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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DIVINA JAIME,

Plaintiff,

vs.

**CLOTHESMINDS, INC.; JOSEPH
HERNANDEZ; and DOES 1 to 25,
inclusive,**

Defendants.

CASE NO.: 24STCV00510

COMPLAINT FOR DAMAGES FOR:

- 1) FAILURE TO COMPENSATE FOR
ALL HOURS WORKED;**
- 2) FAILURE TO PAY MINIMUM
WAGES;**
- 3) FAILURE TO PAY OVERTIME;**
- 4) FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS;**
- 5) FAILURE TO PAY WAGES OWED
EVERY PAY PERIOD;**
- 6) FAILURE TO PAY WAGES WHEN
EMPLOYMENT ENDS;**
- 7) FAILURE TO PROVIDE REST
BREAKS;**
- 8) FAILURE TO PROVIDE MEAL
BREAKS;**
- 9) FAILURE TO REIMBURSE
BUSINESS EXPENSES;**
- 10) PRIVATE ATTORNEYS GENERAL
ACT ("PAGA")**
- 11) FAILURE TO PROVIDE
PERSONNEL RECORDS;**
- 12) FAILURE TO PROVIDE PAY
RECORDS;**
- 13) DISCRIMINATION ON THE BASIS
OF PHYSICAL DISABILITY IN
VIOLATION OF FAIR
EMPLOYMENT AND HOUSING
ACT ("FEHA");**

1) 14) FAILURE TO ACCOMMODATE
2) PHYSICAL DISABILITY IN
3) VIOLATION OF FEHA;
4) 15) FAILURE TO ENGAGE IN
5) INTERACTIVE PROCESS TO
6) DETERMINE REASONABLE
7) ACCOMMODATION IN
8) VIOLATION OF FEHA;
9) 16) RETALIATION IN VIOLATION OF
10) FEHA;
11) 17) FAILURE TO PREVENT
12) DISCRIMINATION AND
13) RETALIATION IN VIOLATION OF
14) FEHA;
15) 18) WRONGFUL TERMINATION IN
16) VIOLATION OF PUBLIC POLICY
17) 19) VIOLATION OF BUSINESS AND
18) PROFESSIONS CODE SECTION
19) 17200
20)
21)
22)
23)
24)
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27)
28)

JURY TRIAL DEMANDED

COMES NOW Plaintiff, DIVINA JAIME (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants CLOTHESMINDS, INC.; JOSEPH HERNANDEZ and DOES 1 to 25, inclusive (hereinafter collectively "CLOTHESMINDS" or "Defendant(s)") do business in the County of Los Angeles, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant

1 CLOTHESMINDS, INC. is a California corporation, doing business in the County of
2 Los Angeles, State of California, and which employed Plaintiff.

3 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
4 JOSEPH HERNANDEZ is a male resident of the State of California, and the owner,
5 managing agent, and/or director CLOTHESMINDS, INC. Defendant JOSEPH HERNANDEZ
6 is being included in this lawsuit pursuant to Labor Code Section 558.1 in that he was involved
7 in the day-to-day operations of the business and, as such, controlled the hours, wages, and/or
8 working conditions of Plaintiff and other hourly, non-exempt employees. Defendants
9 CLOTHESMINDS, INC. and JOSEPH HERNANDEZ are collectively referred to herein as
10 "Defendant(s)" (unless otherwise noted) or "CLOTHESMINDS".
11

12 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
13 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
14 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
15 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
16 for the conduct alleged herein. Upon discovering the true names and capacities of these
17 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
18 capacities of these fictitiously named defendants.
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20 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
21 that information and belief, alleges that at all times herein mentioned, each of the remaining
22 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
23 under the authority of their agency, employment, or representative capacity, with the consent of
24 his/her codefendants.
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26 **GENERAL ALLEGATIONS**

27 7. Plaintiff started working at CLOTHESMINDS on or around 2020. During her
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1 employment tenure, Plaintiff was seemingly miscategorized and misclassified as a 1099
2 independent contractor employee and was paid \$14/hour.

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

22 9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
23 other employees, it allows for suits broader than the specific violations the named
24 employee experienced. Therefore, even if the employee did not personally experience the
25 Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is
26 Plaintiff’s position that Plaintiff can equivocally bring the following labor code violations on
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1 behalf of all other employees, including hourly, non-exempt employees and even salaried
2 employees along with those salaried employees who were misclassified and should have been
3 hourly, non-exempt employees.

4 10. It is Plaintiff's position that CLOTHESMINDS has committed the following labor code
5 violations against Plaintiff and other aggrieved employees who worked at any of
6 CLOTHESMINDS's locations in the state of California during the PAGA period.

7 11. CLOTHESMINDS violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it
8 failed to pay Plaintiff and other similarly situated aggrieved employees California's statutory
9 minimum wage for all hours worked and for "off the clock" work. This is so because
10 CLOTHESMINDS had a policy and practice of rounding down hours worked to the detriment
11 of employees, which is akin to a minimum wage violation. In addition, CLOTHESMINDS also
12 failed to pay Plaintiff and others for all hours worked to the extent that Plaintiff and others
13 worked during or through their meal breaks and while they were "off the clock". In addition,
14 Plaintiff was only paid \$14 per hour, which is below the minimum wage rate in California. In
15 fact, one look at Plaintiff's punch cards would reveal the horrific rounding that was taking
16 place to the detriment of employees such as Plaintiff.

17 12. Due to the above "off the clock" violations, CLOTHESMINDS violated Labor Code
18 §510 because it failed to pay Plaintiff and other similarly situated aggrieved employees the
19 correct amount of overtime, even though they worked more than 8 hours per day, 12 hours per
20 day, and/or 40 hours per week throughout their employment. In addition, CLOTHESMINDS
21 failed to include bonus payment or incentive payments in calculating employees' regular rate
22 of pay for purposes of deciphering their overtime rate of pay. In fact, the company had a policy
23 of only paying straight time, despite an employee working over 8 hours in a day and/or over 40
24 hours in a week. The concept of overtime compensation did not exist. It is also important to
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1 note that Plaintiff was initially working Monday through Saturday and certainly worked plenty
2 of overtime hours before she was retaliated against and had her hours cut. As such, Plaintiff
3 and others are entitled to overtime compensation. Furthermore, CLOTHESMINDS failed to
4 include bonuses/incentive payments in calculating employees' regular rate of pay for use in
5 deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments
6 were also not factored into employees' regular rate for purposes of receiving meal and rest
7 break premiums per the Ferra v. Loews case.

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9 13. In addition, the company violated Labor Code section 226.8 in that Plaintiff's was
10 misclassified as being an "independent contractor" and Plaintiff and others received 1099's for
11 their work even though they were working as employees for CLOTHESMINDS, and every
12 aspect of their employment was controlled, from their scheduling to their job duties. Moreover,
13 under the ABC test, Plaintiff and others would unequivocally be considered employees in that
14 their job duties aligned with CLOTHESMINDS' main business of selling clothes. In fact,
15 Plaintiff performed various tasks in this regard, including lifting heavy clothing boxes,
16 packing, unpacking, and other similar duties related to the clothes themselves.

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18 14. As alluded to above, CLOTHESMINDS violated Labor Code section 226.8. Pursuant
19 to Labor Code section 226.8(a)(1), it is unlawful for any person or employer to willfully
20 misclassify an individual as an independent contractor. "Willful misclassification
21 means avoiding employee status for an individual by voluntarily and knowingly misclassifying
22 that individual as an independent contractor." Cal. Lab. Code Section 226.8(i)(4). If a person or
23 employer has willfully misclassified an individual as an independent contractor, the person or
24 employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and
25 not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other
26 penalties or fines permitted by law. Cal. Lab. Code Section 226.8(b). If the person or employer
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1 has engaged in or is engaging in a pattern or practice of willfully misclassifying individuals as
2 independent contractors, the person or employer shall be subject to a civil penalty of not less
3 than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000)
4 for each violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code
5 Section 226.8(c).

6 15. In a very important decision, Dynamex Operations v. Superior Court (2018) 4 Cal. 5th
7 903, the Supreme Court developed the “ABC TEST” to determine whether an independent
8 contractor is an employee. Under the ABC TEST, a worker will be deemed to have been
9 “suffered or permitted to work,” and thus, an employee for wage order purposes, unless the
10 putative employer proves:
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- 12 a. that the worker is free from the control and direction of the hiring entity in
13 connection with the performance of the work, both under the contract for the
14 performance of the work and in fact;
- 15 b. that the worker performs work that is outside the usual course of the hiring
16 entity’s business; and
- 17 c. that the worker is customarily engaged in an independently established trade,
18 occupation, or business of the same nature as the work performed.
19

20 16. Note that each of these requirements need to be met in order for the presumption that a
21 worker is an employee to be rebutted, and for a court to recognize that a worker has been
22 properly classified as an independent contractor.

23 17. Here, it is unequivocally clear that CLOTHESMINDS would not be able to get past the
24 second part of the test since Plaintiff and others, who were employed as laborers in the clothing
25 store and were unequivocally doing work related to CLOTHESMINDS’ core business of
26 selling clothes. As such, CLOTHESMINDS willfully misclassified Plaintiff and other
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1 aggrieved employees as independent contractors. Moreover, there was plenty of control by
2 CLOTHESMINDS as it related to Plaintiff's and other aggrieved employees' schedules,
3 working conditions, and work duties.

4 18. CLOTHESMINDS violated Labor Code §§ 512 and 226.7 as well as the relevant
5 Industrial Welfare Commission Wage Order (no. 4/7) because it failed to provide Plaintiffs and
6 other similarly situated aggrieved employees the requisite 30-minute, timely, uninterrupted
7 meal periods for every five (5) hours of work throughout their employment, and Plaintiff did
8 not validly waive said meal periods. CLOTHESMINDS did not completely relieve Plaintiff of
9 all duty during said meal periods. CLOTHESMINDS did not pay to Plaintiff one additional
10 hour of pay at Plaintiff's regular rate of compensation for each workday that one or more
11 statutory meal periods was not provided. Plaintiff's meal breaks would often be short and less
12 than 30-minutes long as proven right on her punch cards. The culture and work environment at
13 CLOTHESMINDS was not conducive to employees such as Plaintiff taking full and timely,
14 uninterrupted meal periods wherein they were relieved of all work duty. If CLOTHESMINDS
15 had Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff
16 and others generally worked more than a 6-hour shift. If CLOTHESMINDS had Plaintiff sign
17 an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it
18 would be invalid and unenforceable because the nature of Plaintiff's job does not and did not
19 prevent her from taking a meal period and the company could have hired "breakers" to relieve
20 Plaintiff of her job duties so that she can actually take a timely, uninterrupted meal period.
21 Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to revoke such
22 an agreement even if it was signed. As such, Plaintiff and others did not always receive
23 statutory, timely meal periods during their employment. To the extent that CLOTHESMINDS
24 argues that employees receive meal break premium pay for missed meal periods, that argument
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1 is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations
2 themselves, irrespective of whether an employee received the premium payment for a missed,
3 short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated,
4 “section 226.7 does not give employers a lawful choice between providing *either* meal and rest
5 breaks *or* an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53
6 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the
7 violation; the employer has still committed a violation even if the remedy for the violation has
8 been paid. See *Wert v. U.S. Bancorp.*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As
9 such, the work environment and culture at CLOTHESMINDS was not conducive to receiving
10 consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest
11 break premiums paid were not compensated at the weighted average regular rate, inclusive of
12 bonuses and/or incentive payments as well as overtime compensation.

14 19. CLOTHESMINDS violated Labor Code § 226.7 as well as the relevant Industrial
15 Welfare Commission Wage Order (no. 4/7) because it failed to provide Plaintiff and other
16 similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or
17 majority portion thereof, throughout their employment. CLOTHESMINDS did not completely
18 relieve Plaintiff of all duty during said rest periods. CLOTHESMINDS did not pay to Plaintiff
19 one additional hour of pay at Plaintiff’s regular rate of compensation for each workday that one
20 or more statutory rest periods was not provided. Like the situation involving meal breaks,
21 Plaintiff rarely received two timely, uninterrupted statutory rest breaks per shift. Like meal
22 breaks, the culture and environment at CLOTHESMINDS was not conducive to employees
23 such as Plaintiff taking timely, uninterrupted rest periods wherein she was relieved of all work
24 duty.
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27 20. Furthermore, during the relevant time period, and due all of the aforementioned
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1 violations, CLOTHESMINDS failed to pay Plaintiff and other similarly situated aggrieved
2 employees all wages due to them within any time period specified by California Labor Code
3 section 204. CLOTHESMINDS was also in violation of California Labor Code section 226(a),
4 by failing to include pertinent information on the wage statements, including but not limited to,
5 all hours worked (regular and overtime), gross wages earned, all deductions, net wages earned,
6 premium pay for missed meal and rest breaks, the correct start and end of the pay period, all
7 identifying employee information, the correct name and address of the legal employer, and all
8 applicable hourly rates, among other items. In fact, Plaintiff and others did not receive any pay
9 stubs at all. As such, CLOTHESMINDS did not provide Plaintiff and other similarly situated
10 aggrieved employees with complete, accurate itemized wage statements.

12 21. CLOTHESMINDS violated Labor Code § 203 because it willfully failed to pay
13 Plaintiff and other similarly situated aggrieved employees earned and due wages upon
14 separation of employment, either immediately upon involuntary termination, or within 72
15 hours of resignation. These earned but unpaid wages include the unpaid minimum wages,
16 overtime wages, meal/rest period compensation described above, and business expense
17 reimbursement. In fact, Plaintiff never received her final check and is owed wages for hours
18 worked along with “waiting time” penalties.

20 22. During the relevant time period, CLOTHESMINDS also failed to keep accurate and
21 complete payroll records showing the actual hours worked per day and the wages paid to
22 Plaintiff and other aggrieved employees pursuant to California Labor Code sections 1174(d).

24 23. During the relevant time period, Plaintiff and other aggrieved employees incurred
25 necessary, business-related expenses and costs that were not reimbursed by
26 CLOTHESMINDS. These costs include, but are not limited to, use of personal cell phones for
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1 business-related purposes as well as tools and equipment to effectuate job duties. Accordingly,
2 CLOTHESMINDS was in violation of California Labor Code sections 2800 and 2802.

3 24. In addition, Plaintiff would also have individual claims against CLOTHESMINDS
4 for discrimination based on physical disability and retaliation in violation of the Fair
5 Employment and Housing Act (FEHA) in that Plaintiff was terminated on or around August
6 2023 after suffering physical injuries on-the-job due to the heavy lifting she had to do as part of
7 her job duties (she injured her lower back and developed a hernia). In fact, after Plaintiff
8 informed her employer of her injuries, CLOTHESMINDS made absolutely no effort to engage
9 in the interactive process and failed to accommodate Plaintiff. Moreover, CLOTHESMINDS
10 actually retaliated against Plaintiff due to her work injuries and physical disability and
11 terminated her employment by telling her there was no work for her. Pursuant to California
12 Government Code section 12960, Plaintiff has exhausted her administrative remedies. Plaintiff
13 filed a complaint with the California Civil Rights Department (CRD), alleging claims in this
14 complaint. The CRD immediately issued to Plaintiff a right to sue letter.
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17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

19 **(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of**
20 **Regulations Title 8 Section 11040/11070, and California Labor Code Section 1198)**
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22 **(Plaintiff against all named defendants and all DOE defendants)**

23 25. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 24, inclusive, of this Complaint as though fully set forth herein.

25 26. At all times relevant herein, Defendants were required to compensate its employees for
26 all hours worked upon reporting for work at the appointed time stated by the employer
27 pursuant to Industrial Welfare Commission Order 4-2001/7-2001, California Code of
28

1 Regulations, Title 8, Section 11040/11070.

2 27. For the three (3) years preceding filing of this action, Defendants failed to compensate
3 Plaintiff for all hours worked.

4 28. Under the aforementioned wage order and regulations, Plaintiff is to recover
5 compensation for all hours worked but not paid by Defendants for the three (3) years
6 preceding the filing of this Complaint.

7 29. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
8 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
9 this Court.

10 30. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
11 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
12 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
13 reasonable attorney's fees and costs of suit.

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

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21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES**

23 **(California Labor Code Sections 1194, 1194.2, 1197)**

24 **(Plaintiff against all named defendants and all DOE defendants)**

25 32. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 31, inclusive, of this Complaint as though fully set forth herein.

27 33. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
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1 to suffer or permit a California employee to work without paying wages at the minimum wage
2 rate for all hours worked as required by the applicable Industrial Welfare Commission
3 (hereinafter "IWC") Wage Order No. 4-2001/7-2001, codified at California Code of
4 Regulations, Title 8, Section 11040/11070, subdivision 4.
5

6 34. Pursuant to IWC Wage Order no. 4-2001/7-2001, subdivision 2(K)/(H), at all relevant
7 times, "hours worked" included "the time during which an employee is subject to the control of
8 an employer, and includes all the time the employee is suffered or permitted to work, whether
9 or not required to do so..."

10 35. During her employment, Plaintiff was regularly required as a matter of uniform
11 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
12 was paid less than the minimum wage rate by Defendants for hours worked in violation of
13 California Labor Code Section 1197 and the applicable California Industrial Wage
14 Commission wage order(s).
15

16 36. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
17 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
18 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
19 to believe that their acts or omissions were not contrary to California law.
20

21 37. For all hours worked by Plaintiff for which she was paid less than the minimum wage
22 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
23 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
24 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
25 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.
26

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

1 trial.

2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO PAY OVERTIME**

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5 **(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of**
6 **Regulations Title 8 Section 11040/11070; California Labor Code Section 510)**

7 **(Plaintiff against all named defendants and all DOE defendants)**

8 39. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 38, inclusive, of this Complaint as though fully set forth herein.

10 40. Pursuant to Industrial Welfare Commission Order No. 4-2001/7-2001, Cal. Code of
11 Regs., Title 8, Section 11040/11070, for the period of Plaintiff's employment, Defendants were
12 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
13 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
14 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
15 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
16 week.
17

18 41. Plaintiff was a non-exempt employee entitled to the protections of the California
19 Industrial Welfare Commission Order No. 4-2001/7-2001, California Code of Regulations,
20 Title 8, Section 11040/11070.
21

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

24 43. Plaintiff was entitled to the above overtime premiums.

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

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

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

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

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

13 49. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
14 Regulations, Title 8, Sections 11040/11070, Plaintiff is entitled to recover damages for the
15 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
16 reasonable attorney's fees and costs of suit.

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

22 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

23 **(California Labor Code Section 226)**

24 **(Plaintiff against all named defendants and all DOE defendants)**

25 51. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.
27

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

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

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

9 54. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
10 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
11 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
12 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
13 reasonable attorney's fees.
14

15 55. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
16 sustained damages, including loss of earnings, in an amount to be established at trial. As a
17 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
18 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
19 and attorney's fees pursuant to statute.
20

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

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

26 **(California Labor Code Section 204)**

27 **(Plaintiff against all named defendants and all DOE defendants)**
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1 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

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

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

7 60. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
8 informed, believes, and thereon alleges, that all times relevant during the liability period,
9 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
10 including overtime hours, the minimum wage, and premium pay for missed meal and rest
11 breaks.
12

13 61. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
14 amount, subject to proof, to the extent she was not paid all wages each pay period. The precise
15 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
16 from Defendants' records or indirectly based on information from Defendants' records.
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18 62. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
19 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
20 trial.
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22 **SIXTH CAUSE OF ACTION**

23 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

24 **(California Labor Code Sections 201, 203)**

25 **(Plaintiff against all named defendants and all DOE defendants)**

26 63. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 62, inclusive, of this Complaint as though fully set forth herein.
28

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

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

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

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

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

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

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

23 **SEVENTH CAUSE OF ACTION**

24 **FAILURE TO GIVE REST BREAKS**

(Plaintiff against all named defendants and all DOE defendants)

71. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 70, inclusive, of this Complaint as though fully set forth herein.

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

- a. Title 8 of the California Code of Regulations Sections 11040/11070(12)(A), which provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- b. Title 8 of the California Code of Regulations Sections 11040/11070(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;
- c. Title 8 of the California Code of Regulations sections 11040/11070(20)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest

period is not provided.

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

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

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff against all named defendants and all DOE defendants)

77. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 76, inclusive, of this Complaint as though fully set forth herein.

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

- a. California Labor Code section 512(a), which requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;
- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of

1 the Industrial Welfare Commission, and (b) if any employer fails to provide an
2 employee a meal period in accordance with an applicable order of the Industrial
3 Welfare Commission, the employer shall pay the employee one (1) additional hour
4 of pay at the employee's regular rate of compensation for each workday that the
5 meal period is not provided;

6 c. California Industrial Welfare Commission Order No. 4/7 section 11(B), as codified
7 under Title 8 of the California Code of Regulations Section 11040/11070, which
8 states that if an employer fails to provide an employee a meal period in accordance
9 with the applicable provisions of the Wage Order, the employer shall pay the
10 employee one (1) hour of pay at the employee's regular rate of compensation for
11 each workday that the meal period is not provided;

12 d. California Industrial Welfare Commission Wage Order No. 4/7 Section 7(A)(3), as
13 codified under Title 8 of the California Code of Regulations Section 11040/11070,
14 which requires an employer to maintain records documenting its employees' meal
15 periods;

16 e. California Industrial Welfare Commission wage order No. 4/7 Section 20(A), as
17 codified under California Code of Regulations Section 11040/11070, which
18 penalizes the employer \$50.00 for each initial violation, per employee, of any
19 provision of the Wage Order, and \$100.00 for each additional violation thereafter
20 per employee; and

21 f. California Labor Code section 1171 and 1173, which have given the California
22 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4
23 and 7) as enforceable law.

24
25 79. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks
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27
28

1 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
2 to take a second relieved meal break after ten (10) hours of work, as required by California
3 law. California Labor Code section 512(a) and California Industrial Welfare Commission
4 Order No. 4/7, as codified under California Code of Regulations Sections 11040/11070 et. seq.
5 requires that employees receive uninterrupted meal periods every five (5) hours of consecutive
6 work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of
7 all work duty. California Labor Code section 226.7 provides that employers may not require
8 their employees to work through their meal periods. California Labor Code section 226.7 and
9 California Code of Regulations section 11040/11070 requires that if the employer fails to
10 provide the employee with an uninterrupted meal period, the employer must pay the employee
11 one (1) hour of pay for each work day that the meal period is not given.
12

13 80. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
14 regulations, and wage orders alleged in this cause of action along with any allowable interest,
15 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
16 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
17

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

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

24 **NINTH CAUSE OF ACTION**

25 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

26 **(Plaintiff against All Named Defendants and all DOE defendants)**

27 83. Plaintiff re-alleges and incorporates by reference each and every allegation in
28

1 paragraphs 1 through 82, inclusive, of this Complaint as though fully set forth herein.

2 84. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her
3 employee for all necessary expenditures or losses incurred by the employee in direct
4 consequence of the discharge of his or her duties.”

5 85. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
6 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
7 of completing her job duties, which were not reimbursed by Defendant. These expenses
8 include, but are not limited to, use of personal cell phones for business-related purposes as well
9 as tools and equipment to effectuate job duties.
10

11 86. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
12 and attorney’s fees and costs, under Labor Code section 2802.

13 **TENTH CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
16 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1174, 1174.5, 1194,**
1194.2, 1197, 1197.1, 1198, 2800, 2802)

17 **(Plaintiff against Defendant CLOTHESMINDS, INC. and all DOE defendants)**

18 87. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 86, inclusive, of this Complaint as though fully set forth herein.

20 88. Plaintiff has complied with the procedures for bringing suit specified in California
21 Labor Code § 2699.3.

22 89. By letter dated September 26, 2023, Plaintiff gave written notice by certified mail to the
23 Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
24 provisions of the California Labor Code alleged to have been violated, including the facts and
25 theories to support the alleged violations.

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

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

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

4 92. Pursuant to California Labor Code section 2699, any provisions of the Labor
5 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
6 departments, divisions, commissions, boards, agencies, or employees for violation of the code
7 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
8 on behalf of himself or herself and other current or former employees pursuant to the procedures
9 specified in California Labor Code section 2699.3.

10 93. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
11 violator and had one or more of the alleged violations committed against her, and therefore is
12 properly suited to represent the interests of other current and former employees, including all
13 current and former hourly, non-exempt employees who worked for CLOTHESMINDS at all
14 locations in the State of California during the applicable PAGA Period.

15 94. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties
16 under California Labor Code sections 2698 and 2699 because of Defendants' violations of
17 numerous provisions of the California Labor Code as alleged in this Complaint.

18 95. Plaintiff therefore has exhausted all administrative remedies required of her under
19 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute
20 this cause of action and pursue penalties in a representative action for Defendants' violations of
21 the Labor Code.

22 96. California Labor Code section 2699 et seq. imposes penalties upon culpable
23 Defendants for violating the Labor Code.

24 97. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
25 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
26 seeking individual penalties/victim specific relief or underpaid wages for herself or other
27 employees under this specific PAGA cause of action. Plaintiff has separate causes of action in
28 this Complaint for individual wages but is not seeking wages through the PAGA action.

98. Specifically, Plaintiff seeks penalties under California Labor Code

1 section 2699, for the following:

2 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
3 226.3, 226.7, 226.8, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800,
4 2802), and any other Labor Codes/Industrial Welfare Commission Order (No. 4/7) violated
5 based on the facts alleged in this Complaint.

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

10 **ELEVENTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE PERSONNEL RECORDS**

12 **(Plaintiff against all named Defendants and all DOE Defendants)**

13 100. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 99, inclusive, of this Complaint as though fully set forth herein.

15 101. Labor Code section 1198.5 dictates "every current and former employee, or his
16 or her representative, has the right to inspect and receive a copy of the personnel records that
17 the employer maintains relating to the employee's performance or to any grievance concerning
18 the employee."

19 102. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the
20 employer shall make the contents of those personnel records available for inspection to the
21 current or former employee, or his or her representative, at reasonable intervals and at reasonable
22 times..." On information and belief, Defendants intentionally failed to provide Plaintiff with
23 personnel records when requested by Plaintiff via letter on September 26, 2023, as required by
24 law. Plaintiff requested her personnel records in accordance with California Labor Code section
25 1198.5(k) on September 26, 2023, via U.S. certified mail, return receipt requested.

26 103. Defendants failed to provide Plaintiff with an opportunity to inspect or copy her
27 records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has
28 suffered and continues to suffer substantial losses related to Defendants' failure to provide

1 personnel records.

2 104.Plaintiff seeks all available remedies for Defendants' violations including, but not
3 limited penalties, and costs to the extent permitted by law and according to proof at trial.
4 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
5 amount of \$750.00, along with costs and attorney's fees.

6 **TWELFTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE PAY RECORDS**

8 **(Plaintiff against all named Defendants and all DOE Defendants)**

9 105.Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 104, inclusive, of this Complaint as though fully set forth herein.

11 106.Labor Code section 226 sub-section (b) dictates "an employer...shall afford
12 current and former employees the right to inspect or copy records pertaining to their
13 employment, upon reasonable request to the employer..."

14 107.Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer
15 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
16 pertaining to a current or former employee shall comply with the request as soon as practicable,
17 but no later than 21 calendar days from the date of the request." On information and belief,
18 Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff
19 via certified letter, return receipt requested, on September 26, 2023, and as required by law.
20 Plaintiff requested her pay records in accordance with California Labor Code section 226 on
21 September 26, 2023, via certified mail. Defendants failed to provide Plaintiff with an opportunity
22 to inspect or copy her pay records within 21 days.

23 108.As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
24 and continues to suffer substantial losses related to Defendants' failure to provide pay records.
25 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
26 amount of \$750.00, along with costs and attorney's fees.

27 109.Plaintiff seeks all available remedies for Defendants' violations including, but
28 not limited penalties, and costs to the extent permitted by law and according to proof at trial.

///

THIRTEENTH CAUSE OF ACTION

DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY

IN VIOLATION OF FEHA

(Plaintiff against Defendant CLOTHESMINDS, INC. and all DOE Defendants)

110. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 109, inclusive, of this Complaint as though fully set forth herein.

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

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

113. Plaintiff's physical disabilities, including Plaintiff's injury to her back/spine and development of a hernia, which were debilitating, and which limited a major life activity, qualify as disabilities under FEHA, and Plaintiff was entitled to its protection.

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

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

116. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,

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

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

11 **FOURTEENTH CAUSE OF ACTION**

12 **FAILURE TO ACCOMMODATE PHYSICAL DISABILITY IN VIOLATION OF**

13 **FEHA**

14 **(Plaintiff against Defendant CLOTHESMINDS, INC. and all DOE Defendants)**

15 118. Plaintiff re-alleges and incorporates by reference each and every allegation
16 in paragraphs 1 through 117, inclusive, of this Complaint as though fully set forth herein.
17

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

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

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

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

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

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

13 **FIFTEENTH CAUSE OF ACTION**

14 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA**

15 **(Plaintiff against Defendant CLOTHESMINDS, INC. and all DOE Defendants)**

16 124. Plaintiff re-alleges and incorporates by reference each and every allegation
17 in paragraphs 1 through 123, inclusive, of this Complaint as though fully set forth herein.

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

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

26 127. As a direct and proximate result of the aforementioned acts and omissions
27
28

1 of Defendant, Plaintiff suffered general and compensatory damages, including but not limited
2 to, loss of income (past and future), loss of employment benefits (past and future), general and
3 compensatory damages (past and future), mental pain and anguish and emotional distress (past
4 and future), and will continue to suffer in the future, in an amount to be proved at the time of
5 trial.

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

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

17 **SIXTEENTH CAUSE OF ACTION**

18 **RETALIATION IN VIOLATION OF FEHA**

19 **(Plaintiff against Defendant CLOTHESMINDS, INC. and all DOE Defendants)**

20 130. Plaintiff re-alleges and incorporates by reference each and every allegation
21 in paragraphs 1 through 129, inclusive, of this Complaint as though fully set forth herein.

22 131. At all times herein mentioned, Government Code section 12940 et. seq. was
23 in full force and effect and was binding upon Defendants and each of them. Said statute imposes
24 certain duties upon Defendants concerning discrimination and retaliation against persons, such
25 as Plaintiff, on the basis of physical disability or on the basis of Plaintiff requesting time off of
26 work/missing time from work in order to manage her work load and doctor's appointments due
27
28

1 to her physical disabilities. Said statutes were intended to prevent the type of injury and damage
2 set forth herein. Plaintiff was, at all times herein mentioned, a member of the class of persons
3 intended to be protected by said statutes. As alleged above, Plaintiff was retaliated against and
4 was terminated as a result of her physical disabilities.

5 132. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed in
6 that Plaintiff has suffered loss of wages, salary, and benefits, among other things. As a result,
7 Plaintiff has suffered such damages in an amount according to proof.
8

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

13 134. In committing the foregoing acts, Defendants have been guilty of
14 oppression, fraud, and/or malice under California Civil Code section 3294, thereby entitling
15 Plaintiff to punitive damages in a sum appropriate to punish and make an example out of the
16 foregoing Defendants.
17

18 135. The acts of oppression, fraud, and/or malice, were engaged in by employees
19 of Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of
20 each employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
21 wrongful conduct for which an award of punitive damages is sought, and/or was personally
22 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
23 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
24 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
25 to punitive and exemplary damages against each of the Defendants in accordance with California
26 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant
27
28

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

6 **SEVENTEENTH CAUSE OF ACTION**

7 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION**

8 **OF FEHA**

9
10 **(Plaintiff against Defendant CLOTHESMINDS, INC. and all DOE Defendants)**

11 137. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 136, inclusive, of this Complaint as though fully set forth herein.

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

17
18 139. During the course of Plaintiff's employment, Defendants failed to prevent their
19 employees, including management, from engaging in intentional actions that resulted in Plaintiff
20 being treated less favorably and eventually being terminated because of Plaintiff's protected
21 status (i.e. her physical disabilities). During the course of Plaintiff's employment, Defendants
22 failed to prevent their employees from engaging in unjustified employment practices against
23 employees in such protected classes. During the course of Plaintiff's employment, Defendants
24 failed to prevent a pattern and practice by its employees of intentional discrimination and
25 retaliation on the basis of physical disability, and/or other protected status and/or protected
26 activity.
27
28

1 140. Plaintiff believes and, on that basis, alleges that her physical disabilities and
2 other protected status and/or protected activity in informing her employer about her disabilities
3 was a substantial motivating factor in Defendants' employees' discriminating against her and
4 retaliating against her.

5 141. As a direct and proximate result of the aforementioned acts and omissions of
6 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
7 loss of income (past and future), loss of employment benefits (past and future), general and
8 compensatory damages (past and future), mental pain and anguish and emotional distress (past
9 and future), and will continue to suffer in the future, in an amount to be proved at the time of
10 trial.
11

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

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

24 **EIGHTEENTH CAUSE OF ACTION**

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

26 **(Plaintiff against Defendant CLOTHESMINDS, INC. and all DOE**
27 **Defendants)**
28

1 144. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 143, inclusive, of this Complaint as though fully set forth herein.

3 145. At all times during her employment with Defendant CLOTHESMINDS, INC.,
4 Plaintiff performed her duties with the utmost diligence and competence.
5

6 146. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and
7 actions to treat her differently and ultimately terminate her as alleged herein, was motivated
8 by Plaintiff's physical disabilities. Defendant CLOTHESMINDS, INC. intentionally created
9 the aforementioned retaliation, thereby not giving Plaintiff an opportunity to work in
10 an environment free of retaliation.
11

12 147. The employment of Plaintiff was wrongfully terminated in August 2023 in violation
13 of the fundamental public policy of the State of California with respect to retaliating against an
14 employee on account of their physical disability. Moreover, Plaintiff was forced to hire an
15 attorney to assist her to end these illegal activities. Said conduct violated statutory and
16 constitutional expressions of public policy including, the California Government Code section
17 12940 et seq. (FEHA) and the California Constitution, Article 1 section 8.
18

19 148. As set forth above, said actions by Defendants were wrongful and in violation of the
20 fundamental principles of the public policy of the State of California as reflected in its laws,
21 objectives and policies. Said statutes and constitutional expressions of public policy include,
22 but are not limited to, California Government Code section 12940 (FEHA), and the California
23 Constitution, Article 1 section 8. These laws inure to the benefit of the public at large, and not
24 just the private interests of the employers and employees whom they govern or protect.
25

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

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

3 150. The foregoing conduct engaged in by Defendants and each of their directors, officers
4 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
5 and carried on with a conscious and willful disregard of their workers' right to work in an
6 environment free of discrimination and retaliation due to physical disabilities, so as to justify
7 the imposition of punitive damages to punish and set an example of said Defendants.
8

9 **NINETEENTH CAUSE OF ACTION**

10 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

11 **(California Business and Professions Code Section 17200)**

12 **(Plaintiff against Defendant CLOTHESMINDS, INC. and all DOE defendants)**

13 151. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 150, inclusive, of this Complaint as though fully set forth herein.
15

16 152. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
17 constitutes unfair and unlawful business practices under California Business and Professions
18 Code Section 17200, et seq.

19 153. Defendant's violations of the California labor laws and FEHA constitutes a
20 business practice because it was done repeatedly over a significant period of time in a
21 systematic manner that was detrimental to Plaintiff and other employees.
22

23 154. Defendants' violations of California labor laws and FEHA constitutes a business
24 practice because it was done repeatedly over a significant period of time in a systematic
25 manner that was detrimental to Plaintiff and others.

26 155. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
27 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of
28

1 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et
2 seq.

3 156. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
4 multiple damages as specifically provided in California Business and Professions Code section
5 17200 et seq.

6 157. For the four years preceding the filing of this action, Plaintiff requests
7 restitution of all monies and profits to be disgorged from Defendants in an amount according to
8 proof at time of trial, but in excess of the jurisdiction of this Court.
9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
12 follows:

- 13 1. For compensatory damages including lost past and future wages, regular wages,
14 overtime, and all other sums of money, including employment benefits, together with
15 interest on said amounts, and any other economic injury to Plaintiff, up to an amount of
16 **\$250,000;**
- 17 2. For special and consequential damages to Plaintiff in an amount up to **\$250,000;**
- 18 3. For general damages in an amount up to **\$1,000,000;**
- 19 4. For punitive/exemplary damages in an amount up to **\$2,500,000** against
20 CLOTHESMINDS, INC.
- 21 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount up
22 to **\$4,000;**
- 23 6. For damages and penalties pursuant to Labor Code Section 203 in an amount up to
24 **\$15,000;**
- 25 7. For damages and penalties pursuant to Labor Code Section 204/210 in an amount up to
26 **\$50,000;**
- 27 8. For damages and penalties pursuant to Labor Code Sections 1198.5 and 226 for failure
28 to provide personnel file and pay records in the aggregate amount of **\$1500.00;**

9. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount subject to proof at trial;
10. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
11. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period for an amount up to **\$50,000**;
12. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break for an amount up to **\$50,000**;
13. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendant as described more particularly in the Complaint and Representative PAGA claim/action up to an amount of **\$150,000** for Plaintiff individually and up to an amount of **\$5,000,000** for other aggrieved employees;
14. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of attorney's fees, costs, interest, and penalties according to proof to the extent permitted by law;
15. For restitution and/or damages for all amounts unlawfully withheld from the wages of Plaintiff, as may be proven;
16. For the imposition of civil penalties and/or statutory penalties;
17. For all interest as allowed by law;
18. For all costs and disbursements incurred in this suit;
19. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code, including section 2698 et seq., Government Code section 12940 et seq. and the FEHA, Code of Civil Procedure section 1021.5, and/or other applicable laws; and

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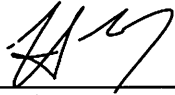
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1 20. For such other and further relief as this Court may deem proper.

2
3 DATED: January 8, 2024

MESSRELIAN LAW INC.

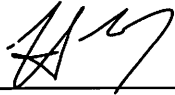
4 By 
5 Harout Messrelian, Esq.
6 Attorneys for Plaintiff Divina Jaime

7
8 **DEMAND FOR JURY TRIAL**

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

10
11 DATED: January 8, 2024

MESSRELIAN LAW INC.

12 By 
13 Harout Messrelian, Esq.
14 Attorneys for Plaintiff Divina Jaime