

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
Jose A. Hernandez (Bar No. 337368)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Electronically FILED by
Superior Court of California,
County of Los Angeles
8/02/2023 5:38 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By E. Galicia, Deputy Clerk

Attorneys for Plaintiff,
PATRICIA PALACIOS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

PATRICIA PALACIOS, an individual,

Plaintiff,

vs.

THE NEST, an entity of unknown form;
MICHELLE WISERMAN; an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.:

COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM OVERTIME/DOUBLE TIME WAGES DUE (Cal. Labor Code §§ 510, 1198; IWC Wage Order No. 5);**
- 2. FAILURE TO PAY MINIMUM WAGES DUE (Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1 1198; IWC Wage Order No. 5);**
- 3. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 5);**
- 4. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 5);**
- 5. WAITING TIME PENALTIES (Cal. Labor Code §226; IWC Wage Order No. 5);**
- 6. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. Labor Code §§201-203);**
- 7. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code §2802);**
- 8. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code §1198.5);**
- 9. FAILURE TO PROVIDE DAY OF REST (Cal. Labor Code §§ 551, 552);**
- 10. UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.**

- 1 11. DISCRIMINATION BASED UPON
2 PHYSICAL DISABILITY IN VIOLATION
3 OF GOVT. CODE §12940 (a);
4 12. HOSTILE WORK ENVIRONMENT IN
5 VIOLATION OF GOVT. CODE §12940
6 ET SEQ.;
7 13. RETALIATION IN VIOLATION OF
8 GOVT. CODE §12940 ET SEQ.;
9 14. FAILURE TO PREVENT
10 DISCRIMINATION AND HARASSMENT
11 IN VIOLATION OF GOVT. CODE
12 §12940 (k);
13 15. HARASSMENT IN VIOLATION OF
14 GOVT. CODE §12940(j);
15 16. FAILURE TO ACCOMMODATE
16 PHYSICAL DISABILITY IN
17 VIOLATION OF GOVT. CODE
18 §12940(m);
19 17. FAILURE TO ENGAGE IN A GOOD
20 FAITH INTERACTIVE PROCESS IN
21 VIOLATION OF GOVT. CODE
22 §12940(n); and
23 18. WRONGFUL TERMINATION IN
24 VIOLATION OF PUBLIC POLICY IN
25 VIOLATION OF GOVT. CODE §12940 *et*
26 *seq.*

27 **DEMAND FOR A JURY TRIAL**

28 Patricia Palacios (“Plaintiff”) alleges the following:

PARTIES

1. Plaintiff was, at all times relevant to the matters alleged herein, over age 18 and a resident of North Hollywood, California.

2. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant The Nest is, and at all times mentioned herein was, an entity of unknown form, with a principal place of business at 4100 Hayvenhurst Avenue, Encino, CA 91436.

1 Defendant has been authorized to do business and has been doing business in the County of Los
2 Angeles. The Nest is a board and care facility.

3 3. Plaintiff alleges on information and belief that Defendant Michelle Wiserman
4 ("Michelle") is an individual, who at all times relevant herein, was a resident of Los Angeles
5 County, California. Michelle is the owner of The Nest.

6 4. Starting in or about April 2019 and continuing through May 20, 2023, The Nest
7 employed Plaintiff as a Caregiver in Encino, California. Plaintiff would manage the board and
8 care house, take care of physician appointments for residents, enroll and register seniors for
9 residence at the facility and take care of the medical needs of residents.

10 5. Plaintiff is ignorant of the true names and capacities of the defendants sued
11 herein as DOES 1 through 100, inclusive, and therefore Plaintiff sues these defendants by such
12 fictitious names and capacities. Plaintiff will amend her Complaint to show their true names
13 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
14 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an
15 individual person who owned, controlled, or managed the business for which Plaintiff worked
16 and/or who directly or indirectly exercised operational control over the wages, hours, and
17 working conditions of Plaintiff. These DOE Defendants held ownership, officer, director and/or
18 executive positions with the remaining Defendants, and acted on behalf of the remaining
19 Defendants, which included decision-making responsibility for, and establishment of, illegal
20 payroll practices and policies and disability discrimination for Defendants which have damaged
21 Plaintiff and others similarly situated. Therefore, DOES 1 through 100, in addition to the
22 remaining Defendants, are "employers" as a matter of law and personally liable on the causes
23 of action alleged herein pursuant to Labor Code §558, as well as other California wage and
24 hour laws and regulations as alleged herein.

25 6. Plaintiff is informed and believes and thereon alleges that at least some of the
26 Defendant DOES 1 through 100 are, and at all times relevant hereto were, persons,
27 corporations or other business entities organized and existing under and by virtue of the laws
28 of the State of California, and are/were qualified to transact and conduct business in the State

1 of California, and did transact and conduct business in the State of California, and are thus
2 subject to the jurisdiction of the State of California. Specifically, said DOES 1 through 100
3 maintain offices, operate businesses, employ persons, and conduct business in, and illegally
4 pay employees by illegal payroll practices and policies and engage in disability discrimination
5 in the County of Los Angeles.

6 7. Plaintiff is informed and believes and thereon alleges, that at all times relevant
7 herein, the named defendants and at least some of DOES 1 through 100 were the agents,
8 employees, and/or servants, masters, or employers of the remaining DOES 1 through 100, and
9 in doing the things herein alleged, were acting within the course and scope of such agency or
10 employment, and with the approval and ratification of each of the other defendants.

11 8. Plaintiff is informed and believes and thereon alleges that Defendants, and each
12 of them, directly employed or exercised control over her wages, hours, or working conditions.

13 9. Plaintiff is further informed and believes, and thereon alleges, that each of the
14 fictitiously named Defendants aided and assisted the named Defendants in committing the
15 wrongful acts alleged herein, and that Plaintiff's damages were proximately caused by each
16 defendant.

17 10. At all times relevant herein, each of the named defendants was the agent of the
18 other named defendants and in doing the things alleged herein, was acting within the course
19 and scope of said agency.

20 **JURISDICTION AND VENUE**

21 11. This Court has jurisdiction over this Complaint under California Government
22 Code §12920 *et seq.*, and the rules, regulations and directives implementing those statutes. This
23 Court also has jurisdiction over this Complaint under *Code of Civil Procedure* §410.10 and
24 *Business & Professions Code* §§ 17200 *et seq.*

25 12. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
26 395.5, because the claims made, and the *Government Code and Labor Code* violations as
27 against the persons identified herein, occurred in the County of Los Angeles and because
28 Defendant The Nest owned and operated their business in the County of Los Angeles.

1 13. On or about May 13, 2023, Plaintiff was involved in car accident. On or about
2 May 14, 2023, Plaintiff was not feeling well and visited her physician. Defendants provided
3 Plaintiff was medical leave so that she could recover and then terminated her a few days later.
4 Plaintiff believes she was terminated because she was attempting to obtain certifications to start
5 her own board and care facility and Defendants believed Plaintiff would steal The Nest's
6 residents. Further, Plaintiff believes she was terminated due to her physical disability.

7 **Employment Information**

8 14. Plaintiff was an employee of The Nest since in or about April 2019 and worked
9 as a Caregiver. While employed by The Nest, Plaintiff was paid \$240 per day and she worked
10 20 hours per day, 140 hours per week, 7 days per week. Plaintiff was employed at The Nest
11 until April 20, 2023, when she was wrongfully terminated.

12 **Wage and Hour Violations**

13 15. The employment by Defendant of Plaintiff is governed by Industrial Welfare
14 Commission Wage Order 5, which covers those persons employed in the public housekeeping
15 industry.

16 16. Under California law, non-exempt employees as defined by Wage Order 5, are
17 entitled to premium wages for overtime worked and minimum wages.

18 17. Under California law, non-exempt employees as defined by Wage Order 5, are
19 entitled to double time wages for work in excess of 12 hours per day.

20 18. As a result of The Nest's failure to pay Plaintiff at required overtime/double
21 time and/or minimum wage rates, the wage statements issued to her did not comply with *Labor*
22 *Code* §226 and California Industrial Welfare Commission ("IWC") Wage Order 5 in that they
23 did not accurately reflect all wages earned and due and owing.

24 19. As a further result of The Nest's failure to pay Plaintiff at required
25 overtime/double time and/or minimum wage rates, when Plaintiff left their employ, she was not
26 timely paid all wages due her, as required by *Labor Code* §§ 201, 202 and Wage Order No. 5.

27 20. Under California law, non-exempt employees as defined by Wage Order 5, are
28 entitled to a 30-minute lunch period for each 10 hours worked, a 10-minute paid rest break for

1 every four hours worked, or major fraction thereof. Non-exempt employees are also entitled to
2 one hour pay at their regular pay rate for each day the requisite rest and/or meal periods are not
3 provided. The Nest failed to afford Plaintiff any meal breaks, including a second meal break on
4 days when she worked between 12 or more hours. The Nest also failed to afford Plaintiff rest
5 breaks.

6 21. Defendants required Plaintiff to use her personal vehicle and cell phone for
7 work-related purposes. Plaintiff was not reimbursed for her gas, mileage and vehicle wear and
8 tear and cell phone expenses.

9 22. Plaintiff was required to work seven days per week, but was not paid one and
10 one-half times her regular rate of pay the first eight hours worked on the seventh consecutive
11 day of work in any workweek, and twice her regular rate for hours worked in excess of eight
12 on the seventh day.

13 23. The Nest failed to provide Plaintiff with her requested employment records.

14 24. Plaintiff intends to amend this Complaint to add a PAGA claim.

15 **Discrimination, Harassment and Wrongful Termination**

16 25. Plaintiff was denied a work environment free of physical disability
17 discrimination and was targeted for wrongful termination on or about April 20, 2023.

18 26. On or about May 13, 2023, Plaintiff was involved in car accident. Plaintiff
19 injured her right thumb and elbow. On or about May 14, 2023, Plaintiff was not feeling well
20 and visited her physician. Her doctor told her to take 2 days of medical leave on the following
21 Monday and Tuesday.

22 27. Prior to her accident, Plaintiff asked the Nest if she could have off on Fridays
23 and Saturdays. The Nest and Michelle approved Plaintiff's request.

24 28. As a result, when Plaintiff provided her physician's note to the Nest and
25 Michelle on Monday and she was told by Michelle that she should take off Tuesday through
26 Saturday since she would have been off on Friday and Saturday anyway. Plaintiff told Michelle
27 she would likely come to work on Sunday.

29. On Saturday evening, Plaintiff texted Michelle to confirm her start on Sunday. Michelle replied that Plaintiff should not come in on Sunday or anytime soon thereafter. Plaintiff asked if she was being terminated and Michelle stated “yes”.

30. The Nest's and Michelle's wrongful termination of Plaintiff was wrongfully motivated by discrimination against her due to her physical disability.

31. On July 27, 2023, Plaintiff filed an administrative complaint with the Department of Fair Employment and Housing ("DFEH") alleging discrimination and harassment by the Nest and Michelle. On July 27, 2023, the DFEH issued to Plaintiff a Right to Sue Notice as to the Nest and Michelle.

FIRST CAUSE OF ACTION

(Failure to Pay Overtime/Double Time in Violation of Labor Code §§510, 558, 1194.3, 1198 and Wage Order 5 By Plaintiff Against all Defendants and Does 1-100)

32. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

33. During Plaintiff's entire employment with Defendants, pursuant to Cal. Lab. Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 5, Defendants were required to compensate Plaintiff with premium pay for all overtime/double-time performed, for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week for the first eight (8) hours on the seventh (7th) consecutive day of any work week. Further, Defendants were required to compensate Plaintiff with premium pay for all double time performed, for hours worked in excess of twelve (12) hours per workday and for work in excess of eight hours on any seventh day of a workweek.

34. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee who had not been paid overtime/double time compensation could recover the unpaid balance of the full amount of overtime/double time wages due, including interest thereon, together with reasonable attorneys' fees and costs of suit.

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35. California Labor Code section 510, subdivision (a), states in relevant part:
Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.
36. Further, California Labor Code section 1198 provides,
The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.
37. Pursuant to IWC Wage Order No. 5-2001, § 3, “Employment beyond eight (8) hours in any workday is permissible provided the employee is compensated for such overtime at not less than: ... (b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.”
38. California Labor Code section 558 provides in pertinent part:
- (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
 - (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
 - (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
 - (3) Wages recovered pursuant to this section shall be paid to the affected employee...

1 (c) The civil penalties provided for in this section are in addition to any
2 other civil or criminal penalty provided by law.

3 39. Plaintiff was at all times required to work in excess of 12-hour shifts, but was
4 not paid double time. Instead, she was paid \$240 per day. Further, Plaintiff worked in excess of
5 12-hour shift seven consecutive days, without being paid double time by Defendants.

6 40. Throughout Plaintiff's employment, Defendants failed and refused to pay and
7 properly calculate overtime/double time compensation to Plaintiff as required by law.

8 41. Pursuant to Cal. Labor Code §558.1:

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

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

18 (c) Nothing in this section shall be construed to limit the definition of
19 employer under existing law.

20 42. Michelle is the owner of The Nest and is therefore liable to Plaintiff as an
21 employer. Defendants caused the laws relating to overtime/double time to be violated.

22 43. The foregoing overtime/double time compensation is owed and unpaid. As a
23 direct and proximate result of Defendants' failure and refusal to pay overtime/double time
24 compensation, Plaintiff suffered damages in the amount of at least \$112,761.60, to be proven at
25 trial.

26 44. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
27 counsel in order to enforce Plaintiff's rights to overtime/double time pay, is entitled to recover
28 Plaintiff's attorneys' fees, costs and interest.

1 **SECOND CAUSE OF ACTION**

2 **(Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194, 1197, 1197.1, 1198,**
3 **119, IWC Wage Order 5 – By Plaintiff Against all Defendants Does 1 through 100)**

4 45. Plaintiff realleges and incorporates by reference all of the allegations set forth in
5 this Complaint.

6 46. *Labor Code* § 1197 states the California requirement that employees must be
7 paid at least the minimum wage fixed by the Commission, and any payment of less than the
8 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
9 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
10 the full amount of this minimum wage.” IWC Wage Order 5-2001 also obligates employers to
11 pay each employee minimum wages for all hours worked. These minimum wage standards
12 apply to each hour employees worked for which they were not paid. Therefore, an employer’s
13 failure to pay for any particular hour of time worked by an employee is unlawful, even if
14 averaging an employee’s total pay over all hours worked, paid or not, results in an average
15 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
16 (2005).

17 47. Here, Plaintiff worked 20 hours per day, 7 days per week and was only paid
18 \$240 per day. As result thereof, Plaintiff was not paid minimum wages that were due to her.

19 48. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
20 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
21 wage, including interest thereon, reasonable attorneys’ fees, and costs of suit.

22 49. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
23 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
24 *Code* § 1194. Where an employee, such as Plaintiff is not paid for all hours worked under
25 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
26 the overtime for which they received no compensation. *See Sillah v. Command Int’l Sec. Servs.*,
27 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime
28 could recover liquidated damages under § 1194.2 if they also showed they were paid less than

1 minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
2 (N.D. Cal. 2016).

3 50. Plaintiff suffered and continues to suffer losses related to the use and enjoyment
4 of compensation due and owing to her as a direct result of Defendants' unlawful acts and Labor
5 Code violations in the amount of at least \$112,761.60, to be shown according to proof at trial.

6 51. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
7 wages against employers and those individuals acting in their behalf. Plaintiff requests that this
8 Court assess said penalty against Defendants, and each of them, in an amount to be proven at
9 trial.

10 52. Pursuant to Cal. Labor Code §558.1:

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

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

20 (c) Nothing in this section shall be construed to limit the definition of
21 employer under existing law.

22 53. Michelle is the owner of The Nest and is therefore liable to Plaintiff as an
23 employer. Michelle caused the laws relating to minimum wages to be violated.

24 54. Therefore, pursuant to Labor Code §§200, 203, 218.5, 226, 558, 1194 and
25 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages Defendants
26 owe her, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts
27 according to proof.

1 55. Under *Labor Code* § 1194.2, Plaintiff is entitled to recover as liquidated
2 damages, amounts equal to the wages unlawfully unpaid and interest thereon.

3 **THIRD CAUSE OF ACTION**

4 **(Failure to Provide Rest Breaks in Violation of Labor Code §226.7**

5 **– By Plaintiff Against all Defendants Does 1 through 100)**

6 56. Plaintiff realleges and incorporates by reference all of the allegations set forth in
7 this Complaint.

8 57. Labor Code § 226.7 and the applicable Wage Order provide that employers shall
9 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
10 per four hours of work, or major fraction thereof.

11 58. Labor Code § 226.7 and the applicable Wage Order provide that if an employer
12 fails to provide an employee with rest periods in accordance with those provisions, the
13 employer shall pay the employee one hour of pay at the employee's regular rate of
14 compensation for each workday that the rest periods were not so provided.

15 59. Defendants have intentionally and improperly denied rest periods to Plaintiff in
16 violation of Labor Code § 226.7 and the applicable Wage Order.

17 60. At all times relevant hereto, Plaintiff has worked 8 or more hours daily.

18 61. At all times relevant hereto, Defendants failed to provide rest periods as required
19 by Labor Code § 226.7 and the applicable Wage Order. Plaintiff was never afforded any rest
20 breaks. Defendants thought that sitting down with a resident constituted a rest break. Plaintiff
21 was restricted from leaving her work area to take a rest break.

22 62. Pursuant to Cal. Labor Code §558.1:

23 (c) Any employer or other person acting on behalf of an employer, who
24 violates, or causes to be violated, any provision regulating...hours and days of
25 work in any order of the Industrial Welfare Commission, or violates, or causes
26 to be violated Sections 203, 226, 226.7...may be held liable as the employer for
27 such violation.
28

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

5 (c) Nothing in this section shall be construed to limit the definition of
6 employer under existing law.

7 63. Michelle is person acting on behalf of The Nest and is therefore liable to
8 Plaintiff as an employer. Defendants caused the laws relating to rest breaks to be violated.

9 64. By virtue of Defendants’ unlawful failure to provide rest periods to the Plaintiff,
10 Plaintiff has suffered, and will continue to suffer, damages in amounts which are presently
11 unknown to Plaintiff, but which exceed the jurisdictional limits of the Court and which will be
12 ascertained according to proof at trial.

13 **FOURTH CAUSE OF ACTION**

14 **(Compensation for Required Meal Periods Not Provided - Cal. Lab. Code §§ 226.7, 512 –**
15 **By Plaintiff against all Defendants and Does 1 through 100)**

16 65. Plaintiff realleges and incorporates by reference all of the allegations set forth in
17 this Complaint.

18 66. California Labor Code §226.7(a) prohibits an employer from requiring an
19 employee to work during any meal period mandated by an applicable Industrial Wage Order.
20 Section 226.7(b) of the California Labor Code provides that “[a]n employer shall not require an
21 employee to work during a meal or rest break or recovery period mandated pursuant to an
22 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
23 Commission...”

24 67. California Labor Code §1198 makes unlawful the employment of an employee
25 under conditions the IWC prohibits.

26 68. The applicable Wage Order provides, in relevant part: "No employer shall
27 employ any person for a work period of more than five (5) hours without a meal period of not
28 less than 30-minutes, except that when a work period of not more than six (6) hours will

1 complete the day's work the meal period may be waived by mutual consent of the employer and
2 the employee."

3 69. The applicable Wage Order further provides, in relevant part: "Unless the
4 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
5 considered an 'on duty' meal period and counted as time worked."

6 70. Section 512(a) of the California Labor Code provides, in relevant part, that:
7 An employer may not employ an employee for a work period of more than five
8 hours per day without providing the employee with a meal period of not less
9 than 30-minutes, except that if the total work period per day of the employee is
10 no more than six hours, the meal period may be waived by mutual consent of
11 both the employer and employee. An employer may not employ an employee for
12 a work period of more than 10 hours per day without providing the employee
13 with a second meal period of not less than 30-minutes, except that if the total
14 hours worked is no more than 12 hours, the second meal period may be waived
15 by mutual consent of the employer and the employee only if the first meal
16 period was not waived.

17 71. The Labor Code and Wage Order provisions cited above require California
18 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
19 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
20 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
21 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
22 the fifth hour of their shifts.

23 72. Defendants violated Labor Code § 512 and the applicable IWC Wage Order by
24 failing to provide Plaintiff the requisite 30-minute meal periods and second meal periods on
25 days when she worked 12 or more hours, required by law. Plaintiff was never afforded any
26 meal periods and was required to stay at her work area at all times. Although Plaintiff was
27 allowed to eat while caring for patients, she was not allowed to leave the house and was
28 required to be present at all times.

1 73. Pursuant to Cal. Labor Code §558.1:

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

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

11 (c) Nothing in this section shall be construed to limit the definition of
12 employer under existing law.

13 74. Michelle is the owner of The Nest and is therefore liable to Plaintiff as an
14 employer. Michelle caused the laws relating to meal breaks to be violated.

15 75. Defendants further violated the applicable IWC Wage Order and Labor Code
16 § 226.7 by failing to pay one hour of compensation to Plaintiff at her individual and regular rate
17 of pay for each work day that the meal period was not provided, in an amount according to
18 proof. This amount remains owed and unpaid.

19 76. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to
20 recover wages due based on the deprivation of timely meal periods under Cal. Labor Code
21 § 226.7(b).

22 77. As a direct and proximate result of Defendants’ unlawful conduct as alleged
23 herein, Plaintiff has sustained economic damages, including but not limited to unpaid wages
24 and lost interest, in an amount to be established at trial, and is entitled to recover economic and
25 statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendants’
26 violations of the California Labor Code and the applicable IWC Wage Orders.

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1 **FIFTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(Labor Code §226 By Plaintiff Against all Defendants and Does 1 through 100)**

4 78. Plaintiff realleges and incorporates by reference all of the allegations set forth in
5 this Complaint.

6 79. At all times relevant hereto, Defendants failed to issue payrolls statements to
7 Plaintiff which complied with *Labor Code* § 226 in that the statements issued to Plaintiff did
8 not properly and accurately itemize the number of hours Plaintiff worked at the effective
9 regular rates of pay, the effective overtime/double time and minimum wage rates of pay and
10 premium pay for meal/rest breaks not afforded.

11 80. Pursuant to Cal. Labor Code §558.1:

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

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

21 (c) Nothing in this section shall be construed to limit the definition of
22 employer under existing law.

23 81. Michelle is the owner of The Nest and is therefore liable to Plaintiff as an
24 employer. Michelle caused the laws relating to overtime/double time, minimum wages and
25 meal/rest breaks to be violated.

26 82. Defendants knowingly and intentionally failed to comply with *Labor Code*
27 §226(a), causing damage to Plaintiff. These damages, including but not limited to, costs
28 expended calculating the actual hours worked and the amount of employment taxes which were

1 not properly paid to state and federal tax authorities, are difficult to estimate. Therefore,
2 Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the
3 violations occurred, and \$100.00 for each violation in subsequent pay periods, pursuant to
4 *Labor Code* § 226(e), in the amount of \$4,000.00 plus reasonable attorneys' fees and costs.

5 83. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus
6 attorneys' fees and costs in obtaining the injunction, pursuant to *Labor Code* § 226(g).

7 **SIXTH CAUSE OF ACTION**

8 **FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION**

9 **(Labor Code §§201-203 By Plaintiff Against all Defendants and Does 1 through 100)**

10 84. Plaintiff realleges and incorporates by reference all of the allegations set forth in
11 this Complaint.

12 85. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
13 due and payable immediately. Labor Code § 202(a) provides that when an employee is
14 terminated or resigns from employment, unpaid wages are due and payable within 72 hours of
15 termination or resignation.

16 86. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
17 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
18 paid, not to exceed thirty days.

19 87. Plaintiff was discharged from Defendants' employ and Defendants willfully
20 failed to pay Plaintiff overtime/double time and minimum wages due her. Defendants also
21 failed to afford meal/rest breaks to Plaintiff and did not pay her premium pay for meal/rest
22 breaks not afforded.

23 88. Pursuant to Cal. Labor Code §558.1:

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

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

5 (c) Nothing in this section shall be construed to limit the definition of
6 employer under existing law.

7 89. Michelle is the owner of The Nest and is therefore liable to Plaintiff as an
8 employer. Michelle caused the laws relating to overtime/double time, minimum wages and
9 meal/rest breaks to be violated.

10 90. Defendants terminated Plaintiff on April 20, 2023, yet failed to pay her wages
11 due to her.

12 91. Under Labor Code § 203(a), Plaintiff is entitled to one day’s wages for each day
13 she was not timely paid, not to exceed 30 days' wages.

14 **SEVENTH CAUSE OF ACTION**

15 **REIMBURSEMENT OF BUSINESS EXPENSES**

16 **(Cal. Labor Code §2802 By Plaintiff Against all Defendants and Does 1 through 100)**

17 92. Plaintiff realleges and incorporates by reference all of the allegations set forth in
18 this Complaint.

19 93. Labor Code §2802 requires employers to indemnify employees for all necessary
20 expenditures incurred by employees in the discharge of her duties.

21 94. At all times relevant herein, Defendants were aware that Plaintiff was using her
22 cell phone and personal vehicle for business, but failed to indemnify Plaintiff for all her
23 business-related expenses, including wear and tear expenses, in accordance with Labor Code
24 §2802.

25 95. Plaintiff was required to have her personal cell phone with her at all times and to
26 use it as a means of communication for work. Further, Plaintiff was required to use her personal
27 vehicle to take residents to their physicians or bring them special types of food they requested.
28

1 96. As a result of Defendants' conduct, Plaintiff suffered damages in an amount,
2 subject to proof, to the extent she was not reimbursed for all of her business-related expenses
3 incurred in the discharge of her duties.

4 97. Pursuant to Labor Code §2802, Plaintiff is entitled to recover the full amount of
5 her unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

8 **(Cal. Labor Code §1198.5 By Plaintiff Against all Defendants and Does 1 through 100)**

9 98. Plaintiff realleges and incorporates by reference all of the allegations set forth in
10 this Complaint.

11 99. California Labor Code Section 1198.5 provides:

12 (a) Every current and former employee, or his or her representative, has the right
13 to inspect and receive a copy of the personnel records that the employer
14 maintains relating to the employee's performance or to any grievance concerning
15 the employee.

16 (b) The employer shall make the contents of those personnel records available
17 for inspection to the current or former employee, or his or her representative, at
18 reasonable intervals and at reasonable times, but not later than 30 calendar days
19 from the date the employer receives a written request, unless the current or
20 former employee, or his or her representative, and the employer agree in writing
21 to a date beyond 30 calendar days to inspect the records, and the agreed-upon
22 date does not exceed 35 calendar days from the employer's receipt of the written
23 request to inspect the records. Upon a written request from a current or former
24 employee, or his or her representative, the employer shall also provide a copy of
25 the personnel records,... later than 30 calendar days from the date the employer
26 receives the request...

27 (k) If an employer fails to permit a current or former employee, or his or her
28 representative, to inspect or copy personnel records within the times specified I

this section... the current or former employee may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

(1) A current or former employee may also bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action.

100. Additionally, pursuant to Wage Order 5, at section 7 re: Records, employers are required to keep accurate payroll records on each employee, and such records must be made readily available for inspection by the employee upon reasonable request. The employer must also maintain accurate production records.

101. On or about June 20, 2023, Plaintiff's counsel issued a written request to Defendants for copies of her personnel records.

102. Under California Labor Code Sections 226, 432 and 1198.5, such records were to include all records relating to Plaintiff's hours worked, wage statements and compensation. Plaintiff's counsel and Defendants did not enter into an agreement to enlarge the time for Defendants' compliance, and Defendants have failed and refused to permit Plaintiff copies of her records.

103. As a direct result and consequence of Defendants' failure and refusal to permit Plaintiff full access to her records, Plaintiff seeks injunctive relief in the form of an order or decree mandating Defendants' compliance. Plaintiff has suffered and will suffer harm as a result of Defendants' ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of \$750 based upon Defendants' violation of §1198.5.

NINTH CAUSE OF ACTION

(Failure to Provide Day of Rest in Violation of Cal. Labor Code

§§ 551, 552 By Plaintiff Against all Defendants and Does 1 through 100)

104. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

105. Labor Code section 551 states: “Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven.”

1 106. Labor Code section 552 states in part: “No employer of labor shall cause his
2 employees to work more than six days in seven....”

3 107. Wage Order No. 5 require employers to pay employees one and one-half times
4 their regular rate of pay for the first eight hours worked on the seventh consecutive day of
5 work in any workweek, and twice their regular rate for hours worked in excess of eight on the
6 seventh day.

7 108. Defendants knowingly and intentionally failed to pay Plaintiff premium pay for
8 working seven consecutive days as required by Labor Code sections 551 and 552 and Wage
9 Order 5.

10 109. As a direct and proximate result of Defendants’ conduct as alleged herein,
11 Plaintiff has suffered monetary damages in an amount equal to her unpaid wages for work
12 performed during seven consecutive work days, pursuant to Labor Code sections 551 and 552
13 and Wage Order 5, plus interest thereon pursuant to Labor Code 218.6.

14 110. Plaintiff further is entitled to recover from Defendant additional sums as a
15 penalty, pursuant to Labor Code section 558 equal to fifty dollars (\$50) per unpaid pay period
16 for Defendant’s initial violation, and one hundred dollars (\$100) per unpaid pay period for
17 each subsequent violation, in addition to the underpaid wages from each pay period.

18 111. In addition, Plaintiff has retained the services of an attorney to maintain and
19 prosecute this action and these attorneys are entitled to recover fees and costs incurred on
20 Plaintiff’s behalf pursuant to Labor Code section 218.5.

21 **TENTH CAUSE OF ACTION**

22 **FOR UNFAIR COMPETITION**

23 **(Business & Professions Code §§ 17200 et seq. By Plaintiff Against all Defendants and**
24 **Does 1 through 100)**

25 112. Plaintiff realleges and incorporates by reference all of the allegations set forth in
26 this Complaint.

27 113. *Business & Professions Code* §§ 17200 et seq. prohibit acts of unfair
28 competition, which mean and include “unlawful and unfair business practices.”

1 114. Defendants' conduct as alleged herein has been and continues to be unfair,
2 unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights
3 affecting the public interest within the meaning of *Code of Civil Procedure* § 1021.5. Plaintiff
4 is a "person" within the meaning of *Business and Professions Code* § 17204 and therefore has
5 standing to bring this suit for restitution.

6 115. The prompt payment of overtime/double time, minimum wages, affording of
7 meal/rest breaks, reimbursement of business expenses, and failure to provide employment
8 records, are fundamental public policies of California. It also is the public policy of California
9 to enforce minimum labor standards to ensure that employees are not required to or permitted
10 to work under substandard and unlawful conditions and to protect those employers who comply
11 with the law from losing competitive advantage to other employers who fail to comply with
12 labor standards and requirements.

13 116. Through the conduct alleged herein, Defendants acted contrary to these public
14 policies and have thus engaged in unlawful and/or unfair business practices in violation of
15 *Business & Professions Code* §§ 17200 *et seq.*, depriving Plaintiff of the rights, benefits and
16 privileges guaranteed to employees under California law.

17 117. Defendants regularly and routinely violated the following statutes and
18 regulations with respect to Plaintiff:
19

- 20 (a) *Labor Code* §§ 510 and 1194 and IWC Wage Order No. 5 as amended
21 (failure to pay overtime);
- 22 (b) *Labor Code* § 1197 and IWC Wage Order No. 5 (failure to pay minimum
23 wages);
- 24 (c) *Labor Code* §§ 510 and 1194 and IWC Wage Order No. 5 as amended
25 (failure to pay double time);
- 26 (d) *Labor Code* § 226 (failure to afford meal/rest breaks);
- 27 (d) *Labor Code* § 226 (failure to provide accurate wage statements to
28 employees at the time of payment of wages);

- 1 (e) *Labor Code* §§ 202 and 203 (failure to pay wages due at termination);
2 (f) *Labor Code* § 2802 (failure to reimburse business expenses);
3 (g) *Labor Code* §§ 551, 552 (failure to provide day of rest); and
4 (j) *Labor Code* §1198.5 (failure to allow inspection of employment
5 records).

6 118. By engaging in these business practices, which are unfair business practices
7 within the meaning of *Business & Professions Code* §§17200 *et seq.*, Defendants harmed
8 Plaintiff and gained an unfair competitive edge. Under the *Business & Professions Code*
9 § 17203, Plaintiff is entitled to obtain restitution of these funds.

10 **ELEVENTH CAUSE OF ACTION**

11 **(Discrimination Based on Physical Disability in Violation of Government Code §§12940(a)**
12 **- By Plaintiff Against all Defendants and Does 1 through 100)**

13 119. Plaintiff realleges and incorporates by reference all of the allegations set forth in
14 this Complaint.

15 120. Under the California Fair Employment and Housing Act ("FEHA"),
16 Government Code § 12940(a), an employer cannot discriminate against an employee, because
17 of her physical disability.

18 121. During Plaintiff's employment at the Nest she was subjected to physical
19 disability discrimination by Michelle.

20 122. Plaintiff apprised Michelle of the physical disability discrimination and
21 harassment, but nothing was done to resolve the issues Plaintiff was experiencing.

22 123. Defendants' wrongful discharge of Plaintiff was motivated in substantial part by
23 Plaintiff's physical disability.

24 124. All of the conduct by the Nest was done with the full knowledge and ratification
25 of the management employees of the Nest, and was consistent with the recognized policies and
26 procedures of the Nest, which tolerated and encouraged such discriminatory physical disability
27 conduct.

1 125. Defendants were aware of the discriminatory conduct and did not take effective,
2 good faith action to investigate, remedy, prevent, or stop the physical disability discrimination.

3 126. At all times herein mentioned, Defendants were legally required to refrain from
4 discriminating against and harassing any employee on the basis of physical disability, among
5 other things. Within the time provided by law, Plaintiff filed a complaint with the California
6 Department of Fair Employment and Housing, in full compliance with these sections, and she
7 received a right to sue letter.

8 127. By wrongfully discharging Plaintiff because of her physical disability,
9 Defendants violated *Government Code* § 12940(a).

10 128. As a direct and proximate result of the Defendants' conduct, individually and
11 collectively, Plaintiff has suffered and continues to suffer substantial losses in income,
12 earnings, and benefits and has been damaged in her capacity to earn her salary, and has lost and
13 will continue to lose employment benefits, in the amount of at least \$112,761.60, according to
14 proof.

15 129. As a direct and proximate result of Defendants' actions, Plaintiff has suffered
16 severe and serious injury to her person, all to her damage in the amount of at least
17 \$1,000,000.00, according to proof.

18 130. All actions of the Nest were known, ratified and approved by the officers or
19 managing agents of the Nest. Therefore, Plaintiff is entitled to punitive or exemplary damages
20 against Defendants in an amount to be determined at the time of trial.

21 131. Defendants' conduct in discriminating against Plaintiff because of her physical
22 disability subjected her to cruel and unjust hardship in conscious disregard of her rights, as it
23 was anticipated by Defendants, that Plaintiff would be unable to find comparable employment
24 in the foreseeable future. Plaintiff is informed and believes, and thereon alleges, that her
25 wrongful termination by Defendants, was done with the intent to cause her injury. As a
26 consequence of the aforesaid oppressive, malicious and despicable conduct, Plaintiff is entitled
27 to an award of punitive damages in a sum to be shown according to proof.

1 132. Pursuant to California Government Code §12965(b), Plaintiff requests an award
2 of attorneys' fees in this action.

3 **TWELFTH CAUSE OF ACTION**

4 **(Hostile Work Environment in Violation Govt. Code §12940 et seq.- By Plaintiff Against**
5 **all Defendants and Does 1 through 100)**

6 133. Plaintiff realleges and incorporates by reference all of the allegations set forth in
7 this Complaint.

8 134. The offensive conduct to which Plaintiff was subjected constitutes a hostile
9 work environment in violation to FEHA, California Government Code §12940 et seq. During
10 her employment, Defendants violated FEHA, California Government Code §12940 (j), by
11 discriminating against Plaintiff due to her physical disability.

12 135. Defendants' harassment was hostile, abusive, continuous and pervasive to create
13 a hostile work environment for the Plaintiff.

14 136. Defendants' harassment was unwelcome, humiliating, offensive and adversely
15 affected the terms of Plaintiff's employment.

16 137. Plaintiff was subjectively offended by Defendants' conduct and any reasonable
17 person in Plaintiff's position would perceive Defendants' conduct as being offensive, hostile
18 and abusive.

19 138. As a direct result of Defendants' failure to take all reasonable steps necessary to
20 prevent discrimination, Plaintiff has suffered and will continue to suffer pain and suffering,
21 extreme and severe mental anguish and emotional distress, loss of earnings and earning
22 capacity. Plaintiff is hereby entitled to general and compensatory damages the amount of at
23 least \$112,761.60, according to proof at trial.

24 139. Defendants did the things hereinabove alleged, intentionally, oppressively, and
25 maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against
26 public policy, were obnoxious, despicable, and ought not to be suffered by any member of the
27 community.

140. All actions of the Nest were known, ratified and approved by the officers or managing agents of the Nest. Therefore, Plaintiff is entitled to punitive or exemplary damages against Defendants in an amount to be determined at the time of trial.

141. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

THIRTEENTH CAUSE OF ACTION

(Retaliation in Violation of Government Code §§12940 et seq. - By Plaintiff

Against all Defendants and Does 1 through 100)

142. Plaintiff realleges and incorporates by reference all of the allegations set forth above in the Complaint.

143. This cause of action is brought pursuant to the FEHA, Govt. Code §12940(h), which provides that it is unlawful to retaliate against a person "because the person has opposed any practices forbidden under [Government Code sections 12900 through 12966] or because the person has filed a complaint, testified, or assisted in any proceeding under the FEHA."

144. As a result of her physical disability, Plaintiff was denied the right to work in an environment free of discrimination and harassment and was wrongfully terminated by Defendants.

145. Defendants' retaliatory conduct toward Plaintiff caused her emotional injury, including, but not limited to, humiliation, anxiety, fear, and loss of self-esteem. Defendants' retaliatory conduct was a substantial factor and the proximate cause of Plaintiff's damages.

146. Plaintiff's physical disability was the reason Defendants retaliated against her. Further, Plaintiff was retaliated against due to her complaining about harassment due to her physical disability.

147. Plaintiff has suffered monetary damages, lost wages and privileges of employment illegally caused by Defendants' discriminatory conduct in the amount of at least \$112,761.60, according to proof.

148. Defendants' conduct was the proximate cause of the Plaintiff's damages.

149. Defendants did the things hereinabove alleged, intentionally, oppressively, and maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against public policy, were obnoxious, despicable, and ought not to be suffered by any member of the community.

150. All actions of the Nest were known, ratified and approved by the officers or managing agents of the Nest. Therefore, Plaintiff is entitled to punitive or exemplary damages against the Defendants in an amount to be determined at the time of trial.

151. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

FOURTEENTH CAUSE OF ACTION

(Failure to Prevent Discrimination from Occurring in Violation of Government Code §12940(k) - By Plaintiff Against all Defendants and Does 1 through 100)

152. Plaintiff realleges and incorporates by reference all of the allegations set forth above in the Complaint.

153. Plaintiff alleges that Defendants violated Government Code §12940(k) by failing to take all reasonable steps to prevent physical disability discrimination and harassment from occurring.

154. Defendants' conduct in subjecting Plaintiff to discriminatory conduct due to Plaintiff's physical disability constituted breach of their duty under FEHA, including the duty to take immediate and appropriate corrective action and to take all reasonable steps to prevent discrimination and retaliation from occurring pursuant to California Government Code Section 12940(k).

155. Defendants knew or reasonably should have known that they were engaging in unlawful, discriminatory and harassing conduct in the workplace, and Defendants should have refrained from engaging in unlawful, discriminatory and harassing conduct towards Plaintiff based on her physical disability. Defendants failed to take all reasonable steps necessary to prevent the discrimination, retaliation and harassment from occurring.

156. Defendants' conduct was the proximate cause of Plaintiff's damages.

157. As a direct result of Defendants' failure to take all reasonable steps necessary to prevent discrimination, Plaintiff has suffered and will continue to suffer pain and suffering, extreme and severe mental anguish and emotional distress, loss of earnings and earning capacity. Plaintiff is hereby entitled to general and compensatory damages in the amount of at least \$112,761.60, according to proof at trial.

158. Defendants did the things hereinabove alleged, intentionally, oppressively, and maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against public policy, were obnoxious, despicable, and ought not to be suffered by any member of the community.

159. All actions of the Nest were known, ratified and approved by the officers or managing agents of the Nest. Therefore, Plaintiff is entitled to punitive or exemplary damages against Defendants in an amount to be determined at the time of trial.

160. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

FIFTEENTH CAUSE OF ACTION

(Harassment in Violation of Government Code §§12940(j) - By Plaintiff Against all Defendants and Does 1 through 100)

161. Plaintiff realleges and incorporates by reference all of the allegations set forth above in the Complaint.

162. The FEHA explicitly prohibits any employer or any other person from harassing an employee because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation. *Gov. Code* § 12940(j).

163. Defendants were at all times material herein Plaintiff's employer pursuant to Government Code sections 12940(d) and 12940(j)(4) and was therefore barred from harassing its employees in violation of Government Code section 12940(j).

164. Defendants' harassment, as set forth above, created an abusive working environment in violation of Government Code section 12940(j). Defendants and/or their agents/employees harassed Plaintiff and/or failed to take immediate and appropriate corrective action. The harassment was sufficiently pervasive and severe as to alter the conditions of employment and to create a hostile or abusive work environment.

165. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered emotional distress and physical symptoms, pain and suffering, has lost income and related benefits, past and future, and medical expenses, all to her damage in the sum of at least \$1,000,000, according to proof.

166. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

167. The acts taken toward Plaintiff were carried out by and/or ratified by Defendants and/or managing agents/employees of Defendants acting in an oppressive, fraudulent and malicious manner in order to injure or damage Plaintiff, thereby justifying an award to her of punitive damages.

SIXTEENTH CAUSE OF ACTION

(Failure to Accommodate Physical Disability in Violation of Public Policy, Govt. Code §§12940 (m) – By Plaintiff Against all Defendants Does 1 through 100)

168. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

169. As alleged herein, Plaintiff requested that Defendants make a reasonable accommodation for her physical disability so that she would be able to perform the essential job requirements. Defendants refused said accommodation and refused to discuss any other potential reasonable accommodation it might afford to Plaintiff, wrongfully terminating Plaintiff instead on or about April 20, 2023.

170. By refusing to afford Plaintiff a reasonable accommodation, Defendants violated Government Code § 12940(m).

171. As a direct and proximate result of Defendants' conduct, individually and collectively, Plaintiff has suffered and continues to suffer substantial losses in income, earnings, and benefits and has been damaged in her capacity to earn her salary, and has lost and will continue to lose employment benefits, in the amount of at least \$112,761.60, according to proof.

172. As a direct and proximate result of Defendants' actions, Plaintiff has suffered severe and serious injury to her person, all to her damage in the amount of at least \$1,000,000.00, according to proof.

173. Defendants did the things hereinabove alleged, intentionally, oppressively, and maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against public policy, were obnoxious, despicable, and ought not to be suffered by any member of the community.

174. All actions of the Nest were known, ratified and approved by the officers or managing agents of the Nest. Therefore, Plaintiff is entitled to punitive or exemplary damages against the Defendants in an amount to be determined at the time of trial.

175. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

SEVENTEENTH CAUSE OF ACTION

(Failure to Engage in a Good Faith Interactive Process in Violation of *Government Code* §12940(n)– By Plaintiff Against all Defendants Does 1 through 100)

176. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

177. At all times hereto, FEHA, including in particular Government Code §12940(n), was in full force and effect and was binding on Defendants. This subsection imposes a duty on Defendants to engage in a timely, good faith, interactive process with the employee to determine reasonable accommodation, if any, in response to a request for a reasonable accommodation by an employee with a known physical disability or known medical condition.

1 178. At all relevant times, Plaintiff was a member of a protected class within the
2 meaning of Government Code §12940(a) et seq. because she had a disability, which
3 Defendants had both actual and constructive notice.

4 179. Plaintiff reported her disability to Defendants, triggering Defendants' obligation
5 to engage in a good faith interactive process with Plaintiff, but at all times herein, Defendants
6 failed and refused to do so.

7 180. Defendants breached their statutory duty under FEHA to engage in a timely
8 good faith interactive process to determine a reasonable accommodation for Plaintiff's physical
9 disability. Plaintiff further alleges: (1) that Defendants were the Plaintiff's employer; (2) that
10 Plaintiff was an employee of Defendants; (3) that Plaintiff had injuries that required reasonable
11 accommodation and which injuries were known to Defendants; (4) that Plaintiff requested that
12 Defendants make reasonable accommodation for her injuries and/or physical condition so that
13 she would be able to perform the essential functions of her job requirements; (5) that Plaintiff
14 was willing to participate in the interactive process to determine whether reasonable
15 accommodation could be made so that she would be able to perform the essential job
16 requirements; (6) that Defendants failed to participate in a timely good faith interactive process
17 with Plaintiff to determine whether reasonable accommodation could be made; (7) that Plaintiff
18 was harmed financially; and (8) that Defendants' failure to engage in a good faith interactive
19 process was a substantial factor in causing Plaintiff's damage and harm. Instead of engaging in
20 a good faith interactive process, Defendants, wrongfully terminated Plaintiff on or about April
21 20, 2023.

22 181. The above acts of Defendants constitute violations of FEHA, and were a
23 proximate cause in Plaintiff's damages as stated below.

24 182. Defendants did the things hereinabove alleged, intentionally, oppressively, and
25 maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against
26 public policy, were obnoxious, despicable, and ought not to be suffered by any member of the
27 community.

183. All actions of the Nest were known, ratified and approved by the officers or managing agents of the Nest. Therefore, Plaintiff is entitled to punitive or exemplary damages against Defendants in an amount to be determined at the time of trial.

184. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of attorneys' fees and costs.

EIGHTEENTH CAUSE OF ACTION

**(Wrongful Termination in Violation of Public Policy, Govt. Code §§12940 et seq. – By
Plaintiff Against all Defendants Does 1 through 100)**

185. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

186. Plaintiff alleges that significant policies exist in the State of California that prohibit discrimination, harassment, retaliation, wrongfully terminating an employee due to physical disability, complaining about harassment and protesting against unlawful employment practices. Among others, the right to be free from discrimination and retaliation are codified in the California and United States Constitutions and the provisions of Government Code §§12900 *et seq.*

187. These policies are set forth in various laws including but not limited to Government Code §§12940 (a), 12940 (k); Cal. Const. Art. 1, §8 (employment discrimination).

188. Defendants intentionally created and knowingly permitted the discrimination based on physical disability and harassment.

189. Defendants wrongfully terminated Plaintiff in violation of important and well-established public policies, including, but not limited to, policies against employment discrimination based upon physical disability discrimination.

190. Defendants' wrongful conduct proximately caused Plaintiff to suffer general damages in the amount of at least \$112,761.60, special and statutory damages, according to proof.

1 191. As a further proximate result of the unlawful acts of Defendants as alleged
2 above, Plaintiff has been harmed in that she has suffered humiliation, mental anguish, and
3 emotional and physical distress that a reasonable person would suffer upon losing her job. As
4 a result of such actions and consequent harm, Plaintiff has suffered such damages in the
5 amount of at least \$1,000,000, according to proof.

6 192. The above acts of Defendants constituted a wrongful termination of Plaintiff and
7 were in violation of public policy as described above. Such termination was a substantial
8 factor in causing damage and injury to Plaintiff as set forth below.

9 193. Plaintiff believes and thereon alleges that engaging in a protected activity,
10 including, but not limited to, complaining about harassment were factors in Defendants'
11 conduct as alleged hereinabove.

12 194. As a result of Defendants' conduct, Plaintiff is entitled to recover punitive
13 damages in amount according to proof at trial.

14 195. Pursuant to California Government Code §12965(b), Plaintiff requests an award
15 of attorneys' fees in this action.

16 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor
17 and against Defendants, and each of them, as follows:

18 1. For compensatory damages in the amount of overtime/double time due to
19 Plaintiff, \$112,761.60, according to proof;

20 2. For compensatory damages in the amount of minimum wages due to Plaintiff, in
21 at least \$112,761.60, according to proof;

22 3. For compensatory damages for physical and emotional distress, in the amount of
23 at least \$1,00,000, according to proof:

24 4. For one (1) hour of pay at the regular rate of compensation for Plaintiff for each
25 workday that a meal and/or rest period was not provided;

26 5. For compensatory damages in the amount of Plaintiff's out of pocket expenses
27 for cell phone and vehicle use and/or reimbursement of monies incurred while performing
28

1 Defendants' business-related duties plus interest, costs and attorneys' fees pursuant to *Cal.*
2 *Code Civ. Proc.* §2802(c);

3 6. Premium pay for failure to provide a day of rest;

4 7. For payment of unpaid wages in accordance with California labor and
5 employment law;

6 8. For an award of consequential damages in Plaintiff's favor and against
7 Defendants, in an amount to be proven at trial;

8 9. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

9 10. Pursuant to Labor Code § 203, for an additional sum according to proof equal of
10 up to 30 days wages for each violation, as a premium for unpaid wages to Plaintiff;

11 11. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code*
12 §203, in an amount equal to her respective daily rates of pay at the time of termination or
13 layoff, multiplied by the total amount of days elapsed between the date of the involuntary
14 termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30
15 days' pay, according to proof;

16 12. For specific relief enforcing waiting time penalties of 30 days of per diem wages
17 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

18 13. For prejudgment interest accrued on all due and unpaid overtime/double time
19 and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab.*
20 *Code* §§218.6 and 1194(a), according to proof;

21 14. For statutory penalties pursuant to *Cal. Lab. Code* §§ 203.1, 558, 226.7,
22 according to proof;

23 15. For reasonable costs, including attorneys' fees, in an amount according to proof
24 pursuant to, *inter alia*, *Government Code* § 12965(b), *Cal. Labor Code* §§1194, 218.5,
25 1198.5(1), 2802;

26 16. For an award of restitution of wages to Plaintiff in an amount equal to the
27 amount of wages owed and unpaid, according to proof;

1 17. For injunctive relief ordering the continuing unfair business acts and practices to
2 cease, as the Court deems just and proper;

3 18. For other injunctive relief ordering Defendants to notify Plaintiff that she has not
4 been paid the proper amounts in accordance with California law;

5 19. For injunctive relief requiring Defendants to comply with Labor Code
6 1198.5(b)(1);

7 20. For punitive and exemplary damages in a sum to be determined at trial;

8 21. For prejudgment interest, according to proof;

9 22. For costs of suit, generally and pursuant to Code of Civil Procedure § 1021.5;
10 and

11 23. For such other and further relief as the Court deems just and proper.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff Patricia Palacios hereby respectfully requests a trial by jury for all claims and
14 issues raised in her Complaint that may be entitled to a jury trial.

15
16 LIPELES LAW GROUP, APC

17 Date: August 2, 2023

18 By: Jose A. Hernandez
19 Jose A. Hernandez
20 Kevin A. Lipeles
21 Thomas H. Schelly
22 Attorneys for Plaintiff
23 Patricia Palacios
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