived.

4 120. Pursuant to IWC Wage Order No. 4-2001, in order for an “on duty” meal period
5 to be permissible, the nature of the work done by Plaintiff must have prevented them from being
6 relieved of all duties relating to their work for such employers and Plaintiff must consent in
7 writing to the “on duty” meal period.

8 121. Plaintiff did not consent in writing to an “on duty” meal period. Furthermore, the
9 nature of the work that Plaintiff did was not such that she was prevented from being relieved of
10 all duties. Despite said requirements of IWC Wage Order 4-2001 and Labor Code §§ 512 and
11 226.7, Plaintiff was not provided with a timely meal period, was not provided with a meal period
12 at all, and/or was not relieved of all duties during her meal periods during the Employment
13 Period.

14 122. There is no applicable exemption that would permit Defendants to fail or refuse to
15 provide Plaintiff with the required meal periods.

16 123. Under the aforementioned wage order, statutes, and regulations, Plaintiff is
17 entitled to, and thereby requests, one hour of pay at her respective regular rate of pay for each
18 workday that a meal period was not provided consistent with applicable law for the respective
19 employment periods, in an amount to be determined at trial.

20 124. Pursuant to Labor Code § 558.1, Santiago is personally liable to Plaintiff for the
21 damages set forth in this cause of action since, at all relevant times herein, Santiago acted on
22 behalf of the remaining Defendants as an owner, director, officer or managing agent of the
23 remaining Defendants, who violated, or caused to be violated, and provision regulating minimum
24 wages or hours and days of work in any order of the Industrial Wage Commission, and/or §§
25 203, 226, 226.7 or 1194 of the California Labor Code.

TENTH CAUSE OF ACTION

(Failure to Provide Compensation to Employee Not Provided with Rest Periods in Violation of Cal. Lab. Code 226.7 by Plaintiff against Defendants and DOES 1 - 50)

125. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

126. Section 12 of IWC Wage Order No. 4-2001, provides, in pertinent part: “(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 (3½) 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 workday that the rest period is not provided.”

127. At all relevant times hereto, Defendants failed to comply with Section 12 of Order 4-2001, by failing to authorize and permit Plaintiff to take required rest periods.

128. Defendants further violated these IWC wage orders and violated Labor Code § 226.7 by failing to pay Plaintiff, who was not authorized or permitted to take rest breaks as required under these orders, an additional one hour of compensation at Plaintiff’s regular rate of pay for each day the Plaintiff was not authorized or permitted to take a required rest period.

129. Under the aforementioned wage order, statutes and regulations, Plaintiff is entitled to, and hereby request one hour of pay at her regular rate of pay for each workday that a rest period was not provided consistent with applicable law, in an amount to be determined at trial.

130. Pursuant to Labor Code § 558.1, Santiago is personally liable to Plaintiff for the damages set forth in this cause of action since, at all relevant times herein, Santiago acted on behalf of the remaining Defendants as an owner, director, officer or managing agent of the remaining Defendants, who violated, or caused to be violated, and provision regulating minimum

1 wages or hours and days of work in any order of the Industrial Wage Commission, and/or §§
2 203, 226, 226.7 or 1194 of the California Labor Code.

3
4 **ELEVENTH CAUSE OF ACTION**

5 (Waiting Time Penalties in Violation of California Labor Code Sections 201 and
6 203 by Plaintiff against Defendants and DOES 1-50)

7 131. Plaintiff alleges and incorporates herein by this reference each and every
8 allegation set forth in all previous paragraphs of this Complaint.

9 132. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knew that California law required that Plaintiff be paid wages for all hours worked at her hourly
11 rate of pay, and that Plaintiff receive premium pay in light of meal and rest period violations.
12 Premium pay for violating the California Labor Code's meal and rest period provisions
13 constitutes "wages" for purposes of waiting time penalties. (*Naranjo v. Spectrum Security*
14 *Services, Inc.*, (2022) 13 Cal.th 93.)

15 133. Despite having the financial ability to pay, Defendants intentionally refused to
16 pay Plaintiff her lawfully earned compensation.

17 134. Defendants willfully failed to pay Plaintiff all wages due, without abatement or
18 reduction, within 72 hours of Plaintiff's resignation of employment as required by Labor Code §
19 202. Labor Code § 203 states that an employee's wage shall continue as a penalty at the same
20 rate until paid or for a period of up to thirty days from the time they were due, whichever period
21 is shorter. Pursuant to Labor Code § 203, Plaintiff is entitled to, and requests waiting time
22 penalties according to proof at time of trial but believed to be in excess of the jurisdiction of this
23 Court.

24 135. Each of the Defendants willfully failed and refused and continue to willfully fail
25 and refuse to pay earned wages to Plaintiff, with reference to the end of Plaintiff's Employment
26 Period. These wages include unpaid premium pay for meal and rest period violations. These
27 statutory penalties, in a sum to be proven at trial, are owed an unpaid. Plaintiff further seeks an
28 award of reasonable attorney's fees and costs, consistent with California Labor Code § 218.5.

136. Pursuant to Labor Code § 558.1, Santiago is personally liable to Plaintiff for the damages set forth in this cause of action since, at all relevant times herein, Santiago acted on behalf of the remaining Defendants as an owner, director, officer or managing agent of the remaining Defendants, who violated, or caused to be violated, and provision regulating minimum wages or hours and days of work in any order of the Industrial Wage Commission, and/or §§ 203, 226, 226.7 or 1194 of the California Labor Code.

TWELFTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements in Violation of Labor Code § 226 by Plaintiff
against Hungry and DOES 1 - 50)

137. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

138. During the entire Employment Period, and in violation of Labor Code § 226(a), Defendants failed to provide Plaintiff with accurate itemized written statements showing all of following: gross wages earned, overtime wages earned, total hours worked by the employee, all deductions, net wages earned, inclusive dates of the period for which the employee is paid, last four digits of the social security number or employee identification number, address of the legal entity that is the employer, and all applicable rates of pay. These itemized wage statements are required to be kept on file by the employer for at least three years at the place of employment.

139. As a result of Defendants' willful failure to provide Plaintiff with accurate wage statements as required by Labor Code § 226(a), Plaintiff was deprived of documentation helpful for verifying and calculating the amount of wages owed. Thus, Plaintiff has been damaged because she will be required to expend more time and expense in proving her claims for unpaid wages, unpaid overtime compensation, and calculating the premium payments owed for meal and rest period violations.

140. Pursuant to Labor Code § 226(e), Plaintiff is entitled to, and requests penalties of \$50.00 for the initial violation and \$100.00 for each subsequent violation, not exceeding an aggregate penalty of \$4,000.00.

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THIRTEENTH CAUSE OF ACTION

(PAGA Civil Penalties for Violation of Labor Code §§ 204, 210, 558, and 2698 et seq.
by Plaintiff Against Hungry and DOES 1-50)

141. Plaintiff alleges and incorporates herein each and every allegation set forth in all previous paragraphs of this Complaint.

142. During the period preceding the filing of the initial complaint in this action, Defendants violated Labor Code §§ 204, 210, 558, and all applicable Wage Orders. These violations subject Defendants to civil penalties as set forth in (1) the foregoing statutes, (2) or the default penalties as set forth in Labor Code § 2698 et seq.

143. Plaintiff exhausted her LWDA administrative remedies as required by the PAGA statute, complying with all exhaustion procedures.

144. Specifically, Defendants have failed to pay all wages earned on a bi-weekly basis. Defendants failed to pay all wages owing for all hours worked as required by California law, and failed to pay an additional hour of compensation for each day a rest period or meal period was not provided, on a timely basis as strictly required under Labor Code § 204, making Defendants liable for civil penalties under Labor Code §§ 204, 210, and 2699.

145. Labor Code §§ 2699, subdivisions (a) and (g) authorize an aggrieved employee, on behalf of himself/herself and other current or former employees, to bring a civil action to recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code §§ 2699.3 and 2699.5.

146. Plaintiff has complied with the procedures for bringing suit specified in Labor Code §§ 2699.3 and 2699.5.

147. Pursuant to Labor Code § 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with his claim and that of other aggrieved employees for civil penalties.

1 **FOURTEENTH CAUSE OF ACTION**

2 (PAGA Civil Penalties for Violation of Labor Code §§ 510, 1194, 1198, 558 and 2698 et seq.
3 by Plaintiff Against Hungry and DOES 1-50)

4 148. Plaintiff alleges and incorporates herein each and every allegation set forth in all
5 previous paragraphs of this Complaint.

6 149. During the period preceding the filing of the initial complaint in this action,
7 Defendants violated Labor Code §§ 510, 1194, 1198, 558 and all applicable Wage Orders. These
8 violations subject Defendants to civil penalties as set forth in (1) the foregoing statutes, (2) or the
9 default penalties as set forth in Labor Code § 2698 et seq.

10 150. Plaintiff exhausted her LWDA administrative remedies as required by the PAGA
11 statute, complying with all exhaustion procedures.

12 151. Specifically, Defendants have failed to pay all overtime wages due and owing for
13 hours worked in excess of eight (8) hours in a workday and/or more than forty (40) hours in a
14 workweek as required by the enumerated labor code sections. Aggrieved Employees frequently
15 worked more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek
16 without receiving any additional compensation, let alone overtime pay.

17 152. Labor Code §§ 2699, subdivisions (a) and (g) authorize an aggrieved employee,
18 on behalf of himself/herself and other current or former employees, to bring a civil action to
19 recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code
20 §§ 2699.3 and 2699.5.

21 153. Plaintiff has complied with the procedures for bringing suit specified in Labor
22 Code §§ 2699.3 and 2699.5.

23 154. Pursuant to Labor Code § 2699(g), Plaintiff is entitled to an award of reasonable
24 attorney's fees and costs in connection with his claim and that of other aggrieved employees for
25 civil penalties.
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169. Plaintiff alleges and incorporates herein each and every allegation set forth in all previous paragraphs of this Complaint.

171. Plaintiff exhausted her LWDA administrative remedies as required by the PAGA statute, complying with all exhaustion procedures.

173. Labor Code §§ 2699, subdivisions (a) and (g) authorize an aggrieved employee, on behalf of himself/herself and other current or former employees, to bring a civil action to recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code §§ 2699.3 and 2699.5.

175. Pursuant to Labor Code § 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with his claim and that of other aggrieved employees for civil penalties.

1
2 **EIGHTEENTH CAUSE OF ACTION**

3 (PAGA Civil Penalties for Violation of Labor Code §§ 2802, 558, and 2698 et seq.
4 by Plaintiff Against Hungry and DOES 1-50)

5 176. Plaintiff alleges and incorporates herein each and every allegation set forth in all
6 previous paragraphs of this Complaint.

7 177. During the period preceding the filing of the initial complaint in this action,
8 Defendants violated Labor Code §§ 2802, 558, and all applicable Wage Orders. These violations
9 subject Defendants to civil penalties as set forth in (1) the foregoing statutes, (2) or the default
10 penalties as set forth in Labor Code § 2698 et seq.

11 178. Plaintiff exhausted her LWDA administrative remedies as required by the PAGA
12 statute, complying with all exhaustion procedures.

13 179. Specifically, Defendants have failed to indemnify Plaintiff and all aggrieved
14 employees for necessary business expenditures and losses incurred as a direct consequence of the
15 discharge of his or her duties. Defendants failed to reimburse Plaintiff and all aggrieved
16 employees for gas mileage expenses, caused aggrieved employees to bear the burden of self-
17 employment taxes, and caused aggrieved employees to incur other expenses as a direct
18 consequence of the discharge of their employment duties. As a result of this willful
19 misclassification, Plaintiff and aggrieved employees were forced to incur and expend funds to
20 pay for gas, self-employment taxes, and other expenses as a direct consequence of their
21 employment with Defendants.

22 180. Labor Code §§ 2699, subdivisions (a) and (g) authorize an aggrieved employee,
23 on behalf of himself/herself and other current or former employees, to bring a civil action to
24 recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code
25 §§ 2699.3 and 2699.5.

26 181. Plaintiff has complied with the procedures for bringing suit specified in Labor
27 Code §§ 2699.3 and 2699.5.
28

1 182. Pursuant to Labor Code § 2699(g), Plaintiff is entitled to an award of reasonable
2 attorney's fees and costs in connection with his claim and that of other aggrieved employees for
3 civil penalties.

4
5 **NINETEENTH CAUSE OF ACTION**

6 (PAGA Civil Penalties for Violation of Labor Code §§ 201, 202, 203, 256, 558 and 2698 et seq.
7 by Plaintiff Against Hungry and DOES 1-50)

8 183. Plaintiff alleges and incorporates herein each and every allegation set forth in all
9 previous paragraphs of this Complaint.

10 184. During the period preceding the filing of the initial complaint in this action,
11 Defendants violated Labor Code §§ 201, 202, 203, 256, 558, and all applicable Wage Orders.
12 These violations subject Defendants to civil penalties as set forth in (1) the foregoing statutes, (2)
13 or the default penalties as set forth in Labor Code § 2698 et seq.

14 185. Plaintiff exhausted her LWDA administrative remedies as required by the PAGA
15 statute, complying with all exhaustion procedures.

16 186. Specifically, Defendants have committed the following violations of California
17 Labor Code: At all times relevant to this Complaint, California Labor Code §§ 201 and 202
18 required that an employer promptly pay all wages due to employees at the time of separation of
19 their employment. Labor Code § 201 required “[i]mmediate payment of wages due upon
20 discharge or layoff.” Labor Code § 202 requires that an employee who quits his or her
21 employment is paid all wages due “not later than 72 hours thereafter, unless the employee has
22 given 72 hours previous notice of his or her intention to quit, in which case the employee is
23 entitled to his or her wages at the time of quitting.”

24 187. At all times relevant to this Complaint, California Labor Code § 203 provided
25 that, for the willful violation of Labor Code §§ 201 and/or 202, “the wages of the employee shall
26 continue as a penalty from the due date thereof at the same rate until paid or until an action
27 therefor is commenced; but the wages shall not continue for more than 30 days.” This is also
28 provided as an additional penalty under Labor Code § 256.

1 188. Defendants willfully failed to pay all wages due to Plaintiff and other aggrieved
2 employees upon termination and/or separation with Defendants, and therefore, Defendants are
3 liable for civil penalties as a result thereof.

4 189. Labor Code §§ 2699, subdivisions (a) and (g) authorize an aggrieved employee,
5 on behalf of himself/herself and other current or former employees, to bring a civil action to
6 recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code
7 §§ 2699.3 and 2699.5.

8 190. Plaintiff has complied with the procedures for bringing suit specified in Labor
9 Code §§ 2699.3 and 2699.5.

10 191. Pursuant to Labor Code § 2699(g), Plaintiff is entitled to an award of reasonable
11 attorney's fees and costs in connection with his claim and that of other aggrieved employees for
12 civil penalties.

13
14 **TWENTIETH CAUSE OF ACTION**

15 (PAGA Civil Penalties for Violation of Labor Code §§ 1174 and 2698 et seq.

16 by Plaintiff Against Hungry and DOES 1-50)

17 192. Plaintiff alleges and incorporates herein each and every allegation set forth in all
18 previous paragraphs of this Complaint.

19 193. During the period preceding the filing of the initial complaint in this action,
20 Defendants violated Labor Code § 1174 and all applicable Wage Orders. These violations
21 subject Defendants to civil penalties as set forth in (1) the foregoing statutes, (2) the penalties as
22 set forth in Labor Code § 1174.5, (3) or the default penalties as set forth in Labor Code § 2698 et
23 seq.

24 194. Plaintiff exhausted her LWDA administrative remedies as required by the PAGA
25 statute, complying with all exhaustion procedures.

26 195. Labor Code § 1174 requires employers to keep “accurate and complete” payroll
27 records showing, among other things, the hours worked daily by all non-exempt employees.
28 Section 7 of IWC Wage Order 4-2001 similarly requires employers to keep time records showing

1 when the employees begin and end each work period and reflecting the time during which a meal
2 and/or rest period was provided each day.

3 196. Defendants violated this Labor Code section because they wholly failed to
4 maintain accurate and complete payroll records. More specifically, Defendants did not provide
5 and/or record Plaintiff and aggrieved employees' actual daily and weekly earned wages,
6 including, but not limited to, hours worked, overtime hours and wages, and meal and rest period
7 premiums due and owing. In addition, Defendants failed to keep accurate daily records of
8 Plaintiff and other aggrieved employees' earnings for the bi-weekly pay period.

9 197. Labor Code §§ 2699, subdivisions (a) and (g) authorize an aggrieved employee,
10 on behalf of himself/herself and other current or former employees, to bring a civil action to
11 recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code
12 §§ 2699.3 and 2699.5.

13 198. Plaintiff has complied with the procedures for bringing suit specified in Labor
14 Code §§ 2699.3 and 2699.5.

15 199. Pursuant to Labor Code § 2699(g), Plaintiff is entitled to an award of reasonable
16 attorney's fees and costs in connection with his claim and that of other aggrieved employees for
17 civil penalties.

18
19 **TWENTY-FIRST CAUSE OF ACTION**

20 (PAGA Civil Penalties for Violation of Labor Code §§ 1197, 1198, 1199 and 2698 et seq.

21 by Plaintiff Against Hungry and DOES 1-50)

22 200. Plaintiff alleges and incorporates herein each and every allegation set forth in all
23 previous paragraphs of this Complaint.

24 201. During the period preceding the filing of the initial complaint in this action,
25 Defendants violated Labor Code §§ 1197, 1198, 1199 and all applicable Wage Orders. These
26 violations subject Defendants to civil penalties as set forth in (1) the foregoing statutes, (2) the
27 penalties as set forth in Labor Code § 1197.1, (3) or the default penalties as set forth in Labor
28 Code § 2698 et seq.

1 202. Plaintiff exhausted her LWDA administrative remedies as required by the PAGA
2 statute, complying with all exhaustion procedures.

3 203. Labor Code §§ 1198 and 1199 make unlawful the employment of any employee
4 under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to
5 comply with any provision within Part 4, Chapter 1 of the Labor Code, including §§ 1174, 1197,
6 1198, or order or ruling of the commission.

7 204. Defendants violated the aforementioned Labor Code sections. More specifically,
8 Defendant's violations with respect to meal periods, rest periods, unpaid wages, wage
9 statements, and failure to keep accurate time records result in separate violations of Labor Code
10 §§ 1174, 1198, and 1199.

11 205. Labor Code §§ 2699, subdivisions (a) and (g) authorize an aggrieved employee,
12 on behalf of himself/herself and other current or former employees, to bring a civil action to
13 recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code
14 §§ 2699.3 and 2699.5.

15 206. Plaintiff has complied with the procedures for bringing suit specified in Labor
16 Code §§ 2699.3 and 2699.5.

17 207. Pursuant to Labor Code 1197.1, Plaintiff is entitled to the restitution of wages
18 owed, liquidated damages, and any applicable penalties imposed pursuant to Labor Code § 203.

19 208. Pursuant to Labor Code § 2699(g), Plaintiff is entitled to an award of reasonable
20 attorney's fees and costs in connection with his claim and that of other aggrieved employees for
21 civil penalties.

22
23 **TWENTY-SECOND CAUSE OF ACTION**

24 (PAGA Civil Penalties for Violation of Labor Code §§ 226.8 and 2698 et seq.

25 by Plaintiff Against Hungry and DOES 1-50)

26 209. Plaintiff alleges and incorporates herein each and every allegation set forth in all
27 previous paragraphs of this Complaint.
28

1 210. During the period preceding the filing of the initial complaint in this action,
2 Defendants violated Labor Code § 226.8 and all applicable Wage Orders. These violations
3 subject Defendants to civil penalties as set forth in (1) the foregoing statutes, (2) or the default
4 penalties as set forth in Labor Code § 2698 et seq.

5 211. Plaintiff exhausted her LWDA administrative remedies as required by the PAGA
6 statute, complying with all exhaustion procedures.

7 212. Labor Code § 226.8 makes it unlawful for an employer to willfully misclassify
8 any person as an independent contractor.

9 213. Defendants violated the aforementioned Labor Code section by misclassifying
10 Plaintiff and similarly aggrieved employees as independent contractors, failing to have them sign
11 a W4 form, failing to provide a W2 form, and paying Plaintiff and similarly aggrieved
12 employees without the inclusion of payroll taxes. Plaintiff is informed and believe, and based
13 thereon alleges, that every person employed by Defendants during the relevant time period was
14 misclassified in this fashion.

15 214. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 were aware of the misclassification of persons in its employ, and willfully continued to
17 misclassify Plaintiff and aggrieved persons nonetheless.

18 215. As such, Defendants engaged in a pattern or practice of misclassifying persons as
19 independent contractors.

20 216. Labor Code §§ 2699, subdivisions (a) and (g) authorize an aggrieved employee,
21 on behalf of himself/herself and other current or former employees, to bring a civil action to
22 recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code
23 §§ 2699.3 and 2699.5.

24 217. Plaintiff has complied with the procedures for bringing suit specified in Labor
25 Code §§ 2699.3 and 2699.5.

26 218. Pursuant to Labor Code § 226.8(c), Plaintiff requests that the court issue a
27 determination that Defendants engaged in any of the enumerated violations of Labor Code §
28 226.8(a) and that Defendants have engaged in or are engaging in a pattern or practice of these

1 violations, thus entitling Plaintiff and similarly aggrieved employees to a civil penalty of not less
2 than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for
3 each violation, in addition to any other penalties or fines permitted by law.

4 219. Pursuant to Labor Code § 2699(g), Plaintiff is entitled to an award of reasonable
5 attorney's fees and costs in connection with his claim and that of other aggrieved employees for
6 civil penalties.

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as
10 follows:

11 **UNDER THE FIRST CAUSE OF ACTION**

- 12 1. For all compensatory, consequential, general and special damages, subject to proof;
13 2. For punitive damages in an amount to be determined by the Court to be reasonable
14 under the circumstances of this case;
15 3. For attorney's fees and costs pursuant to Government Code § 12965(b);
16 4. For interest according to law;
17 5. For costs of suit incurred herein; and
18 6. For such other and further relief that the Court determines to be just and proper.

19
20 **UNDER THE SECOND CAUSE OF ACTION**

- 21 1. For all compensatory, consequential, general and special damages, subject to proof;
22 2. For punitive damages in an amount to be determined by the Court to be reasonable
23 under the circumstances of this case;
24 3. For attorney's fees and costs pursuant to Government Code § 12965(b);
25 4. For interest according to law;
26 5. For costs of suit incurred herein; and
27 6. For such other and further relief that the Court determines to be just and proper.

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1. For all compensatory, consequential, general and special damages, subject to proof;
2. For punitive damages in an amount to be determined by the Court to be reasonable under the circumstances of this case;
3. For attorney's fees and costs pursuant to Government Code § 12965(b);
4. For interest according to law;
5. For costs of suit incurred herein; and
6. For such other and further relief that the Court determines to be just and proper.

1. For all compensatory, consequential, general and special damages, subject to proof;
2. For punitive damages in an amount to be determined by the Court to be reasonable under the circumstances of this case;
3. For attorney's fees and costs pursuant to Government Code § 12965(b);
4. For interest according to law;
5. For costs of suit incurred herein; and
6. For such other and further relief that the Court determines to be just and proper.

1 **UNDER THE SIXTH CAUSE OF ACTION**

- 2 1. For all compensatory, consequential, general, and special damages, subject to proof;
- 3 2. For punitive damages in an amount to be determined by the Court to be reasonable
- 4 under the circumstances of this case;
- 5 3. For attorney's fees and costs pursuant to Government Code § 12965(b);
- 6 4. For interest according to law;
- 7 5. For costs of suit incurred herein; and
- 8 6. For such other and further relief that the Court determines to be just and proper.
- 9

10 **UNDER THE SEVENTH CAUSE OF ACTION**

- 11 1. For all compensatory, consequential, general and special damages, subject to proof;
- 12 2. For punitive damages in an amount to be determined by the Court to be reasonable
- 13 under the circumstances of this case;
- 14 3. For interest according to law;
- 15 4. For costs of suit incurred herein; and
- 16 5. For such other and further relief that the Court determines to be just and proper.
- 17

18 **UNDER THE EIGHTH CAUSE OF ACTION**

- 19 1. For all compensatory, consequential, general and special damages, subject to proof;
- 20 2. For punitive damages in an amount to be determined by the Court to be reasonable
- 21 under the circumstances of this case;
- 22 3. For interest according to law;
- 23 4. For costs of suit incurred herein; and
- 24 5. For such other and further relief that the Court determines to be just and proper.
- 25

26 **UNDER THE NINTH CAUSE OF ACTION**

- 27 1. For one (1) hour of premium pay for each missed meal period that was not provided,
- 28 subject to proof;

2. For costs of suit incurred herein; and
3. For such other and further relief that the Court may deem just and proper.

UNDER THE TENTH CAUSE OF ACTION

1. For one (1) hour of premium pay for each missed rest period that was not provided, subject to proof;
2. For costs of suit incurred herein; and
3. For such other and further relief that the Court may deem just and proper.

UNDER THE ELEVENTH CAUSE OF ACTION

1. For waiting time penalties pursuant to Labor Code § 203;
2. For attorney's fees and costs pursuant to Labor Code § 218.5;
3. For costs of suit incurred herein; and
4. For such other and further relief that the Court may deem just and proper.

UNDER THE TWELFTH CAUSE OF ACTION

1. For the assessment of actual damages or a statutory penalty in an amount not to exceed Four Thousand Dollars (\$4,000), subject to proof and consistent with Labor Code § 226(e);
2. For attorney's fees and costs pursuant to Labor Code § 226(e);
3. For costs of suit incurred herein; and
4. For such other and further relief that the Court may deem just and proper.

UNDER THE THIRTEENTH CAUSE OF ACTION

1. For PAGA civil penalties;
2. For reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).

1 **UNDER THE FOURTEENTH CAUSE OF ACTION**

- 2 1. For PAGA civil penalties;
- 3 2. For reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).
- 4

5 **UNDER THE FIFTEENTH CAUSE OF ACTION**

- 6 1. For PAGA civil penalties;
- 7 2. For reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).
- 8

9 **UNDER THE SIXTEENTH CAUSE OF ACTION**

- 10 1. For PAGA civil penalties;
- 11 2. For reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).
- 12

13 **UNDER THE SEVENTEENTH CAUSE OF ACTION**

- 14 1. For PAGA civil penalties;
- 15 2. For reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).
- 16

17 **UNDER THE EIGHTEENTH CAUSE OF ACTION**

- 18 1. For PAGA civil penalties;
- 19 2. For reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).
- 20

21 **UNDER THE NINETEENTH CAUSE OF ACTION**

- 22 1. For PAGA civil penalties;
- 23 2. For reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).
- 24

25 **UNDER THE TWENTIETH CAUSE OF ACTION**

- 26 1. For PAGA civil penalties;
- 27 2. For reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).
- 28

1 **UNDER THE TWENTY-FIRST CAUSE OF ACTION**

- 2 1. For PAGA civil penalties;
- 3 2. For reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).
- 4

5 **UNDER THE TWENTY-SECOND CAUSE OF ACTION**

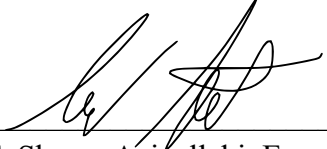
- 6 1. For PAGA civil penalties;
- 7 2. For reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).
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10 Dated: October 2, 2023

MARQUEE LAW GROUP, APC

11

12

13 By:  _____

14 F. Shawn Azizollahi, Esq.

15 Gary S. Brotman, Esq.

16 Conor James Diego Gómez, Esq.

17 Attorneys for Plaintiff Sabrina Norsworthy

18

19 **DEMAND FOR JURY TRIAL**

20 PLAINTIFF hereby demands a jury trial with respect to all issues triable in the

21 Complaint.

22

23 Dated: October 2, 2023

MARQUEE LAW GROUP, APC

24

25 By:  _____

26 F. Shawn Azizollahi, Esq.

27 Gary S. Brotman, Esq.

28 Conor James Diego Gómez, Esq.

 Attorneys for Plaintiff Sabrina Norsworthy

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PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 9100 Wilshire Boulevard, Suite 445, East Tower, Beverly Hills, California 90212.

On October 2, 2023 I served the foregoing document(s) described as:

FIRST AMENDED COMPLAINT

on all interested parties in this action by transmitting a true copy of the document(s) described above, addressed as follows:

SEE ATTACHED SERVICE LIST

- () **BY MAIL** as follows: I am “readily familiar” with the firm’s practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Beverly Hills, California.
- () **BY PERSONAL SERVICE:** I caused to be delivered such envelope by hand to the above addressee(s).
- () **BY OVERNIGHT COURIER:** I am “readily familiar” with the firm’s practice of collecting and processing overnight deliveries, which includes depositing such packages in a receptacle used exclusively for overnight deliveries. The packages were deposited before the regular pickup time and marked accordingly for delivery the next business day.
- (X) **BY ELECTRONIC TRANSMISSION:** Participants in this case were served electronically to the address of the recipient(s) as set forth below. I am readily familiar with the Code of Civil Procedure and California Rules of Court for electronic service and this document/these documents were duly served electronically in accordance with said rules and regulations on the date stated above, and the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 2, 2023 at Beverly Hills, California.

Kimberly Gomez Garcia
Kimberly Gomez Garcia

SERVICE LIST:

Gordon Rees Scully Mansukhani, LLP c/o Fernando Vicente, Esq. c/o Thomas McMullen, Esq. 633 West Fifth Street, 52nd floor Los Angeles, CA 90071 E: <i>fvicente@grsm.com</i> ; <i>tmcullen@grsm.com</i> ; <i>lgarner@grsm.com</i> ; <i>efacundo@grsm.com</i>	<i>Attorneys for Defendant Hungry Marketplace, Inc.</i>
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