

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Electronically FILED by
Superior Court of California,
County of Los Angeles
10/07/2024 12:00 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By Y. Ayala, Deputy Clerk

Attorneys for Plaintiff,
MICAELA NOEMY RAMON LEON

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

MICAELA NOEMY RAMON LEON,
an individual,

Plaintiff,

vs.

MINI SUPER MARKET, an entity of
unknown form; AGUSTINA MATEO
DIEGO, an individual; EFRAIN CELSO
MARCOS, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 24STCV25923

COMPLAINT FOR:

- 1. SEXUAL HARASSMENT IN VIOLATION OF GOVT. CODE §12940(j);**
- 2. HARASSMENT BASED ON SEX IN VIOLATION OF GOVT. CODE §12940(j);**
- 3. HOSTILE WORK ENVIRONMENT IN VIOLATION OF GOVT. CODE §12940 ET SEQ.;**
- 4. RETALIATION IN VIOLATION OF GOVT. CODE §12940 ET SEQ.;**
- 5. FAILURE TO PREVENT HARASSMENT IN VIOLATION OF GOVT. CODE §12940 (k);**
- 6. WRONGFUL CONSTRUCTIVE TERMINATION IN VIOLATION OF PUBLIC POLICY IN VIOLATION OF GOVT. CODE §12940 *et seq.*;**
- 7. FAILURE TO PAY MINIMUM WAGE (*Labor Code* §§ 204, 1194 and 1197; IWC Wage Order No. 7);**
- 8. FAILURE TO PAY FOR MEAL PERIODS NOT PROVIDED (Cal. *Labor Code* §§ 226.7, 512; IWC Wage Order No. 7);**
- 9. FAILURE TO PROVIDE REST PERIODS (Cal. *Labor Code* §226.7; IWC Wage Order No. 7);**

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
10. WAITING TIME PENALTIES (Cal. *Labor Code* §226; IWC Wage Order No. 7);
 11. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. *Labor Code* §§201-203);
 12. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
 13. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. *Labor Code* §1198.5);
 14. BATTERY; and
 15. UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.).

DEMAND FOR A JURY TRIAL

Micaela Noemy Ramon Leon ("Plaintiff") alleges the following:

I. JURISDICTION AND VENUE

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

2. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Government Code* violations as against the persons identified herein, occurred in Los Angeles County and because Defendants Agustina Mateo

1 Diego, Efrain Celso Marcos and Mini Super Market, owned and operated their businesses in
2 Los Angeles County.

3 **II. PARTIES**

4 3. At all times relevant hereto, Plaintiff Micaela Ramon Leon (“Plaintiff”) was an
5 individual over age 18 and a resident of Los Angeles County, California.

6 4. Plaintiff is informed and believes and thereon alleges that at all times material
7 hereto, Defendant Mini Super Market (“MSM”), has been, and is an entity of unknown form,
8 with a principal place of business at 2405 E. Slauson Avenue, Huntington Park, CA 90255. At
9 all times material hereto, MSM has been, and is, a mini super market. Plaintiff is informed and
10 believes and thereon alleges that at all times material hereto MSM has been authorized to do
11 business and has been doing business in the State of California.

12 5. Plaintiff is informed and believes and thereon alleges that Defendant Agustina
13 Mateo Diego (“Augustina”) is an individual, who at all times relevant herein, was a resident of
14 Los Angeles County. Agustina is the owner of MSM.

15 6. Plaintiff is informed and believes and thereon alleges that Defendant Efrain
16 Celso Marcos (“Efrain”) (collectively with MSM and Agustina “Defendants”) is an individual,
17 who at all times relevant herein, was a resident of Los Angeles County. Efrain is the owner of
18 MSM.

19 7. Plaintiff is informed and believes and thereon alleges, that at all times relevant
20 herein, Defendants and some of DOES 1 through 100 were the agents, employees, and/or
21 servants, masters, or employers of the remaining DOES 1 through 100, and in doing the things
22 herein alleged, were acting within the course and scope of such agency or employment, and
23 with the approval and ratification of each of the other Defendants.

24 8. Plaintiff is ignorant of the true names and capacities of Defendants sued herein
25 as DOES 1 through 100, inclusive, and therefore Plaintiff sues these Defendants by such
26 fictitious names and capacities. Plaintiff will amend her Complaint to show their true names
27 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
28 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an

1 individual person who owned, controlled, or managed the business for which Plaintiff worked
2 and/or who directly or indirectly exercised operational control over the wages, hours, and
3 working conditions of Plaintiff. These DOE Defendants held ownership, officer, director
4 and/or executive positions with the remaining Defendants, and acted on behalf of the remaining
5 Defendants, which included decision-making responsibility for, and establishment of, sexual
6 harassment and wage and hour violations for Defendants which have damaged Plaintiff.
7 Therefore, Does 1 through 100, in addition to the remaining Defendants, are “employers” as a
8 matter of law and are liable on the causes of action alleged herein.

9 9. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
10 through 100 are, and at all times relevant hereto were, persons, corporations or other business
11 entities organized and existing under and by virtue of the laws of the State of California, and
12 are/were qualified to transact and conduct business in the State of California, and did transact
13 and conduct business in the State of California, and are thus subject to the jurisdiction of the
14 State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses,
15 employ persons, conduct business and engage in sexual harassment and wage and hour
16 violations in the County of Los Angeles.

17 10. An employer or other person acting on behalf of an employer, who violates, or
18 causes to be violated, a provision regulating minimum wages or hours and days of work in an
19 order of the Industrial Welfare Commission may be held liable as the employer for that
20 violation. (Lab. Code § 558.1(a).) The term “other person acting on behalf of an employer” is
21 limited to a natural person who is an owner, director, officer, or managing agent of the
22 employer, and the term “managing agent” has the same meaning as in C.C.P. § 3294(b). (Lab.
23 Code. § 558.1(b).)

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

28

1
2
3 **III. FACTUAL ALLEGATIONS THAT ARE COMMON TO ALL CAUSES OF**
4 **ACTION**

5 **Employment Information**

6 19. From in or about 2022 through July 12, 2024, MSM employed Plaintiff as a
7 Cashier. Plaintiff was paid approximately \$16.00 per hour. Plaintiff often worked 5 or more
8 hours per day, 6 days per week. She was employed at MSM until July 12, 2024, when she was
9 wrongfully constructively terminated.

10 **Sexual Harassment and Wrongful Constructive Termination**

11 20. Plaintiff was denied a work environment free of sexual harassment and was
12 targeted for wrongful termination on or about July 12, 2024.

13 21. In or about April 2024, Efrain started to make sexual remarks to Plaintiff such as
14 telling her that she looked good, among other statements relating to her body.

15 22. On or about July 12, 2024, Efrain grabbed Plaintiff's breasts and her behind and
16 attempted to pull down her pants.

17 23. Plaintiff became very nervous and fearful and did not feel comfortable enough
18 to tell Efrain's wife, Agustina.

19 24. Instead, when Plaintiff arrived home, she told her sister, Lucia, who also works
20 for Defendants. Lucia also suffered sexual harassment by Efrain. Lucia assisted Plaintiff in
21 calling the police.

22 25. As a result of the sexual harassment of herself and her sister, Lucia, Plaintiff
23 became very frightened, traumatized and decided to resign from her position.

24 26. As a result of the harassment, Plaintiff suffered emotional distress.

25 27. MSM's wrongful constructive termination of Plaintiff was wrongfully motivated
26 by sexual harassment and her complaints relating thereto.

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

1 29. On October 4, 2024, Plaintiff filed an administrative complaint with the
2 Department of Fair Employment and Housing (“DFEH”) alleging sexual harassment by MSM,
3 Agustina and Efrain. On October 4, 2024, the DFEH issued to Plaintiff a Right to Sue Notice
4 as to MSM, Agustina and Efrain.

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

9 **Wage and Hour Violations**

10 31. Plaintiff’s employment with MSM is governed by Industrial Welfare
11 Commission Wage Order 7, which covers those persons employed in the mercantile industry.

12 32. Plaintiff routinely worked 5 or more hours per day. At times, Plaintiff was asked
13 to arrive 2 hours before the start of her shift, but was not paid for her off the clock work.

14 33. Plaintiff did not receive minimum wages.

15 34. Plaintiff did not receive any meal breaks.

16 35. Plaintiff’s rest breaks were interrupted and/or shortened.

17 36. As a result of MSM's failure to afford Plaintiff minimum wages, meal/rest
18 breaks, the wage statements issued to her did not comply with Labor Code § 226 and California
19 Industrial Welfare Commission ("IWC") Wage Order No. 7 in that they did not accurately
20 reflect all wages earned and due and owing.

21 37. As a further result of MSM’s failure to pay minimum wages and to afford
22 meal/rest breaks to Plaintiff, when Plaintiff left their employ, she was not timely paid all wages
23 due her, as required by Labor Code §§ 201, 202 and IWC Wage Order No. 7.

24 38. MSM failed to provide Plaintiff with her requested employment records.

25 **FIRST CAUSE OF ACTION**

26 **(Sexual Harassment in violation of Government Code § 12940(j)– By Plaintiff Against all**
27 **Defendants and Does 1 through 100**

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

40. In perpetrating the above-described actions, MSM, Efrain and Agustina engaged in a pattern and practice of unlawful sexual harassment in violation of FEHA, *Government Code* § 12940(j).

41. MSM, Agustina and Efrain sexually harassed Plaintiff. The harassment was sufficiently pervasive and severe as to alter the conditions of employment and create a hostile work environment.

42. As a proximate result of this sexual harassment in violation of public policy, Plaintiff was caused to suffer, and continues to suffer, from humiliation, anxiety, severe emotional distress, worry, fear, and special damages (including lost wages) all to her special and general damage, according to proof at the time of trial.

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

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

SECOND CAUSE OF ACTION

(Harassment in Violation of Government Code § 12940(j) - By Plaintiff Against all Defendants and Does 1 through 100)

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

46. The FEHA explicitly prohibits any employer or any other person from harassing an employee because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation. *Gov. Code* § 12940(j).

//

//

1 47. MSM, Agustina and Efrain were at all times material herein Plaintiff's employer
2 pursuant to Government Code §§ 12940(d) and 12940(j)(4) and were therefore barred from
3 harassing their employees in violation of Government Code § 12940(j).

4 48. Defendants' harassment, as set forth above, created an abusive working
5 environment in violation of Government Code § 12940(j). MSM, Agustina and Efrain harassed
6 Plaintiff and/or failed to take immediate and appropriate corrective action. The harassment was
7 sufficiently pervasive and severe as to alter the conditions of employment and to create a
8 hostile or abusive work environment.

9 49. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered
10 emotional distress and physical symptoms, pain and suffering, has lost income and related
11 benefits, past and future, and medical expenses, all to her damage in a sum according to proof.

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

14 51. The acts taken toward Plaintiff were carried out by and/or ratified by Defendants
15 and/or managing agents/employees of Defendants acting in an oppressive, fraudulent and
16 malicious manner in order to injure or damage Plaintiff, thereby justifying an award to her of
17 punitive damages.

18
19 **THIRD CAUSE OF ACTION**

20 **(Hostile Work Environment in Violation Govt. Code § 12940 et seq.- By Plaintiff Against**
21 **all Defendants and Does 1 through 100)**

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

24 53. The offensive conduct to which Plaintiff was subjected constitutes a hostile
25 work environment in violation to FEHA, California Government Code § 12940 et seq. During
26 her employment, MSM, Agustina and Efrain violated FEHA, California Government Code §
27 12940 (j), by allowing sexual harassment by their employees.

1 54. MSM, Agustina and Efrain's harassment was hostile, abusive, continuous and
2 pervasive to create a hostile work environment for the Plaintiff.

3 55. MSM, Agustina and Efrain's harassment was unwelcome, humiliating, offensive
4 and adversely affected the terms of Plaintiff's employment.

5 56. Plaintiff was subjectively offended by MSM, Agustina and Efrain's conduct and
6 any reasonable person in Plaintiff's position would perceive MSM, Agustina and Efrain's
7 conduct as being offensive, hostile and abusive.

8 57. As a direct result of MSM, Agustina and Efrain's failure to take all reasonable
9 steps necessary to prevent sexual harassment, Plaintiff has suffered and will continue to suffer
10 pain and suffering, extreme and severe mental anguish and emotional distress, loss of earnings
11 and earning capacity. Plaintiff is hereby entitled to general and compensatory damages
12 according to proof at trial.

13 58. MSM, Agustina and Efrain did the things hereinabove alleged, intentionally,
14 oppressively, and maliciously with an evil and malevolent motive to injure Plaintiff. These acts
15 were against public policy, were obnoxious, despicable, and ought not to be suffered by any
16 member of the community.

17 59. All actions of Defendants were known, ratified and approved by the officers or
18 managing agents of Defendant MSM. Therefore, Plaintiff is entitled to punitive or exemplary
19 damages against Defendants in an amount to be determined at the time of trial.

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

22
23 **FOURTH CAUSE OF ACTION**

24 **(Retaliation in Violation of Government Code §§12940 et seq. - By Plaintiff Against all**
25 **Defendants and Does 1 through 100)**

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

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

63. Because she resisted Defendant Efrain's unwanted touching of herself and her sister, etc., Plaintiff was wrongfully constructively terminated.

64. Defendants' retaliatory conduct toward Plaintiff caused her emotional injury, including, but not limited to, humiliation, anxiety, fear, and loss of self-esteem. Defendants' retaliatory conduct was a substantial factor and the proximate cause of Plaintiff's damages.

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

66. Defendants' conduct was the proximate cause of the Plaintiff's damages.

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

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

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

FIFTH CAUSE OF ACTION

(Failure to Prevent Harassment from Occurring in Violation of Government Code § 12940(k) - By Plaintiff Against all Defendants and Does 1 through 100)

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

1 71. Plaintiff alleges that Defendants violated Government Code §12940(k) by
2 failing to take all reasonable steps to prevent sexual harassment from occurring.

3 72. Defendants' conduct in subjecting Plaintiff to sexual harassment constituted
4 breach of their duty under FEHA, including the duty to take immediate and appropriate
5 corrective action and to take all reasonable steps to prevent the sexual harassment and
6 retaliation from occurring pursuant to California Government Code § 12940(k).

7 73. Defendants MSM and Agustina knew or reasonably should have known of
8 Efrain's propensity for engaging in unlawful, harassing conduct in the workplace, and
9 Defendants Agustina and MSM should have restrained Efrain from engaging in unlawful,
10 harassing conduct towards Plaintiff. Defendants failed to take all reasonable steps necessary to
11 prevent the retaliation and harassment from occurring.

12 74. Plaintiff is informed and believes and thereupon alleges that MSM and Agustina
13 failed to provide adequate training to Efrain to prevent sexual harassment from occurring.

14 75. Defendants' conduct was the proximate cause of Plaintiff's damages.

15 76. As a direct result of MSM and Agustina's failure to take all reasonable steps
16 necessary to prevent sexual harassment, Plaintiff has suffered and will continue to suffer pain
17 and suffering, extreme and severe mental anguish and emotional distress, loss of earnings and
18 earning capacity. Plaintiff is hereby entitled to general and compensatory damages in the
19 amount according to proof at trial.

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

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

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

1 **SIXTH CAUSE OF ACTION**

2 **(Wrongful Constructive Termination in Violation of Govt. Code §§ 12940 et seq. – By**
3 **Plaintiff Against all Defendants Does 1 through 100)**

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

6 81. Plaintiff alleges that significant policies exist in the State of California that
7 prohibit sexual harassment, retaliation, wrongfully constructively terminating an employee due
8 to complaining about sexual harassment and protesting against unlawful employment practices.
9 Among others, the right to be free from harassment and retaliation are codified in the California
10 and United States Constitutions and the provisions of Government Code §§ 12900 *et seq.*

11 82. These policies are set forth in various laws including but not limited to
12 Government Code §§ 12940 (a), 12940 (k); Cal. Const. Art. 1, § 8 (sexual harassment).

13 83. MSM, acting through its owners, intentionally created and knowingly permitted
14 the sexual harassment.

15 84. Defendants wrongfully constructively terminated Plaintiff in violation of
16 important and well-established public policies, including, but not limited to, policies against
17 sexual harassment.

18 85. Defendants' wrongful conduct proximately caused Plaintiff to suffer general
19 damages, special and statutory damages, according to proof.

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

25 87. The above acts of Defendants constituted a wrongful constructive termination of
26 Plaintiff and were in violation of public policy as described above. Such termination was a
27 substantial factor in causing damage and injury to Plaintiff as set forth below.
28

88. Plaintiff believes and thereon alleges that engaging in a protected activity, including, but not limited to, complaining about harassment were factors in Defendants' conduct as alleged hereinabove.

89. As a result of Defendants' conduct, Plaintiff is entitled to recover punitive damages in amount according to proof at trial.

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

SEVENTH CAUSE OF ACTION

(Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order 7 – By Plaintiff Against all Defendants and Does 1 through 100)

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

92. *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 7-2001 also obligates employers to pay each employee minimum wages for all hours worked. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

93. 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.

1 94. At times, Plaintiff was asked to arrive 2 hours prior to the start of her shift, but
2 was not paid for that time even though she started worked and was engaged in off the clock
3 work.

4 95. Here, Plaintiff was not paid minimum wages that were due to her due
5 Defendants required off the clock work and failure to afford meal/rest breaks.

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

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

18 98. Plaintiff suffered and continues to suffer losses related to the use and enjoyment
19 of compensation due and owing to her as a direct result of Defendants' unlawful acts and Labor
20 Code violations in the amount of at least \$73,728, to be shown according to proof at trial.

21 99. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
22 wages against employers and those individuals acting in their behalf. Plaintiff requests that this
23 Court assess said penalty against Defendants, and each of them, in an amount to be proven at
24 trial.

25 100. Pursuant to Cal. Labor Code §558.1:

26 (a) Any employer or other person acting on behalf of an employer, who
27 violates, or causes to be violated, any provision regulating...hours and days of
28 work in any order of the Industrial Welfare Commission, or violates, or causes

1 to be violated Sections 203, 226, 226.7...may be held liable as the employer for
2 such violation.

3 (b) For purposes of this section, the term "other person acting on behalf of
4 an employer" is limited to a natural person who is an owner, director, officer, or
5 managing agent of the employer, and the term "managing agent" has the same
6 meaning as in subdivision (b) of Section 3294 of the Civil Code.

7 (c) Nothing in this section shall be construed to limit the definition of
8 employer under existing law.

9 101. Agustina and Efrain are the owners of MSM and is therefore liable to Plaintiff as
10 an employer. Agustina and Efrain caused the laws relating to minimum wages to be violated.

11 102. Therefore, pursuant to Labor Code §§ 200, 203, 218.5, 226, 558, 1194 and
12 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages Defendants
13 owe her, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts
14 according to proof.

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

17 **EIGHTH CAUSE OF ACTION**

18 **(For Failure to Provide Meal Breaks in violation of Cal. Labor Code § 226.7;**
19 **IWC Wage Order No. 7– By Plaintiff Against all Defendants and Does 1 through 100)**

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

22 105. California Labor Code § 226.7(a) prohibits an employer from requiring an
23 employee to work during any meal period mandated by an applicable Industrial Wage Order.
24 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
25 employee to work during a meal or rest break or recovery period mandated pursuant to an
26 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
27 Commission..."

1 106. California Labor Code § 1198 makes unlawful the employment of an employee
2 under conditions the IWC prohibits.

3 107. IWC Wage Order No. 7 provides, in relevant part: "No employer shall employ
4 any person for a work period of more than five (5) hours without a meal period of not less than
5 30-minutes, except that when a work period of not more than six (6) hours will complete the
6 day's work the meal period may be waived by mutual consent of the employer and the
7 employee."

8 108. IWC Wage Order No. 7 further provides, in relevant part: "Unless the employee
9 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an
10 'on duty' meal period and counted as time worked."

11 109. Section 512(a) of the California Labor Code provides, in relevant part, that:
12 An employer may not employ an employee for a work period of more than five
13 hours per day without providing the employee with a meal period of not less
14 than 30-minutes, except that if the total work period per day of the employee is
15 no more than six hours, the meal period may be waived by mutual consent of
16 both the employer and employee. An employer may not employ an employee for
17 a work period of more than 10 hours per day without providing the employee
18 with a second meal period of not less than 30-minutes, except that if the total
19 hours worked is no more than 12 hours, the second meal period may be waived
20 by mutual consent of the employer and the employee only if the first meal
21 period was not waived.

22 110. The Labor Code and IWC Wage Order No. 7 provisions cited above require
23 California employers to provide employees with off-duty 30-minute meal periods on or before
24 the fifth hour of their shifts. To satisfy this obligation, California employers must: (1) make
25 employees aware of their right to off-duty 30-minute meal periods before the fifth hour of their
26 shifts, and (2) ensure that employees are actually free of job duties for thirty minutes per day on
27 or before the fifth hour of their shifts.

28 111. Pursuant to Cal. Labor Code §558.1:

1 (c) Any employer or other person acting on behalf of an employer, who
2 violates, or causes to be violated, any provision regulating...hours and days of
3 work in any order of the Industrial Welfare Commission, or violates, or causes
4 to be violated Sections 203, 226, 226.7...may be held liable as the employer for
5 such violation.

6 (d) For purposes of this section, the term "other person acting on behalf of
7 an employer" is limited to a natural person who is an owner, director, officer, or
8 managing agent of the employer, and the term "managing agent" has the same
9 meaning as in subdivision (b) of Section 3294 of the Civil Code.

10 (c) Nothing in this section shall be construed to limit the definition of
11 employer under existing law.

12 112. Agustina and Efrain are the owners of MSM and are therefore liable to Plaintiff
13 as an employer. Agustina and Efrain caused the laws relating to meal breaks to be violated.

14 113. Defendants violated Labor Code § 512 and IWC Wage Order No. 7 by routinely
15 failing to provide Plaintiff any meal breaks.

16 114. Defendants further violated IWC Wage Order No. 7 and Labor Code § 226.7 by
17 failing to pay one hour of compensation to Plaintiff at her individual and regular rate of pay for
18 each work day that the meal period was not provided, in an amount according to proof. This
19 amount remains owed and unpaid.

20 115. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to
21 recover wages due based on the deprivation of timely meal periods under Cal. Labor Code
22 § 226.7(b).

23 116. As a direct and proximate result of Defendants' unlawful conduct as alleged
24 herein, Plaintiff has sustained economic damages, including but not limited to unpaid wages
25 and lost interest, in an amount to be established at trial, and is entitled to recover economic and
26 statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendants'
27 violations of the California Labor Code and the applicable IWC Wage Orders.

28

1 **NINTH CAUSE OF ACTION**

2 **(For Failure to Provide Rest Breaks in violation of Cal. Labor Code §226.7; IWC Wage**
3 **Order No. 7 – By Plaintiff Against all Defendants and Does 1 through 100)**

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

6 118. Labor Code § 226.7 and IWC Wage Order No. 7 provide that employers shall
7 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
8 per four hours of work, or major fraction thereof.

9 119. Labor Code § 226.7 and IWC Wage Order No. 7 provide that if an employer
10 fails to provide an employee with rest periods in accordance with those provisions, the
11 employer shall pay the employee one hour of pay at the employee's regular rate of
12 compensation for each workday that the rest periods were not so provided.

13 120. Defendants have intentionally and improperly denied compliant rest periods to
14 Plaintiff in violation of Labor Code § 226.7 and IWC Wage Order No. 7.

15 121. Defendants failed to afford Plaintiff uninterrupted rest breaks. Further,
16 Plaintiff's rest breaks were shortened to 7 minutes.

17 122. At all times relevant hereto, Plaintiff has worked 5 or more hours daily.

18 123. Pursuant to Cal. Labor Code §558.1:

19 (e) Any employer or other person acting on behalf of an employer, who
20 violates, or causes to be violated, any provision regulating...hours and days of
21 work in any order of the Industrial Welfare Commission, or violates, or causes
22 to be violated Sections 203, 226, 226.7...may be held liable as the employer for
23 such violation.

24 (f) For purposes of this section, the term "other person acting on behalf of
25 an employer" is limited to a natural person who is an owner, director, officer, or
26 managing agent of the employer, and the term "managing agent" has the same
27 meaning as in subdivision (b) of Section 3294 of the Civil Code.
28

1 (c) Nothing in this section shall be construed to limit the definition of
2 employer under existing law.

3 124. Agustina and Efrain are the owners of MSM and are therefore liable to Plaintiff
4 as an employer. Agustina and Efrain caused the laws relating to rest breaks to be violated.

5 125. At all times relevant hereto, Defendants failed to provide rest periods as required
6 by Labor Code § 226.7 and IWC Wage Order No. 7.

7 126. By virtue of Defendants' unlawful failure to provide rest periods to the Plaintiff,
8 Plaintiff has suffered, and will continue to suffer, damages in amounts which are presently
9 unknown to Plaintiff, but which exceed the jurisdictional limits of the Court and which will be
10 ascertained according to proof at trial.

11 **TENTH CAUSE OF ACTION**

12 **(Waiting Time Penalties in Violation of Labor Code § 226 - By Plaintiff Against all**
13 **Defendants and Does 1 through 100)**

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

16 128. At all times relevant hereto, Defendants failed to issue payrolls statements to
17 Plaintiff which complied with *Labor Code* § 226 in that the statements issued to Plaintiff did
18 not properly and accurately pay her premium pay for minimum wages and meal/rest breaks not
19 afforded.

20 129. Defendants knowingly and intentionally failed to comply with *Labor Code* §
21 226(a), causing damage to Plaintiff. These damages, including but not limited to, costs
22 expended calculating the actual hours worked and the amount of employment taxes which were
23 not properly paid to state and federal tax authorities, are difficult to estimate. Therefore,
24 Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the
25 violations occurred, and \$100.00 for each violation in subsequent pay periods, pursuant to
26 *Labor Code* § 226(e), in the amount of \$4,000.00 plus reasonable attorneys' fees and costs.

27 130. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus
28 attorneys' fees and costs in obtaining the injunction, pursuant to *Labor Code* § 226(g).

ELEVENTH CAUSE OF ACTION
FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION

(Labor Code §§ 201-203 By Plaintiff Against all Defendants and Does 1 through 100)

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

132. 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.

133. 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.

134. Plaintiff was wrongfully constructively terminated from Defendants' employ and Defendants willfully failed to pay minimum wages, to afford meal/rest breaks to Plaintiff and did not pay her premium pay for meal/rest breaks not afforded.

135. Defendants wrongfully constructively terminated Plaintiff on July 12, 2024, yet failed to pay her wages due to her.

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

TWELFTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress – against all Defendants and Does 1 through 100)

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

138. Plaintiff is informed and believes, and thereon alleges, that Defendants' actions were intentional, extreme, and outrageous.

139. Plaintiff is further informed and believes, and thereon alleges, that such actions were done with the intent to cause serious emotional distress or with reckless disregard of the probability of causing Plaintiff serious emotional distress.

140. As a direct, legal and proximate result of Defendants' actions, Plaintiff suffered severe emotional distress which might have caused her to sustain severe, serious and permanent injuries to her person, all to her damage in a sum to be shown according to proof.

141. As a direct, legal and proximate result of Defendants' aforesaid actions, Plaintiff may be compelled to employ the services of hospitals, physicians and surgeons, nurses, and the like, to care for and treat her, and may incur future hospital, medical, professional and incidental expenses, all to Plaintiff's damage in a sum to be shown according to proof.

142. As a direct, legal and proximate result of the aforesaid tortious conduct of Defendants, Plaintiff may be prevented from engaging in her usual occupation, thereby sustaining a loss of income, in an amount according to proof.

143. Defendants, and each of them, committed the acts herein alleged maliciously fraudulently, and oppressively, and with reckless disregard for Plaintiff's rights. Conduct by the Defendants, and each of them, amounted to malice and was carried out in a despicable, deliberate, cold, callous and intentional manner, entitling Plaintiff to recover punitive damages from the Defendants in an amount sufficient to deter such conduct in the future and according to proof.

THIRTEENTH CAUSE OF ACTION

**(For Failure to Allow Inspection of Employment Records in Violation of Cal. Labor Code
§1198.5 By Plaintiff Against all Defendants and Does 1 through 100)**

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

145. 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.

17 146. Additionally, pursuant to IWC Wage Order No. 7, 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.

21 147. On or about October 4, 2024, Plaintiff's counsel issued a written request to
22 Defendants for copies of her personnel records.

23 148. 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 Defendants did not enter into an agreement to enlarge the time for
26 Defendants' compliance, and Defendants have failed and refused to permit Plaintiff copies of
27 her records.

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

6 **FOURTEENTH CAUSE OF ACTION**

7 **(Battery – By Plaintiff Against all Defendants and Does 1 through 100)**

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

10 151. To establish a claim for battery, a plaintiff must show all of the following: (1)
11 that the defendant touched the plaintiff or caused the plaintiff to be touched with the intent to
12 harm or offend them; (2) that the plaintiff did not consent to the touching; and (3) that the
13 plaintiff was harmed by the defendant's conduct. (CACI No. 1300.)

14 152. Further, an employer is liable for the wrongful acts of its employees, particularly
15 when the employee is acting within the scope of their employment. (See Cal. Civ. Code § 2338;
16 *see also* CACI No. 3701.)

17 153. On or about July 12, 2024, Efrain touched Plaintiff on her body with the intent
18 to offend Plaintiff and without her consent.

19 154. Accordingly, Defendants' conduct as alleged herein was purposeful and
20 intentional and was engaged in for the purposes of causing offense, and was despicable conduct
21 that subjected Plaintiff to cruel and unjust hardship in conscious disregard of her rights, and
22 was performed with fraud, oppression or malice so as to justify an award of exemplary or
23 punitive damages against Defendants in an amount according to proof at trial.

24 155. As a direct and proximate result of the above reference acts and omissions by
25 Defendants, Plaintiff has suffered actual, special, and general damages, all to her detriment in
26 amounts to be determined at trial.

27 **FIFTEENTH CAUSE OF ACTION**

28 **UNFAIR COMPETITION**

(Cal. Bus. & Prof. Code §17200 et. seq. –By Plaintiff Against all Defendant and Does 1 through 100)

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

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

158. Defendants' 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.

159. Paying minimum wages, affording of meal/rest breaks, and providing employment records 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.

160. Defendants failed to pay Plaintiff minimum wages, afford Plaintiff meal/rest breaks and failed to provide her personnel records.

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

162. Defendants regularly and routinely violated the following statutes and regulations with respect to Plaintiff:

(a) *Labor Code* § 1197 and IWC Wage Order No. 7 (failure to pay minimum wages);

- 1 (b) *Lab. Code* § 226.7 (failure to afford meal breaks);
2 (c) *Lab. Code* § 226.7 (failure to afford rest breaks);
3 (d) *Labor Code* § 226 (failure to provide accurate wage statements to
4 employees at the time of payment of wages);
5 (e) *Labor Code* §§ 202 and 203 (failure to pay wages due at termination);
6 and
7 (j) *Labor Code* §1198.5 (failure to allow inspection of employment
8 records).
9

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

14 **PRAYER FOR RELIEF**

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

- 17 1. For compensatory damages in the amount of unpaid minimum wages due to
18 Plaintiff, in the amount of \$73,728, according to proof;
19 2. For compensatory damages for lost wages and employment benefits, in the
20 amount of \$73,728, according to proof;
21 3. For general damages, according to proof;
22 4. For an award of consequential damages, according to proof;
23 5. For one hour of pay at the regular rate of compensation for Plaintiff for each
24 workday that a meal and/or rest period was not provided;
25 6. For payment of unpaid wages in accordance with California labor and
26 employment law;
27 7. For mental and emotional distress damages, according to proof;
28 8. For past and future medical expenses, according to proof;

- 1 9. For statutory damages pursuant to California law, according to proof;
- 2 10. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code* §
- 3 203, in an amount equal to her respective daily rates of pay at the time of termination or layoff,
- 4 multiplied by the total amount of days elapsed between the date of the involuntary termination,
- 5 and/or 72 hours after notice of the voluntary termination, up to a maximum of 30 days' pay,
- 6 according to proof;
- 7 11. For specific relief enforcing waiting time penalties of 30 days of per diem wages
- 8 pursuant to *Cal. Bus. & Prof. Code* § 17200 and *Cal. Lab. Code* § 203, according to proof;
- 9 12. For statutory penalties pursuant to *Cal. Lab. Code* §§ 203.1, 558, 226.7,
- 10 according to proof;
- 11 13. For reasonable costs, including attorneys' fees pursuant to pursuant to
- 12 *Government Code* § 12965(b), *Cal. Labor Code* §§218.5, 1198.5 and/or *Cal. Code Civ. Proc.*
- 13 §1021.5;
- 14 14. For injunctive relief ordering the continuing unfair business acts and practices to
- 15 cease, as the Court deems just and proper;
- 16 15. For other injunctive relief ordering Defendants to notify Plaintiff that she has not
- 17 been paid the proper amounts in accordance with California law;
- 18 16. For injunctive relief requiring Defendants to comply with Labor Code
- 19 1198.5(b)(1);
- 20 17. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, according to proof;
- 21 18. For an award of liquidated damages pursuant to *Cal. Lab. Code* § 1194.2 in an
- 22 amount equal to the wages unlawfully unpaid according to proof, and interest thereon;
- 23 19. For punitive and exemplary damages in a sum to be determined at trial;
- 24 20. For prejudgment interest accrued on all due and unpaid minimum wages from
- 25 the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a),
- 26 according to proof; and
- 27 21. For such other and further relief as the Court deems just and proper.
- 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff Micaela Noemy Ramon Leon 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 4, 2024

By: 
Thomas H. Schelly
Attorneys for Plaintiff
Micaela Noemy Ramon Leon