

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
Franz T. Reece (Bar No. 355386)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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By: Alyssa Leber, DEPUTY

Attorneys for Plaintiff,
PAMELA BETZABEL CALLEJA RODRIGUEZ

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

PAMELA BETZABEL CALLEJA
RODRIGUEZ, an individual,

Plaintiff,

vs.

HALLMARK-PALM SPRINGS, L.P., a
California limited partnership; GLORIA
GOURLAY, an individual; KRISTEN
HUNT, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: CIVSB2435226

COMPLAINT FOR:

- 1. SEX DISCRIMINATION ON THE BASIS OF PREGNANCY (Govt. Code §12940(a));**
- 2. DISCRIMINATION BASED UPON PHYSICAL DISABILITY (Govt. Code §12940);**
- 3. FAILURE TO PREVENT DISCRIMINATION (Govt. Code §12940(k));**
- 4. RETALIATION IN VIOLATION OF PUBLIC POLICY (Govt. Code §12940 et seq.);**
- 5. HARASSMENT DUE TO PHYSICAL DISABILITY (Govt. Code §12940(a));**
- 6. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY (Govt. Code §12940);**
- 7. FAILURE TO PAY MINIMUM WAGES DUE (Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1 1198; IWC Wage Order No. 5);**
- 8. FAILURE TO PROVIDE MEAL PERIODS (Cal. Labor Code §226.7; IWC Wage Order No. 5);**
- 9. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code §226.7; IWC Wage Order No. 5);**
- 10. WAITING TIME PENALTIES (Cal. Labor Code §226; IWC Wage Order No. 5);**

- 1 11. FAILURE TO PAY WAGES DUE AT
2 TERMINATION (Cal. *Labor Code* §203;
3 IWC Wage Order No. 5);
4 12. FAILURE TO PROVIDE UNIFORM
5 MAINTENANCE ALLOWANCE (Cal.
6 *Labor Code* § 2802);
7 13. FAILURE TO ALLOW INSPECTION OF
8 EMPLOYMENT RECORDS (Cal. *Labor*
9 *Code* §1198.5); and
10 14. UNFAIR COMPETITION (Cal. Bus. & Prof.
11 *Code* §§17200 et seq.).

12 **DEMAND FOR A JURY TRIAL**

13 Pamela Betzabel Calleja Rodriguez alleges the following:

14 **I.**

15 **JURISDICTION AND VENUE**

16 1. This action is brought pursuant to California Government Code §12920 *et seq.*,
17 and the rules, regulations and directives implementing those statutes. This Court also has
18 jurisdiction over this Complaint under Code of Civil Procedure §410.10.

19 2. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
20 395.5, because the claims made, as against the persons identified herein, occurred in the County
21 of Riverside and because Defendant Hallmark-Palm Springs, L.P. owned and operated their
22 assisted living business in the County of Riverside.

23 **II.**

24 **PARTIES**

25 3. Plaintiff Pamela Betzabel Calleja Rodriguez (“Plaintiff”) was an employee of
26 Defendant Hallmark-Palm Springs, L.P. (“HPS”) and at all times relevant to the matters alleged
27 herein, has been a resident of Riverside County.
28

1 4. Plaintiff is informed and believes and thereon alleges that Defendant HPS is a
2 California limited partnership with its principal place of business located at 26019 Bancroft
3 Street, Loma Linda, CA 92354. At all material times, HPS has been, and is, an assisted living.
4 Plaintiff is informed and believes and thereon alleges that at all times material hereto HPS has
5 been authorized to do business and has been doing business in the State of California.

6 5. Plaintiff is informed and believes and thereon alleges that Defendant Gloria
7 Gourlay ("Gloria") is an individual, who at all times relevant herein, was a resident of
8 Riverside County. Gloria is Plaintiff's former Manager at HPS.

9 6. Plaintiff is informed and believes and thereon alleges that Defendant Kristen
10 Hunt ("Kristen") (collectively with HPS and Gloria "Defendants") is an individual, who at all
11 times relevant herein, was a resident of Riverside County. Kristen is a Nurse at HPS.

12 7. Plaintiff is informed and believes and thereon alleges, that at all times relevant
13 herein, Defendant and some of Does 1 through 100 were the agents, employees, and/or
14 servants, masters, or employers of the remaining Does 1 through 100, and in doing the things
15 herein alleged, were acting within the course and scope of such agency or employment, and
16 with the approval and ratification of each of the other Defendants.

17 8. Plaintiff is ignorant of the true names and capacities of Defendants sued herein
18 as Does 1 through 100, inclusive, and therefore Plaintiff sues these Defendants by such
19 fictitious names and capacities. Plaintiff will amend her Complaint to show their true names
20 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
21 alleges that at all times relevant, each of these fictitiously named Doe Defendants was an
22 individual person who owned, controlled, or managed the business for which Plaintiff worked
23 and/or who directly or indirectly exercised operational control over Plaintiff's working
24 conditions. These Doe Defendants held ownership, officer, director and/or executive positions
25 with the remaining Defendants, and acted on behalf of the remaining Defendants, which
26 included decision-making responsibility for, and establishment of, sex discrimination and
27 physical disability discrimination and wage and hour policies and practices for Defendants,
28 which have damaged Plaintiff. Therefore, Does 1 through 100, in addition to the remaining

1 Defendants, are “employers” as a matter of law and personally liable on the causes of action
2 alleged herein.

3 9. Plaintiff is informed and believes and thereon alleges that Defendants Does 1
4 through 100 are, and at all times relevant hereto were, persons, corporations or other business
5 entities organized and existing under and by virtue of the laws of the State of California, and
6 are/were qualified to transact and conduct business in the State of California, and did transact
7 and conduct business in the State of California, and are thus subject to the jurisdiction of the
8 State of California. Specifically, Does 1 through 100 maintain offices, operate businesses,
9 employ persons, and conduct business in, and engage in disability discrimination, sex
10 discrimination and wage and hour violations in the County of Riverside.

11 10. Plaintiff is informed and believes and thereon alleges that Defendants directly
12 employed or exercised control over Plaintiff’s working conditions.

13 11. Plaintiff is further informed and believes, and thereon alleges, that each of the
14 fictitiously named Defendants aided and assisted the named Defendants in committing the
15 wrongful acts alleged herein, and that her damages were proximately caused by each
16 Defendant.

17 III.

18 **FACTUAL ALLEGATIONS THAT ARE COMMON TO ALL CAUSES OF ACTION**

19 **Employment Information**

20 12. Plaintiff began working for HPS in or about May 2024 and was wrongfully
21 terminated on or about August 9, 2024. Plaintiff’s job position was Caregiver/Med Tech.
22 Plaintiff escorted patients, changed their briefs, fed patients and dispensed medication to them.
23 Plaintiff earned \$19.00 per hour and worked 5 days per week, 8 hours per day.

24 **Sex and Disability Discrimination and Wrongful Termination**

25 13. Plaintiff was denied a work environment free of sex and disability
26 discrimination.

1 14. On or about July 30, 2024, Plaintiff ascertained that she was pregnant. As such,
2 this condition constitutes a physical disability, as that term is defined in *Government Code* §
3 12926(l)(1)(A), (B).

4 15. Plaintiff scheduled an ultrasound for August 15, 2024.

5 16. Since Gloria was not in her office, Plaintiff provided her a note by leaving it on
6 her desk informing Gloria she would be taking August 15, 2024, off.

7 17. On or about August 7, 2024, Plaintiff informed Gloria in person that she was
8 pregnant. Gloria did not state anything in response.

9 18. On that same day, Kristen became upset with Plaintiff and confronted her in the
10 kitchen claiming she was not doing her job properly.

11 19. On or about August 9, 2024, Gloria called Plaintiff into her office and told her
12 she was being terminated and not to return to work tomorrow. Plaintiff was terminated on the
13 pretextual reason that there were too many staff members. However, no one else at HPS was
14 terminated.

15 20. On or about August 9, 2024, HPS wrongfully terminated Plaintiff due to her
16 pregnancy.

17 21. HPS regularly employed five or more persons and therefore are employers, as
18 that term is defined in *Government Code* § 12926(d).

19 22. On November 21, 2024, Plaintiff filed an administrative complaint with the
20 Department of Fair Employment and Housing ("DFEH") alleging sex discrimination and
21 discrimination based on pregnancy-related physical disability by HPS, Gloria and Kristen. On
22 November 21, 2024, the DFEH issued to Plaintiff a Right to Sue Notice as to HPS, Gloria and
23 Kristen.

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

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25. HPS failed to pay Plaintiff minimum wages due to their failure to afford compliant meal/rest breaks.

27. Plaintiff's rest breaks were not afforded and/or interrupted.

29. HPS failed to pay Plaintiff all her wages on termination.

31. HPS failed to provide Plaintiff with her requested employment records.

**(Sex (Pregnancy) Discrimination in violation of Government Code 12940(a)– By Plaintiff
Against Defendant HPS and Does 1 through 100)**

33. FEHA offers protection to employees against the unlawful practices of employers by broadly prohibiting employment discrimination in discharges, or terms and conditions of employment based on disability. FEHA provides, in pertinent part:

Gov't Code § 12940(a).

1 34. Discrimination based on the fact that a person is pregnant, has given birth, is
2 breastfeeding, or has a related medical condition is a form of sex discrimination. Gov't Code §§
3 12940(a), 12926(r)(1), 12945(a)(1); *Lopez v. La Casa de Las Madres* (2023) 89 Cal. App. 5th
4 365, 378; *see also Badih v. Myers* (1995) 36 Cal. App. 4th 1289, 1296 (pregnancy
5 discrimination is a form of sex discrimination under article I, section 8 of the California
6 Constitution).

7 35. At all relevant times, FEHA was in full force effect, and thus is binding on HPS.

8 36. HPS was aware of Plaintiff's pregnancy because Plaintiff informed Gloria of her
9 pregnancy.

10 37. At all relevant times, Plaintiff was performing competently in her position.

11 38. As set forth above, Plaintiff was treated differently and was discriminated
12 against on the basis of her pregnancy, namely, that HPS wrongfully terminated Plaintiff on or
13 about August 9, 2024.

14 39. Upon information and belief, employees who were not pregnant were not
15 terminated.

16 40. Plaintiff believes HPS's decision was motivated by sex (pregnancy)
17 discrimination and/or was made in retaliation due to her pregnancy.

18 41. As set forth above, Plaintiff was wrongfully terminated on a discriminatory and
19 retaliatory basis.

20 42. As set forth above, HPS's acts and omissions constitute violations of FEHA.

21 43. HPS's unlawful acts, practices, and omissions proximately caused Plaintiff to
22 suffer monetary damages, humiliation, mental anguish, and physical and emotional distress, in
23 the amount of at least \$1,000,000, subject to proof at trial. Plaintiff claims such amount as
24 damages together with pre-judgment interest thereon pursuant to Civil Code sections 3287,
25 3288, and/or any other applicable provision providing for prejudgment interest.

26 44. The unlawful acts and practices alleged by Plaintiff were done by managing
27 agents of HPS and/or indicate a ratification of management's actions by HPS. HPS and its
28 managing agents committed the acts herein maliciously, fraudulently, recklessly, willfully, and

1 with wrongful and deliberate intent of causing great harm to Plaintiff. Therefore, an award of
2 punitive damages, sufficient to punish HPS and to serve as an example to deter HPS from
3 similar conduct in the future, should be made, pursuant to Civil Code section 3294. Plaintiff
4 claims such amount as damages together with pre-judgment interest thereon pursuant to
5 California Civil Code sections 3287, 3288, and/or any other applicable provision providing for
6 pre-judgment interest.

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

9 **SECOND CAUSE OF ACTION**

10 **(Discrimination Based on Physical Disability in Violation of Govt. Code 12940(a) – By**
11 **Plaintiff Against Defendant HPS and Does 1 through 100)**

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

14 47. Under the California Fair Employment and Housing Act ("FEHA"),
15 Government Code § 12940(a), an employer cannot discriminate against an employee, because
16 of a physical disability.

17 48. Discrimination based on the fact that a person has a pregnancy-related medical
18 condition is a form of discrimination. Gov't Code §§ 12926(r)(1) and 12945(a)(1); *Lopez*, 89
19 Cal. App. 5th at 378.

20 49. FEHA also provides that it shall be unlawful for an employer to “. . .
21 discriminate against a person for requesting accommodation under this subdivision, regardless
22 of whether the request was granted.” Gov't Code § 12940(m)(2).

23 50. At all relevant times, FEHA was in full force effect, and thus is binding on HPS.

24 51. Plaintiff suffered from the physical limitation as set forth above and was
25 therefore a member of the class of persons protected from disability discrimination under
26 California Government Code § 12940(a).

27 //

28 //

1 52. Upon learning about Plaintiff's pregnancy-related disability, on or about August
2 9, 2024, HPS wrongfully terminated Plaintiff in violation of California Government Code §
3 12940.

4 53. By wrongfully terminating Plaintiff because of her physical disability, HPS
5 violated Government Code § 12940(a).

6 54. As a direct and proximate result of HPS's conduct, individually and collectively,
7 Plaintiff has suffered and continues to suffer substantial losses in income, earnings, and
8 benefits and has been damaged in her capacity to earn her salary, and has lost and will continue
9 to lose employment benefits, in an amount according to proof.

10 55. As a direct and proximate result of HPS's actions, Plaintiff has suffered severe
11 and serious injury to her person, all to her damage in the amount of at least \$1,000,0000, and to
12 be shown according to proof.

13 56. HPS's conduct in discriminating against Plaintiff because of her physical
14 disability subjected her to cruel and unjust hardship in conscious disregard of her rights, as it
15 was anticipated by HPS that Plaintiff would be unable to find comparable employment in the
16 foreseeable future. Plaintiff is informed and believes, and thereon alleges, that her wrongful
17 termination by HPS was done with the intent to cause her injury. As a consequence of the
18 aforesaid oppressive, malicious and despicable conduct, Plaintiff is entitled to an award of
19 punitive damages in a sum to be shown according to proof.

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

22
23 **THIRD CAUSE OF ACTION**

24 **(Failure to Prevent Discrimination from Occurring in Violation of Government Code**
25 **§12940(k) – By Plaintiff Against Defendant HPS and Does 1 through 100)**

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

1 59. Plaintiff alleges that HPS violated Government Code §12940(k) by failing to
2 take all reasonable steps to prevent discrimination based on physical disability and sex
3 discrimination from occurring.

4 60. HPS knew or reasonably should have known of Gloria and Kristen's
5 propensities for engaging in unlawful, discriminatory and harassing conduct in the workplace
6 and HPS should have restrained Gloria and Kristen from engaging in unlawful, discriminatory
7 and harassing conduct towards Plaintiff based on her pregnancy-related disability, and HPS
8 should have provided training and instruction to Gloria and Kristen on the laws pertaining to
9 discrimination and harassment. HPS failed to take all reasonable steps necessary to prevent the
10 discrimination and harassment from occurring.

11 61. Plaintiff is informed and believes and thereupon alleges that HPS failed to
12 provide adequate training to their managers and employees.

13 62. HPS's discriminatory conduct toward Plaintiff and harassment caused her to
14 suffer physical, emotional and psychological injury, including, but not limited to, humiliation,
15 anxiety, fear, and loss of self-esteem, in the amount of at least \$1,000,000, according to proof.

16 63. Plaintiff is hereby entitled to general and compensatory damages in an amount
17 to be proven at trial.

18 64. HPS's conduct was the proximate cause of the Plaintiff's damages.

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

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

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

28

1 **FOURTH CAUSE OF ACTION**

2 **(Retaliation in Violation of Public Policy – By Plaintiff Against Defendant HPS and Does**
3 **1 through 100)**

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

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

10 70. HPS's adverse actions taken against Plaintiff as set forth herein occurred in
11 retaliation for Plaintiff's pregnancy, as hereinabove alleged. Such actions are and were
12 unlawful, discriminatory and retaliatory in violation of Cal. Gov. Code §12940 et seq., and Cal.
13 Lab. Code §1102.5, and resulted in damages and injury to Plaintiff, as alleged herein, including
14 but not limited to lost wages and benefits.

15 71. As a result of her pregnancy-related physical disability, Plaintiff was denied the
16 right to work in an environment free of discrimination and harassment and was wrongfully
17 terminated by HPS.

18 72. Plaintiff's pregnancy-related physical disability was the reason HPS retaliated
19 against her.

20 73. As a proximate result of this retaliatory conduct in violation of public policy,
21 Plaintiff was caused to suffer, and continues to suffer, from humiliation, anxiety, severe
22 emotional distress, worry, fear, and special damages, in the amount of at least \$1,000,000,
23 according to proof.

24 74. As a proximate result of HPS's retaliatory conduct, Plaintiff has suffered
25 damages including lost wages and general damages in an amount according to proof at the time
26 of trial.

27 75. HPS did the things hereinabove alleged, intentionally, oppressively, and
28 maliciously with an evil and malevolent motive to injure Plaintiff. These acts, which resulted in

1 Plaintiff's wrongful termination against public policy, were obnoxious, despicable, and ought
2 not to be suffered by any member of the community.

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

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

8 **FIFTH CAUSE OF ACTION**

9 **(Harassment Due to Physical Disability– By Plaintiff Against All Defendants and DOES 1**
10 **through 100)**

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

13 79. Plaintiff was harassed by the actions, conduct and comments of Defendants,
14 which actions, conduct and comments combined to create and allow a pattern of discriminatory
15 treatment towards Plaintiff due to Plaintiff's physical disability. Defendants' actions constituted
16 a continuing violation of Cal. Lab. Code §1102.5 and Cal. Gov. Code §12940, *et seq.*

17 80. Defendants negligently and in bad faith failed to properly investigate Plaintiff's
18 claims of harassment and discrimination and take appropriate remedial action.

19 81. Defendants, and each of them, engaged in retaliatory actions against Plaintiff for
20 complaining about and participating in the investigation of the above-referenced illegal
21 conduct.

22 82. At all times herein mentioned, Defendants, and each of them were legally
23 required to refrain from discriminating against and harassing any employee on the basis of sex
24 and pregnancy-related disability. Within the time provided by law, Plaintiff filed a complaint
25 with the DFEH, in full compliance with these sections, and received a right to sue letter.

26 83. Defendants' conduct resulted in the damages and injuries to Plaintiff as alleged
27 in this Complaint. As a direct and proximate result of the conduct of Defendants and each of
28 them, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental

1 and physical pain and anguish, all to Plaintiff's damage in the amount of at least \$1,000,000,
2 according to proof.

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

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

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

12 **SIXTH CAUSE OF ACTION**

13 **(Wrongful Termination in Violation of Public Policy, Govt. Code §§12940 et seq.**

14 **– By Plaintiff Against Defendant HPS and Does 1 through 100)**

15 87. Plaintiff realleges and incorporates by this reference the allegations set forth in
16 this Complaint.

17 88. Plaintiff alleges that significant policies exist in the State of California that
18 prohibit discrimination, retaliation, wrongfully terminating an employee for being disabled,
19 pregnant, complaining about harassment and protesting against unlawful employment practices.
20 Among others, the right to be free from discrimination and retaliation are codified in the
21 California and United States Constitutions and the provisions of Government Code §§12900 *et*
22 *seq.*

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

26 90. Plaintiff became disabled due to her pregnancy while working for HPS.

27 91. HPS, acting through its managers and employees, intentionally created and
28 knowingly permitted the discrimination based on disability and harassment.

1 92. HPS wrongfully terminated Plaintiff in violation of important and well-
2 established public policies, including, but not limited to, policies against employment
3 discrimination based upon disability and against harassment.

4 93. HPS's wrongful conduct proximately caused Plaintiff to suffer general, special
5 and statutory damages in an amount according to proof.

6 94. As a further proximate result of the unlawful acts of HPS as alleged above,
7 Plaintiff has been harmed in that she has suffered humiliation, mental anguish, and emotional
8 and physical distress that a reasonable person would suffer upon losing her job. As a result of
9 such actions and consequent harm, Plaintiff has suffered such damages in the amount of at
10 least \$1,000,000, according to proof.

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

14 96. Plaintiff believes and thereon alleges that engaging in protected activity,
15 including, but not limited to, to her disability and pregnancy were factors in HPS's conduct as
16 alleged hereinabove.

17 97. As a result of HPS's conduct, Plaintiff is entitled to recover punitive damages in
18 amount according to proof at trial.

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

21 **SEVENTH CAUSE OF ACTION**

22 **(Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194, 1197, 1197.1, 1198,**
23 **119, IWC Wage Order No. 5 – By all Plaintiff Against Defendant HPS and Does 1 through**
24 **100)**

25 99. Plaintiff realleges and incorporates by this reference the allegations set forth in
26 this Complaint.

27 100. *Labor Code* § 1197 states the California requirement that employees must be
28 paid at least the minimum wage fixed by the Commission, and any payment of less than the

1 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
2 less than the legal minimum wage... to recover in a civil action the unpaid balance of the full
3 amount of this minimum wage.” IWC Wage Order No. 5 also obligates employers to pay each
4 employee minimum wages for all hours worked. These minimum wage standards apply to each
5 hour employees worked for which they were not paid. Therefore, an employer’s failure to pay
6 for any particular hour of time worked by an employee is unlawful, even if averaging an
7 employee’s total pay over all hours worked, paid or not, results in an average hourly wage
8 above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

9 101. Here, Plaintiff was not paid minimum wages due to HPS’s failure to afford
10 Plaintiff compliant meal/rest breaks.

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

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

23 104. Plaintiff suffered and continued to suffer losses related to the use and
24 enjoyment of compensation due and owing to her as a direct result of HPS’s unlawful acts and
25 Labor Code violations in the amount of at least \$72,960.00, according to proof at trial.

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

106. Therefore, pursuant to Labor Code §§200, 203, 218.5, 226, 558, 1194 and 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages Defendant HPS owes her, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

EIGHTH CAUSE OF ACTION

(Failure to Provide Meal Breaks in Violation of Labor Code §226.7; IWC Wage Order

No. 5– By Plaintiff Against Defendant HPS and Does 1 through 100)

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

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

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

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

111. Wage Order No. 5 further provides, in relevant part: "Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

112. Section 512(a) of the California Labor Code provides, in relevant part, that:
An employer may not employ an employee for a work period of more than five
hours per day without providing the employee with a meal period of not less
than 30-minutes, except that if the total work period per day of the employee is

1 no more than six hours, the meal period may be waived by mutual consent of
2 both the employer and employee.

3 113. The Labor Code and Wage Order provisions cited above require California
4 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
5 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
6 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
7 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
8 the fifth hour of their shifts.

9 114. At times Plaintiff's meal breaks were interrupted. Plaintiff was required to
10 answer her walkie talkie while on her breaks.

11 115. HPS further violated IWC Wage Order No. 5 and Labor Code § 226.7 by failing
12 to pay one hour of compensation to Plaintiff at her individual and regular rate of pay for each
13 work day that the meal period was not provided, in an amount according to proof. This amount
14 remains owed and unpaid.

15 116. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to
16 recover wages due based on the deprivation of timely meal periods under Cal. Labor Code
17 § 226.7(b).

18 117. As a direct and proximate result of HPS's unlawful conduct as alleged herein,
19 Plaintiff has sustained economic damages, including but not limited to unpaid wages and lost
20 interest, in an amount to be established at trial, and is entitled to recover economic and statutory
21 damages, attorneys' fees and penalties and other appropriate relief due to Defendant HPS's
22 violations of the California Labor Code and IWC Wage Order No. 5.

23 **NINTH CAUSE OF ACTION**

24 **(For Failure to Provide Rest Breaks in violation of Cal. Labor Code §226.7; IWC Wage**
25 **Order No. 5– By Plaintiff Against Defendant HPS and Does 1 through 100)**

26 118. Plaintiff realleges and incorporates by this reference the allegations set forth in
27 this Complaint.

28

119. Labor Code § 226.7 and Wage Order No. 5 provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work, or major fraction thereof.

120. Labor Code § 226.7 and Wage Order No. 5 provide that if an employer fails to provide an employee with rest periods in accordance with those provisions, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest periods were not so provided.

121. Defendant HPS has intentionally and improperly failed to afford compliant rest periods to Plaintiff in violation of Labor Code § 226.7 and Wage Order No. 5. At times Plaintiff was not provided any rest breaks and/or her rest breaks were interrupted.

122. At all times relevant hereto, Plaintiff has worked 8 or more hours daily.

123. At all times relevant hereto, Defendant HPS failed to provide rest periods as required by Labor Code § 226.7 and Wage Order No, 5.

124. By virtue of Defendant HPS's failure to afford Plaintiff rest periods, Plaintiff has suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

TENTH CAUSE OF ACTION

**(Waiting Time Penalties in Violation of Labor Code §226 - By Plaintiff Against Defendant
HPS Does 1 through 100)**

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

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

127. HPS knowingly and intentionally failed to comply with Labor Code §226(a), causing damage to Plaintiff. These damages, including but not limited to, costs expended

1 calculating the actual hours worked and the amount of employment taxes which were not
2 properly paid to state and federal tax authorities, are difficult to estimate. Therefore, Plaintiff
3 elects to recover liquidated damages of \$50.00 for the initial pay period in which the violations
4 occurred, and \$100.00 for each violation in subsequent pay periods, pursuant to Labor Code §
5 226(e), in the amount of \$4,000.00 plus reasonable attorneys' fees and costs.

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

8 **ELEVENTH CAUSE OF ACTION**

9 **(Failure to Pay All Wages Due on Termination in violation of Cal. Lab. Code**
10 **§203– By Plaintiff Against Defendant HPS Does 1 through 100)**

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

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

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

19 132. Plaintiff was wrongfully discharged from HPS's employ and HPS willfully
20 failed to pay Plaintiff wages due to her.

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

23 134. By willfully failing to pay Plaintiff separate amounts owed for minimum wages
24 and meal/rest periods not provided, as set forth above, in a timely manner as required by Cal.
25 Lab. Code §§ 201 & 202, HPS is liable to her for penalties pursuant to Cal. Lab. Code § 203, in
26 an amount equal to 30 days of her per diem wage rate in an amount according to proof.

27 //

28 //

1 **TWELFTH CAUSE OF ACTION**

2 **(For Failure to Provide a Uniform Maintenance Allowance in Violation of Cal. Labor**
3 **Code § 2802 By Plaintiff Against Defendant HPS and Does 1 through 100)**

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

6 136. Under California law, if an employer requires non-exempt employees to wear a
7 uniform, the employer must pay for and maintain the uniform for the employee. Labor Code
8 §2802.

9 137. An employer may never impose a financial burden on employees, with respect
10 to purchasing or maintaining clothing, which would reduce the employee's wage rate below the
11 minimum wage.

12 138. Here, Plaintiff was required to purchase scrubs for work.

13 139. Defendant failed to purchase the scrubs for Plaintiff nor reimburse her for the
14 cost thereof.

15 140. As a proximate result of the aforementioned violations of § 2802, Plaintiff is
16 entitled to recovery from Defendant for reimbursement of necessary expenditures including
17 interest and attorneys' fees.

18 141. As a proximate result of the aforementioned violations of Labor Code § 2802,
19 Plaintiff has been damaged in an amount according to proof at the time of trial.

20 **THIRTEENTH CAUSE OF ACTION**

21 **(For Failure to Allow Inspection of Employment Records in Violation of Cal. Labor Code**
22 **§1198.5 By Plaintiff Against Defendant HPS and Does 1 through 100)**

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

25 143. California Labor Code Section 1198.5 provides:

26 (a) Every current and former employee, or his or her representative, has the right
27 to inspect and receive a copy of the personnel records that the employer
28

1 maintains relating to the employee's performance or to any grievance concerning
2 the employee.

3 (b) The employer shall make the contents of those personnel records available
4 for inspection to the current or former employee, or his or her representative, at
5 reasonable intervals and at reasonable times, but not later than 30 calendar days
6 from the date the employer receives a written request, unless the current or
7 former employee, or his or her representative, and the employer agree in
8 writing to a date beyond 30 calendar days to inspect the records, and the
9 agreed-upon date does not exceed 35 calendar days from the employer's receipt
10 of the written request to inspect the records. Upon a written request from a
11 current or former employee, or his or her representative, the employer shall also
12 provide a copy of the personnel records,... later than 30 calendar days from the
13 date the employer receives the request...

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

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

21 144. Additionally, pursuant to Wage Order No. 5, at section 7 re: Records, employers
22 are required to keep accurate payroll records on each employee, and such records must be made
23 readily available for inspection by the employee upon reasonable request. The employer must
24 also maintain accurate production records.

25 145. On or about November 21, 2024, Plaintiff's counsel issued a written request to
26 HPS for copies of her personnel records.

27 146. Under California Labor Code Sections 226, 432 and 1198.5, such records were
28 to include all records relating to Plaintiff's hours worked, wage statements and compensation.

1 Plaintiff's counsel and HPS did not enter into an agreement to enlarge the time for HPS's
2 compliance, and HPS has failed and refused to permit Plaintiff copies of her records.

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

8 **FOURTEENTH CAUSE OF ACTION**

9 **(For Unfair Competition in Violation of Unfair Business Practices, Cal. Bus. &**
10 **Prof. Code §17200 et. seq. – By Plaintiff Against Defendant HPS and Does 1 through 100)**

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

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

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

20 151. Paying minimum wages, affording of meal/rest breaks, providing a uniform
21 maintenance allowance and providing employment records, are fundamental public policies of
22 the State of California. It is also the public policy of this State to enforce minimum labor
23 standards, to ensure that employees are not required or permitted to work under substandard
24 and unlawful conditions, and to protect those employers who comply with the law from losing
25 competitive advantage to other employers who fail to comply with labor standards and
26 requirements.
27
28

1 152. HPS failed to pay Plaintiff minimum wages, afford Plaintiff meal/rest breaks,
2 provide a uniform maintenance allowance and to provide her personnel records.

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

7 154. HPS regularly and routinely violated the following statutes and regulations with
8 respect to Plaintiff:

- 9
- 10 (a) *Labor Code* § 1197 and Wage Order No. 5 (failure to pay minimum
 - 11 wages);
 - 12 (b) *Lab. Code* § 226.7 (failure to afford meal/rest breaks);
 - 13 (c) *Labor Code* § 226 (failure to provide accurate wage statements to
 - 14 employees at the time of payment of wages);
 - 15 (d) *Labor Code* § 203 (failure to pay wages on termination);
 - 16 (e) *Labor Code* § 2802 (failure to provide a uniform maintenance allowance);
 - 17 and
 - 18 (c) *Labor Code* §1198.5 (failure to allow inspection of employment records).

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

23

24 **PRAYER FOR RELIEF**

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

27 1. For compensatory damages in the amount of minimum wages due to Plaintiff, in
28 the amount of at least \$72,960.00, according to proof;

2. For compensatory damages for lost wages and employment benefits, in the amount of \$72,960.00, according to proof;
3. For compensatory damages for physical and emotional distress, in the amount of at least \$1,000,000, according to proof;
4. For an award of consequential damages, according to proof;
5. For one (1) hour of pay at the regular rate of compensation for Plaintiff for each workday that a meal/rest period was not provided;
6. For payment of unpaid wages in accordance with California labor and employment law;
7. For statutory damages pursuant to Cal. Lab. Code §226, according to proof;
8. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code* § 203, in an amount equal to her daily pay rate at the time of termination, multiplied by the total amount of days elapsed between the date of involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;
9. For specific relief enforcing waiting time penalties of 30 days of per diem wages pursuant to Cal. Bus. & Prof. Code §17200, according to proof;
10. For statutory penalties pursuant to Cal. Lab. Code § 226.7, according to proof;
11. For prejudgment interest accrued on all due and unpaid minimum wages from the date that wages were due and payable, pursuant to Cal. Lab. Code §§218.6 and 1194(a), according to proof;
12. For compensatory damages in the amount of Plaintiff's uniform maintenance expenses, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);
13. For reasonable costs, including attorneys' fees, in an amount according to proof pursuant to *Government Code* § 12965(b), Cal. Labor Code §§ 1194, 218.5, 1198.5, 2802 and/or Cal. Code Civ. Proc. §1021.5;
14. For injunctive relief ordering the continuing unfair business acts and practices to cease, as the Court deems just and proper;

1 15. For other injunctive relief ordering HPS to notify Plaintiff that she has not been
2 paid the proper amounts in accordance with California law;

3 16. For injunctive relief requiring HPS to comply with Labor Code 1198.5(b)(1);

4 17. For costs of suit, generally and pursuant to Code of Civil Procedure § 1021.5;

5 18. For punitive and exemplary damages in a sum to be determined at trial; and

6 19. For such other and further relief as the Court deems just and proper.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff Pamela Betzabel Calleja Rodriguez hereby respectfully requests a trial by jury
9 for all claims and issues raised in her Complaint that may be entitled to a jury trial.

11 LIPELES LAW GROUP, APC

12 Date: November 21, 2024

14 By: Franz Reece
15 Franz D. Reece
16 Attorneys for Plaintiff
17 Pamela Betzabel Calleja Rodriguez