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MARIA ISABEL MENERA RAMIREZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

MARIA ISABEL MENERA RAMIREZ, an
individual,

Plaintiff,

vs.

NFI INDUSTRIES, INC., an entity of
unknown form; HUMANO LLC, a
California limited liability company; ADID
DELGADO an individual; JUAN DOE, an
individual; ADALBERTO DOE, an
individual; HERMELINDA VALENCIA,
an individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CIVRS2401415

COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM OVERTIME WAGES DUE (Cal. Labor Code §§ 510, 511, 1194, 1198; IWC Wage Order No. 9);**
- 2. FAILURE TO PAY MINIMUM WAGE AND PAY FOR ALL WAGES EARNED (Labor Code §§ 204, 1194 and 1197; IWC Wage Order No. 9);**
- 3. FAILURE TO PAY FOR REST PERIODS NOT PROVIDED (Cal. Labor Code § 226.7; IWC Wage Order No. 9);**
- 4. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226);**
- 5. FAILURE TO PAY ALL WAGES DUE ON TERMINATION (Cal. Labor Code §203);**
- 6. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code §1198.5);**
- 7. UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.);**
- 8. DISCRIMINATION BASED ON SEXUAL ORIENTATION IN VIOLATION OF GOVT. CODE**

- 1 §12940(a);
2 9. HARASSMENT BASED ON
3 SEXUAL ORIENTATION IN
4 VIOLATION OF GOVT. CODE
5 §12940(a);
6 10. HOSTILE WORK
7 ENVIRONMENT IN VIOLATION
8 OF GOVT. CODE §12940 *ET. SEQ.*;
9 11. RETALIATION IN VIOLATION
10 OF GOVT. CODE §12940 *ET SEQ.*;
11 12. FAILURE TO PREVENT
12 DISCRIMINATION FROM
13 OCCURRING IN VIOLATION OF
14 GOVT. CODE §12940(K); and
15 13. WRONGFUL TERMINATION IN
16 VIOLATION OF PUBLIC
17 POLICY, GOVT. CODE §12940 *ET*
18 *SEQ.*

19 **DEMAND FOR A JURY TRIAL**

20 Maria Isabel Menera Ramirez (“Plaintiff”) alleges the following:

21 **I. JURISDICTION AND VENUE**

22 1. This action is brought pursuant to California Government Code §12920 *et*
23 *seq.*, and the rules, regulations and directives implementing those statutes. This Court also has
24 jurisdiction over this Complaint under *Code of Civil Procedure* §410.10 and *Business &*
25 *Professions Code* §§ 17200 *et seq.*

26 2. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
27 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
28 herein, occurred in the County of San Bernardino and because Defendant NFI Industries, Inc.
owned and operated their business in the County of San Bernardino.

II. PARTIES

3. At all times relevant hereto, Plaintiff Maria Isabel Menera Ramirez (hereinafter
“Plaintiff”) was an individual over age 18 and a resident of Los Angeles County, California.

4. Plaintiff is informed and believes and thereon alleges that at all times material
hereto, Defendant NFI Industries, Inc., (hereinafter “NFI”), has been, and is, an entity of

1 unknown form, with a principal place of business at TRIAD1828 Centre, 2 Cooper Street,
2 Camden, NJ 08102. At all times material hereto, NFI has been, and is, a logistics company.
3 Plaintiff is informed and believes and thereon alleges that at all times material hereto NFI has
4 been authorized to do business and has been doing business in the State of California.

5 5. Plaintiff is informed and believes and thereon alleges that at all times material
6 hereto, Defendant Humano LLC, (hereinafter "Humano"), has been, and is, a California limited
7 liability company, with a principal place of business at 4321 Balboa Avenue, #1109, San
8 Diego, CA 92117. At all times material hereto, Humano has been, and is, a staffing agency.
9 Plaintiff is informed and believes and thereon alleges that at all times material hereto Humano
10 has been authorized to do business and has been doing business in the State of California.

11 6. Plaintiff is informed and believes and thereon alleges that Defendant Adid
12 Delgado ("Adid") is an individual, who at all times relevant herein, was a resident of San
13 Bernardino County. Adid was Plaintiff's supervisor.

14 7. Plaintiff is informed and believes and thereon alleges that Defendant Juan Doe
15 ("Juan") is an individual, who at all times relevant herein, was a resident of San Bernardino
16 County. Juan was a manager at NFI.

17 8. Plaintiff is informed and believes and thereon alleges that Defendant
18 Hermelinda Valencia ("Hermelinda") is an individual, who at all times relevant herein, was a
19 resident of San Bernardino County. Hermelinda was a coworker of Plaintiff at NFI.

20 9. Plaintiff is informed and believes and thereon alleges that Defendant Adalberto
21 Doe ("Adalberto") (collectively with NFI, Humano, Adid, Juan and Hermelinda "Defendants")
22 is an individual, who at all times relevant herein, was a resident of San Bernardino County.
23 Adalberto was a supervisor at NFI.

24 10. Plaintiff is informed and believes and thereon alleges, that at all times relevant
25 herein, Defendant and some of DOES 1 through 100 were the agents, employees, and/or
26 servants, masters, or employers of the remaining DOES 1 through 100, and in doing the things
27 herein alleged, were acting within the course and scope of such agency or employment, and
28 with the approval and ratification of each of the other Defendants.

1 11. Plaintiff is ignorant of the true names and capacities of Defendants sued herein
2 as DOES 1 through 100, inclusive, and therefore Plaintiff sues these by such fictitious names
3 and capacities. Plaintiff will amend her Complaint to show their true names and capacities
4 when they have been ascertained. Plaintiff is informed and believes and thereon alleges that at
5 all times relevant, each of these fictitiously named DOE Defendants was an individual person
6 who owned, controlled, or managed the business for which Plaintiff worked and/or who
7 directly or indirectly exercised operational control over the working conditions of Plaintiff.
8 These DOE Defendants held ownership, officer, director and/or executive positions with the
9 remaining Defendants, and acted on behalf of the remaining Defendants, which included
10 decision-making responsibility for, and establishment of, discrimination and harassment
11 practices and policies for Defendants which have damaged Plaintiff. Therefore, DOES 1
12 through 100, in addition to the remaining Defendants, are Plaintiff's "employers" as a matter of
13 law and liable on the causes of action alleged herein pursuant to the Lab. Code's wage and hour
14 laws and regulations, and FEHA as alleged herein.

15 12. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
16 through 100 are, and at all times relevant hereto were, persons, corporations or other business
17 entities organized and existing under and by virtue of the laws of the State of California, and
18 are/were qualified to transact and conduct business in the State of California, and did transact
19 and conduct business in the State of California, and are thus subject to the jurisdiction of the
20 State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses,
21 employ persons, and conduct business and illegally pay employees by illegal payroll practices
22 and policies and engage in harassment and discrimination in the County of San Bernardino.

23 13. Plaintiff is further informed and believes, and thereon alleges, that each of the
24 fictitiously named Defendants aided and assisted the named Defendants in committing the
25 wrongful acts alleged herein, and that Plaintiff's damages were proximately caused by each
26 Defendant.

27 **III. JOINT EMPLOYER ALLEGATIONS**

1 14. Plaintiff is informed and believes and thereon alleges that NFI contracted with
2 Humano whereby Humano would provide them with staffing/employment services. Pursuant to
3 that agreement, and given the amount of influence, control and direction NFI and Humano
4 exerted over Plaintiff's employment, NFI and Humano were Plaintiff's co-employers.

5 15. Plaintiff is informed and believes and thereon alleges that NFI and Humano
6 exercised control over Plaintiff's wages, hours and/or working conditions (start time, end time,
7 etc.) such that they were joint employers.

8
9 **IV. FACTUAL ALLEGATIONS THAT ARE COMMON TO ALL CAUSES OF**
10 **ACTION**

11 **Employment Information**

12 16. Plaintiff was an employee of NFI AND Humano since on or about March 2,
13 2024. Plaintiff worked as a Lamper/Labelin. On or about May 29, 2024, Plaintiff was
14 wrongfully terminated due to her sexual orientation.

15 17. Plaintiff is a lesbian. Throughout her employment at NFI, Plaintiff was subject
16 to harassment and discrimination toward her due to her sexual orientation.

17 18. Throughout her employment with NFI, Plaintiff worked 5 days per week,
18 between 6- 8 hours per day. Plaintiff was paid between \$17.00 to 36.00 per hour.

19 19. The employment by Defendants NFI and Humano of Plaintiff is governed by
20 Industrial Welfare Commission Wage Order 9, which covers those persons employed in the
21 transportation industry.

22 **Wage and Hour Violations**

23 20. Defendants NFI and Humano failed to pay Plaintiff overtime wages.

24 21. Defendants NFI and Humano routinely denied Plaintiff any rest periods.

25 22. Defendants NFI and Humano routinely failed to provide Plaintiff with itemized
26 wage statements that properly and accurately itemized the number of hours she worked at the
27 effective regular rates of pay.
28

1 23. Defendants NFI and Humano failed to pay Plaintiff all wages due on
2 termination.

3 24. Plaintiff was not provided her personnel records.

4 **Discrimination, Harassment and Wrongful Termination**

5 25. Plaintiff was denied a work environment free of sexual orientation
6 discrimination and was targeted for wrongful termination on or about May 29, 2024.

7 26. In or about the end of April 2024, Plaintiff was speaking with Hermelinda and
8 she disclosed to Hermelinda that she is a lesbian.

9 27. Approximately 2 weeks later, in May 2024, Adid ascertained from Hermelinda
10 that Plaintiff is a lesbian.

11 28. Thereafter, Plaintiff began to be treated differently. Adid started making
12 comments about gay people and saying such things as “what a waste of women” and “those
13 men are so disgusting”.

14 29. After Adid learned Plaintiff is a lesbian, he began to give Plaintiff more difficult
15 work, asking her to unload the heaviest boxes.

16 30. Plaintiff asked Adid why he was acting in the above-alleged manner, but Adid
17 told Plaintiff to stop complaining and to leave her position if she was not comfortable.

18 31. Further, thereafter Adid refused to speak to Plaintiff and instead he sent
19 Hermelinda to assign her tasks.

20 32. On or about May 17, 2024, Adid moved Plaintiff to a different warehouse.

21 33. Thereafter, Plaintiff complained to Juan that she was not able to work at the
22 other warehouse because of the schedule. Plaintiff told Juan about Adid’s comments and the
23 discrimination she experienced. Plaintiff asked Juan why she was moved to a different
24 warehouse.

25 34. Juan told Plaintiff that he would speak to Adid. However, nothing was done to
26 rectify the situation.

27 35. On or about May 22, 2024, Plaintiff reported the discrimination to Adalberto,
28 but again nothing was done to rectify the situation.

36. On May 29, 2024, Plaintiff was sent her last paycheck and was not given a reason for her termination. However, Plaintiff believes that she was terminated due to her sexual orientation.

37. Thereafter, Plaintiff was told by a coworker, Adan Contreras, that he spoke to Adid and that the true reason she was terminated was due to her sexual orientation.

38. At all times material hereto, Defendants NFI and Humano regularly employed five or more persons and therefore are employers, as that term is defined in *Government Code* § 12926(d).

39. On October 10, 2024, Plaintiff filed an administrative complaint with the Department of Fair Employment and Housing ("DFEH") alleging discrimination based on sexual orientation by NFI, Humano, Adid, Juan, Hermelinda and Adalberto. On October 10, 2024, the DFEH issued to Plaintiff a Right to Sue Notice as to NFI, Humano, Adid, Juan, Hermelinda and Adalberto.

40. Pursuant to the California Labor Code, Plaintiff intends to file a notice with Labor and Workforce Development Agency (LWDA) and pursue claims against Defendants under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to amend this Complaint once she completes and complies with the provisions under the law.

FIRST CAUSE OF ACTION

(Failure to Pay Premium Overtime Wages Due in Violation of Cal. Labor Code §§ 510, 511, 558, 1194, 1198; IWC Wage Order No. 9 – By Plaintiff Against Defendants NFI and Humano and Does 1 through 100)

41. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

42. During Plaintiff's entire employment with NFI and Humano, pursuant to Cal. Lab. Code §§ 200, 510, 1194, and 1198, and IWC Wage Order No. 9, NFI and Humano were required to compensate Plaintiff with premium pay for all overtime performed, for hours worked in excess of eight hours per day and/or 40 hours per week and for the first eight hours on the seventh consecutive day of any work week.

1 43. At all times relevant herein, Cal. Lab. Code § 1194(a) provided that an
2 employee who had not been paid overtime compensation could recover the unpaid balance of
3 the full amount of overtime/double time wages due, including interest thereon, together with
4 reasonable attorneys' fees and costs of suit.

5 44. Further, California Labor Code section 1198 provides as follows:

6 The maximum hours of work and the standard conditions of labor fixed
7 by the commission shall be the maximum hours of work and the standard
8 conditions of labor for employees. The employment of any employee for
9 longer hours than those fixed by the order or under conditions of labor
10 prohibited by the order is unlawful.

11 45. Pursuant to IWC Wage Order No. 9-2001, § 3, "Employment beyond eight (8)
12 hours in any workday is permissible provided the employee is compensated for such overtime
13 at not less than: ...(a) One and one-half (1 1/2) times the employee's regular rate of pay for all
14 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
15 workday...

16 46. California Labor Code section 558 provides in pertinent part:

17 (a) Any employer or other person acting on behalf of an employer who
18 violates, or causes to be violated, a section of this chapter or any
19 provision regulating hours and days of work in any order of the
20 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

21 (1) For any initial violation, fifty dollars (\$50) for each underpaid
22 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

23 (2) For each subsequent violation, one hundred dollars (\$100) for each
24 underpaid employee for each pay period for which the employee was
25 underpaid in addition to an amount sufficient to recover underpaid
wages.

26 (3) Wages recovered pursuant to this section shall be paid to the affected
27 employee...
28

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

47. Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 585.

48. At times, Plaintiff was asked to arrive 15 minutes prior to the start of her shift, but was not allowed to clock in for her shift until 5 minutes prior to the start of her shift time. Plaintiff was not paid for her off the clock work.

49. Throughout Plaintiff’s employment, NFI and Humano failed and refused to pay and properly calculate overtime compensation to Plaintiff as required by law.

50. The foregoing overtime compensation is owed and unpaid. As a direct and proximate result of NFI and Humano’s failure and refusal to pay overtime compensation, Plaintiff suffered damages in the amount of \$138,240.

51. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal counsel in order to enforce Plaintiff’s rights to overtime pay, is entitled to recover Plaintiff’s attorneys’ fees, costs and interest.

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order 9 – By Plaintiff Against Defendants NFI and Humano and Does 1 through 100)

52. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

53. *Labor Code* § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order 9-2001 also obligates employers to

1 pay each employee minimum wages for all hours worked. These minimum wage standards
2 apply to each hour employees worked for which they were not paid. Therefore, an employer's
3 failure to pay for any particular hour of time worked by an employee is unlawful, even if
4 averaging an employee's total pay over all hours worked, paid or not, results in an average
5 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
6 (2005).

7 54. Here, Plaintiff was not paid minimum wages that were due to her due to NFI and
8 Humano's failure to afford proper rest breaks.

9 55. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
10 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
11 wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

12 56. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
13 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
14 *Code* § 1194. Where an employee, such as Plaintiff is not paid for all hours worked under
15 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
16 the overtime for which they received no compensation. *See Sillah v. Command Int'l Sec. Servs.*,
17 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime
18 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
19 minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
20 (N.D. Cal. 2016).

21 57. Plaintiff suffered and continues to suffer losses related to the use and enjoyment
22 of compensation due and owing to her as a direct result of Defendants NFI and Humano's
23 unlawful acts and Labor Code violations in the amount of at least \$131,669.28, to be shown
24 according to proof at trial.

25 58. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
26 wages against employers and those individuals acting in their behalf. Plaintiff requests that this
27 Court assess said penalty against Defendants NFI and Humano in an amount to be proven at
28 trial.

1 59. Therefore, pursuant to Labor Code §§ 200, 203, 218.5, 226, 558, 1194 and
2 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages NFI and
3 Humano owe her, plus interest, penalties, attorneys' fees, expenses and costs of suit, in the
4 amount of \$131,669.28.

5 60. Under *Labor Code* § 1194.2, Plaintiff is entitled to recover as liquidated
6 damages, amounts equal to the wages unlawfully unpaid and interest thereon.

7 **THIRD CAUSE OF ACTION**

8 **(Compensation for Required Rest Periods Not Provided - Cal. Lab. Code § 226.7**
9 **- By Plaintiff Against Defendants NFI and Humano and Does 1 through 100)**

10 61. Plaintiff realleges and incorporates by reference all of the allegations set forth in
11 this Complaint.

12 62. Labor Code § 226.7 and IWC Wage Order No. 9 provide that employers shall
13 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
14 per four hours of work, or major fraction thereof.

15 63. Labor Code § 226.7 and IWC Wage Order No. 9 provide that if an employer
16 fails to provide an employee with rest periods in accordance with those provisions, the
17 employer shall pay the employee one hour of pay at the employee's regular rate of
18 compensation for each workday that the rest periods were not so provided.

19 64. NFI and Humano have intentionally and improperly denied rest periods to
20 Plaintiff in violation of Labor Code § 226.7 and the IWC Wage Order No. 9.

21 65. At times, NFI and Humano failed to afford Plaintiff 2 rest breaks. Plaintiff was
22 only afforded 1 rest break on days that she worked 8 hours.

23 66. At all times relevant hereto, Plaintiff has worked between 6-8 hours daily.

24 67. At all times relevant hereto, NFI and Humano failed to provide rest periods as
25 required by Labor Code § 226.7 and IWC Wage Order No. 9.

26 68. By virtue of NFI and Humano's unlawful failure to provide rest periods to the
27 Plaintiff, Plaintiff has suffered, and will continue to suffer, damages in the amount of
28 \$138,240.00.

69. Defendants NFI and Humano further violated IWC Wage Order No. 9, and Cal. Lab. Code §226.7 by failing to pay Plaintiff one hour of pay at her regular rate of pay for each rest period not provided, and thus Plaintiff is owed compensation in an amount according to proof. This amount remains owed and unpaid.

FOURTH CAUSE OF ACTION

(For Violation of Cal. Lab. Code §226 – By Plaintiff Against Defendants NFI and Humano and Does 1 through 100)

70. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

71. At all times relevant herein, Defendants NFI and Humano issued payroll statements to Plaintiff which violated Cal. Lab. Code §226(a), in that Defendants failed to properly and accurately itemize the number of hours she worked at the effective regular rates of pay.

72. Defendants NFI and Humano knowingly and intentionally failed to comply with Cal. Lab. Code §226(a), causing damage to Plaintiff. These damages, including but not limited to costs expended calculating her true hours worked, and the amount of employment taxes which were not properly paid to state and federal tax authorities, are difficult to estimate. Therefore, Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay periods pursuant to Cal. Lab. Code § 226(e), in an amount to be proven at trial, plus reasonable attorneys' fees and costs.

73. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus attorneys' fees and costs in obtaining the injunction, pursuant to Cal. Lab. Code § 226(g).

FIFTH CAUSE OF ACTION

**(Failure to Pay All Wages Due on Termination - Cal. Lab. Code §203 - By Plaintiff
Against Defendants NFI and Humano and Does 1 through 100)**

74. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

75. Labor Code § 201(a) provides that a discharged employee's unpaid wages are due and payable immediately. Labor Code § 202(a) provides that when an employee resigns from employment, unpaid wages are due and payable within 72 hours of resignation.

76. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until paid, not to exceed thirty days.

77. Plaintiff was wrongfully terminated from Defendant NFI and Humano's employ and Defendants NFI and Humano willfully failed to pay Plaintiff wages due to her.

78. Under Labor Code § 203(a), Plaintiff is entitled to one days' wages for each day she was not timely paid, not to exceed 30 days' wages.

79. By willfully failing to pay Plaintiff separate amounts owed for overtime pay, minimum wages and rest breaks not afforded, as set forth above, in a timely manner as required by Cal. Lab. Code §§ 201 & 202, Defendants NFI and Humano are liable to her for penalties pursuant to Cal. Lab. Code § 203, in an amount equal to 30 days of her per diem wage rate in an amount according to proof. Plaintiff requests to recover those waiting time penalties under Labor Code §203.

SIXTH CAUSE OF ACTION

(Failure to Allow Inspection of Employment Records in violation of Cal. Lab. Code §1198.5 - By Plaintiff Against Defendants NFI and Humano and Does 1 through 100)

80. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

81. California Labor Code Section 1198.5 provides:

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at

1 reasonable intervals and at reasonable times, but not later than 30 calendar days
2 from the date the employer receives a written request, unless the current or
3 former employee, or his or her representative, and the employer agree in writing
4 to a date beyond 30 calendar days to inspect the records, and the agreed-upon
5 date does not exceed 35 calendar days from the employer's receipt of the written
6 request to inspect the records. Upon a written request from a current or former
7 employee, or his or her representative, the employer shall also provide a copy of
8 the personnel records ... later than 30 calendar days from the date the employer
9 receives the request...

10 (k) If an employer fails to permit a current or former employee, or his or her
11 representative, to inspect or copy personnel records within the times specified I
12 this section... the current or former employee may recover a penalty of seven
13 hundred fifty dollars (\$750) from the employer.

14 (1) A current or former employee may also bring an action for injunctive relief
15 to obtain compliance with this section, and may recover costs and reasonable
16 attorney's fees in such an action.

17 82. Additionally, pursuant to IWC Wage Order No. 9, at section 7 re: Records,
18 employers are required to keep accurate payroll records on each employee, and such records
19 must be made readily available for inspection by the employee upon reasonable request. The
20 employer must also maintain accurate production records.

21 83. On or about October 10, 2024, Plaintiff's counsel issued a written request to NFI
22 for copies of her personnel records.

23 84. Under California Labor Code Sections 226, 432 and 1198.5, such records were
24 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
25 Plaintiff's counsel and NFI and Humano did not enter into an agreement to enlarge the time for
26 NFI and Humano's compliance, and NFI and Humano have failed and refused to permit
27 Plaintiff copies of her records.
28

85. As a direct result and consequence of NFI and Humano's failure and refusal to permit Plaintiff full access to her records, Plaintiff seeks injunctive relief in the form of an order or decree mandating NFI and Humano's compliance. Plaintiff has suffered and will suffer harm as a result of NFI and Humano's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of \$750 based upon NFI and Humano's violation of §1198.5.

SEVENTH CAUSE OF ACTION

(For Unfair Competition in Violation of Unfair Business Practices, Cal. Bus. & Prof. Code §17200 et. seq. – By Plaintiff Against Defendants NFI and Humano and Does 1 through 100)

86. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

87. California Business & Professions Code § 17200 *et seq.* prohibits acts of unfair competition, which shall mean and include any "unlawful and unfair business practices."

88. Defendants NFI and Humano's conduct as alleged herein has been and continues to be unfair, unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights affecting the public interest within the meaning of the Cal. Code of Civ. Proc. § 1021.5. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this suit for restitution.

89. Paying overtime, minimum wages, affording employees rest breaks, are fundamental public policies of the State of California. It is also the public policy of this State to enforce minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect those employers who comply with the law from losing competitive advantage to other employers who fail to comply with labor standards and requirements.

90. Defendants NFI and Humano failed to pay overtime wages, minimum wages, allow Plaintiff to take rest breaks, to issue accurate wage statements and pay all wages on termination.

1 91. Through the conduct alleged herein, Defendants acted contrary to these public
2 policies and have thus engaged in unlawful and/or unfair business practices in violation of
3 Business & Professions Code §§ 17200 *et. seq.*, depriving Plaintiff of the rights, benefits, and
4 privileges guaranteed to employees under California law.

5 92. Defendants regularly and routinely violated the following statutes and
6 regulations with respect to Plaintiff:

7 *Labor Code* §§ 510 and 1194 and IWC Wage Order No. 9 as amended (failure
8 to pay overtime);

9 *Labor Code* § 1197 and IWC Wage Order No. 9 (failure to pay minimum
10 wages);

11 Cal. Lab. Code § 226 (failure to provide accurate wage statements to employees
12 at the time of payment);

13 Cal. Lab. Code §§ 201, 202 and 203 (failure to pay wages due on termination);

14 Cal. Lab. Code §§ 226.7 and 512, and IWC Wage Order No. 9 (failure to
15 provide rest periods); and

16 Cal. Lab. Code § 1198.5 (failure to allow inspection of personnel records).

17 93. By engaging in these business practices, which are unfair business practices
18 within the meaning of Bus. & Prof. Code §§ 17200 *et seq.*, Defendants harmed Plaintiff and
19 gained an unfair competitive edge. Under the Business & Professions Code § 17203, Plaintiff is
20 entitled to obtain restitution of these funds.

21 **EIGHTH CAUSE OF ACTION**

22 **(Discrimination Based on Sexual Orientation in Violation of Govt. Code §12940(a)- By**
23 **Plaintiff against Defendants NFI and Humano and Does 1 through 100)**

24 94. Plaintiff realleges and incorporates by reference all of the allegations set forth in
25 this Complaint.

26 95. California Government Code section 12940(a) prohibits discrimination,
27 including adverse employment action against an employee based on sexual orientation, among
28 other protected bases.

1 96. Throughout Plaintiff's employment at NFI and Humano, she was regularly
2 subjected to sexual orientation discrimination by means of rude comments and public
3 humiliation.

4 97. All of the conduct by Defendants NFI and Humano was done with the full
5 knowledge and ratification of the management employees of NFI and Humano, and was
6 consistent with the recognized policies and procedures of NFI and Humano, which tolerated
7 and encouraged such sexual orientation discrimination.

8 98. Defendants NFI and Humano were aware of the discriminatory conduct and did
9 not take effective, good faith action to investigate, remedy, prevent, or stop the sexual
10 orientation discrimination.

11 99. At all times herein mentioned, Defendants NFI and Humano were legally
12 required to refrain from discriminating against and harassing any employee on the basis of
13 sexual orientation, among other things.

14 100. Defendants NFI and Humano's conduct resulted in the damages and injuries to
15 Plaintiff as alleged in this Complaint. As a direct and proximate result of the conduct of
16 Defendants NFI and Humano, Plaintiff has suffered and continues to suffer humiliation,
17 emotional distress, and mental and physical pain and anguish, all to her damage in a sum
18 according to proof.

19 101. Pursuant to California Government Code §12965(b), Plaintiff requests an award
20 of attorneys' fees in this action.

21 102. Defendants NFI and Humano did the things hereinabove alleged, intentionally,
22 oppressively, and maliciously with an evil and malevolent motive to injure Plaintiff. These acts
23 were against public policy, were obnoxious, despicable, and ought not to be suffered by any
24 member of the community.

25 103. All actions of ss were known, ratified and approved by the officers or managing
26 agents of Defendants NFI and Humano. Therefore, Plaintiff is entitled to punitive or exemplary
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1 damages against the Defendants NFI and Humano in an amount to be determined at the time of
2 trial.

3 **NINTH CAUSE OF ACTION**

4 **(Harassment Due to Sexual Orientation in Violation of Govt. Code §12940(a)– By**
5 **Plaintiff against all Defendants and Does 1 through 100)**

6 104. Plaintiff realleges and incorporates by reference all of the allegations set forth in
7 this Complaint.

8 105. Beginning in or about May 2024, Plaintiff was harassed by the actions, conduct
9 and comments of Defendants NFI and Humano’s employees, Adid, Juan, Adalberto, and her
10 coworker, Hermelinda, which actions, conduct and comments combined to create and allow a
11 pattern of discriminatory treatment towards her due to her sexual orientation. Defendants’
12 actions constituted a continuing violation of Cal. Gov. Code § 12940, et seq.

13 106. Defendants NFI and Humano negligently and in bad faith failed to properly
14 investigate Plaintiff’s claims of harassment and take appropriate remedial action.

15 107. Defendants NFI and Humano, and each of them, engaged in retaliatory actions
16 against Plaintiff for complaining about and participating in the investigation of the above-
17 referenced illegal conduct. Because of her complaints about the illegal conduct as aforesaid,
18 Plaintiff was subjected to unfair and hostile treatment by Defendants and each of them.

19 108. All of the conduct by Defendants, and each of them, was done with the full
20 knowledge and ratification of the management employees of NFI and Humano, and was
21 consistent with the recognized policies and procedures of NFI and Humano, which tolerated
22 and encouraged such discriminatory conduct.

23 109. At all times herein mentioned, Defendants, and each of them were legally
24 required to refrain from discriminating against and harassing any employee on the basis of
25 sexual orientation, among other things. Within the time provided by law, Plaintiff filed a
26 complaint with the DFEH, in full compliance with these sections, and received a right to sue
27 letter.
28

110. Defendants' conduct resulted in the damages and injuries to Plaintiff as alleged in this Complaint. As a direct and proximate result of the conduct of Defendants and each of them, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to her damage in a sum according to proof.

111. Defendants did the things hereinabove alleged, intentionally, oppressively, and maliciously with an evil and malevolent motive to injure Plaintiff. These acts, which resulted in Plaintiff's wrongful termination against public policy, were obnoxious, despicable, and ought not to be suffered by any member of the community.

112. All actions of Defendants, and each of them, were known, ratified and approved by the officers or managing agents of NFI and Humano, and each of them. Therefore, Plaintiff is entitled to punitive or exemplary damages against the Defendants, and each of them, in an amount to be determined at the time of trial.

TENTH CAUSE OF ACTION

(Hostile Work Environment in Violation Govt. Code §12940 *et seq.*– By Plaintiff Against Defendants NFI and Humano and Does 1 through 100)

113. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

114. The offensive conduct to which Plaintiff was subjected constitutes a hostile work environment in violation to FEHA, California Government Code §12940 et seq. During her employment, Defendants NFI and Humano violated FEHA, California Government Code §12940 (j), by discrimination against Plaintiff due to her sexual orientation.

115. Defendants NFI and Humano's harassment was hostile, abusive, continuous and pervasive to create a hostile work environment for the Plaintiff.

116. Defendants NFI and Humano's harassment was unwelcome, humiliating, offensive and adversely affected the terms of Plaintiff's employment.

117. Plaintiff was subjectively offended by Defendants NFI and Humano's conduct and any reasonable person in Plaintiff's position would perceive Defendants NFI and Humano's conduct as being offensive, hostile and abusive.

1 118. As a direct result of Defendants NFI and Humano's failure to take all reasonable
2 steps necessary to prevent discrimination and harassment, Plaintiff has suffered and will
3 continue to suffer pain and suffering, extreme and severe mental anguish and emotional
4 distress, loss of earnings and earning capacity. Plaintiff is hereby entitled to general and
5 compensatory damages in amounts to be proven at trial.

6 119. Pursuant to California Government Code §12965(b), Plaintiff requests an award
7 of attorneys' fees in this action.

8 120. All actions of Defendants NFI and Humano, and each of them, were known,
9 ratified and approved by the officers or managing agents of NFI and Humano. Therefore,
10 Plaintiff is entitled to punitive or exemplary damages against Defendants NFI and Humano in
11 an amount to be determined at the time of trial.

12 **ELEVENTH CAUSE OF ACTION**

13 **(Retaliation in Violation of *Government Code* §§12940 *et seq.* – By Plaintiff Against**
14 **Defendants NFI and Humano and Does 1 through 100)**

15 121. Plaintiff realleges and incorporates by reference all of the allegations set forth
16 above in the Complaint.

17 122. This cause of action is brought pursuant to the FEHA, Govt. Code §12940(h),
18 which provides that it is unlawful to retaliate against a person "because the person has opposed
19 any practices forbidden under [Government Code sections 12900 through 12966] or because
20 the person has filed a complaint, testified, or assisted in any proceeding under the FEHA."

21 123. As a result of her sexual orientation, Plaintiff was denied the right to work in an
22 environment free of discrimination and was wrongfully terminated by Defendants NFI and
23 Humano.

24 124. Defendants NFI and Humano's retaliatory conduct toward Plaintiff caused her
25 emotional injury, including, but not limited to, humiliation, anxiety, fear, and loss of self-
26 esteem. Defendants' NFI and Humano's retaliatory conduct was a substantial factor and the
27 proximate of Plaintiff's damages.

125. Plaintiff's sexual orientation was the reason Defendants NFI and Humano retaliated against her.

126. Plaintiff has suffered monetary damages, lost wages and privileges of employment illegally caused by Defendants NFI and Humano's discriminatory conduct in an amount according to proof.

127. Defendants NFI and Humano's conduct was the proximate cause of the Plaintiff's damages.

128. All actions of Defendants NFI and Humano's, and each of them, were known, ratified and approved by the officers or managing agents of NFI and Humano. Therefore, Plaintiff is entitled to punitive or exemplary damages against Defendants NFI and Humano in an amount to be determined at the time of trial.

129. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

TWELFTH CAUSE OF ACTION

(Failure to Prevent Retaliation from Occurring in Violation of *Government Code*
§12940(k) – By Plaintiff Against Defendants NFI and Humano and Does 1 through 100)

130. Plaintiff realleges and incorporates by reference all of the allegations set forth above in the Complaint.

131. Defendants NFI and Humano's conduct in subjecting Plaintiff to discriminatory conduct due to Plaintiff's sexual orientation constituted breach of their duty under FEHA, including the duty to take immediate and appropriate corrective action and to take all reasonable steps to prevent discrimination and retaliation from occurring pursuant to California Government Code Section 12940(k).

132. Defendants NFI and Humano failed to take measures to prevent discrimination and retaliation.

133. As a direct result of the Defendants NFI and Humano's failure to take all reasonable steps necessary to prevent discrimination, Plaintiff has suffered and will continue to suffer pain and suffering, extreme and severe mental anguish and emotional distress, loss of

1 earnings and earning capacity. Plaintiff is hereby entitled to general and compensatory
2 damages in amounts to be proven at trial.

3 134. All actions of Defendants NFI and Humano were known, ratified and approved
4 by the officers or managing agents of NFI and Humano. Therefore, Plaintiff is entitled to
5 punitive or exemplary damages against Defendants NFI and Humano in an amount to be
6 determined at the time of trial.

7 135. Pursuant to California Government Code §12965(b), Plaintiff requests an award
8 of attorneys' fees in this action.

9 **THIRTEENTH CAUSE OF ACTION**

10 **(Wrongful Termination in Violation of Public Policy, Govt. Code §§12940 *et seq.*– By**
11 **Plaintiff Against Defendants NFI and Humano and Does 1 through 100)**

12 136. Plaintiff realleges and incorporates by reference all of the allegations set forth
13 above in the Complaint.

14 137. Plaintiff alleges that significant policies exist in the State of California that
15 prohibit discrimination and wrongfully terminating an employee due to sexual orientation.
16 Among others, the right to be free from discrimination and retaliation are codified in the
17 California and United States Constitutions and the provisions of Government Code §§12900 *et*
18 *seq.*

19 138. Defendants NFI and Humano, acting through its employees and supervisors,
20 intentionally created and knowingly permitted the discrimination based on sexual orientation.

21 139. Defendants NFI and Humano wrongfully terminated Plaintiff in violation of
22 important and well-established public policies, including, but not limited to, policies against
23 employment discrimination based upon sexual orientation.

24 140. These policies are set forth in various laws including but not limited to
25 Government Code §§12940 (a), 12940 (n), 12940(m); Cal. Const. Art. 1, §8 (employment
26 discrimination).

27 141. Defendants NFI and Humano's wrongful conduct proximately caused Plaintiff
28 to suffer general, special and statutory damages in an amount to according to proof.

142. As a further proximate result of the unlawful acts of Defendants NFI and Humano, as alleged above, Plaintiff has been harmed in that she has suffered humiliation, mental anguish, and emotional and physical distress that a reasonable person would suffer upon losing her job. As a result of such actions and consequent harm, Plaintiff has suffered such damages in an amount according to proof.

143. The above acts of Defendants constituted a wrongful termination of Plaintiff and were in violation of public policy as described above. Such termination was a substantial factor in causing damage and injury to Plaintiff as set forth below.

144. Plaintiff believes and thereon alleges that engaging in protected activity, including, but not limited to being a lesbian and complaining about discrimination and harassment, were factors in Defendants NFI and Humano's conduct as alleged hereinabove.

145. All actions of Defendants NFI and Humano were known, ratified and approved by the officers or managing agents of NFI and Humano. Therefore, Plaintiff is entitled to punitive or exemplary damages against Defendants NFI and Humano in an amount to be determined at the time of trial.

146. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor and against Defendants, and each of them, as follows:

1. For compensatory damages in the amount of unpaid overtime due to Plaintiff, in an amount of \$138,240;

2. For compensatory damages in the amount of unpaid minimum wages due to Plaintiff, in an amount of \$138,240.00;

3. For compensatory damages for lost wages and employment benefits, in the amount of \$138,240.00, according to proof;

4. For compensatory damages for physical injury and emotional distress, in an amount according to proof;

- 1 5. For an award of consequential damages, in an amount to be proven at trial;
- 2 6. For general damages in Plaintiff's favor and against Defendants, according to
- 3 proof;
- 4 7. For compensation of one hour at the regular rate of pay for each rest period
- 5 denied in violation of *Cal. Lab. Code* § 226.7 and IWC Wage Order No. 9, according to proof;
- 6 8. For payment of unpaid wages in accordance with California labor and
- 7 employment law, in the amount of \$138,240.00;
- 8 9. For statutory damages pursuant to *Cal. Lab. Code* § 226, according to proof;
- 9 10. For statutory penalties pursuant to *Cal. Lab. Code* §§ 203.1, 558, 226.7, 226.8,
- 10 according to proof;
- 11 11. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code*
- 12 § 203, in an amount equal to her daily pay rate at the time of termination, multiplied by the
- 13 total amount of days elapsed between the date of involuntary termination, and/or 72 hours after
- 14 notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;
- 15 12. For specific relief enforcing waiting time penalties of 30 days of per diem wages
- 16 pursuant to *Business & Professions Code* § 17200 and *Labor Code* § 203, according to proof;
- 17 13. For injunctive relief requiring Defendants to comply with Labor Code
- 18 1198.5(b)(1);
- 19 14. For an award of restitution of wages to Plaintiff in an amount equal to the
- 20 amount of wages owed and unpaid, according to proof;
- 21 15. For an award of liquidated damages pursuant to *Cal. Lab. Code* § 1194.2, to
- 22 Plaintiff in an amount equal to the wages unlawfully unpaid and interest thereon;
- 23 16. For punitive and exemplary damages, in a sum to be determined at trial;
- 24 17. For attorneys' fees under *Government Code* § 12965(b), *Cal. Labor Code* §§
- 25 218.5, 1194, 1198.5 and/or *California Code of Civil Procedure* § 1021.5, according to proof;
- 26 18. For prejudgment interest, according to proof;
- 27 19. For reasonable costs of suit, in an amount according to proof;
- 28 20. For such other and further relief as this Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff Maria Isabel Menera Ramirez hereby respectfully requests a trial by jury for all claims and issues raised in her Complaint that may be entitled to a jury trial.

LIPELES LAW GROUP, APC

Date: October 10, 2024

By: 
Kevin A. Lipeles
Attorneys for Plaintiff
Maria Isabel Menera Ramirez