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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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By Gabriel Lopez, Deputy Clerk

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO – CENTRAL CIVIL**

10
11 ARVIN JOHN BAUTISTA, an individual and on
behalf of the State of California,

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13 Plaintiff,

14 vs.

15 OPERATION SAMAHAN, INC. a California
Non-Profit Corporation; and DOES 1-5,

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17 Defendants.
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Case No.: 37-2024-00001751-CU-OE-CTL

COMPLAINT FOR:

1. **EQUAL PAY ACT VIOLATIONS [LABOR CODE SECTION 1197.5];**
2. **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5;**
3. **RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6;**
4. **COMMON LAW WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
5. **FAILURE TO PAY MINIMUM AND REGULAR WAGES [LAB. CODE §§ 1194, 1197 and WAGE ORDERS];**
6. **UNPAID OVERTIME COMPENSATION [LAB. CODE §§ 510, 1194, 1198 and WAGE ORDERS];**
7. **FAILURE TO PROVIDE MEAL PERIODS [LAB. CODE §§ 226.7 and 512(a) and WAGE ORDERS];**
8. **FAILURE TO PROVIDE REST PERIODS [LAB. CODE § 226.7 and WAGE ORDERS];**
9. **WAGES NOT TIMELY PAID DURING EMPLOYMENT [LAB. CODE §§204 and 210];**

10. FINAL WAGES NOT TIMELY PAID [LAB. CODE § 201, 202, and 203];
11. NON-COMPLIANT WAGE STATEMENTS [LAB. CODE § 226(a)];
12. FAILURE TO KEEP ACCURATE PAYROLL RECORDS [LAB. CODE §§ 1174(d) and 1174.5]
13. FAILURE TO INDEMNIFY FOR EXPENSES [LAB. CODE §§ 2800 and 2802];
14. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”) LABOR CODE SECTION 2698 *ET SEQ.* FOR VIOLATIONS OF LABOR CODE;
15. FEHA – RETALIATION [GOV. CODE § 12940(h)]

Plaintiff Arvin John Bautista (“Plaintiff”) alleges against Defendant Operation Samahan, Inc. (“Defendant OPSAM”), Defendant DOES 1-5 (collectively “Defendants”), and each of them as follows:

GIST OF THE ACTION

1. This case involves Defendants’ various and sundry Labor Code violations against Plaintiff Arvin John Bautista as an individual. Defendant OPSAM is government funded provider of medical and dental services in San Diego County. Specifically, in addition to suffering individual wage and hour violations, Plaintiff was wrongfully terminated after reporting sexual harassment and requesting a raise and mentioning the salaries of other of Defendants’ employees. Plaintiff also brings a Private Attorneys General Act (“PAGA”) claim against Defendants, on behalf of the State of California and aggrieved employees.

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1 Defendant. The LWDA expressed no interest in investigating the matter. Additionally, he obtained
2 a right to sue from the California Civil Rights Department for his FEHA claim.

3 **GENERAL ALLEGATIONS**

4 9. In October 2021, Defendant OPSAM hired Plaintiff as a temporary health navigator
5 trainee at the rate of \$18.00 per hour. By January 2022, Plaintiff was a regular employee, and being
6 asked to cover his regular duties, as well as additive duties of in-house IT.

7 10. By May 2022, Plaintiff was additionally performing his regular job duties, as well as
8 HR assistant and Executive Assistant. By mid-2022, Plaintiff received a raise from \$18.00 per hour,
9 to \$21.00 per hour.

10 11. By September 2022, Plaintiff received a formal eCW certification as a EMR Certified
11 Trainer and in October 2022 received a promotion to Practice her Superuser and upgraded to \$25.00
12 per hour.

13 12. In December 2022, Plaintiff attended the Defendant OPSAM Christmas party.
14 Regretfully, Defendant OPSAM initiated, and conducted an obscene game for the attendees and
15 employees to engage in. Plaintiff complained about the game and noted that it was wholly
16 inappropriate and offensive to have such a game a work sponsored Christmas party.

17 13. In August 2023, Plaintiff sent an email to Defendant OPSAM asking when he was
18 having an evaluation. He also informed Defendant OPSAM that he was aware other employees were
19 being paid more than he was, who were doing significantly less work. Plaintiff planned on asking for
20 a raise because it was unfair he was doing the duties of multiple job titles, but receiving less pay than
21 two junior employees with less job duties.

22 14. Defendant OPSAM terminated his employment because he mentioned other
23 employees' wages and in retaliation for Plaintiff's prior complaint about the sexually inappropriate
24 game.

25 15. Plaintiff does not know the true names or capacities of the Defendants sued herein as
26 DOES 1 – 5 and will amend its Complaint to allege their true names or capacities as soon as they are
27 ascertained. All DOES are co-conspirators, aiders and abettors, or agents of Defendants.

1 **FIRST CAUSE OF ACTION**

2 **(Unequal Pay Act – Labor Code Sections 1197.5)**

3 **(Plaintiff Against Defendants)**

4 16. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
5 though fully set forth herein.

6 17. Labor Code Section 1197.5 (k) prohibits an employer from prohibiting an employee
7 from disclosing the employee's own wages, or inquiring or discussing the wages of other employees.

8 18. Here, Defendants placed Plaintiff on leave after he mentioned the other employees'
9 wages, and ultimately terminated his employment.

10 19. As a result of Defendants' violations of section 1197.5, Plaintiff is entitled to recover
11 balance of wages, interest, liquidated damages, and attorney's fees and costs under section 1197.5
12 (h) and (c).

13 **SECOND CAUSE OF ACTION**

14 **(Retaliation – Labor Code Section 1102.5)**

15 **(Plaintiff Against Defendants)**

16 20. Plaintiff realleges and incorporates by reference all the preceding paragraphs as though fully
17 set forth herein.

18 21. During his employment, Plaintiff reported to a person with authority over him, at
19 least the following information, where he had reasonable cause that such information disclosed at
20 least the following legal violations: that Plaintiff and others were being sexually harassed and
21 subjected to a hostile work environment in violation of the FEHA.

22 22. As a result of Plaintiff disclosing such information, Defendants retaliated against him
23 and subjected him to adverse employment actions such as harassing him, and finally constructively
24 and/or wrongfully discharging him.

25 23. As a direct and proximate result of the unlawful conduct of Defendants, Plaintiff
26 suffered a loss of earning and benefits and Plaintiff has also suffered emotional distress because of
27 Defendants' actions.

24. Defendants' conduct described herein was intended to cause injury to Plaintiff to send a message to other employees that they too would be harassed and retaliated against for complaining and voicing concern about Defendants' illegal and unethical business practices. Defendants' conduct was willful and consciously disregarded Plaintiff's rights and subjected him to unjust hardship so as to constitute malice, oppression or fraud under California Civil Code Section 3294, thereby entitling Plaintiff to punitive and exemplary damages in an amount appropriate to punish or set an example of Defendants.

THIRD CAUSE OF ACTION

(Retaliation— Labor Code 98.6)

(Plaintiff Against Defendants)

25. Plaintiff realleges and incorporates by reference all the preceding paragraphs as though fully set forth herein. At all relevant times, Labor Code Section 98.6 was in effect and binding upon Defendants. Labor Code Section 98.6 prohibits any person from retaliating, discriminating, or taking any adverse action against an employee for, among other activities, making a written or oral complaint that he or she is owed back wages, or exercising other rights under the Labor Code.

26. At all relevant times, Plaintiff had a right to complain that his wages were below those of two junior employees with less responsibilities and duties than Plaintiff. Labor Code Section 1197.5 prohibits employers from prohibiting their employees from discussing their own, or other employees' wages.

27. When Plaintiff complained to Defendants about such abusive and illegal employment practices, they terminated him. As a result of Defendants' discrimination and retaliation and harassment, Plaintiff has suffered, and continues to suffer economic damages, including past and continuing loss of wages, and non-economic damages, including pain and suffering and emotional and mental distress, in a sum to be determined at trial.

28. Plaintiff is also entitled to recover statutory civil penalties of \$10,000 per violation in accordance with Labor Code Section 98.6.

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1 **FOURTH CAUSE OF ACTION**

2 **(Common Law Wrongful Termination or Constructive Discharge)**

3 **(Plaintiff Against Defendants)**

4 29. Plaintiff hereby incorporates by reference the allegations in the above paragraphs of
5 this Complaint as though fully set forth herein.

6 30. Defendants employed Plaintiff at all relevant times.

7 31. Defendants terminated Plaintiff's employment in violation of public policy. A
8 substantial motivating factor in Defendants' termination of Plaintiff was: (a) reporting harassment
9 of himself and other employees under FEHA; (b) complaining about pay discrepancies between
10 himself, and two junior employees, in violation of Labor Code Section 1197.5.

11 32. Defendants' wrongful termination of Plaintiff was a substantial factor in causing
12 Plaintiff economic damages and lost wages, both past and future, and suffering emotional and mental
13 distress, all in a sum to be proven and determined at trial.

14 33. Defendants' conduct described herein in was intended to cause injury. Defendants'
15 conduct was willful and consciously disregarded Plaintiff's rights and subjected him to unjust
16 hardship so as to constitute malice, oppression or fraud under California Civil Code Section 3294,
17 thereby entitling Plaintiff to punitive and exemplary damages in an amount appropriate to punish or
18 set an example of Defendants.

19 **FIFTH CAUSE OF ACTION**

20 **((Non-Payment of Minimum Wage and Failure to Pay For All Time Worked) – Labor Code**

21 **Section 1194, 1197, 1198, 200, and IWC Orders)**

22 **(Plaintiff Against Defendants)**

23 34. Plaintiff realleges and incorporates by reference all the preceding paragraphs as though
24 fully set forth herein.

25 35. Labor Code Section 1194(a) provides that notwithstanding any agreement to work
26 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
27 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
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1 of the full amount of this minimum wage or overtime compensation, including interest thereon,
2 reasonable attorneys' fees, and costs of suit.

3 36. Labor Code Section 200 defines wages as all amounts for labor performed by
4 employees of every description, whether the amount is fixed or ascertained by the standard of time,
5 task, piece, commission basis, or other method of calculation.

6 37. Labor Code Section 1198 makes it unlawful for employers to employ employees
7 under conditions that violate the Wage Orders. The relevant wage order defines hours worked as
8 the time during which an employee is subject to the control of an employer and includes all the time
9 the employee is suffered, or permitted to work, whether or not required to do so.

10 38. Plaintiff performed work for Defendants.

11 39. Plaintiff was paid less than the minimum wage by Defendants for some hours
12 worked off the clock.

13 40. As a proximate result of the aforementioned violations, Plaintiff has been damaged
14 in an amount according to proof at the time of trial, including liquidated damages under Section
15 1194.2 and penalties under Section 1197.1.

16 **SIXTH CAUSE OF ACTION**

17 **(Non-Payment of Overtime Wage – Labor Code Sections 1194, 1198, 510 and**
18 **IWC Orders)**

19 **(Plaintiff Against Defendants)**

20 41. Plaintiff hereby incorporates by reference the allegations in the above paragraphs of
21 this Complaint as though fully set forth herein.

22 42. Plaintiff performed work for Defendants and worked overtime hours.

23 43. Defendants knew, or should have known that Plaintiff worked overtime, and that
24 Plaintiff

25 was not paid for the overtime. Plaintiff is owed not less than \$50,000 in overtime, in an amount
26 subject to proof at trial.

1 **SEVENTH CAUSE OF ACTION**

2 **(Failure to Provide Meal Breaks – Labor Code Sections 226.7 and 512(a) and IWC Wage**
3 **Order)**

4 **(Plaintiff Against Defendants)**

5 44. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
6 though fully set forth herein.

7 45. At all relevant times, the IWC Order and Labor Code Sections 226.7 and 512(a) were
8 in effect and applicable to Defendants.

9 46. At all relevant times, Defendants failed to provide Plaintiff with duty free meal period
10 in accordance with Labor Code Sections 226.7 and 512(a) and the IWC Order.

11 47. At all relevant times, Defendants intentionally and willfully failed to compensate
12 Plaintiff with one additional hour of pay at his normal regular rate of pay for meal periods that were
13 not provided in accordance with California Labor Code Sections 226.7 and 512(a) and applicable
14 IWC Order.

15 48. Defendants' conduct violates the applicable IWC Order and California Labor Code
16 Sections 226.7 and 512(a), and Plaintiff is thus entitled to recover from Defendants one additional
17 hour of pay at his regular rate for each workday that a compliant meal period was not provided.

18 **EIGHTH CAUSE OF ACTION**

19 **(Failure to Provide Rest Breaks – Labor Code Section 226.7 and IWC Wage Order)**

20 **(Plaintiff Against Defendants)**

21 49. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
22 though fully set forth herein.

23 50. Labor Code Section 226.7 and the applicable IWC Wage Order provide that every
24 employer shall authorize and permit all employees to take rest breaks, which in so far as practicable
25 shall be in the middle of each work period and that the rest period time shall be based on the total
26 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
27 thereof unless the total daily work time is less than three- and one-half hours.

1 51. At all relevant times, Defendants regularly failed to authorize and permit Plaintiff to
2 take duty-free rest periods in accordance with California Labor Code Section 226.7 and the
3 applicable IWC Wage Order. In particular, Defendants required Plaintiff to work four or more hours
4 without authorizing or permitting a ten-minute rest period per each four-hour period or major
5 fraction thereof worked.

6 52. Further, at all relevant times, Defendants failed to compensate Plaintiff premium pay
7 of one additional hour of pay at their regular pay rate for rest periods that were not provided in
8 accordance with Labor Code Section 226.7 and the applicable IWC Wage Orders.

9 53. Defendants' conduct violates the applicable IWC Wage Order and Labor Code
10 Section 226.7. Consequently, pursuant to the IWC Order and Labor Code Section 226.7, Plaintiff
11 is entitled to recover from Defendants one additional hour of pay at his regular rate of pay for each
12 workday that a rest period was not provided.

13 **NINTH CAUSE OF ACTION**

14 **(Wages Not Timely Paid During Employment – Labor Code Sections 204 and 210)**

15 **(Plaintiff Against Defendants)**

16 54. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
17 though fully set forth herein.

18 55. Labor Code Section 204 provides that all wages earned by an employee for labor
19 performed between the 1st and the 15th days, inclusive, of any calendar month, other than those wages
20 due upon termination of an employee, are due and payable between the 16th and 26th day of the
21 month during which the work was performed. Section 204 also provides that all wages earned by
22 any employee for labor performed between the 16th day and the last day, inclusive, of any calendar
23 month, other than those wages due upon termination of an employee, are due and payable between
24 the 1st day and 10th day of the following month. The section further provides that all wages earned
25 for labor in excess of the normal week period shall be paid no later than the payday for the next
26 regular payroll period.

27 56. Defendant intentionally and willfully failed to pay Plaintiff all wages earned and due
28 to him, within the time permitted under Labor Code Section 204.

57. Labor Code Section 210 authorizes the following civil penalties for violation of Labor Code Section 204, which are in addition to, and entirely independent and apart from, any other civil or criminal penalties: “(1) for any initial violation, or any willful or intentional violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” The penalties enumerated in Labor Code Section 210 may be recovered in a private civil action. California Labor Code Section 210(b). Thus, Plaintiffs are therefore entitled to recover civil penalties pursuant to Labor Code Sections 210 and 218 and all other remedies available for Defendants’ violating Labor Code Section 204.

TENTH CAUSE OF ACTION

(Final Wages Not Timely Paid – Labor Code Sections 201, 202 and 203)

(Plaintiff Against Defendants)

58. Plaintiff realleges and incorporates by reference all the preceding paragraphs as though fully set forth herein.

59. California Labor Code Sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of the discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours' thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

60. At all relevant times, Defendants intentionally and willfully failed to pay Plaintiff all of his earned and unpaid wages at the time he separated his employment, in violation of California Labor Code Sections 201 and 202.

61. California Labor Code Section 203 provides that if an employer willfully fails to pay wages owed, in accordance with Sections 201 and 202, then the wages of the employee continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

62. Accordingly, Plaintiff is entitled to recover from Defendant the statutory penalty wages for each day he was not paid, up to a thirty (30) day maximum pursuant to Section 203.

ELEVENTH CAUSE OF ACTION

(Non-Compliant Wage Statements – Labor Code Sections 226(a) and 226.3)

(Plaintiff Against Defendants)

63. Plaintiff realleges and incorporates by reference all the preceding paragraphs as though fully set forth herein.

64. California Labor Code Section 226(a) provides that every employer shall furnish each employee an accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and his or her social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

65. At all relevant times, Defendants intentionally and willfully failed to provide Plaintiffs with complete and accurate wage statements as required by Labor Code Section 226.

66. As a result of Defendants' violations of California Labor Code Section 226(a), Plaintiff suffered injuries and damages, including confusion over whether he received all wages earned and owed, difficulty and expense involved in reconstructing pay records, and forcing him to make mathematical computations to analyze whether the wages paid in fact properly compensated him.

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1 67. Accordingly, Plaintiff is entitled to recover from Defendants the greater of his actual
2 damages caused by Defendants' failure to comply with Section 226(a), or an aggregate penalty not
3 exceeding \$4,000 and other penalties and fines.

4 **TWELFTH CAUSE OF ACTION**

5 **(Failure to Keep Accurate Payroll Records – Labor Code Sections 1174(d) and 1174.5)**
6 **(Plaintiff Against Defendants)**

7 68. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
8 though fully set forth herein.

9 69. Pursuant to California Labor Code Section 1174(d), an employer shall keep, at a
10 central location in the state or at the plants or establishments at which employees are employed,
11 payroll records showing the hours worked daily by, and the wages paid to employees employed at
12 the respective plants or establishments. These records shall be kept on file for not less than two
13 years. And Section 1174(d) also states that an employer shall not prohibit an employee from
14 maintaining a personal record of hours worked.

15 70. At all relevant times, Defendants intentionally and willfully failed to keep accurate
16 and complete payroll records showing the actual daily hours worked and the proper wages to be
17 paid to Plaintiff.

18 71. As a result of Defendants' violation of California Labor Code Section 1174(d),
19 Plaintiff has suffered injuries and damages, including confusion over whether he received all wages
20 earned and owed to him, difficulty and expense involved in reconstructing pay records, and forcing
21 him to make mathematical computations to analyze the wages paid were accurate. Additionally,
22 Plaintiff has been injured by Defendants' intentional and willful violation of California Labor Code
23 Section 1174(d) because he was denied both the legal right to receive, and the protected interest in
24 receiving, accurate payroll records pursuant to Labor Code Section 1174(d).

25 72. Labor Code Section 1174.5 provides that any person employing labor who willfully
26 fails to maintain accurate and complete records as required by Labor Code Section 1174(d) shall be
27 subject to a civil penalty in the amount of \$500.

1 73. Accordingly, Plaintiff is entitled to recover a civil penalty in the amount of \$500
2 pursuant to Labor Code Section 1174.5 and all other remedies.

3 **THIRTEENTH CAUSE OF ACTION**

4 **(Unreimbursed Business Expenses – Lab. Code §§ 2800 and 2802)**

5 **(Plaintiff Against Defendants)**

6 74. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
7 though fully set forth herein.

8 75. Pursuant to California Labor Code Sections 2800 and 2802, Defendants were
9 required to reimburse Plaintiff for all necessary expenditures incurred by Plaintiff in direct
10 consequence of the discharge of his job duties or incurred at the direction of Defendants.

11 76. Plaintiff incurred necessary business-related expenses and costs that were not fully
12 reimbursed by Defendants, including but not limited to mileage and gas and cell phone useage.

13 77. Plaintiff is entitled to recover from Defendants his business-related expenses and
14 costs incurred during his employment, plus interest and attorney’s fees in a sum to be determined at
15 trial.

16 **FOURTEENTH CAUSE OF ACTION**

17 **(Violation of Labor Code Section 2698, *et seq.* California Private Attorneys General Act)**

18 **(Plaintiff Against Defendants)**

19 78. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
20 though fully set forth herein.

21 79. PAGA permits an “aggrieved employee” to bring a civil action on behalf of him or
22 herself and on behalf of all other aggrieved employees to recover civil penalties for an employer’s
23 violation of sections enumerated in Labor Code Section 2699.5. An “aggrieved employee” is
24 defined in Labor Code Section 2699, subdivision (c), as “any person who was employed by the
25 alleged violator and against whom one or more of the alleged violations was committed.”

26 80. Plaintiff and other aggrieved employees are “aggrieved employees” as defined by
27 California Labor Code Section 2699, subdivision (c) because they are all current or former
28 employees of Defendants and were subject to Defendants’ violations of various labor code sections.

1 81. Plaintiff satisfied the requirements of Labor Code Section 2699.3 (a)(1)(A) and
2 (a)(1)(B). Additionally, the LWDA provided no notice it was investigating the violations within 65
3 days of postmark date of the notice provided in Section 2699.3 (a)(1)(A).

4 82. Plaintiff and other aggrieved employees were subject to violations of the following
5 Labor Code Sections, entitling them to penalties under PAGA: Labor Code Sections 200, 201, 202,
6 203, 204, 210, 226(a), 226.3, 226.7, 246(i), 432.5, 510, 512(a), 558, 558.1, 1030, 1031, 1003, 1034,
7 1174(d), 1174.5, 1194, 1197, 1197.5, 1198, 1198.5, 1199, 2800/2802. In particular, Defendants'
8 unlawful policies, practice, and procedures comprising the violations include:

9 a. Defendants' failure to pay minimum wage, regular, and overtime wages
10 (Labor Code Sections 200, 218, 510, 1194, 1197.1, 1198 and 1199(c) and the "Minimum
11 Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order).

12 b. Defendants' failure to provide compliant meal and rest breaks (Labor Code
13 Sections 226.7, 512, 1198, and the Meal Period and Rest Period sections of the applicable
14 IWC Wage Order).

15 c. Defendants' failure to provide accurate itemized wage statements (Labor
16 Code Sections 226(a), 226.3, 1198 and the "Records" section of the applicable IWC Wage
17 Order).

18 d. Defendants' failure to maintain accurate records (Labor Code Sections 1174 and
19 1174.5 and the "Records" section of the IWC Wage Orders).

20 e. Defendants' failure to timely pay wages during and upon termination of
21 employment (Labor Code Sections 200, 201, 202, 203, 204, 210, and 1197, 1198).

22 f. Defendants' underpayment of employees and failure to issue premium pay for
23 missed meal and rest breaks, or reimburse for business expenses violated Labor Code Sections
24 558, 558.1, and 1197.1).

25 g. Defendants' failure to reimburse business-related expenses under Labor Code
26 Section 2800, 2802 and of the applicable IWC Wage Order).

27 h. Labor Code Section 246(i) requires an employer provide employees written
28 notice setting forth the amount of paid sick leave available either on an employee's wage

1 statements pursuant to Labor Code Section 226, or in a separate writing on the designated pay
2 date. Here, Defendants failed to provide employees with accrued sick leave on either wage
3 statements or separate writings every pay period.

4 i. Defendants' violation of Labor Code Section 432.5 by requiring employees to
5 agree, in writing, to terms and conditions which the Defendants knew were prohibited by law.

6 j. Defendants' violation of Labor Code Section 1197.5 by paying female
7 employees at rates lower than their male counterparts.

8 k. Defendants' violation of Labor Code Section 1030, 1031, 1034 by failing to
9 provide reasonable break times for employees to express breast milk and make reasonable
10 efforts to provide an employee with use of a suitable area or room in close proximity to the
11 employee's work area to express milk in private and develop a compliant written policy
12 regarding lactation accommodation.

13 83. Accordingly, Plaintiff and the aggrieved employees are entitled to penalties against
14 Defendants under Labor Code Section 2699 (f) as well as attorneys' fees and costs pursuant to Labor
15 Code Section 2699 (g) and Code of Civil Procedure Section 1021.5.

16 **FIFTEENTH CAUSE OF ACTION**

17 **(FEHA Retaliation – Government Code Section 12940(h))**

18 **(Plaintiff Against Defendants)**

19 84. Plaintiff hereby incorporates by reference the allegations in the above paragraphs of
20 this Complaint as though fully set forth herein.

21 85. Plaintiff reported to Defendant that a holiday work party had a sexually inappropriate
22 and obscene game that the employees were engaged in. He reported this game as a making a hostile
23 work environment.

24 86. Plaintiff's reporting of the sexual harassment and discrimination was a substantial
25 motivating reason for Defendant's decision to pay Plaintiff less than junior and less qualified
26 employees, aggressively micromanage him, and finally wrongfully terminated and discharged him.

27 87. Plaintiff was harmed and Defendant's conduct was a substantial factor in causing
28 Plaintiff harm. Such harm includes loss of earnings and employment benefits, humiliation, emotional

1 distress, and mental pain and anguish all in an amount to be determined at trial according to proof,
2 but not less than \$1,000,000.00.

3 88. Defendant's conduct described herein was intended to cause injury. Defendant's
4 conduct was willful and consciously disregarded Plaintiff's rights and subjected him to unjust
5 hardship so as to constitute malice, oppression or fraud under California Civil Code Section 3294,
6 thereby entitling Plaintiff to punitive and exemplary damages in an amount appropriate to punish or
7 set an example of Defendant. Defendant's course of retaliation was done to send a message to others
8 that they too would be victimized and subjected to abuse if they sought to speak out against
9 Defendant's hostile work environment and tolerated sexual harassment.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiffs prays for judgment against Defendants, and each of them, as
12 follows:

- 13 1. For general and special damages according to proof but not less than \$1,000,000.00;
- 14 2. For pre-judgment interest as permitted by law;
- 15 3. For all penalties and liquidated damages permitted under the California Labor Code,
16 including but not limited to Sections 98.6, 203, 210, 1174.5, 226, 1102.5, 1197.5, and
17 2699(f);
- 18 4. For exemplary and punitive damages;
- 19 5. For attorney's fees under at least the following statutes: Labor Code Sections 218.5,
20 226, 1102.5, 1174, 1174.5, 1194, 226.7, 2800, 2802, 1197.5, 2699(g), Government
21 Code Section 12965(b); and Code of Civil Procedure Section 1021.5;
- 22 6. For the costs of the suit herein; and
- 23 7. For such other and further relief as this Court may deem just and proper.

24
25 DATED: January 16, 2024

SHALCHI BURCH LLP

26
27 By: /S/

Travis J. Burch, Esq.

Attorneys for Plaintiff Arvin John Bautista