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Assigned for All Purposes
Judge Randall J. Sherman

CX-105

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE—CIVIL COMPLEX CENTER

LILI ANA BARNES, individually and on behalf
of all other aggrieved employees and the State of
California,

Plaintiff,

v.

GRUPO GALLEGOS; and DOES 1 through 10,
inclusive,

Defendants.

Case No. 30-2024-01440683-CU-OE-CXC

COMPLAINT FOR:

1. Failure to Pay All Wages;
2. Meal Period Violations;
3. Rest Period Violations;
4. Failure to Indemnify All Necessary Business Expenditures;
5. Wage Statement Violations;
6. Unfair Competition;
7. Civil Penalties and Public Injunctive Relief under the Private Attorneys General Act;
8. Failure to Provide Reasonable Accommodation;
9. Retaliation;
10. Discrimination;
11. Failure to Prevent Discrimination; and
12. Wrongful Termination in Violation of Public Policy

**REQUEST FOR PUBLIC
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff Lili Ana Barnes (“Plaintiff”), individually and on behalf of all other aggrieved
2 employees and the State of California, hereby brings this individual and representative action
3 Complaint against Grupo Gallegos and DOES 1 through 10 inclusive (collectively, “Defendants”),
4 and hereby alleges with knowledge with respect to her own acts and on information and belief as to
5 other matters as follows:

6 **INTRODUCTION**

7 1. This case arises, in part, out of Defendants’ misclassification of Plaintiff as exempt
8 from the requirements of overtime and double time pay, resulting in the non-payment of overtime and
9 double time compensation and failure to provide compliant meal and rest periods or compensation in
10 lieu thereof to Plaintiff. Thus, Plaintiff hereby brings this Complaint for recovery of unpaid wages and
11 penalties under California Business and Professions Code § 17200 *et. seq.*, Labor Code §§ 201-204,
12 226, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2802, and 2804, and the applicable
13 Industrial Welfare Commission Wage Order, in addition to seeking injunctive relief, declaratory relief,
14 and restitution.

15 2. Plaintiff also brings a representative action, under Labor Code §§ 2698, *et seq.*, on
16 behalf of all other current and former employees of Defendants employed in California during the
17 PAGA Period, including exempt, non-exempt, and/or misclassified employees (collectively,
18 “Aggrieved Employees”). The term “PAGA Period” is defined as commencing from one year prior to
19 the submission of Plaintiff’s notice of Labor Code violations to the Labor and Workforce Development
20 Agency (“LWDA”) and Defendants through the date of final judgment.

21 3. This representative action is brought under, *inter alia*, the California Industrial Welfare
22 Commission (“IWC”) Wage Orders and applicable provisions of the California Code of Regulations,
23 California Code of Civil Procedure § 1021.5, and Labor Code §§ 201, 202, 203, 204, 206, 210, 221,
24 223, 224, 226, 226.3, 226.7, 227.3, 233, 234, 246, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1194,
25 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800, 2802, and 2804.

26 4. Defendants have engaged in a systematic pattern of wage and hour violations under the
27 Labor Code. During the PAGA Period, Defendants maintained a consistent practice and policy of
28 violating state wage and hour laws by, among other things, failing to timely pay all wages (including

1 minimum, overtime, and double time wages, sick pay, and vacation pay), failing to provide compliant
2 meal periods or compensation in lieu thereof, failing to provide compliant rest periods or compensation
3 in lieu thereof, failing to reimburse necessary business expenditures, failing to timely pay all wages
4 due upon separation of employment, failing to provide accurate itemized wage statements, and failing
5 to maintain accurate records. Accordingly, Plaintiff brings this representative action for recovery of
6 civil penalties and injunctive relief under Labor Code §§ 2698 *et seq.*

7 5. Plaintiff further seeks general and special damages, exemplary/punitive damages,
8 penalties, interest as allowed by law, attorneys' fees and costs, and other appropriate and just relief
9 due to Defendants' unlawful conduct in violation of Plaintiff's rights under California law to be free
10 from discrimination and retaliation.

11 **JURISDICTION AND VENUE**

12 6. This Court has jurisdiction over Defendants because, upon information and belief,
13 Defendants are citizens of California, Defendants have sufficient minimum contacts in California, or
14 otherwise intentionally avail themselves to the California market so as to render the exercise of
15 jurisdiction over them by the California courts consistent with the traditional notions of fair play and
16 substantial justice.

17 7. Venue in this County is proper under Business & Professions Code § 17203 and
18 California Code of Civil Procedure § 395.5 because a substantial part of Defendants' unlawful
19 conduct, acts, and omissions alleged in this Complaint occurred in this County, Defendants conduct
20 substantial business in this County, and/or Defendants' liability arose in this County.

21 **PARTIES**

22 8. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was, and currently is, a California resident. Plaintiff was, and is, a victim of Defendants'
24 policies and/or practices complained of in this Complaint, lost money and/or property, and has been
25 deprived of the rights guaranteed by Business and Professions Code § 17200 *et. seq.*, Labor Code §§
26 201-204, 226, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802, and 2804, and
27 the applicable Wage Order.

28 9. Defendant Grupo Gallegos is a California corporation. Grupo Gallegos is, and at all

1 relevant times was, an employer subject to California state wage and hour laws. Plaintiff is informed,
2 believes, and thereon alleges that the practices and policies of Grupo Gallegos that are complained of
3 by way of this Complaint were implemented during the PAGA Period.

4 10. Plaintiff does not know the true names or capacities, whether individual, partner, or
5 corporate, of the defendants sued herein as DOES 1 to 10, inclusive, and for that reason, said
6 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to further
7 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
8 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
9 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and
10 proximately caused Plaintiff and other Aggrieved Employees to be subject to the unlawful
11 employment practices, wrongs, injuries and damages complained of herein.

12 11. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
13 herein, Defendants were and are the employers of Plaintiff and other Aggrieved Employees.

14 12. At all relevant times, each of said Defendants participated in the doing of the acts
15 hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and
16 each of them, were the agents, servants, and employees of each and every one of the other Defendants,
17 as well as the agents of all Defendants, and at all times herein mentioned were acting within the course
18 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
19 and/or otherwise ratified each and every one of the acts or omissions complained of in this Complaint.

20 13. At all times mentioned herein, Defendants, and each of them, were members of and
21 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope
22 of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges
23 that all Defendants were joint employers for all purposes of Plaintiff and other Aggrieved Employees.

24 **GENERAL ALLEGATIONS**

25 14. Defendants operate an independent advertising agency.

26 **Facts Concerning Alleged Wage and Hour Violations**

27 15. Plaintiff did not perform duties, more than 50% of the time, that would qualify her as
28 an exempt employee under the Labor Code. The titles implemented by Defendants for Plaintiff, such

1 as “Office Manager” were misnomers, as Plaintiff lacked the exercise of discretion and independent
2 judgment in the performance of her primary duties and, therefore, she should have been classified as
3 non-exempt under the applicable Wage Order(s) of the Industrial Welfare Commission (“IWC”).

4 16. Defendants misclassified Plaintiff who was required to regularly work hours beyond 8,
5 10, and 12 hours per day and/or 40 hours per week, and failed to pay the requisite amount of overtime
6 and double time wages as required by Labor Code §§ 510 and 1194 and the applicable IWC Wage
7 Order(s). As a result of this “exempt” classification, Plaintiff’s hours worked were not accurately
8 tracked, meal and rest periods were not provided as required by applicable law, and wage statements
9 were inadequate to convey accurate information as required by Labor Code § 226.

10 17. Defendants have consistently maintained and enforced unlawful employment practices
11 and policies against Plaintiff and other Aggrieved Employees which violate the Labor Code and IWC
12 Wage Orders.

13 18. **Unpaid Wages:** Plaintiff is informed, believes, and thereon alleges that during the
14 PAGA Period, Defendants failed to pay Plaintiff and other Aggrieved Employees minimum, regular,
15 overtime, and/or double time wages for all hours worked at the legally mandated rates. During the
16 PAGA Period, Plaintiff and other Aggrieved Employees regularly worked more than eight (8), 10,
17 and/or 12 hours per workday and/or over 40 hours per workweek. Defendants’ practices and policies
18 deprived Plaintiff and other Aggrieved Employees of minimum, regular, overtime, and/or double time
19 wages for work they performed off the clock. Defendants required Plaintiff and other Aggrieved
20 Employees to complete work-related tasks off the clock, such as communicating with Defendants,
21 working through meal periods, and being “on call” for Defendants’ benefit. Specifically, Plaintiff was
22 required to be “on call” 24/7 to respond to any security alarm alerts for Defendants’ worksite that she
23 received on her personal cell phone. Furthermore, Defendants rounded Plaintiff and other Aggrieved
24 Employees’ hours worked, thereby depriving them of wages for all hours worked at the legally
25 mandated rates. On information and belief, during the PAGA Period, Defendants failed to accurately
26 calculate the regular rate of pay by, among other things, failing to include a remuneration when
27 calculating the rate of pay for overtime, double time, meal and rest period premiums, and sick pay and
28 the final rate of pay for their vacation payout upon termination. Accordingly, Defendants violated the

1 Labor Code and the applicable IWC Wage Orders.

2 19. **Meal Period Violations:** Plaintiff is informed, believes, and thereon alleges that during
3 the PAGA Period, Defendants failed to authorize and permit and/or make available to aggrieved
4 employees timely off-duty 30-minute meal periods within the appropriate time intervals required by
5 Labor Code § 512 and § 11 of the applicable IWC Wage Order(s). Specifically, Claimant and other
6 aggrieved employees frequently had their meal periods shortened, interrupted, late, and/or missed
7 altogether due to Employer's practice of understaffing and prioritizing work demands over taking
8 compliant breaks. Employer also failed to authorize and permit and/or make available to Plaintiff and
9 other Aggrieved Employees second meal periods when they worked more than 10 hours. Moreover,
10 Defendants rounded Plaintiff and other Aggrieved Employees' time punches for meal periods.
11 Accordingly, Defendants failed to authorize and permit and/or make available to Plaintiff and other
12 Aggrieved Employees timely, uninterrupted off-duty meal periods for at least 30 minutes when they
13 worked more than five (5) hours and/or 10 hours in a workday, and failed to compensate Plaintiff and
14 other Aggrieved Employees with an additional hour of pay at their regular rate of pay for every day in
15 which they were denied a compliant meal period, in violation of Labor Code §§ 226.7 and 512, and
16 the applicable IWC Wage Orders. Accordingly, Defendants violated the Labor Code and the
17 applicable IWC Wage Orders.

18 20. **Rest Period Violations:** Plaintiff is informed, believes, and thereon alleges that during
19 the PAGA Period, Defendants failed to permit Plaintiff and other Aggrieved Employees to take all of
20 their statutorily entitled 10-minute rest periods for every four (4) hours worked or major fraction
21 thereof or provide compensation in lieu thereof in violation of the Labor Code and IWC Wage Orders.
22 Plaintiff and other Aggrieved Employees missed their rest breaks or had them interrupted or governed
23 by Defendants' practices and policies. Defendants also failed to adopt and implement a practice of
24 providing third rest breaks when Plaintiff and other Aggrieved Employees worked over 10 hours.
25 Notwithstanding the above rest break violations, Defendants failed to compensate Plaintiff and other
26 Aggrieved Employees with an additional hour of pay at their regular rate of pay for every day in which
27 they suffered a rest period violation. Accordingly, Defendants violated the Labor Code and the
28 applicable IWC Wage Orders.

1 21. **Unreimbursed Business Expenses:** Plaintiff is informed, believes, and thereon alleges
2 that during the PAGA Period, Defendants failed to reimburse Plaintiff and other Aggrieved Employees
3 for necessary business expenses incurred in the performance of their duties in violation of the Labor
4 Code and IWC Wage Orders. First, Plaintiff and other Aggrieved Employees were required to use
5 their personal cell phones to discuss work-related matters with Defendants' representatives and for
6 other work purposes without any reimbursement. For example, Plaintiff was required to receive
7 security alarm system alerts for Defendants' worksite on her personal cell phone without
8 reimbursement. Second, Plaintiff and other Aggrieved Employees who worked remotely were required
9 to incur costs for home internet service, electricity, and the purchase and maintenance of all hardware,
10 including laptops, keyboards, mice, and Bluetooth headsets, used by the employees in the discharge
11 of their job duties without any reimbursement. Third, Plaintiff and other Aggrieved Employees
12 required to incur costs for equipment and tools, including software, used by the employees in the
13 discharge of their job duties without any reimbursement. Accordingly, Defendants violated Labor
14 Code §§ 2800, 2802, and 2804. Accordingly, Defendants violated the Labor Code and applicable IWC
15 Wage Orders.

16 22. **Waiting Time Penalties:** Defendants knew or should have known that Plaintiff and
17 other Aggrieved Employees who separated from their employment with Defendants during the
18 statutory period were entitled to timely payment of all wages due. In violation of the Labor Code,
19 Plaintiff and other Aggrieved Employees did not receive payment of all wages owed upon separation
20 within the permissible time period due to, *inter alia*, Defendants' failure to pay all wages, including
21 minimum wages and premium pay.

22 23. **Wage Statement Violations:** Defendants knew or should have known that Plaintiff
23 and other Aggrieved Employees were entitled to receive complete and accurate wage statements. In
24 violation of the Labor Code and IWC Wage Orders, Plaintiff and other Aggrieved Employees were
25 not furnished with complete and accurate wage statements that show all information required by Labor
26 Code §§ 226 *et seq.*, including, but not limited to, the gross and net wages earned, the total hours
27 worked, all applicable hourly rates in effect during the pay period, and the corresponding number of
28 hours worked at each hourly rate.

1 24. **Failure to Keep Accurate Records:** Defendants knew or should have known that
2 Defendants were required to keep accurate records of the hours worked by Plaintiff and other
3 Aggrieved Employees. In violation of the Labor Code, Defendants failed to maintain accurate records
4 of hours worked by Plaintiff and other Aggrieved Employees as a result of Defendants' conduct, acts,
5 and/or omissions described throughout this Complaint.

6 25. Defendants' conduct, acts, and/or omissions described throughout this Complaint were
7 willful.

8 **Facts Concerning Alleged Discrimination and Retaliation**

9 26. Defendants employed Plaintiff as an "Office Manager" from May 18, 2023 through
10 March 19, 2024.

11 27. At all relevant times, Plaintiff performed her job duties well.

12 28. On February 15, 2024, Plaintiff, through her doctor, requested medical leave.

13 29. On March 19, 2024, Defendants terminated Plaintiff's employment in violation of
14 California law by, among other things, discriminating against Plaintiff on the basis of her actual or
15 perceived physical disability.

16 30. The alleged discrimination and retaliation has caused significant emotional distress to
17 Plaintiff. Specifically, as a result of Defendants' acts or omissions, Plaintiff has endured physical pain,
18 mental suffering, loss of enjoyment of life, physical impairment, inconvenience, grief, anxiety,
19 humiliation, and sleep deprivation.

20 31. Prior to filing this action, Plaintiff exhausted her administrative remedies by obtaining
21 a right-to-sue letter from the Civil Rights Department.

22 **FIRST CAUSE OF ACTION**

23 **Failure to Pay All Wages**

24 **(Against All Defendants)**

25 32. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though
26 fully set forth herein.

27 33. At all relevant times, Defendants had a duty to comply with Labor Code §§ 203, 204,
28 206, 210, 218, 221, 222, 223, 224, 227.3, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, and the

1 applicable IWC Wage Orders and California Code of Regulations.

2 34. Labor Code § 203 requires employers to pay a waiting time penalty when they fail to
3 provide final paychecks to employees who are terminated or who quit. The penalty is equal to the
4 employee's daily wage for each day the final paycheck goes unpaid, up to 30 days.

5 35. Labor Code § 204 and the IWC Wage Orders require timely payment of all wages owed
6 on regularly scheduled paydays at least twice during each calendar month, on days designated in
7 advance by the employer as the regular paydays. All wages earned in excess of the normal work
8 period must be paid no later than the payday for the next regular payroll period.

9 36. Labor Code § 206 provides that in case of a dispute over wages, the employer shall
10 pay, without condition and promptly under the Labor Code all wages conceded due, leaving to the
11 employee all remedies he/she is otherwise entitled to as to any balance claimed.

12 37. Labor Code § 210 provides:

13 every person who fails to pay the wages of each employee as provided
14 in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
15 1197.5, shall be subject to a penalty as follows: (1) For any initial
16 violation, one hundred dollars (\$100) for each failure to pay each
17 employee. (2) For each subsequent violation, or any willful or
18 intentional violation, two hundred dollars (\$200) for each failure to pay
each employee, plus 25 percent of the amount unlawfully withheld.
(b) The penalty shall either be recovered by the employee as a statutory
penalty pursuant to Section 98 or by the Labor Commissioner as a civil
penalty through the issuance of a citation or pursuant to Section 98.3.

19 38. Labor Code § 221 provides "[i]t shall be unlawful for any employer to collect or receive
20 from an employee any part of wages theretofore paid by said employer to said employee."

21 39. Labor Code § 223 provides "[w]here any statute or contract requires an employer to
22 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting
23 to pay the wage designated by statute or by contract."

24 40. Labor Code § 224 prohibits any deduction from an employee's wages which is not
25 either authorized by the employee in writing or permitted by law.

26 41. Labor Code § 246 requires employers to provide and allow employees to use at least
27 24 hours, or three days, of paid sick leave per year.

28 42. Labor Code § 227.3 requires employers to pay terminated employees for their unused

1 paid vacation time at their final rate of pay.

2 43. At all times relevant, Labor Code § 510, and applicable sections of the California Code
3 of Regulations and the IWC Wage Orders applied to Plaintiff's work with Defendants. Labor Code §
4 510 and applicable provisions of the California Code of Regulations and IWC Wage Orders state that
5 any work performed in excess of eight hours in a workday and/or 40 hours in a workweek must be
6 paid at one and one-half times the employee's regular rate of pay. Any work performed in excess of
7 12 hours in a workday must be compensated at the rate of no less than twice the regular rate of pay for
8 an employee.

9 44. Labor Code § 558 provides "[a]ny employer or other person acting on behalf of an
10 employer who violates, or causes to be violated, a section of this chapter or any provision regulating
11 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
12 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
13 each pay period for which the employee was underpaid in addition to an amount to recover underpaid
14 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee
15 for each pay period for which the employee was underpaid in addition to an amount sufficient to
16 recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
17 employee."

18 45. Labor Code § 1182.12 sets forth the minimum hourly wage that must be paid to all
19 employees in California for all hours worked. Local minimum wage ordinances may provide for higher
20 minimum wage rates that must be paid to employees for all hours worked in those locales where each
21 local ordinance is in effect. Labor Code § 1197 affirms that it is unlawful to pay less than the state or
22 local minimum wage, whichever is higher, for any hour of work.

23 46. Labor Code § 1194 provides that any employee receiving less than the legal minimum
24 wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil
25 action the unpaid balance of the full amount of the minimum wage or overtime compensation,
26 including interest thereon, reasonable attorney's fees, and costs of suit.

27 47. Labor Code § 1194.2 authorizes the recovery of liquidated damages in an amount equal
28 to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

1 48. Labor Code § 1197 provides that the minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to the employees, and the payment of a less wage than
3 minimum so fixed is unlawful.

4 49. Labor Code § 1198 prohibits employers from employing for longer hours or less
5 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by
6 the Labor Commissioner.

7 50. The failure to pay at least minimum wages to Plaintiff for each and every hour worked
8 violates Labor Code §§ 1812.11-1812.12, 1194, 1194.2, and 1197; the applicable Wage Order; and
9 Business & Professions Code.

10 51. The failure to pay designated wages to Plaintiff for each and every hour worked violates
11 Labor Code §§ 221 and 223; the applicable Wage Order; and the Business & Professions Code.

12 52. Plaintiff is informed, believes, and thereon alleges that Defendants failed to pay
13 Plaintiff all wages for hours worked (including minimum, regular, overtime, and double time wages,
14 reporting time pay, sick pay, and vacation pay) by failing to accurately record all time worked, failing
15 to compensate Plaintiff for being on-call, time shaving, auto-deducting missed or short meal periods,
16 rounding time and meal period punches, and requiring off-the-clock work without compensation,
17 among other things.

18 53. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein,
19 Plaintiff has sustained and continue to sustain damages, including loss of earnings from minimum,
20 regular, overtime, and double time compensation due, in an amount to be established at trial, plus
21 prejudgment interest, attorneys' fees, and costs pursuant to statute.

22 54. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
23 conduct described herein, have committed an "intentional theft of wages in an amount greater than
24 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars
25 (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period" within
26 the meaning of Penal Code § 487m. Specifically, Defendants have intentionally deprived Plaintiff of
27 wages, as defined in Labor Code § 200, gratuities, as defined in Labor Code § 350, benefits, or other
28 compensation, by unlawful means, with the knowledge that the wages, gratuities, benefits, or other

1 compensation is due to Plaintiff under the law. Plaintiff is thus entitled to recover from Defendants
2 treble damages and costs, including reasonable attorneys' fees, pursuant to Penal Code § 496(c).

3 **SECOND CAUSE OF ACTION**

4 **Meal Period Violations (Labor Code §§ 226.7, 512, 558)**

5 **(Against All Defendants)**

6 55. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though
7 fully set forth herein.

8 56. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
9 their affirmative obligation to provide Plaintiff with all legally compliant meal periods in accordance
10 with the mandates of the California Labor Code and the applicable Wage Order. Despite Defendants'
11 violations, Defendants did not pay an additional hour of pay to Plaintiff at Plaintiff's respective regular
12 rate of compensation, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

13 57. As a result, Defendants are responsible for paying premium compensation for meal
14 period violations including interest thereon, statutory penalties, civil penalties, and costs of suit,
15 pursuant to Labor Code §§ 226.7, 512, 558, the applicable Wage Order, and Civil Code §§ 3287(b)
16 and 3289.

17 58. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
18 conduct described herein, have committed an "intentional theft of wages in an amount greater than
19 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars
20 (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period" within
21 the meaning of Penal Code § 487m. Specifically, Defendants have intentionally deprived Plaintiff of
22 wages, as defined in Labor Code § 200, gratuities, as defined in Labor Code § 350, benefits, or other
23 compensation, by unlawful means, with the knowledge that the wages, gratuities, benefits, or other
24 compensation is due to Plaintiff under the law Plaintiff is informed, believes, and thereon alleges that
25 meal period premiums are wages, gratuities, benefits, or other compensation within the meaning of
26 Penal Code § 487m. Plaintiff is thus entitled to recover from Defendants treble damages and costs,
27 including reasonable attorneys' fees, pursuant to Penal Code § 496(c).

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1 **THIRD CAUSE OF ACTION**

2 **Rest Period Violations (Labor Code §§ 226.7, 516, 558)**

3 **(Against All Defendants)**

4 59. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though
5 fully set forth herein.

6 60. California Labor Code §§ 226.7, 516 and 558 and the applicable Wage Order establish
7 the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4)
8 hour period worked, or major fraction thereof. Despite Defendants' failure to authorize and permit
9 Plaintiff to take all legally complaint rest periods as alleged herein, Defendants did not pay Plaintiff
10 an additional hour of pay at Plaintiff's respective regular rate for the rest periods that they failed to
11 authorize and permit Plaintiff to take, as required by Labor Code § 226.7.

12 61. Defendants' policies and practices described herein are unlawful and create an
13 entitlement to recovery by Plaintiff in a civil action for the unpaid amount of rest period premiums
14 owing, including interests thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit
15 according to California Labor Code §§ 226.7, 516, 558, the applicable Wage Order, and Civil Code
16 §§ 3287(b) and 3289.

17 62. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
18 conduct described herein, have committed an "intentional theft of wages in an amount greater than
19 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars
20 (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period" within
21 the meaning of Penal Code § 487m. Specifically, Defendants have intentionally deprived Plaintiff of
22 wages, as defined in Labor Code § 200, gratuities, as defined in Labor Code § 350, benefits, or other
23 compensation, by unlawful means, with the knowledge that the wages, gratuities, benefits, or other
24 compensation is due to Plaintiff under the law Plaintiff is informed, believes, and thereon alleges that
25 rest period premiums are wages, gratuities, benefits, or other compensation within the meaning of
26 Penal Code § 487m. Plaintiff is thus entitled to recover from Defendants treble damages and costs,
27 including reasonable attorneys' fees, pursuant to Penal Code § 496(c).

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1 **FOURTH CAUSE OF ACTION**

2 **Failure to Indemnify All Necessary Business Expenditures (Labor Code §§ 2802, 2804)**

3 **(Against All Defendants)**

4 63. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though
5 fully set forth herein.

6 64. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
7 states that “an employer shall indemnify his or her employees for all necessary expenditures or losses
8 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
9 obedience to the directions of the employer

10 65. Furthermore, at all relevant times herein, Defendants were subject to Labor Code §
11 2804, which states that “any contract or agreement, express or implied, made by any employee to
12 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
13 any employee or his personal representative of any right or remedy to which he is entitled under the
14 laws of this State.”

15 66. Due to Defendants’ unlawful policy and/or practice of failing to pay reimbursements
16 to Plaintiff, as alleged above, Defendants have violated Labor Code § 2802.

17 67. As a proximate result of Defendants’ policies and/or practices in violation of Labor
18 Code §§ 2802 and 2804, Plaintiff suffered damages in sums, which will be shown according to proof.

19 68. Plaintiff is entitled to attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c)
20 for bringing this action.

21 69. Under Labor Code § 2802(b), any action brought for the reimbursement of necessary
22 expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff is entitled to
23 interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

24 **FIFTH CAUSE OF ACTION**

25 **Wage Statement Violations (Labor Code § 226 *et seq.*)**

26 **(Against All Defendants)**

27 70. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though
28 fully set forth herein.

71. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff with complete and accurate itemized wage statements in violation of Labor Code § 226 *et seq.*

72. Defendants' failures in furnishing Plaintiff with complete and accurate itemized wage statements resulted in injury, as said failures deprived Plaintiff of the information necessary to identify the discrepancies in Defendants' reported data, and deprived Plaintiff of the information required to be included under Labor Code § 226(a).

73. Defendants' failures create an entitlement to recovery by Plaintiff in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et seq.*

SIXTH CAUSE OF ACTION

Unfair Competition (Bus. & Prof. Code § 17200 *et seq.*)

(Against All Defendants)

74. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though fully set forth herein.

75. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by: (a) failing to timely pay Plaintiff all wages owed; (b) failing to provide Plaintiff with all meal periods to which Plaintiff is entitled, and failing to pay Plaintiff all meal period premium payments; (c) failing to authorize and permit Plaintiff all rest periods to which Plaintiff is entitled, and failing to pay Plaintiff rest period premium payments; (d) failing to reimburse Plaintiff for necessary business expenditures; and (e) failing to issue to Plaintiff accurate and itemized wage statements.

76. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive Plaintiff of compensation to which Plaintiff is legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

1 77. Because Plaintiff is a victim of Defendants’ unfair and/or unlawful conduct alleged
2 herein, Plaintiff seeks full restitution of monies, as necessary and according to proof, to restore any
3 and all monies withheld, acquired and/or converted by Defendants pursuant to Business and
4 Professions Code §§ 17203 and 17208.

5 78. The acts complained of in this Complaint occurred within the last four years
6 immediately preceding the filing of the Complaint in this action.

7 **SEVENTH CAUSE OF ACTION**

8 **Civil Penalties and Public Injunctive Relief Under PAGA (Labor Code §§ 2698, *et seq.*)**
9 **(Against All Defendants)**

10 79. Plaintiff incorporate by reference all previous paragraphs of this Complaint as though
11 fully set forth herein.

12 80. On September 11, 2024, Plaintiff notified Grupo Gallegos, via certified mail, and the
13 California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’
14 violations of the California Labor Code and Plaintiff’s intent to bring a claim for injunctive relief and
15 civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California
16 Labor Code identified in this Complaint. Now that sixty-five days have passed from Plaintiff notifying
17 Defendants of these violations, Plaintiff has exhausted the administrative requirements for bringing a
18 claim under the Private Attorneys General Act with respect to the violations alleged in this Complaint.

19 81. Defendants have committed several Labor Code violations against Plaintiff and other
20 Aggrieved Employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698
21 *et seq.*, acting on behalf of herself and other Aggrieved Employees, brings this representative action
22 against Defendants to recover the civil penalties due to Plaintiff, other Aggrieved Employees, and the
23 State of California according to proof, including, but not limited to: (1) \$100.00 for each initial
24 violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful
25 or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25%
26 of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
27 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$250.00 for each initial
28 violation; and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee

1 per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation
2 per employee per pay period for those violations of the Labor Code for which no civil penalty is
3 specifically provided, based on the following Labor Code violations:

4 (a) Violation of Labor Code §§ 201-204, 210, 221, 223, 224, 227.3, 510, 558, 1194,
5 1197, 1197.1, and 1198 for failure to timely pay all earned wages owed to Plaintiff and other
6 Aggrieved Employees during employment and upon separation of employment;

7 (b) Violation of Labor Code §§ 226.7, 516, and 558 for failing to authorize and
8 permit all required rest periods and failing to pay rest period premiums to Plaintiff and other Aggrieved
9 Employees at these employees' respective regular rates of compensation for rest period violations;

10 (c) Violation of Labor Code §§ 226.7, 512, and 558 for failing to provide meal
11 periods as required by law and failing to pay meal period premiums to Plaintiff and other Aggrieved
12 Employees at these employees' respective regular rates of compensation for meal period violations;

13 (d) Violation of Labor Code §§ 226 *et seq.* for failing to furnish Plaintiff and other
14 Aggrieved Employees with accurate and compliant itemized wage statements;

15 (e) Violation of Labor Code §§ 221, 223, and 224 for secretly paying Plaintiff and
16 other Aggrieved Employees less than the statutory or contractual rate;

17 (f) Violation of Labor Code §§ 1174, 1174.5, and 1198 for failure to maintain
18 accurate records on behalf of Plaintiff and other Aggrieved Employees;

19 (g) Violation of Labor Code §§ 2800, 2802, and 2804 for failure to reimburse
20 business expenses to Plaintiff and other Aggrieved Employees; and

21 (h) Derivative violations of Labor Code § 1199.

22 82. Under Labor Code §§ 2699(a), 2699.3, and 2699.5, Plaintiff is entitled to recover civil
23 penalties, in addition to public injunctive relief, for the alleged foregoing violations of the Labor Code.

24 83. Under Labor Code §§ 2699(g) and 2802(c) and California Code of Civil Procedure §
25 1021.5, Plaintiff is entitled to attorneys' fees and costs incurred in this action.

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1 **EIGHTH CAUSE OF ACTION**

2 **Failure to Provide Reasonable Accommodation (Gov. Code §§ 12940 *et seq.*)**

3 **(Against All Defendants)**

4 84. Plaintiff incorporate by reference all previous paragraphs of this Complaint as though
5 fully set forth herein.

6 85. Defendants failed to attempt any reasonable accommodation of Plaintiff's known or
7 perceived disability. Defendants used Plaintiff's disability and Plaintiff's need to take medical leave
8 as an excuse for terminating Plaintiff's employment.

9 86. Plaintiff's physical disability and the need to accommodate Plaintiff's physical
10 disability were motivating factors in Plaintiff's termination from Defendants' employ, as well as their
11 other adverse actions against Plaintiff.

12 87. As a result of the alleged acts and omissions of Defendants, Plaintiff has suffered
13 general and special damages, according to proof.

14 88. Plaintiff has suffered and continues to suffer physical pain, mental suffering, loss of
15 enjoyment of life, physical impairment, inconvenience, grief, anxiety, humiliation, and sleep
16 deprivation, according to proof.

17 89. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Under
18 Government Code § 12965(b), Plaintiff is entitled to recover reasonable attorneys' fees and costs
19 (including expert witness costs), according to proof.

20 90. Defendants and their managers, officers, and/or directors committed the acts alleged
21 herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff
22 and acted with an improper and evil motive amounting to malice or oppression, and in conscious
23 disregard of Plaintiff's rights. Moreover, Defendants and their managers, officers, and/or directors
24 authorized or ratified the wrongful conduct of their employees and/or are personally guilty of
25 oppression, fraud, or malice. Thus, Plaintiff is entitled to recover punitive damages, according to proof.

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1 **NINTH CAUSE OF ACTION**

2 **Retaliation (Labor Code §§ 98.6 and 1102.5)**

3 **(Against All Defendants)**

4 91. Plaintiff incorporate by reference all previous paragraphs of this Complaint as though
5 fully set forth herein.

6 92. Labor Code § 98.6 protects an employee complaining orally or in writing about unpaid
7 wages, or for exercising (on behalf of oneself or other employees) any of the rights provided under the
8 Labor Code or Orders of the Industrial Welfare Commission. In addition to other remedies that might
9 be available, a civil penalty of up to \$10,000 may be awarded to an employee for each violation.

10 93. Labor Code § 1102.5 protects against retaliation for disclosing information, or because
11 an employer believes an employee has disclosed information or may disclose information, to a
12 government or law enforcement agency, to a person with authority over the employee, or to another
13 employee who has the authority to investigate, discover, or correct a violation, where an employee
14 reasonably believes that the information discloses a violation of a state or federal statute, or a violation
15 of or noncompliance with a local, state, or federal rule or regulation. In addition to other remedies that
16 might be available, a civil penalty of up to \$10,000 may be awarded to an employee for each violation.

17 94. Labor Code §§ 98.6 and 1102.5 were intended to prevent the type of injury and damage
18 alleged in this Complaint. Labor Code §§ 98.6 and 1102.5 require Defendants to refrain from
19 retaliating or discriminating against Plaintiff for engaging in protected activities, including requesting
20 medical leave.

21 95. Plaintiff was, at all times relevant, a member of the class of persons intended to be
22 protected by Labor Code §§ 98.6 and 1102.5.

23 96. As alleged above, Plaintiff engaged in conduct protected by Labor Code §§ 98.6 and
24 1102.5.

25 97. As alleged above, Defendants took retaliatory adverse employment actions against
26 Plaintiff, including terminating her employment.

27 98. As alleged above, because Defendants engaged in retaliatory adverse employment
28 actions against Plaintiff within ninety (90) days of her protected activities, there shall be a rebuttable

1 presumption in favor of Plaintiff's retaliation claims under Labor Code §§ 98.6 and 1102.5. *See* Senate
2 Bill No. 497 (2023) [Equal Pay and Anti-Retaliation Protection Act].

3 99. Plaintiff's protected conduct was a motivating reason for Defendants' alleged
4 retaliatory adverse employment actions.

5 100. As a result of the foregoing acts and omissions of Defendants, and each of them,
6 Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to,
7 loss of earnings and future earning capacity, and other pecuniary loss, according to proof.

8 101. As a further direct and legal result of the acts and conduct of Defendants, and each of
9 them, Plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental
10 distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety. The exact
11 nature, duration, and extent of said injuries is presently unknown to Plaintiff, but Plaintiff is informed
12 and believes and thereon alleges that some if not all of the injuries are reasonably certain to be
13 permanent in character.

14 102. Defendants and their managers, officers, and/or directors committed the acts alleged
15 herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff
16 and acted with an improper and evil motive amounting to malice or oppression, and in conscious
17 disregard of Plaintiff's rights. Moreover, Defendants and their managers, officers, and/or directors
18 authorized or ratified the wrongful conduct of their employees and/or are personally guilty of
19 oppression, fraud, or malice. Thus, Plaintiff is entitled to recover punitive damages, according to proof.

20 103. Plaintiff is entitled to recover costs, including reasonable attorneys' fees and expert
21 witness fees, according to proof.

22 **TENTH CAUSE OF ACTION**

23 **Discrimination (Gov. Code §§ 12940, *et seq.*)**

24 **(Against all Defendants)**

25 104. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though
26 fully set forth herein.

27 105. FEHA requires employers to refrain from discriminating against any employee because
28 of the employee's actual or perceived disability.

106. At all times relevant, Plaintiff was an individual with a physical disability, and is therefore entitled to the protection of Government Code § 12940(a).

107. Plaintiff's physical disability was a motivating factor in Plaintiff's termination from Defendants' employ, as well as their other adverse actions against Plaintiff.

108. As a result of the alleged acts and omissions of Defendants, Plaintiff has suffered general and special damages, according to proof.

109. Plaintiff has suffered and continues to suffer physical pain, mental suffering, loss of enjoyment of life, physical impairment, inconvenience, grief, anxiety, humiliation, and sleep deprivation, according to proof.

110. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Under Government Code § 12965(b), Plaintiff is entitled to recover reasonable attorneys' fees and costs (including expert witness costs), according to proof.

111. Defendants and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, Defendants and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. Thus, Plaintiff is entitled to recover punitive damages, according to proof.

ELEVENTH CAUSE OF ACTION

Failure to Prevent Discrimination (Gov. Code §§ 12940, *et seq.*)

(Against all Defendants)

112. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though fully set forth herein.

113. Under FEHA, it is unlawful for an employer “to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.”

114. During Plaintiff's employment, Defendants failed to prevent their employees from engaging in intentional actions that resulted in Plaintiff being treated less favorably because of Plaintiff's physical disability and/or other protected characteristics.

115. The alleged acts or inaction of Defendants were a proximate cause of Plaintiff's damages.

116. As a result of the alleged acts and omissions of Defendants, Plaintiff has suffered general and special damages, according to proof.

117. Plaintiff has suffered and continues to suffer physical pain, mental suffering, loss of enjoyment of life, physical impairment, inconvenience, grief, anxiety, humiliation, and sleep deprivation, according to proof.

118. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Under Government Code § 12965(b), Plaintiff is entitled to recover reasonable attorneys' fees and costs (including expert witness costs), according to proof.

119. Defendants and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, Defendants and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. Thus, Plaintiff is entitled to recover punitive damages, according to proof.

TWELFTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(Against all Defendants)

120. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though fully set forth herein.

121. There is a strong and well defined public policy against disability discrimination and retaliation in California.

122. Defendant terminated Plaintiff's employment in violation of these public policies.

123. Plaintiff was harmed as a result of Defendants' conduct.

124. Defendants and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious

1 disregard of Plaintiff's rights. Moreover, Defendants and their managers, officers, and/or directors
2 authorized or ratified the wrongful conduct of their employees and/or are personally guilty of
3 oppression, fraud, or malice. Thus, Plaintiff is entitled to recover punitive damages, according to proof.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff prays for judgment against Defendants, jointly and severally, as
6 follows:

7 1. Upon the First Cause of Action, for payment of minimum wages, liquidated damages,
8 and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
9 and for compensatory, consequential, general and special damages according to proof pursuant to
10 Labor Code §§ 203, 204, 510, 558, 1194, and 1198;

11 2. Upon the Second Cause of Action, for compensatory, consequential, general, and
12 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

13 3. Upon the Third Cause of Action, for compensatory, consequential, general, and special
14 damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

15 4. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
16 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

17 5. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226,
18 *et seq.*;

19 6. Upon the Sixth Cause of Action, for restitution to Plaintiff of all money and/or property
20 unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in
21 violation of Business and Professions Code § 17200 *et seq.*;

22 7. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, Aggrieved
23 Employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a)
24 and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
25 employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor
26 Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2)
27 \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558
28 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent

1 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial
2 violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee
3 per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation
4 per employee per pay period for those violations of the Labor Code for which no civil penalty is
5 specifically provided;

6 8. Upon the Seventh Cause of Action, for appropriate injunctive relief pursuant to Labor
7 Code § 2698 *et seq.*;

8 9. Upon the Eighth, Ninth, Tenth, Eleventh, and Twelfth Causes of Action, general and
9 special damages, past emotional distress damages, future emotional distress damages, and punitive
10 damages, according to proof;

11 10. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code §
12 218.6 and Civil Code §§ 3287 and 3289;

13 11. On all causes of action, for attorneys' fees and costs as permitted by law, including
14 under Labor Code §§ 226, 1194, 2698 *et seq.*, and 2802(c); Government Code § 12965(b); and Code
15 of Civil Procedure § 1021.5; and

16 12. For such other and further relief the Court may deem just and proper.

17
18 Dated: November 18, 2024

MANAHAN O'DELL LLP

19
20 By: Shaheen Anthony Etemadi

Shaheen Anthony Etemadi

21 Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: November 18, 2024

MANAHAN O'DELL LLP

By: Shaheen Anthony Etemadi
Shaheen Anthony Etemadi
Attorneys for Plaintiff