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LEAH RABINOWITZ

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

LEAH RABINOWITZ, an individual

Plaintiff,

v.

LEMONLIGHT MEDIA, INC., a California
corporation; and DOES 1- 50, Inclusive,

Defendants.

FILED
Superior Court of California
County of Los Angeles
10/06/2023
David W. Slayton, Executive Officer / Clerk of Court
By: A. Maglalang Deputy

CASE NO.: 23STCV18822

FIRST AMENDED COMPLAINT FOR:

- 1. Disability Discrimination in Violation of the FEHA (Cal. Govt. Code § 12940(a))**
- 2. Failure to Prevent Discrimination and Retaliation in Violation of the FEHA (Cal. Govt. Code § 12940(k))**
- 3. Failure to Engage in the Interactive Process in Violation of the FEHA (Cal. Govt. Code § 12940(n))**
- 4. Failure to Provide Reasonable Accommodations in Violation of the FEHA (Cal. Govt. Code § 12940(m)(1))**
- 5. Retaliation in Violation of the FEHA (Cal. Govt. Code § 12940(h))**
- 6. Retaliation in Violation of Labor Code § 232.5**
- 7. Wrongful Termination in Violation of Public Policy**

8. Failure to Pay Wages for All Hours Worked (Cal. Labor Code §§ 1194 and 1197);
9. Failure to Pay Overtime Wages (Cal. Labor Code §§ 510, 558 and Wage Order 12);
10. Failure to Provide Meal Periods (Cal. Labor Code §§ 226.7, 512, and Wage Order 12);
11. Failure to Provide Rest Periods (Cal. Labor Code § 226.7 and Wage Order 12);
12. Failure to Furnish Timely and Accurate Wage Statements (Cal. Labor Code § 226.7 and Wage Order 12);
13. Failure to Pay All Compensation Due Upon Discharge (Cal. Labor Code §§ 201-203)
14. Private Attorneys General Act (L.C. §§ 2698, et seq.)

DEMAND FOR A JURY TRIAL

1. Plaintiff LEAH RABINOWITZ (“Plaintiff”), an individual, hereby submits this First Amended Complaint against Defendants LEMONLIGHT MEDIA, INC. (“Lemonlight” or the “Company”), a California corporation, and DOES 1 through 50, inclusive (collectively, “Defendants”), and each of them, and alleges as follows:

PARTIES

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

3. Defendant LEMONLIGHT MEDIA, INC. (“Lemonlight” or the “Company”) is a California Corporation. At all times relevant hereto, Defendant does business and employs individuals in the County of Los Angeles, State of California.

4. Defendants are Plaintiff's employer within the meaning of Government Code §§ 12926(d), 12940 (a), (h), (l), (h) (3) (A) and (i), and 12950, and regularly employs five (5) or more persons and is therefore subject to the jurisdiction of this Court.

5. The true names and capacities, whether individual, corporate, associate, or otherwise of the Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this Complaint to insert the true names and capacities of said Defendants when the same become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of the fictitiously-named Defendants is responsible for the wrongful acts alleged herein and is therefore liable to Plaintiff as alleged hereinafter.

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

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1 7. Plaintiff is informed and believes, and based thereupon alleges, that Defendants,
2 and each of them, including those Defendants named DOES 1-50, acted in concert with one
3 another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled, and/or
4 coerced one another in the wrongful acts alleged herein, and/or attempted to do so. Plaintiff is
5 further informed and believes, and based thereupon alleges, that the Defendants, and each of them,
6 including those Defendants named as DOES 1-50, formed and executed a conspiracy or common
7 plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts
8 alleged herein done as part of and pursuant to said conspiracy, intended to and actually causing
9 Plaintiff harm.

10 8. Whenever and wherever reference is made in this Complaint to any act or failure
11 to act by a Defendant or co-Defendant, such allegations and references shall also be deemed to
12 mean the acts and/or failures to act by each Defendant acting individually, jointly and severally.

13 9. Plaintiff has filed a complaint under Government Code Section 12940 *et seq.*, the
14 California Fair Employment and Housing Act (“FEHA”), with the California Civil Rights
15 Department (“CRD”) and has satisfied Plaintiff’s administrative prerequisites with respect to these
16 and all related filings.

17 **ALTER EGO, AGENCY, AND JOINT EMPLOYER**

18 10. Plaintiff is informed and believes, and based thereon alleges, that there exists such
19 a unity of interest and ownership between Defendants and DOES 1-50 that the individuality and
20 separateness of Defendants have ceased to exist.

21 11. Plaintiff is informed and believes, and based thereon alleges, that despite the
22 formation of purported corporate existence, DOES 1-50 are, in reality, one and the same as
23 Defendants, including, but not limited to because:

24 a. Defendants are completely dominated and controlled by DOES 1-50, who
25 personally violated the laws as set forth in this complaint, and who have hidden and
26 currently hid behind Defendants to circumvent statutes or accomplish some other wrongful
27 or inequitable purpose.

1 b. DOES 1-50 derive actual and significant monetary benefits by and through
2 Defendants' unlawful conduct, and by using Defendants as the funding source for their
3 own personal expenditures.

4 c. Plaintiff is informed and believes that Defendants and DOES 1-50, while
5 really one and the same, were segregated to appear as though separate and distinct for
6 purposes of circumventing a statute or accomplishing some other wrongful or inequitable
7 purpose.

8 d. Plaintiff is informed and believes that Defendants do not comply with all
9 requisite corporate formalities to maintain a legal and separate corporate existence.

10 e. Plaintiff is informed and believes, and based thereon alleges, that the
11 business affairs of Defendants and DOES 1-50 are, and at all times relevant were, so mixed
12 and intermingled that the same cannot reasonably be segregated, and the same are in
13 inextricable confusion. Defendants are, and at all times relevant hereto were, used by
14 DOES 1-50 as a mere shell and conduit for the conduct of certain of Defendants' affairs,
15 and are, and were, the alter ego of DOES 1-50. The recognition of the separate existence
16 of Defendants would not promote justice, in that it would permit Defendants to insulate
17 themselves from liability to Plaintiff for violations of the Government Code, Labor Code,
18 and other statutory violations. The corporate existence of Defendants and DOES 1-50
19 should be disregarded in equity and for the ends of justice because such disregard is
20 necessary to avoid fraud and injustice to Plaintiff herein.

21 12. Accordingly, Defendants constitute the alter ego of DOES 1-50, and the fiction of
22 their separate corporate existence must be disregarded.

23 13. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
24 thereon alleges that Defendant and DOES 1-50 are Plaintiff's joint employers by virtue of a joint
25 enterprise, and that Plaintiff was an employee of Defendants and DOES 1-50. Plaintiff performed
26 services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all
27 Defendants shared control of Plaintiff as an employee, either directly or indirectly, in the manner
28 in which Defendants' business was and is conducted.

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15. This Complaint seeks all penalties recoverable pursuant to PAGA for all Aggrieved Employees as identified to have suffered the violations described in the Notice letter and as further identified herein.

16. Plaintiff was an Account Executive at Lemonlight, where she handled revenue-generating accounts. She began working at Lemonlight on April 25, 2022.

18. Plaintiff's compensation package was \$80,000 base pay plus commission with quarterly bonuses in the amount of \$5,000 to \$10,000, and annual bonuses ranging from \$10,000 to \$25,000 based on meeting the quota.

20. Plaintiff's outstanding performance entailed long hours of work. At times, when she worked in the Inglewood office, Plaintiff would often leave late during the evening because she had to finish her work.

21. In July 2022, Plaintiff wrote an anonymous review of the Company through the Gusto website. Plaintiff complained about the long hours of work, and that the Company encourages employees to work excessive hours by sending emails at 10:00 p.m. She thought that

1 the Company might have recognized her writing style because she did copywriting as part of her
2 job.

3 22. On or about August 9, 2021 at around 5:00 p.m., Plaintiff, who was riding her
4 motorcycle, was hit by another vehicle.

5 23. At around 6:30 p.m., Plaintiff sent a text message to her manager, Hooman
6 Bargrizan, informing him about the accident and sent him photos of her broken motorcycle.
7 Plaintiff then informed Mr. Bargrizan that she could not come to work the next day because of this
8 accident and needed medical attention. Mr. Bargrizan did not reply until the next day at around
9 12:14 p.m.

10 24. On or about August 10, 2022, Plaintiff went to urgent care, and discovered that she
11 suffered from a concussion and numbness on her back.

12 25. On the same day until August 12, 2022, Plaintiff reassigned her active opportunities
13 and accounts to her co-workers. Plaintiff did so because Mr. Bargrizan notified her during a team
14 meeting that, if an employee called out sick, they had to reassign their upcoming meetings with
15 active opportunities. Plaintiff reassigned the accounts herself because her manager did not reassign
16 her accounts.

17 26. Plaintiff's access to both her work e-mail and office software was revoked after she
18 had reassigned all of her accounts to her co-workers.

19 27. While seeing her doctor, Plaintiff contacted Human Resources to obtain the correct
20 forms to file for leave. On August 16, 2022, Plaintiff submitted a leave of absence for one (1)
21 month and subsequently requested two (2) extensions because she needed more time to recover.
22 Plaintiff then submitted her first doctor's note to the Defendants.

23 28. During her leave, Plaintiff never received any communication from Mr. Bargrizan.

24 29. On or about September 20, 2022, Plaintiff submitted her second doctor's note to
25 request a two-week extension of her protected medical leave.

26 30. On September 21, 2022, Plaintiff received an e-mail from Ms. Renee Campbell, the
27 Human Resources Advisor of the Company, stating that the Company could not accommodate her
28 requested leave extension because her position is a revenue-generating role and critical to the

1 financial well-being of the Company. In the same e-mail, Ms. Campbell informed Plaintiff that
2 she was being terminated from work effective on that same date.

3 31. Defendants misclassified Plaintiff as an exempt, salaried employee. The nature of
4 Plaintiff's work did not meet the requirements for exemption under Wage Order 12 Section 1.

5 32. Defendant violated numerous Labor Code sections including failure to pay Plaintiff
6 all wages owed, including overtime, failure to provide meal and rest period premiums, and failure
7 to furnish accurate, itemized wage statements.

8 **FIRST CAUSE OF ACTION**

9 **DISABILITY DISCRIMINATION IN VIOLATION OF THE FEHA**

10 **(Against all Defendants)**

11 33. Plaintiff repeats and realleges all the preceding paragraphs as if they were fully set
12 forth herein and with the same full force and effect.

13 34. At all times relevant to this action, Defendants were an employer who regularly
14 employed five or more persons within the meaning of California Government Code § 12926(d).

15 35. At all times relevant to this action, Plaintiff was a member of a protected class
16 within the meaning of California Government Code §§ 12940(a), 12926(m), because of Plaintiff's
17 disability.

18 36. At all times relevant to this action, Defendants unlawfully discriminated against
19 Plaintiff, as previously alleged, on the basis of Plaintiff's membership in the protected class.

20 37. Defendants were substantially motivated to discriminate against and terminate
21 Plaintiff because of Plaintiff's membership in the protected class.

22 38. As a direct and proximate result, Plaintiff has suffered, and continues to suffer,
23 substantial losses in earnings and other benefits, and will for a period time in the future be unable
24 to obtain gainful employment, as Plaintiff's ability to obtain such employment and earning
25 capacity have been diminished. The exact amount of such expenses and losses is presently
26 unknown, and Plaintiff will seek leave of Court to amend this Complaint to set forth the exact
27 amount when it is ascertained.

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1 39. As a direct and proximate result of Defendants' conduct, Plaintiff suffered general
2 damages, as Plaintiff was psychologically injured. Such injuries have caused, and continue to
3 cause, Plaintiff great mental pain and suffering, in an amount more than this Court's minimal
4 jurisdiction.

5 40. As a direct and proximate result of Defendants' conduct, Plaintiff, for a period of
6 time in the future, will be required to employ physicians and incur additional medical and
7 incidental expenses. The exact amount of such expenses is presently unknown to Plaintiff and
8 Plaintiff will seek leave of Court to amend this Complaint to set forth the exact amount when it
9 has been ascertained.

10 41. Plaintiff is informed and believes, and thereon alleges that the employees, officers,
11 directors, and/or managing agents of Defendants acted with malice and oppression, as their
12 unlawful acts were carried out with full knowledge of the extreme risk of injury, involved, and
13 with willful and conscious disregard for Plaintiff's rights. They also acted fraudulently, as they
14 willfully concealed the fact that Plaintiff's employment rights were being violated, with the intent
15 to deprive Plaintiff of employment benefits. Accordingly, an award of punitive damages is
16 warranted.

17 42. Plaintiff is informed and believes and thereon alleges that the actions of
18 Defendants' employees, officers, directors, and/or managing agents were undertaken with the prior
19 approval, consent, and authorization of Defendants and were subsequently authorized and ratified
20 by it as well by the and through its officers, directors, and/or managing agents.

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

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF THE FEHA**

25 **(Against All Defendants)**

26 44. Plaintiff repeats and realleges all the preceding paragraphs as if they were fully set
27 forth herein and with the same full force and effect.

28 45. At all times hereto, the FEHA, including Government Code § 12940(k), was in full

1 force and effect and was binding upon Defendants. This subsection imposes a duty on Defendants
2 to take all reasonable steps necessary to prevent discrimination from occurring. As alleged above,
3 Defendants violated this subsection and breached their duty by failing to take all reasonable steps
4 necessary to prevent discrimination from occurring.

5 46. The above said acts of Defendants constitute violations of the FEHA and were a
6 proximate cause in Plaintiffs damage as stated below.

7 47. As a direct and proximate result, Plaintiff has suffered, and continues to suffer,
8 substantial losses in earnings and other benefits. The exact amount of such losses is presently
9 unknown, and Plaintiff will seek leave of Court to amend this Complaint to set forth the exact
10 amount when it is ascertained.

11 48. As a direct and proximate result of Defendants' conduct, Plaintiff suffered general
12 damages, as Plaintiff was psychologically injured. Such injuries have caused, and continue to
13 cause, Plaintiff great mental pain and suffering, in an amount more than this Court's minimal
14 jurisdiction.

15 49. As a direct and proximate result of Defendants' conduct, Plaintiff, for a period of
16 time in the future, will be required to employ physicians and incur additional medical and
17 incidental expenses. The exact amount of such expenses is presently unknown, and Plaintiff will
18 seek leave of Court to amend this Complaint to set forth the exact amount when it has been
19 ascertained.

20 50. Plaintiff is informed and believes, and thereon alleges that the employees, officers,
21 directors, and/or managing agents of Defendants acted with malice and oppression, as their
22 unlawful acts were carried out with full knowledge of the extreme risk of injury, involved, and
23 with willful and conscious disregard for Plaintiff's rights. They also acted fraudulently, as they
24 willfully concealed the fact that Plaintiff's employment rights were being violated, with the intent
25 to deprive Plaintiff of employment benefits. Accordingly, an award of punitive damages is
26 warranted.

27 51. Plaintiff is informed and believes and thereon alleges that the actions of
28 Defendants' employees, officers, directors, and/or managing agents were undertaken with the prior

approval, consent, and authorization of Defendants and were subsequently authorized and ratified by it as well by the and through its officers, directors, and/or managing agents.

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

THIRD CAUSE OF ACTION

FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN

VIOLATION OF THE FEHA

(Against all Defendants)

53. Plaintiff repeats and realleges all the preceding paragraphs as if they were fully set forth herein and with the same full force and effect.

54. At all times herein relevant, there was an employer/employee, agency, or other qualified relationship between plaintiff and the Defendants.

55. It is illegal to discriminate against an individual based upon actual/perceived disabilities pursuant to California Government Code section 12940 et seq.

56. Plaintiff was an individual with disabilities.

57. Plaintiff needed, and Defendants were aware of or should have known of the disabilities, and/or Plaintiff requested Defendants to provide a reasonable accommodation for the disabilities.

58. Defendants had an obligation to engage in good faith in the interactive process to determine an effective reasonable accommodation for these disabilities.

59. Defendants failed to engage timely in good faith in this interactive process.

60. Defendants have a pattern and practice of failing to engage in a good faith interactive process.

61. Moreover, Defendants' facially neutral policy of nondiscrimination in employment decisions have an unfavorable impact on those employees who are in a similar position to plaintiff.

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62. As a proximate result of Defendants' discrimination against plaintiff, plaintiff has suffered and continues to suffer substantial losses in earnings, and other employment and retirement benefits and has suffered and continues to suffer embarrassment, humiliation and mental anguish in an amount according to proof.

63. Defendants did the acts herein alleged maliciously, fraudulently and oppressively, amounting to despicable conduct, and in conscious disregard of Plaintiff's rights. The acts alleged herein were known to, authorized and ratified by Defendants. Plaintiff is thus entitled to recover punitive damages from Defendants, and each of them, in an amount according to proof.

64. As a result of Defendants' discriminatory acts as alleged herein, plaintiff is entitled to reasonable attorneys' fees and costs of said suit as provided by California Government Code section 12965, subsection (b).

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REASONABLE ACCOMMODATION IN

VIOLATION OF THE FEHA

(Against All Defendants)

65. Plaintiff repeats and realleges all the preceding paragraphs as if they were fully set forth herein and with the same full force and effect.

66. At all times herein relevant, there was an employer/employee, agency, or other qualified relationship between plaintiff and the Defendants.

67. It is illegal to discriminate against an individual based upon disabilities pursuant to California Government Code section 12940 et seq.

68. Plaintiff was an individual with disabilities and/or perceived disabilities.

69. Plaintiff needed, and Defendants were aware of or should have known of the disabilities, and/or Plaintiff requested Defendants to provide a reasonable accommodation for the disabilities.

70. Defendants did not provide a reasonable accommodation.

71. Defendants have a pattern and practice of failing to accommodate employees with disabilities.

1 72. Moreover, Defendants' facially neutral policy of nondiscrimination in employment
2 decisions have an unfavorable impact on those employees who are in a similar position to Plaintiff.

3 73. As a proximate result of Defendants' discrimination against Plaintiff, Plaintiff has
4 suffered and continues to suffer substantial losses in earnings, and other employment and
5 retirement benefits and has suffered and continues to suffer embarrassment, humiliation and
6 mental anguish all to an amount according to proof.

7 74. Defendants did the acts herein alleged maliciously, fraudulently and oppressively,
8 amounting to despicable conduct, and in conscious disregard of plaintiff's rights. The acts alleged
9 herein were known to, authorized and ratified by Defendants. Plaintiff is thus entitled to recover
10 punitive damages from Defendants, and each of them, in an amount according to proof.

11 75. As a result of Defendants' discriminatory acts as alleged herein, Plaintiff is entitled
12 to reasonable attorneys' fees and costs of said suit as provided by California Government Code
13 section 12965, subsection (b).

14 **FIFTH CAUSE OF ACTION**

15 **RETALIATION IN VIOLATION OF THE FEHA**

16 **(Against All Defendants)**

17 76. Plaintiff repeats and realleges all the preceding paragraphs as if they were fully set
18 forth herein and with the same full force and effect.

19 77. Plaintiff was at all times material hereto an employee covered by California
20 Government Code §12940 et seq. prohibiting retaliation under the FEHA.

21 78. Defendants were at all times material hereto an employer within the meaning of the
22 California Government Code and, as such, barred from retaliating against an employee for
23 exercising rights under the FEHA.

24 79. Plaintiff exercised rights under the FEHA.

25 80. Defendants wrongfully terminated Plaintiff's employment. A motivating factor in
26 the termination was Plaintiff's exercise of rights under the FEHA.

27 81. Defendants have a pattern and practice of retaliating against persons who exercise
28 rights under the FEHA.

1 82. Moreover, Defendants' facially neutral policy of nondiscrimination in employment
2 decisions has an unfavorable impact on those employees who are in a similar position to plaintiff.

3 83. As a proximate result of Defendants' retaliation against plaintiff, plaintiff has
4 suffered and continues to suffer substantial losses in earnings, and other employment and
5 retirement benefits and has suffered and continues to suffer embarrassment, humiliation and
6 mental anguish in an amount according to proof.

7 84. Defendants did the acts herein alleged maliciously, fraudulently and oppressively,
8 amounting to despicable conduct, and in conscious disregard of plaintiff's rights. The acts alleged
9 herein were known to, authorized and ratified by Defendants. Plaintiff is thus entitled to recover
10 punitive damages from Defendants, and each of them, in an amount according to proof.

11 85. As a result of defendants' retaliatory acts as alleged herein, Plaintiff is entitled to
12 reasonable attorneys' fees and costs of said suit as provided by California Government Code
13 section 12965, subsection (b).

14 **SIXTH CAUSE OF ACTION**

15 **RETALIATION IN VIOLATION OF CAL. LABOR CODE § 232.5**

16 **(Against All Defendants)**

17 83. Plaintiff repeats and realleges all the preceding paragraphs as if they were fully set
18 forth herein and with the same full force and effect.

19 84. California Labor Code section 232.5 prohibits an employer from discharging or
20 retaliating against an employee who discusses or discloses information about the employer's
21 working conditions.

22 85. At all times relevant hereto, Plaintiff was an employee of Defendants.

23 86. Plaintiff exercised his right to discuss his working conditions with and for
24 Defendants.

25 87. Defendants became aware of this discussion and retaliated against Plaintiff for
26 doing so.

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1 88. Defendants have a pattern and practice of retaliating against persons who exercise
2 these rights, in violation of Cal. Labor Code § 232.5.

3 89. As a proximate result of Defendants' retaliation against Plaintiff, Plaintiff has
4 suffered and continues to suffer substantial losses in earnings, and other employment and
5 retirement benefits and has suffered and continues to suffer embarrassment, humiliation and
6 mental anguish in an amount according to proof.

7 90. Defendants did the acts herein alleged maliciously, fraudulently and oppressively,
8 amounting to despicable conduct, and in conscious disregard of Plaintiff's rights. The acts alleged
9 herein were known to, authorized and ratified by Defendants. Plaintiff is thus entitled to recover
10 punitive damages from Defendants, and each of them, in an amount according to proof.

11 91. As a result of defendants' retaliatory acts as alleged herein, Plaintiff is entitled to
12 reasonable attorneys' fees and costs of said suit as provided by the California Labor Code.

13 **SEVENTH CAUSE OF ACTION**

14 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

15 **(Against All Defendants)**

16 92. Plaintiff repeats and realleges all the preceding paragraphs as if they were fully set
17 forth herein and with the same full force and effect.

18 93. At all times relevant to this action, Defendant was an employer who regularly
19 employed five or more persons within the meaning of California Government Code § 12926(d).

20 94. At all times relevant to this action, Plaintiff was employed by Defendant.

21 95. At all times relevant to this action, Defendants unlawfully subjected Plaintiff to
22 disability-related discrimination by not accommodating Plaintiff's request for disability leave
23 extension, and instead immediately terminated her. Plaintiff's physical disability was a substantial
24 motivating reason for Plaintiff's termination.

25 96. Additionally, Plaintiff was terminated in violation of the fundamental California
26 public policy of permitting employees to use sick leave free from retaliation and discrimination
27 pursuant to California Labor Code § 246.5(c)(1) which states that " An employer shall not deny
28 an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend,

or in any manner discriminate against an employee for using accrued sick days [or] attempting to exercise the right to use accrued sick days[.]”

97. As a direct and proximate result of Plaintiff’s wrongful termination in violation of the above public policies, Plaintiff has suffered, and continues to suffer, substantial losses in earnings and other benefits, and will for a period time in the future be unable to obtain gainful employment, as Plaintiff’s ability to obtain such employment and earning capacity have been diminished. The exact amount of such expenses and losses is presently unknown, and Plaintiff will seek leave of Court to amend this Complaint to set forth the exact amount when it is ascertained.

98. As a direct and proximate result of Defendant’s conduct, Plaintiff suffered general damages, as Plaintiff was psychologically injured. Such injuries have caused, and continue to cause, Plaintiff great mental pain and suffering, in an amount more than this Court’s minimal jurisdiction.

99. As a direct and proximate result of Defendant’s conduct, Plaintiff, for a period of time in the future, will be required to employ physicians and incur additional medical and incidental expenses. The exact amount of such expenses is presently unknown to Plaintiff and Plaintiff will seek leave of Court to amend this Complaint to set forth the exact amount when it has been ascertained.

100. Plaintiff is informed and believes, and thereon alleges that the employees, officers, directors, and/or managing agents of Defendant’s acted with malice and oppression, as their unlawful acts were carried out with full knowledge of the extreme risk of injury, involved, and with willful and conscious disregard for Plaintiff’s rights. They also acted fraudulently, as they willfully concealed the fact that Plaintiff’s employment rights were being violated, with the intent to deprive Plaintiff of employment benefits. Accordingly, an award of punitive damages is warranted.

101. Plaintiff is informed and believes and thereon alleges that the actions of Defendant’s employees, officers, directors, and/or managing agents were undertaken with the prior approval, consent, and authorization of Defendant’s and were subsequently authorized and ratified by it as well by the and through its officers, directors, and/or managing agents.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY WAGES FOR ALL HOURS WORKED

(Against All Defendants)

102. Plaintiff repeats and realleges all the preceding paragraphs as if they were fully set forth herein and with the same full force and effect.

103. California Labor Code §§ 1194, 1197, and Wage Order 12 entitle non-exempt employees to be paid for all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation.

104. Plaintiff regularly worked “off the clock” as required by Defendant, and they were not paid any wages for this time worked. Defendant unlawfully failed to pay Plaintiff the proper compensation for these hours.

105. As a result of these violations, Defendant is liable for unpaid wages, interest thereon, and attorneys’ fees and costs.

106. Plaintiff also requests relief as described below.

NINTH CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(Against All Defendants)

107. Plaintiff repeats and realleges all the preceding paragraphs as if they were fully set forth herein and with the same full force and effect.

108. California Labor Code §§ 510, 558, and Wage Order 12 entitle non-exempt employees to overtime premiums for hours worked in excess of eight (8) in a given day, forty (40) in a given workweek, or on the seventh day worked in a single workweek. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation.

109. While misclassified as an exempt employee, Plaintiff worked in excess of eight hours per day and in excess of forty hours per week, and Defendant unlawfully failed to pay Plaintiff the proper overtime compensation.

110. As a result of these violations, Defendant is liable for unpaid overtime wages, interest thereon, and attorneys' fees and costs.

111. Plaintiff also requests relief as described below.

TENTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Against All Defendants)

112. Plaintiff repeats and realleges all the preceding paragraphs as if they were fully set forth herein and with the same full force and effect.

113. Defendant failed to provide meal periods as required by Labor Code §§ 226.7, 512 and Wage Order 12.

114. Plaintiff worked in excess of five hours a day without being provided at least half hour meal periods in which they were relieved of their duties, as required by Labor Code §§ 226.7 and 512 and Wage Order 12. See Brinker Restaurant Corp., et al. v. Superior Court (2012) 53 Cal. 4th 1004, 1040-41 ("The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute period, and does not impede or discourage them from doing so . . . [A] first meal period [is required] no later than the end of an employee's fifth hour of work, and a second meal period [is required] no later than the end of an employee's 10th hour of work.").

115. Because Defendant failed to provide proper meal periods, it is liable to Plaintiff for one hour of additional pay at the regular rate of compensation for each work day that the proper meal periods were not provided, pursuant to Labor Code §§ 226.7 and 512 and Wage Order 12, as well as interest thereon, plus reasonable attorneys' fees and costs of suit pursuant to Civil Procedure Code § 1021.5.

116. Plaintiff also requests further relief as described below.

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ELEVENTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
(Against All Defendants)

117. Plaintiff repeats and realleges all the preceding paragraphs as if they were fully set forth herein and with the same full force and effect.

118. Defendant failed to provide the rest periods that are required by Wage Order 12. See Brinker, 53 Cal. 4th 1004 at 1029 (“Employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.”).

119. Because Defendant failed to provide proper rest periods, it is liable to Plaintiff for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not provided, pursuant to Labor Code § 226.7 and Wage Order 12, as well as interest thereon, plus reasonable attorneys’ fees and costs of suit pursuant to Civil Procedure Code § 1021.5.

120. Plaintiff also requests relief as described below.

TWELFTH CAUSE OF ACTION
FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS
(Against All Defendants)

121. Plaintiff repeats and realleges all the preceding paragraphs as if they were fully set forth herein and with the same full force and effect.

122. In violation of Labor Code § 226(a), Defendant did not provide Plaintiff with accurate itemized wage statements in writing showing: (1) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked by each respective individual; (2) number of hours worked; (3) gross wages earned; (4) net wages earned; (5) all deductions; (6) inclusive dates of the period for which the employee is paid; (7) the employee identification or social security number; and, (8) the name and address of the legal entity that is the employer.

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1 123. In particular, Defendant included the wrong amounts owed and owing to Plaintiff,
2 because these amounts did not reflect the overtime pay and meal and rest break premium pay to
3 which Plaintiff was entitled.

4 124. As a result of Defendant's failure to provide accurate itemized wages statements,
5 Plaintiff suffered actual damages and harm by being unable to determine their applicable hourly
6 rate for each pay period, which prevented them from becoming aware of these violations and
7 asserting their statutory protections under California law.

8 125. Defendant knowingly and intentionally failed to comply with Labor Code § 226(a)
9 on each and every wage statement provided to Plaintiff.

10 126. Pursuant to Labor Code § 226(e), Plaintiff is entitled to recover the greater of all
11 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and
12 one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not
13 exceeding an aggregate penalty of four thousand dollars (\$4,000.00).

14 127. Plaintiff is entitled to an award of costs and reasonable attorneys' fees under Labor
15 Code § 226(h).

16 128. Plaintiff also requests relief as described below.

17 **THIRTEENTH CAUSE OF ACTION**

18 **FAILURE TO PAY ALL COMPENSATION DUE UPON DISCHARGE**

19 **(Against All Defendants)**

20 129. Plaintiff repeats and realleges all the preceding paragraphs as if they were fully set
21 forth herein and with the same full force and effect.

22 130. California Labor Code §§ 201 and 202 require Defendant to pay all compensation
23 due and owing to former employees immediately upon discharge or within seventy-two hours of
24 their termination of employment. California Labor Code § 203 provides that if an employer
25 willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections
26 201 and 202, then the employer is liable for such "waiting time" penalties in the form of continued
27 compensation up to thirty workdays.

1 131. Defendant willfully failed to pay Plaintiff compensation due upon termination as
2 required by California Labor Code §§ 201 and 202. As a result, Defendant is liable to Plaintiff
3 waiting time penalties provided under California Labor Code § 203, plus reasonable attorneys'
4 fees and costs of suit.

5 132. Plaintiff also requests relief as described below.

6 **FOURTEENTH CAUSE OF ACTION**
7 **PRIVATE ATTORNEYS GENERAL ACT**

8 Labor Code §§ 2698, et. seq.

9 (Against All Defendants)

10 133. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
11 though set forth herein.

12 134. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by
13 Defendants during the applicable statutory period and suffered one or more of the Labor Code
14 violations described herein and as above. As such, he seeks to recover the civil penalties
15 provided by PAGA, plus reasonable attorneys’ fees and costs.

16 135. Plaintiff seeks to recover the PAGA civil penalties through a representative action
17 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
18 4th 969. Therefore, class certification of the PAGA claims is not required, but Plaintiff may
19 choose to seek certification of the PAGA claims.

20 136. Plaintiff seeks to pursue remedies under PAGA pursuant to the following sections
21 of the Labor Code:

- 22 a. Under California Labor Code §§ 204, 1194, 1197, and 1197.1 and Industrial
23 Welfare Commission Wage Order 12-2001 § 4, Defendants are liable for failing to
24 pay Aggrieved Employees minimum wage for all hours worked. Under California
25 Labor Code §§ 510 and 1194, Defendants are liable for failing to pay the Aggrieved
26 Employees overtime and double time as they were misclassified as exempt and only
27 paid a salary plus commission rate. As described above, Defendant failed to pay
28 Plaintiff and other Aggrieved Employees for time spent working in excess of 8

1 hours per day because they were placed on a salary rate.

2 b. Pursuant to Labor Code §§ 201, 202, and 203, for an employer who willfully fails
3 to pay any wages of an employee who is discharged or quits, that employee's wages
4 shall continue as a penalty from the due date at the same rate until paid, but shall
5 not continue for more than thirty (30) days. Labor Code § 256 imposes a civil
6 penalty in an amount not exceeding thirty days' pay as waiting time under the terms
7 of Labor Code § 203. As described herein, Defendant has failed to pay Plaintiff for
8 all hours worked and based on information and belief has also failed to pay other
9 Aggrieved Employees their full wages due in a timely manner, or at termination of
10 the employment.

11 c. Under California Labor Code §§ 226.7 and 512 and Wage Order 12-2001 § 12,
12 Defendants are liable for failing to provide rest periods and/or meal periods or pay
13 the Aggrieved Employees one hour of pay for every missed, late, or interrupted rest
14 period and meal period.

15 d. Under California Labor Code § 204, Defendants are liable for failing to pay
16 Employees wages earned during the course of employment in a timely manner.
17 California Labor Code § 204 states that "All wages...earned by any person in any
18 employment are due and payable twice during each calendar month, on days
19 designated in advance by the employer as the regular paydays." Defendants failed
20 to compensate Plaintiff and other Aggrieved Employees all wages earned at least
21 twice during each calendar month. Labor Code § 210 imposes civil penalties for
22 failure to pay all wages earned twice each calendar month in violation of Labor
23 Code § 204 of one hundred dollars (\$100) for each initial failure to pay each
24 employee, and for each subsequent, or any willful or intentional, failure to pay each
25 employee, two hundred dollars (\$200) plus 25 percent of the amount unlawfully
26 withheld.

27 e. Under Labor Code § 1174, employers must keep "payroll records showing the
28 hours worked daily by and the wages paid to . . . employees [. . .]." To the extent

1 that this failure to keep accurate payroll records was willful, they are liable for civil
2 penalties under California Labor Code § 1174.5. As described herein, Defendant's
3 failed to keep accurate payroll records showing all hours worked because Account
4 Executives were improperly misclassified as exempt employees and their hours
5 were not tracked at all.

6 f. Labor Code § 226(b) and Wage Order 12-2001 § 7 impose a civil penalty for failure
7 to provide accurate and itemized wage statements, in addition to any other penalty
8 provided by law, of two hundred fifty dollars (\$250) per aggrieved employee for
9 the first violation of Labor Code § 226(a), and one thousand dollars (\$1,000) per
10 aggrieved employee for each subsequent violation. As described herein,
11 Defendants failed to track and accurately report the full hours worked by Plaintiff
12 and other Aggrieved Employees, failed to pay wage premiums for meal and rest
13 breaks not properly provided for, and failed to pay overtime work at overtime rates.

14 g. Pursuant to Labor Code §§ 432 and 1198.5 and Wage Order 12-2001 § 7, employers
15 must provide Aggrieved Employees with access and copies of their personnel file
16 and all documents they have signed related to their employment within 30 days of
17 written and/or oral requests. Defendants failed to provide Plaintiff with a copy of
18 the required documents within 30 days of the request, and based on information
19 and belief the Defendants have a practice of failing to provide such documents to
20 other Aggrieved Employees within 30 days of the request in an attempt to prevent
21 employees and former employees from exercising their rights.

22 h. Labor Code § 2698 et seq. imposes a civil penalty of one hundred dollars (\$100)
23 per pay period, per aggrieved employee for the initial violation of Labor Code §§
24 204, 226.7, 510, 512, 1174, 1194, and two hundred dollars (\$200) for each
25 aggrieved employee per pay period for each subsequent violation.

26 i. Labor Code § 558 imposes a civil penalty for failure to provide uninterrupted meal
27 or rest breaks, in addition to any other penalty provided by law, of fifty dollars
28 (\$50) per aggrieved employee, per pay period, in addition to an amount sufficient

to recover underpaid wages, for the first violation of Labor Code §§ 510 or 512, and one hundred dollars (\$100) per aggrieved employee, per pay period, in addition to an amount sufficient to recover underpaid wages, for each subsequent violation.

j. Labor Code § 1197.1 imposes a civil penalty for failure to pay minimum wage, in addition to any other penalty provided by law, of one hundred dollars (\$100) per aggrieved employee, per pay period, in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Labor Code § 1194.2, and any applicable penalties imposed by Labor Code § 203, for the first violation of Labor Code § 1197, and two hundred fifty dollars (\$250) per aggrieved employee, per pay period, in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Labor Code § 1194.2, and any applicable penalties imposed by Labor Code § 203, for each subsequent violation.

k. Labor Code § 2699(f) imposes a civil penalty for violations of any provision of the Labor Code for which a civil penalty is not otherwise specifically provided of one hundred dollars (\$100) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

137. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to seek such penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201-203, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198.5; and

b. Pursuant to Labor Code § 2699(a), the penalties as authorized by Labor Code §§ 210, 558.

138. As a result of the acts alleged above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 et seq.

139. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

140. Plaintiff has fully complied with the procedural requirements specified in Labor Code § 2699.3 as to each of the alleged violations and may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 et seq.

141. Enforcement of statutory provisions to protect workers and to ensure proper and prompt payment of wages is a fundamental public interest. Plaintiff's successful enforcement of important rights affecting the public interest will confer a significant benefit upon the general public. Private enforcement of these rights is necessary, as no public agency has pursued enforcement. Plaintiff is incurring a financial burden in pursuing this action, and it would be against the interest of justice to require the payment of attorneys' fees and costs from any recovery obtained, pursuant to, inter alia, Labor Code § 2699.

142. Plaintiff, on behalf of himself and the aggrieved employees, also requests relief as described below.

PRAYER FOR RELIEF

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

143. For a money judgment representing compensatory damages including unpaid wages, wage premiums, unpaid overtime wages, as well as lost wages, earnings, commissions, and other employee benefits, and all other sums of money, together with interest on these amounts; for other special damages; and

144. For general damages for mental pain and anguish and emotional distress; and

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

146. For punitive damages available under FEHA and under Civil Code §3294 in amounts sufficient to punish Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

1 147. That the Court declare that Defendant's policies and/or practices of refusing to
2 pay overtime and double time to Plaintiff violated California law;

3 148. That the Court declare that Defendant's policies and/or practices of refusing to
4 authorize meal breaks to Plaintiff violated California law;

5 149. That the Court declare that Defendant's policies and/or practices of refusing to
6 authorizing rest breaks to Plaintiff violated California law;

7 150. That the Court declare Defendant's policies and/or practices of refusing to pay
8 premium pay to Plaintiff for missed meal/rest breaks violated California law;

9 151. That the Court declare that Defendant's policies and/or practices of providing
10 inaccurate itemized wage statements to Plaintiff violated California law;

11 152. That the Court declare that Defendant's policies and/or practices of refusing to
12 pay all wages due and owing to Plaintiff promptly upon termination violated California law;

13 153. For payment of all civil and statutory penalties in accordance with California law;

14 154. That the Court declare that Defendant's policies and/or practices of misclassifying
15 Plaintiff as exempt violated California law;

16 155. For an award to Plaintiff of waiting-time penalties, pursuant to Labor Code § 203
17 on behalf of Plaintiff and all Aggrieved Employees;

18 156. Civil penalties pursuant to Labor Code § 2698 et seq for each violation of Labor
19 Code sections §§ 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194,
20 1194.2, 1197, 1197.1, 1198.5, 2698 et seq., and IWC Wage Order No. 12-2001 per Aggrieved
21 Employee;

22 157. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA,
23 Private Attorneys General Act, Labor Code, and/or any other basis including but not limited to
24 Code of Civil Procedure § 1021.5, California Labor Code § 2698 et seq and California Labor
25 Codes §§ 218.5, 226, 226.7, and 1194; and

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LABOR LAW PC

D. Zdzien

Danny Yadidsion, Esq.
Laurel N. Holmes, Esq.
Attorney for Plaintiff
LEAH RABINOWITZ

Plaintiff hereby demands a jury trial of all causes of action and claims with respect to which Plaintiff has a right to jury trial.

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LEAH RABINOWITZ