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ADRIANA AGUILAR

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

ADRIANA AGUILAR, an individual,

Plaintiff,

v.

S.D. 34 OFFICE INC., D/B/A AMERICAN
PARA PROFESSIONAL SYSTEMS, INC., a
California corporation; ALLY CONTRERAS,
an individual; and DOES 1 through 20,
inclusive,

Defendants.

Case No. **23STCV26236**

COMPLAINT FOR DAMAGES FOR:

- 1. DISCRIMINATION IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 2. HARASSMENT IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 3. RETALIATION IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 4. FAILURE TO PREVENT
DISCRIMINATION, HARASSMENT
AND RETALIATION IN VIOLATION OF
GOV'T CODE §12940(k);**
- 5. FAILURE TO PROVIDE REASONABLE
ACCOMMODATIONS IN VIOLATION
OF GOV'T CODE §§12940 ET SEQ.;**
- 6. FAILURE TO ENGAGE IN A GOOD
FAITH INTERACTIVE PROCESS IN
VIOLATION OF GOV'T CODE §§12940
ET SEQ.;**
- 7. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**
- 8. FOR DECLARATORY JUDGMENT**
- 9. FAILURE TO PAY WAGES (CAL.
LABOR CODE §§201, 226.7, 512, 221);**

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10. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);
 11. FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES (CAL. LABOR CODE §2802)
 12. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);
 13. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);
 14. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ); AND
 15. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.).

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DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, ADRIANA AGUILAR, and for causes of action against the Defendants and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Los Angeles County, because Defendants' obligations and liability arise therein, because Defendants maintain offices and transact business within Los Angeles County, and because the work that is the subject of this action was performed by Plaintiff in Los Angeles County.

THE PARTIES

2. Plaintiff, ADRIANA AGUILAR, is and at all times relevant hereto was, a resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant S.D. 34 OFFICE, INC., D/B/A AMERICAN PARA PROFESSIONAL SYSTEMS,

1 INC., a California corporation (“Defendant APPS”), is a healthcare provider with an official address of
2 931 Buena Vista St., Suite 401, Duarte, California in the County of Los Angeles, State of California.

3 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
4 hereto, Defendant APPS owned and operated the largest paramedical company in the US.

5 5. At all times relevant herein, Defendants and DOES 1-20 were Plaintiff’s employers, joint
6 employers and/or special employers within the meaning of Government Code §§12926, subdivision (d),
7 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more
8 persons and are therefore subject to the jurisdiction of this Court.

9 6. At all times relevant herein, Defendants and DOES 1-20 were Plaintiff’s employers, joint
10 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
11 Commission Order No. 4-2001, and are each any “employer or other person acting on behalf of an
12 employer” as such term is used in Labor Code section 558, 1197.1, and/or 558.1, and liable to Plaintiff
13 on that basis.

14 7. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
15 hereto, Defendant ALLY CONTRERAS (“DEFENDANT CONTRERAS”) was and is Plaintiff’s
16 manager, corporate agent, supervisor, and/or coworker at DEFENDANT APPS.

17 8. Plaintiff is informed and believes, and thereon alleges, that at all times relevant to this
18 action, DEFENDANT CONTRERAS and DOES 1-20 were managers and/or supervisors of
19 DEFENDANT APPS and acting as a managing agent for DEFENDANT APPS. DEFENDANT
20 CONTRERAS and DOES 1-20 were each acting within the course and scope of his or her employment
21 and on behalf of DEFENDANT APPS such that his or her acts or omissions are imputed to DEFENDANT
22 APPS under the doctrine of *respondeat superior*, or alternatively, at all times relevant to this action,
23 DEFENDANT APPS cloaked DEFENDANT CONTRERAS and DOES 1-20 with the appearance of
24 actual authority, such that Plaintiff was justified in relying thereon, and therefore his or her acts or
25 omissions are imputed to DEFENDANT APPS under the doctrine of *respondeat superior*.

26 9. Defendant APPS, DEFENDANT CONTRERAS, and DOES 1-20, inclusive, are
27 hereinafter collectively referred to as “Defendants.”
28

1 10. The true names and capacities, whether individual, corporate, associate, or otherwise, of
2 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
3 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
4 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
5 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
6 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as
7 alleged hereinafter.

8 11. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
9 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
10 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
11 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
12 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
13 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

14 12. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
15 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
16 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
17 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code
18 §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
19 each of them, including those defendants named as DOES 1-20, and each of them, formed and executed
20 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
21 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
22 actually causing Plaintiff harm.

23 13. Whenever and wherever reference is made in this complaint to any act or failure to act by
24 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
25 and/or failures to act by each Defendant acting individually, jointly and severally.

26 14. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to prevent
27 discrimination, failure to prevent discrimination, harassment and retaliation, failure to provide reasonable
28 accommodations, failure to engage in a good faith interactive process and wrongful termination under

1 Government Code §§12940, et seq., the California Fair Employment and Housing Act (“FEHA”) with
2 the California Department of Fair Employment and Housing (“DFEH”), and has satisfied Plaintiff’s
3 administrative prerequisites with respect to these and all related filings.

4
5 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

6 15. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
7 of interest and ownership between Defendants and DOES 1-20 that the individuality and separateness of
8 defendants have ceased to exist.

9 16. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
10 purported corporate existence, Defendants and DOES 1-20 are, in reality, one and the same, including,
11 but not limited to because:

12 a. Defendants and DOES 1-20 are completely dominated and controlled by one another, and
13 DOES 1-20 personally committed the frauds and violated the laws as set forth in this complaint, and have
14 hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or accomplish
15 some other wrongful or inequitable purpose.

16 b. Defendants and DOES 1-20 derive actual and significant monetary benefits by and
17 through one another’s unlawful conduct, and by using one another as the funding source for their own
18 personal expenditures.

19 c. Defendants and DOES 1-20, while really one and the same, were segregated to appear as
20 though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
21 accomplishing some other wrongful or inequitable purpose.

22 d. Defendants do not comply with all requisite corporate formalities to maintain a legal and
23 separate corporate existence.

24 e. The business affairs of Defendants and DOES 1-20 are, and at all times relevant were, so
25 mixed and intermingled that the same cannot reasonably be segregated, and the same are in inextricable
26 confusion. Defendants are, and at all times relevant hereto was, used by DOES 1-20 as a mere shell and
27 conduit for the conduct of certain of Defendants’ affairs, and are, and were, the alter ego of one another
28 and DOES 1-20. The recognition of the separate existence of Defendants would not promote justice, in

1 that it would permit Defendants to insulate themselves from liability to Plaintiff for violations of the
2 Government Code and other statutory violations. The corporate existence of Employers and DOES 1-20
3 should be disregarded in equity and for the ends of justice because such disregard is necessary to avoid
4 fraud and injustice to Plaintiff herein.

5 17. Accordingly, Defendants and DOES 1-20 constitute the alter ego of one another, and the
6 fiction of their separate corporate existence must be disregarded.

7 18. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
8 thereon alleges that Defendants and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
9 enterprise, and that Plaintiff was an employee of Defendants and DOES 1-20. Plaintiff performed
10 services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all
11 Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the manner in
12 which Defendants' business was and is conducted.

13 19. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
14 between DOES 1-20, Defendants or any of them, (1) there is an express or implied agreement of
15 assumption pursuant to which Defendants and/or DOES 1-20 agreed to be liable for the debts of the other
16 Defendants, (2) the transaction between Defendants and/or DOES 1-20 and the other Defendants amounts
17 to a consolidation or merger of the two corporations, (3) Defendants and/or DOES 1-20 are a mere
18 continuation of the other Defendants, or (4) the transfer of assets to Defendants and/or DOES 1-20 is for
19 the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Defendants and/or
20 DOES 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

21
22 **FACTUAL ALLEGATIONS**

23 20. On or about November 2018, Defendants hired Plaintiff to work as a phlebotomist, and in
24 approximately May 2023, Defendant switched Plaintiff's position to a customer service representative.
25 At all relevant times, Plaintiff was a full-time, non-exempt employee, who performed all of Plaintiff's
26 job duties satisfactorily before Defendants wrongfully terminated Plaintiff's employment on or around
27 July 6, 2023.
28

WAGE & HOUR ALLEGATIONS

21. Throughout Plaintiff's employment with Defendants, November 2018 through July 6, 2023 (the "Claim Period"), Plaintiff's fixed schedule was typically five days per week, Monday through Friday, for approximately 7 to 14 hours per day.

22. Throughout the Claim Period, Plaintiff worked more than 8 hours per day and/or 40 hours per week, though was not always appropriately compensated for the requisite overtime rate.

23. In violation of Labor Code § 226.7, Plaintiff was not permitted to, nor was she advised of, her right to take a statutory 10-minute rest break for every four hours worked, or majority portion thereof, during the Claim Period.

24. In violation of Labor Code § 512, Plaintiff did not receive uninterrupted 30-minute meal periods for days on which Plaintiff worked, a violation of Labor Code § 512.

25. Furthermore, despite the fact that Plaintiff was required to use her own personal cellphone, home internet, and personal computer to carry out mandatory tasks during working hours, Defendants failed to sufficiently reimburse Plaintiff for this expense in violation of Labor Code section 2802.

26. Defendants also violated Labor Code §§ 204 and 223 when they failed to pay Plaintiff wages for all hours worked paid at least twice during each calendar month to employees as required "by contract" under Labor Code section 223, as well as an improper collection of wages paid to an employee under Labor Code section 221. *Gonzales v. Downtown LA Motors*, 215 Cal. App. 4th 36 (2d App. Dist. Mar. 6, 2013). In addition, throughout Plaintiff's employment, Defendants violated Labor Code §221 by collecting and/or receiving from Plaintiff, part of her wages paid by Defendants.

27. Furthermore, Defendants did not provide Plaintiff with timely nor accurate paystubs in compliance with Labor Code § 226, failed to pay all of the Plaintiff's accrued wages and other compensation due immediately upon termination, as required, by Labor Code §§201-203, and also failed to provide Plaintiff with timely and accurate wage and hour statements showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and rates in effect during each pay period and the corresponding number of hours worked at each hourly rate by Plaintiff, in violation of Labor Code §§ 1198.5 and 226.

28. Plaintiff is informed and believes, and thereupon alleges, that herself and other employees were subject to the same violations, and, therefore, are aggrieved employees within the meaning of California Labor Code § 2699. Thus, Plaintiff, as an aggrieved employee, reserves her right to bring an action against Defendants, on behalf of herself and other current and former employees.

29. Additionally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, as an aggrieved employee, Plaintiff may investigate and pursue claims and penalties on behalf of other aggrieved employees for other violations that she was not personally “aggrieved” by.

FEHA ALLEGATIONS

30. During the hiring process, Plaintiff alerted Defendant that she had a medical condition and/or disability which would require Plaintiff to take occasional time off for doctors' appointments. Plaintiff's medical condition and/or disability, real or perceived, limited Plaintiff's ability to perform the major life activity of working and therefore constituted a disability.

31. Defendant agreed to Plaintiff's request for an accommodation, and also allowed Plaintiff the opportunity to occasionally finish her work from home.

32. From on or about September 1, 2022 until on or about May 7, 2023, Plaintiff took leave of absence for the illness and death of her grandfather.

33. Plaintiff returned to work on or about May 8, 2023. Throughout May and June 2023, Plaintiff was placed off work following a doctor's visit, yet Defendants required Plaintiff to continue working against her doctor's restrictions.

34. Following a doctor mandated leave from June 22 through June 25, 2023, on July 6, 2023, Defendant terminated Plaintiff's employment.

35. Defendants discriminated and retaliated against Plaintiff by failing to provide agreed upon accommodations for Plaintiff's medical leave, and by terminating Plaintiff for engaging in a protected activity.

36. Defendants, including Defendant CONTRERAS, also subjected the Plaintiff to harassment by subjecting Plaintiff to a hostile work environment and forcing her to work in contravention of her doctor's restrictions.

1 37. On information and belief, Defendant CONTRERAS encouraged, engaged, and ratified
2 the harassing conduct for personal gratification, intentional meanness, bigotry, or other personal motives.

3 38. At all relevant times, Defendants failed to properly engage in a good faith interactive
4 process in an effort to properly accommodate Plaintiff's disability and/or medical condition such that
5 Plaintiff could continue working for Defendants.

6 39. At all relevant times, Defendants failed to reasonably accommodate Plaintiff even though
7 Plaintiff was able to perform the essential job duties of Plaintiff's position or another position with or
8 without accommodations.

9 40. Plaintiff's termination was substantially motivated by Plaintiff's disability or perceived
10 disability, medical condition or perceived medical condition, use of or anticipated use of medical leave,
11 request for accommodation, and/or engagement in protected activities, without any discussion of
12 disability accommodations or any good faith attempt to engage in the interactive process with Plaintiff.
13 Defendants' discriminatory animus is evidenced by the previously mentioned facts.

14 41. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
15 Defendants' officers, directors and/or managing agents, including, but not limited to Defendants and
16 DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create policy for
17 Defendants. The aforementioned conduct of said managing agents and individuals was therefore
18 undertaken on behalf of Defendants who further had advanced knowledge of the actions and conduct of
19 said individuals whose actions and conduct were ratified, authorized, and approved by managing agents.

20 42. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
21 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
22 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
23 counseling and treatment, and past and future lost wages and benefits.

24 43. As a result of the above, Plaintiff is entitled to past and future lost wages, commissions,
25 benefits and loss or diminution of earning capacity.

26 44. Plaintiff claims general damages for emotional and mental distress and aggravation in a
27 sum in excess of the jurisdictional minimum of this Court.
28

1 45. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
2 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard
3 of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages
4 be levied against Defendants and each of them, in sums in excess of the jurisdictional minimum of this
5 Court.

6
7 **FIRST CAUSE OF ACTION**
8 **FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
9 **AGAINST DEFENDANT APPS AND DOES 1-20, INCLUSIVE**

10 46. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41, inclusive, as
11 though set forth in full herein.

12 47. At all times hereto, the FEHA was in full force and effect and was binding upon
13 Defendants and each of them.

14 48. As such term is used under FEHA, "on the bases enumerated in this part" means or refers
15 to discrimination on the bases of one or more of the protected characteristics under FEHA.

16 49. FEHA requires Defendants to refrain from discriminating against an employee on the
17 basis of disability (real or perceived) and/or medical condition (real or perceived), use of or anticipated
18 use of medical leave, request for accommodation, and/or engagement in protected activities, and to
19 prevent discrimination, harassment, and retaliation on the basis of use of or anticipated use of medical
20 leave, request for accommodation, and/or engagement in protected activities.

21 50. Plaintiff was a member of multiple protected classes as a result of Plaintiff's disability
22 (real or perceived) and/or medical condition (real or perceived), use of or anticipated use of medical
23 leave, request for accommodation, and/or engagement in protected activities.

24 51. At all times relevant hereto, Plaintiff was performing competently in the position Plaintiff
25 held with Defendants.

26 52. Plaintiff suffered the adverse employment actions of unlawful harassment, discrimination,
27 failure to accommodate, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate
28 and/or return to work, and termination, and was harmed thereby.

1 53. Plaintiff is informed and believes that Plaintiff's disability (real or perceived) and/or
2 medical condition (real or perceived), use of or anticipated use of medical leave, request for
3 accommodation, and/or engagement in protected activities, and/or some combination of these protected
4 characteristics under Government Code §12926(j) were motivating reasons and/or factors in the decisions
5 to subject Plaintiff to the aforementioned adverse employment actions.

6 54. Said conduct violates the FEHA, and such violations were a proximate cause in Plaintiff's
7 damage as stated below.

8 55. The damage allegations of Paragraphs 42 through 45, inclusive, are herein incorporated
9 by reference.

10 56. The foregoing conduct of Defendants individually, or by and through their officers,
11 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
12 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
13 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
14 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
15 punitive damages in an amount appropriate to punish or make an example of Defendants.

16 57. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
17 attorneys' fees and costs, including expert fees pursuant to the FEHA.

18
19 **SECOND CAUSE OF ACTION**
20 **FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
21 **AGAINST ALL DEFENDANT AND DOES 1-20, INCLUSIVE**

22 58. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41, inclusive, as
23 though set forth in full herein.

24 59. At all times hereto, the FEHA was in full force and effect and was binding upon
25 Defendants and each of them.

26 60. As such term is used under FEHA, "on the bases enumerated in this part" means or refers
27 to harassment on the bases of one or more of the protected characteristics under FEHA.
28

1 61. These laws set forth in the preceding paragraph require Defendants to refrain from
2 harassing, or creating, or maintaining a hostile work environment against an employee based upon the
3 employee's disability (real or perceived) and/or medical condition (real or perceived), use of or
4 anticipated use of medical leave, request for accommodation, and/or engagement in protected activities,
5 and/or some combination of these protected characteristics.

6 62. Defendants' harassing conduct was severe or pervasive, was unwelcome by Plaintiff, and
7 a reasonable person in Plaintiff's circumstances would have considered the work environment to be
8 hostile or abusive.

9 63. Defendants violated the FEHA and the public policy of the State of California which is
10 embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of
11 Plaintiff's disability (real or perceived) and/or medical condition (real or perceived), use of or anticipated
12 use of medical leave, request for accommodation, and/or engagement in protected activities, and/or some
13 combination of these protected characteristics, as set forth hereinabove.

14 64. The above said acts were perpetrated upon Plaintiff by a supervisor, and/or Defendants
15 knew or should have known of the conduct but failed to take immediate and appropriate corrective action.

16 65. The above said acts of Defendants constitute violations of the FEHA and violations of the
17 public policy of the State of California. Such violations were a proximate cause in Plaintiff's damage as
18 stated below.

19 66. The damage allegations of Paragraphs 42 through 45, inclusive, are herein incorporated
20 by reference.

21 67. The foregoing conduct of Defendants individually, or by and through their officers,
22 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
23 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
24 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
25 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
26 punitive damages in an amount appropriate to punish or make an example of Defendants.

27 68. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
28 attorneys' fees and costs, including expert fees pursuant to the FEHA.

1 **THIRD CAUSE OF ACTION**

2 **FOR RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**

3 **AGAINST DEFENDANT APPS AND DOES 1-20, INCLUSIVE**

4 69. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41, inclusive, as
5 though set forth in full herein.

6 70. At all times hereto, the FEHA was in full force and effect and was binding upon
7 Defendants and each of them.

8 71. These laws set forth in the preceding paragraph require Defendants to refrain from
9 retaliating against an employee for engaging in protected activity.

10 72. Plaintiff engaged in the protected activities of requesting accommodation, requesting
11 medical leave and/or exercising Plaintiff's right to medical leave, and complaining about and protesting
12 Defendants' discriminatory and harassing conduct towards Plaintiff based upon Plaintiff's disability (real
13 or perceived) and/or medical condition (real or perceived), use of or anticipated use of medical leave,
14 request for accommodation, and/or engagement in protected activities, and/or some combination of these
15 protected characteristics.

16 73. Plaintiff suffered the adverse employment actions of unlawful harassment, discrimination,
17 failure to accommodate, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate
18 and/or return to work, and termination, and was harmed thereby.

19 74. Plaintiff is informed and believes that Plaintiff's conduct of requesting accommodation,
20 requesting medical leave and/or exercising Plaintiff's right to medical leave, complaining about and
21 protesting about Defendants' discriminatory and harassing conduct, and/or some combination of these
22 factors, were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned
23 adverse employment actions.

24 75. Defendants violated the FEHA by retaliating against Plaintiff and terminating Plaintiff for
25 attempting to exercise Plaintiff's protected rights, as set forth hereinabove.

26 76. Plaintiff is informed and believes, and based thereon alleges, that the above acts of
27 retaliation committed by Defendants were done with the knowledge, consent, and/or ratification of, or at
28 the direction of, each other Defendant and the other Managers.

1 77. The above said acts of Defendants constitute violations of the FEHA, and were a
2 proximate cause in Plaintiff's damage as stated below.

3 78. The damage allegations of Paragraphs 42 through 45, inclusive, are herein incorporated
4 by reference.

5 79. The foregoing conduct of Defendants individually, or by and through their officers,
6 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
7 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
8 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
9 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
10 punitive damages in an amount appropriate to punish or make an example of Defendants.

11 80. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
12 attorneys' fees and costs, including expert fees pursuant to the FEHA.

13
14 **FOURTH CAUSE OF ACTION**
15 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION**
16 **IN VIOLATION OF GOV'T CODE §12940(k)**
17 **AGAINST DEFENDANT APPS AND DOES 1-20, INCLUSIVE**

18 81. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41, inclusive, as
19 though set forth in full herein.

20 82. At all times hereto, the FEHA, including in particular Government Code §12940(k), was
21 in full force and effect and was binding upon Defendants. This subsection imposes a duty on Defendants
22 to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation from
23 occurring. As alleged above, Defendants violated this subsection and breached their duty by failing to
24 take all reasonable steps necessary to prevent discrimination, harassment and retaliation from occurring.

25 83. The above said acts of Defendants constitute violations of the FEHA, and were a
26 proximate cause in Plaintiff's damage as stated below.

27 84. The damage allegations of Paragraphs 42 through 45, inclusive, are herein incorporated
28 by reference.

85. The foregoing conduct of Defendants individually, or by and through their officers, directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

86. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

FIFTH CAUSE OF ACTION

FOR FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS

IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.

AGAINST DEFENDANT APPS AND DOES 1-20, INCLUSIVE

87. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41, inclusive, as though set forth in full herein.

88. At all times hereto, the FEHA, including in particular Government Code §12940(m), was in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty on Defendants to make reasonable accommodation for the known physical disability and/or medical condition of an employee.

89. At all relevant times, Plaintiff was a member of a protected class within the meaning of, in particular, Government Code §§12940(a) & 12986(1) et seq. because Plaintiff had a disability, a physical condition that affected Plaintiff's major life activities, and medical condition of which Defendants had both actual and constructive knowledge.

90. At all times herein, Plaintiff was willing and able to perform the duties and functions of the position in which Plaintiff was employed, or could have performed the duties and functions of that position with reasonable accommodations. At no time would the performance of the functions of the employment position, with a reasonable accommodation for Plaintiff's disability or medical condition, actual or as it was perceived by Defendants, have been a danger to Plaintiff's or any other person's health

1 or safety. Accommodation of Plaintiff's disability or disability or medical condition, real or perceived
2 by Defendants, would not have imposed an undue hardship on Defendants. Defendants failed and refused
3 to accommodate Plaintiff's disability, failed to engage in the interactive process with Plaintiff and
4 continue to violate this obligation, up to and including the date of Plaintiff's termination or, if Defendant
5 contends Plaintiff was never terminated, through the present and ongoing.

6 91. The above said acts of Defendants constitute violations of the FEHA, and were a
7 proximate cause in Plaintiff's damage as stated below.

8 92. The damage allegations of Paragraphs 42 through 45, inclusive, are herein incorporated
9 by reference.

10 93. The foregoing conduct of Defendants individually, and/or by and through their officers,
11 directors, and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
12 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
13 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
14 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
15 punitive damages in an amount appropriate to punish or make an example of Defendants.

16 94. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
17 attorneys' fees and costs, including expert fees pursuant to the FEHA.

18
19 **SIXTH CAUSE OF ACTION**
20 **FOR FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS**
21 **IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
22 **AGAINST DEFENDANT APPS AND DOES 1-20, INCLUSIVE**

23 95. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41, inclusive, as
24 though set forth in full herein.

25 96. At all times hereto, the FEHA, including in particular Government Code §12940(n), was
26 in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty on
27 Defendants to engage in a timely, good faith, interactive process with the employee to determine effective
28 reasonable accommodations, if any, in response to a request for reasonable accommodation by an

1 employee with a known physical disability or known medical condition and/or becoming aware of the
2 employee's need for accommodation.

3 97. At all relevant times, Plaintiff was a member of a protected class within the meaning of,
4 in particular, Government Code §§12940(a) & 12986(1) et seq. because Plaintiff had a physical disability
5 that affected Plaintiff's major life activities, and medical condition of which Defendants had both actual
6 and constructive knowledge.

7 98. Plaintiff reported the disability to Defendants and requested accommodation, triggering
8 Defendants' obligation to engage in the interactive process with Plaintiff, but at all times herein,
9 Defendants failed and refused to do so. Thereafter, despite Defendants continuing obligation to engage
10 in the interactive process with Plaintiff, despite Plaintiff's submission of a doctors' notes identifying
11 Plaintiff's condition and Plaintiff's desire to continue working in some capacity, Defendants failed and
12 refused to have any dialogue with Plaintiff whatsoever, on any of these occasions, and Defendants
13 violated, and continued to violate this obligation up to and including the date of Plaintiff's termination
14 or, if Defendant contends Plaintiff was never terminated, through the present and ongoing.

15 99. The above said acts of Defendants constitute violations of the FEHA, and were a
16 proximate cause in Plaintiff's damage as stated below.

17 100. The damage allegations of Paragraphs 42 through 45, inclusive, are herein incorporated
18 by reference.

19 101. The foregoing conduct of Defendants individually, and/or by and through their officers,
20 directors, and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
21 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
22 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
23 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
24 punitive damages in an amount appropriate to punish or make an example of Defendants.

25 102. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
26 attorneys' fees and costs, including expert fees pursuant to the FEHA.

SEVENTH CAUSE OF ACTION
FOR WRONGFUL TERMINATION
IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA
AGAINST DEFENDANT APPS AND DOES 1-20, INCLUSIVE

103. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41, inclusive, as though set forth in full herein.

104. At all relevant times mentioned in this complaint, the FEHA was in full force and effect and was binding on Defendants. This law requires Defendants to refrain, among other things, from discriminating against any employee on the basis of disability (real or perceived) and/or medical condition (real or perceived), use of or anticipated use of medical leave, request for accommodation, and/or engagement in protected activities, and/or some combination of these protected characteristics, and from retaliating against any employee who engages in protected activity.

105. At all times mentioned in this complaint, it was a fundamental policy of the State of California that Defendants cannot discriminate and/or retaliate against any employee on the basis of disability (real or perceived) and/or medical condition (real or perceived), use of or anticipated use of medical leave, request for accommodation, and/or engagement in protected activities, and/or some combination of these protected characteristics.

106. Plaintiff believes and thereon alleges that Plaintiff's disability (real or perceived) and/or medical condition (real or perceived), use of or anticipated use of medical leave, request for accommodation, and/or engagement in protected activities, and/or some combination of these protected characteristics, were factors in Defendants' conduct as alleged hereinabove.

107. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's employment on the basis of disability (real or perceived) and/or medical condition (real or perceived), use of or anticipated use of medical leave, request for accommodation, Plaintiff's complaining of harassment and discrimination due to these protected classes, Plaintiff's engagement in protected activity, and/or some combination of these factors, were a proximate cause in Plaintiff's damages as stated below.

1 108. The above said acts of Defendants constitute violations of the Government Code and
2 the public policy of the State of California embodied therein as set forth above. Defendants violated
3 these laws by discriminating, harassing, and retaliating against Plaintiff and terminating Plaintiff's
4 employment in retaliation for exercise of protected rights.

5 109. At all times mentioned in this complaint, it was a fundamental policy of the State of
6 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of
7 medical leave and in violation of FEHA.

8 110. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's status as
9 a protected member of the class under FEHA was a proximate cause in Plaintiff's damages as stated
10 below.

11 111. The damage allegations of Paragraphs 42 through 45, inclusive, are herein incorporated
12 by reference.

13 112. The foregoing conduct of Defendants individually, or by and through their officers,
14 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
15 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
16 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
17 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
18 punitive damages in an amount appropriate to punish or make an example of Defendants.

19
20 **EIGHTH CAUSE OF ACTION**
21 **FOR DECLARATORY JUDGMENT**
22 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

23 113. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 112, inclusive, as
24 though set forth in full herein.

25 114. Government Code §12920 sets forth the public policy of the State of California as follows:

26 It is hereby declared as the public policy of this state that it is necessary to protect and
27 safeguard the right and opportunity of all persons to seek, obtain, and hold employment
28 without discrimination or abridgment on account of race, religious creed, color, national
 origin, ancestry, physical disability, mental disability, medical condition, genetic
 information, marital status, sex, gender, gender identity, gender expression, age, or
 sexual orientation.

1 It is recognized that the practice of denying employment opportunity and discriminating
2 in the terms of employment for these reasons foments domestic strife and unrest,
3 deprives the state of the fullest utilization of its capacities for development and
4 advancement, and substantially and adversely affects the interests of employees,
5 employers, and the public in general.

6 Further, the practice of discrimination because of race, color, religion, sex, gender,
7 gender identity, gender expression, sexual orientation, marital status, national origin,
8 ancestry, familial status, source of income, disability, or genetic information in housing
9 accommodations is declared to be against public policy.

10 It is the purpose of this part to provide effective remedies that will eliminate these
11 discriminatory practices.

12 This part shall be deemed an exercise of the police power of the state for the protection
13 of the welfare, health, and peace of the people of this state.

14 115. Government Code §12920.5 embodies the intent of the California legislature and states:

15 In order to eliminate discrimination, it is necessary to provide effective remedies that
16 will both prevent and deter unlawful employment practices and redress the adverse
17 effects of those practices on aggrieved persons. To that end, this part shall be deemed an
18 exercise of the Legislature's authority pursuant to Section 1 of Article XIV of the
19 California Constitution.

20 116. Moreover, Government Code §12921, subdivision (a) says in pertinent part:

21 The opportunity to seek, obtain, and hold employment without discrimination because of
22 race, religious creed, color, national origin, ancestry, physical disability, mental
23 disability, medical condition, genetic information, marital status, sex, gender, gender
24 identity, gender expression, age, or sexual orientation is hereby recognized as and
25 declared to be a civil right.

26 117. An actual controversy has arisen and now exists between Plaintiff and Defendants
27 concerning their respective rights and duties as it is believed that Defendants may allege that they did not
28 discriminate and retaliate against Plaintiff; that Plaintiff was not terminated as a result of Plaintiff's
disability (real or perceived) and/or medical condition (real or perceived), use of or anticipated use of
medical leave, request for accommodation, Plaintiff's complaining of harassment and discrimination due
to these protected classes, Plaintiff's engagement in protected activity, and/or some combination of these
factors. Plaintiff contends that Defendants did discriminate and retaliate against Plaintiff on the basis of
Plaintiff's disability (real or perceived) and/or medical condition (real or perceived), use of or anticipated
use of medical leave, request for accommodation, Plaintiff's complaining of harassment and
discrimination due to these protected classes, Plaintiff's engagement in protected activity, and/or some

1 combination of these factors; and that Plaintiff was retaliated against and, ultimately wrongfully
2 terminated as a result of Plaintiff's disability (real or perceived) and/or medical condition (real or
3 perceived), use of or anticipated use of medical leave, request for accommodation, Plaintiff's
4 complaining of harassment and discrimination due to these protected classes, Plaintiff's engagement in
5 protected activity, and/or some combination of these factors. Plaintiff is informed and believes, and on
6 that basis alleges, that Defendants shall dispute Plaintiff's contentions.

7 118. Pursuant to Code of Civil Procedure §1060, Plaintiff desires a judicial determination of
8 Plaintiff's rights and duties, and a declaration that Defendants harassed Plaintiff on the basis of Plaintiff's
9 disability (real or perceived) and/or medical condition (real or perceived), use of or anticipated use of
10 medical leave, request for accommodation, Plaintiff's complaining of harassment and discrimination due
11 to these protected classes, Plaintiff's engagement in protected activity, and/or some combination of these
12 factors.

13 119. Pursuant to Code of Civil Procedure §1060, Plaintiff seeks a judicial determination of
14 Plaintiff's rights and duties, and a declaration that Plaintiff's disability (real or perceived) and/or medical
15 condition (real or perceived), use of or anticipated use of medical leave, request for accommodation,
16 Plaintiff's complaining of harassment and discrimination due to these protected classes, Plaintiff's
17 engagement in protected activity, and/or some combination of these factors was a substantial motivating
18 factor in the decision to subject Plaintiff to the aforementioned adverse employment actions.

19 120. A judicial declaration is necessary and appropriate at this time under the circumstances in
20 order that Plaintiff, for Plaintiff and on behalf of employees in the State of California and in conformity
21 with the public policy of the State, obtain a judicial declaration of the wrongdoing of Defendants and to
22 condemn such discriminatory employment policies or practices prospectively. *Harris v. City of Santa*
23 *Monica* (2013) 56 Cal.4th 203.

24 121. A judicial declaration is necessary and appropriate at this time such that Defendants may
25 also be aware of their obligations under the law to not engage in discriminatory practices and to not
26 violate the law in the future.

27 122. Government Code §12965(b) provides that an aggrieved party, such as the Plaintiff herein,
28 may be awarded reasonable attorney's fees and costs: "In civil actions brought under this section, the

1 court, in its discretion, may award to the prevailing party, including the department, reasonable attorney's
2 fees and costs, including expert witness fees." Such fees and costs expended by an aggrieved party may
3 be awarded for the purpose of redressing, preventing, or deterring discrimination and harassment.

4
5 **NINTH CAUSE OF ACTION**
6 **FOR FAILURE TO PAY WAGES DUE IN VIOLATION OF**
7 **LABOR CODE §§201, 226.7, 512, 221**
8 **AGAINST DEFENDANT APPS AND DOES 1-20, INCLUSIVE**

9 123. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41, inclusive, as
10 though set forth in full herein.

11 124. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8
12 Code of Regulations §11040, and Industrial Welfare Commission Order No. 4-2001.

13 125. Plaintiff has been deprived of Plaintiff's rightfully earned compensation as a direct and
14 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to
15 recover such amounts, plus interest thereon, attorneys' fees and costs.

16 126. Defendants also violated Labor Code §§ 204 and 223 when they failed to pay Plaintiff
17 wages for all hours worked paid at least twice during each calendar month to employees as required "by
18 contract" under Labor Code section 223, as well as an improper collection of wages paid to an employee
19 under Labor Code section 221. *Gonzales v. Downtown LA Motors*, 215 Cal. App. 4th 36 (2d App. Dist.
20 Mar. 6, 2013). In addition, throughout Plaintiff's employment, Defendants violated Labor Code §221 by
21 collecting and/or receiving from Plaintiff, part of her wages paid by Defendants.

22 127. Labor Code §558(a) provides that any person acting on behalf of an employer who
23 violates, or causes to be violated, any statute or provision regulating hours and days of work in any order
24 of the Industrial Welfare Commission pay a civil penalty in the amount of \$50 for each underpaid
25 employee for each pay period in which the employee was underpaid in addition to an amount sufficient
26 to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the person acting
27 on behalf of an employer is liable in the amount of \$100 for each underpaid employee for each pay period
28 for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

1 128. In addition to the unpaid wages, Plaintiff is entitled to civil penalties in this amount stated
2 above based upon Defendants' underpayment of wages and in violation of Labor Code §§ 226.7, 512,
3 1030, *et seq.* Within the one year immediately preceding the filing of this Complaint, Defendants, and
4 each of them, violated Labor Code §558 on 16 pay periods, the first of which Defendants are penalized
5 \$50.00, and the remainder of which Defendants are penalized \$100.00 each, for a total due in Labor Code
6 §558 penalties of at least \$2,550.00.

7
8 **TENTH CAUSE OF ACTION**
9 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
10 **IN VIOLATION OF LABOR CODE §§226.7, 512**
11 **AGAINST DEFENDANT APPS AND DOES 1-20, INCLUSIVE**

12 129. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41, inclusive, as
13 though set forth in full herein.

14 130. Labor Code §512 requires employers to provide every employee with an uninterrupted
15 meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

16 131. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted
17 rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion
18 thereof.

19 132. In the four years last past, Plaintiff regularly worked in excess of 8 hours per day, and was
20 thereby entitled to take an uninterrupted 30-minute meal periods and two 10-minute rest periods on each
21 day of work.

22 133. Defendants failed and refused to provide Plaintiff with uninterrupted rest and meal
23 periods, and failed to compensate Plaintiff for missed or uninterrupted meal and rest periods, as required
24 by Labor Code §§226.7 and the applicable sections of 8 Code of Regulations §11040 and Industrial
25 Welfare Commission Order No. 4-2001.

26 134. During the Claim Period, Plaintiff was not permitted and not advised of her right to take
27 one or more of her statutory 10-minute rest periods nor her 30-minute meal breaks for days on which
28 Plaintiff worked for at least five hours, which was each day she worked.

1 135. As alleged herein, Plaintiff is not exempt from the rest break requirements of 8 Code of
2 Regulations §11040 and Industrial Welfare Commission Order No. 4-2001. Consequently, Plaintiff is
3 owed one hour of pay at her then regular hourly rate, or the requisite minimum wage, whichever is greater,
4 for each day that he was denied such rest and meal periods.

5 136. Plaintiff has been deprived of her rightfully earned compensation for meal and rest breaks
6 as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

7 137. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
8 such amounts in the amount according to proof, pursuant to Labor Code §226.7(b), plus interest thereon
9 and costs of suit.

10
11
12 **ELEVENTH CAUSE OF ACTION**
13 **FOR FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES**
14 **LABOR CODE §2802**
15 **AGAINST DEFENDANT APPS AND DOES 1-20, INCLUSIVE**

16 138. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41, inclusive, as
17 though set forth in full herein.

18 139. Pursuant to Labor Code §450(a), "no employer...may compel or coerce any employee...to
19 patronize his or her employer, or any other person, in the purchase of any thing of value."

20 140. Pursuant to Labor Code §2802(a), "an employer shall indemnify his or her employee for
21 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
22 his or her duties, or of his or her obedience to the directions of the employer."

23 141. Plaintiff was required by Defendants to expend Plaintiff's personal funds because of the
24 duties required by Defendants, as alleged hereinabove.

25 142. Pursuant to Labor Code §2802(a), Defendants are legally required to reimburse Plaintiff
26 for all necessary expenditures incurred in the performance of Plaintiff's duties.

27 143. Defendants have failed and refused to reimburse Plaintiff for all necessary business
28 expenditures, including: home internet, personal cell phone, and personal computer use.

1 144. As a proximate result of the aforementioned violations of Labor Code §§450(a) and
2 2502(a), Plaintiff is entitled to recover from Defendants the unpaid balance of all of the necessary
3 aforementioned expenditures.

4 145. As a proximate result of the aforementioned violations of Labor Code §§450(a) and
5 2502(a), Plaintiff has been damaged in an amount according to proof at the time of trial.

6 146. Pursuant to Labor Code §2802(b), Plaintiff requests that the Court award interest at the
7 same rate as judgments in civil actions, accruing from the date on which Plaintiff incurred the necessary
8 expenditure or loss.

9 147. Pursuant to Labor Code §2802(c), Plaintiff requests that the Court award Plaintiff
10 reasonable attorneys' fees and costs incurred in this action.

11
12 **TWELFTH CAUSE OF ACTION**
13 **FOR FAILURE TO PROVIDE AN ACCURATE ITEMIZED WAGE STATEMENT IN**
14 **VIOLATION OF LABOR CODE §§ 226, 1174**
15 **AGAINST DEFENDANT APPS AND DOES 1-20, INCLUSIVE**

16 148. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41, inclusive, as
17 though set forth in full herein.

18 149. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
19 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
20 total deductions and net wages earned. An employer who violates these code sections is liable to its
21 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the
22 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
23 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
24 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
25 at all.

26 150. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates
27 Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation
28 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

1 151. At all relevant times, Defendants failed to provide Plaintiff with timely and accurate wage
2 and hour statements showing gross wages earned, total hours worked, all deductions made, net wages
3 earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and rates in
4 effect during each pay period and the corresponding number of hours worked at each hourly rate by
5 Plaintiff.

6 152. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

7 153. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
8 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
9 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
10 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
11 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
12 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
13 meal period, and rest period wages.

14 154. Plaintiff was paid on a bi-weekly basis, and therefore Defendants violated Labor Code
15 §226 approximately sixteen (16) times during the last year that Plaintiff worked for Defendants.
16 Consequently, Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory
17 maximum amount of \$4,000.00, whichever is greater.

18 155. In addition, thereto, Plaintiff is entitled civil penalties pursuant to Labor Code §226.3 in
19 the amount of \$20,000.00 (\$250.00 + \$1,000.00 x 16 subsequent pay periods).

20 156. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
21 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
22 applicable provisions, as well as attorneys' fees and costs.

1 **THIRTEENTH CAUSE OF ACTION**

2 **FOR WAITING TIME PENALTIES**

3 **LABOR CODE §§201-203**

4 **AGAINST DEFENDANT APPS AND DOES 1-20, INCLUSIVE**

5 157. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41, inclusive, as
6 though set forth in full herein.

7 158. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
8 other compensation due immediately upon termination or within 72 hours of resignation, as required.
9 These wages refer to, at a minimum, meal and rest period compensation that Defendants should have
10 paid, but did not pay to Plaintiff during the term of her employment and which were, at the latest, due
11 within the time restraints of Labor Code §§201-203.

12 159. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
13 203.

14 160. As a direct and proximate result of Defendants' willful failure to pay these wages,
15 Plaintiff is entitled to payment of her underpaid wages meal and rest periods as previously pleaded
16 herein, and more than \$4,018.50 in wait time penalties, calculated based on 30 days of a regular daily
17 wage of approximately \$133.95, including wages for missed meal and rest periods.

18 161. Based on Defendants' conduct as alleged herein, Defendants are liable for \$4,018.50 in
19 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
20 fees and costs.

21 **FOURTEENTH CAUSE OF ACTION**

22 **FOR PRIVATE ATTORNEY GENERAL ACT**

23 **LABOR CODE §2699**

24 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

25 162. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 161, inclusive, as
26 though set forth in full herein.
27
28

163. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties for Defendants' violations of the California Labor Code.

164. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as previously pleaded in this Complaint.

165. On August 22, 2023, more than 65 calendar days before filing this Complaint, Plaintiff provided written notice by certified mail to the Labor and Workforce Development Agency and to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a). This Complaint include violations of Labor Code §§ 98.6, 201.3, 202, 203, 204, 221, 223, 226, 226.7, 227.3, 246, 510, 512, 551, 552, 1102.5, 1102.6, 1030, 2802, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

166. Here, Plaintiff's civil action alleges violations of provisions listed in Labor Code §2699.5 and violations of provisions other than those listed in Labor Code §2699.5. As such, Labor Code §2699.3(a) and §2699.3(c) apply to this action.

167. As of the filing of this Complaint, Plaintiff has not received any response from the Labor and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

168. Further, as of the filing of this Complaint, Plaintiff has not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of the actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor Code §2699.

PENALTIES

169. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) (or any of its departments, divisions, commissions, board agency or employees), such

1 civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved
2 employee on behalf of himself or herself and other current or former employees) and Labor Code
3 §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which
4 a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil
5 penalties, as follows:

6 a) As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor
7 Code except for those for which a civil penalty is specifically provided, in the amount of one hundred
8 dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two hundred dollars
9 (\$200.00) for each aggrieved employee per pay period for each subsequent violation, including those
10 violations notated in Paragraph 1-38.

11 b) As applicable, civil penalties under Labor Code §558 (in addition to and entirely
12 independent and apart from any other penalty provided for in the Labor Code), for violations of Labor
13 Code §§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the
14 aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and
15 \$100 for each subsequent violation for each underpaid employee for each pay period for which the
16 employee was underpaid; and also an additional amount sufficient to recover under paid wages as
17 penalties, with all wages recovered pursuant to Labor Code §557 paid to the aggrieved employees.
18 Plaintiff is entitled to recover approximately \$2,550 for civil penalties, including for violations under
19 Labor Code §§ 226.7, 512, 1030. Plaintiff is also able to collect an additional penalty to be distributed
20 to the other aggrieved employees in an amount according to proof;

21 c) As applicable, civil penalties under Labor Code §225.5 (in addition to and entirely
22 independent and apart from any other penalty provided in the Labor Code) for violations of Labor Code
23 § 221 and 223, in the amount of \$100 for each underpaid aggrieved employee for each pay period the
24 aggrieved employee was underpaid, and \$200 for each subsequent violation or any willful or intentional
25 violation, for each underpaid aggrieved employees regardless of whether the initial violation was
26 intentionally committed, in addition to 25 percent of the amount unlawfully withheld;

27 d) As applicable, civil penalties under Labor Code §210 (in addition to and entirely
28 independent and apart from any other penalty provided in the Labor Code), for each employee who is/was

1 not paid wages in accordance with Labor Code §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5,
2 in the amount of a civil penalty of \$100 for each aggrieved employee per pay period for each initial
3 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, plus 25
4 percent of the amount unlawfully withheld;

5 e) As applicable, civil penalties under Labor Code §2802 (in addition to and entirely
6 independent and apart from any other penalty provided in the Labor Code), for each violation of Labor
7 Code §2802, in the amount of \$100 for each aggrieved employee per pay period for each violation; and
8 \$200 for each aggrieved employee per pay period for each subsequent violation;

9 f) As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely
10 independent and apart from any other civil penalty provided in the Labor Code), for each violation of
11 Labor Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation
12 and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

13 g) As applicable, civil penalties under Labor Code §§203 and/or 256 (in addition to and
14 entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved
15 employee who was discharged or quit, and was not paid all earned wages at termination in accordance
16 with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay,
17 at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum
18 of thirty (30) days; and

19 h) As applicable, any and all additional applicable civil penalties and sums as provided by
20 the Labor Code and/or other relevant statutes.

21 170. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all penalties
22 obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and
23 employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%)
24 to the aggrieved employees.

25 171. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek
26 recovery of pre-judgment interest on all amounts recovered herein.

27 172. As a direct and proximate result of Defendants' California Labor Code violations as set
28 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per

1 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
2 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
3 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
4 provide for a penalty, §§203, 210, 225.5, 226.3, 226.7, 510, 512, 558, and 1030.

5 173. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek
6 recovery of pre-judgment interest on all amounts recovered herein.

7 174. Further, Plaintiff is entitled; to recover reasonable attorneys' fees and costs pursuant to
8 Labor Code §§2699(g)(1) and any other applicable statute.

9
10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff seeks judgment against Defendants and each of them, in an amount
12 according to proof but estimated to be no less than \$5,000,000 as follows:

13 175. For a money judgment representing compensatory damages including lost wages,
14 earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money,
15 together with interest on these amounts; for other special damages; and for general damages for mental
16 pain and anguish and emotional distress and loss of earning capacity;

17 176. For payment failure to pay wages due pursuant to Labor Code §§201, 221, 226.7, 227.3,
18 512, 1030, and Industrial Welfare Commission Order No. 4-2001, and 8 Code of Regulations §11040,
19 in the amount according to proof;

20 177. For statutory penalties and damages pursuant to Labor Code §558 in the amount of no less
21 than \$2,550.00;

22 178. For payment of missed meal and rest period compensation pursuant to Labor Code
23 §§226.7, 512 in the amount according to proof;

24 179. For damages pursuant to Labor Code §221 in the amount according to proof;

25 180. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;

26 181. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
27 less than \$25,250.00;

1 182. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
2 than \$4,018.50;

3 183. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely
4 independent and apart from other penalties in the Labor Code and for Labor Code violations without a
5 specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each
6 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

7 184. For civil penalties under Labor Code §210, in addition to and entirely independent and
8 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
9 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
10 each subsequent violation, plus 25 percent of the amount unlawfully withheld;

11 185. For civil penalties under Labor Code §2802, in addition to and entirely independent and
12 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
13 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
14 each subsequent violation;

15 186. For civil penalties under Labor Code §§ 210 and 225.5, in addition to and entirely
16 independent and apart from any other penalty provided in the Labor Code, for each violation of Labor
17 Code §§204, 221 and 223, in the amount of \$100 for each aggrieved employee per pay period for each
18 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation or for
19 each willful or intentional violation, in addition to 25 percent of the amount unlawfully withheld;

20 187. For civil penalties under Labor Code §226.3, in addition to and entirely independent
21 and apart from any other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved
22 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period
23 for each subsequent violation;

24 188. For civil penalties under Labor Code §§203 and/or 256, in addition to and entirely
25 independent and apart from any other penalty provided in the Labor Code, in the amount of one day of
26 pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination,
27 until payment was/is made, up to a maximum of thirty (30) days;

28

1 189. For prejudgment interest on all amounts recovered herein pursuant to Labor Code
2 §218.6, Labor Code §1194(a), and/or Civil Code §3287;

3 190. For reasonable attorneys' fees and costs incurred pursuant to Labor Code §2699(g)(1)
4 and any other applicable statute; and

5 191. For prejudgment interest on each of the foregoing at the legal rate from the date the
6 obligation became due through the date of judgment in this matter.

7 **WHEREFORE**, Plaintiff further seeks judgment against Defendants, and each of them, in an
8 amount according to proof, as follows:

9 192. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
10 condemning Defendants' discriminatory practices;

11 193. For injunctive relief barring Defendants' discriminatory employment policies and
12 practices in the future, and restoring Plaintiff to Plaintiff's former position with Defendants;

13 194. For punitive damages, pursuant to Civil Code §§3294 in amounts sufficient to punish
14 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

15 195. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, Labor
16 Code and/or any other basis;

17 196. For post-judgment interest; and

18 197. For any other relief that is just and proper.

19
20 DATED: October 24, 2023

GUERRA & CASILLAS LLP

21
22 By: 

23 Ruben Guerra Esq.
24 Tizoc Perez-Casillas, Esq.
25 Attorney for Plaintiff
26 ADRIANA AGUILAR
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JURY TRIAL DEMANDED

Plaintiff demands trial of all issues by jury.

DATED: October 24, 2023

GUERRA & CASILLAS LLP

By:



Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorney for Plaintiff
ADRIANA AGUILAR