

Fill in this information to identify the case:

Debtor 1 Alamo Buffets Payroll, LLC

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas, Dallas Division

Case number 21-30734-11

E-Filed on 08/27/2021
Claim # 357

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** Susie Annette Valenzuela
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

| 3. Where should notices and payments to the creditor be sent? | Where should notices to the creditor be sent? | Where should payments to the creditor be sent? (if different) |
|--|---|--|
| Federal Rule of Bankruptcy Procedure (FRBP) 2002(g) | <u>Bibiyan Law Group, P.C.</u> Name | _____ Name |
| | <u>8484 Wilshire Blvd, Ste 500</u> Number Street | _____ Number Street |
| | <u>Beverly Hills CA 90211</u> City State ZIP Code | _____ City State ZIP Code |
| | Contact phone <u>(310) 438-5555</u> | Contact phone _____ |
| | Contact email <u>david@tomorrowlaw.com</u> | Contact email _____ |
| | Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____ | |

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 350,000.00. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.
Wrongful Termination Litigation

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ 0.00

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/27/2021
MM / DD / YYYY

April Kimm
Signature

Print the name of the person who is completing and signing this claim:

Name April Kimm
First name Middle name Last name

Title Director

Company Dundon Advisers LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 440 Mamaroneck Ave, Ste 507
Number Street

Harrison NY 10528
City State ZIP Code

Contact phone (914) 341-1188 Email ak@dundon.com

Attachment 1 - Valenzuela Wrongful Termination Complaint.pdf

Description -

1 **BIBIYAN LAW GROUP**
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8 Attorneys for Plaintiff,
9 **SUSIE ANNETTE VALENZUELA**

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

13 **SUSIE ANNETTE VALENZUELA,**
an individual,

15 Plaintiff,

16 v.

17 **HOMETOWN BUFFET, INC.,** a Minnesota
corporation; **BUFFETS, LLC,** a Minnesota
18 limited liability company; **ALAMO BUFFETS**
PAYROLL, LLC, a Texas limited liability
19 company; **FOOD MANAGEMENT**
PARTNERS, INC., a Texas corporation;
20 **MARTA CARILLO,** an individual;
VERONICA VENCES, an individual; and
21 **DOES 1 through 100, Inclusive,**

23 Defendants.

CASE NO.:

COMPLAINT FOR:

- (1) **DISABILITY DISCRIMINATION;**
- (2) **HARASSMENT;**
- (3) **FAILURE TO PROVIDE**
REASONABLE ACCOMMODATION;
- (4) **FAILURE TO ENGAGE IN A GOOD**
FAITH, INTERACTIVE PROCESS;
- (5) **FAILURE TO PROVIDE MEDICAL**
LEAVE;
- (6) **RETALIATION;**
- (7) **FAILURE TO PREVENT**
DISCRIMINATION, HARASSMENT,
AND RETALIATION;
- (8) **WRONGFUL TERMINATION;**
- (9) **WRONGFUL TERMINATION IN**
VIOLATION OF PUBLIC POLICY;
- (10) **FAILURE TO PAY OVERTIME**
WAGES;
- (11) **FAILURE TO PAY MINIMUM**
WAGES;
- (12) **MEAL PERIOD VIOLATIONS;**
- (13) **REST PERIOD VIOLATIONS;**
- (14) **WAGE STATEMENT VIOLATIONS;**
- (15) **WAITING TIME PENALTIES;**
- (16) **FAILURE TO INDEMNIFY;**
- (17) **UNFAIR COMPETITION; and**
- (18) **INTENTIONAL INFLECTION OF**
EMOTIONAL DISTRESS.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

1 COMES NOW plaintiff, SUSIE ANNETTE VALENZUELA (“Ms. Valenzuela” or
2 “Plaintiff”), as and for her Complaint, who complains and alleges as follows:

3 **THE PARTIES**

4 1. Plaintiff Ms. Valenzuela is, and at all times relevant hereto was, an individual
5 residing in the County of Los Angeles, State of California.

6 2. Plaintiff is informed and believes, and based thereon alleges that she suffered from
7 debilitating head pain that limited the major life activity of working. Plaintiff is informed and
8 believes that she was terminated from her employment, discriminated against, retaliated against,
9 and harassed on the basis of her physical disability. Due to her physical disability, Plaintiff is
10 entitled to protection under California Department Fair Employment and Housing Act under
11 Government Code section 12900, *et seq.* (hereinafter “FEHA”) and the California common law.

12 3. Plaintiff is informed and believes, and based thereon alleges, that defendant
13 HOMETOWN BUFFET, INC. (“HOMETOWN”), is, and at all times relevant hereto was, a
14 corporation organized and existing under and by virtue of the laws of the State of Minnesota and
15 doing business in the County of Los Angeles, State of California, with its principal office located
16 at 120 Chula Vista, Hollywood Park, Texas 78232. Plaintiff is further informed and believes, and
17 based thereon alleges, that HOMETOWN owns and operates numerous restaurants in California,
18 regularly employs five or more employees and falls within the definition of “Employer” in
19 Government Code section 12926, subdivision (d).

20 4. Plaintiff is informed and believes, and based thereon alleges, that defendant
21 BUFFETS, LLC. (“BUFFETS”), is, and at all times relevant hereto was, a limited liability
22 company organized and existing under and by virtue of the laws of the State of Minnesota and
23 doing business in the County of Los Angeles, State of California, with its principal office located
24 at 120 Chula Vista, Hollywood Park, Texas 78232. Plaintiff is further informed and believes, and
25 based thereon alleges, that BUFFETS owns and operates numerous restaurants in California,
26 regularly employs five or more employees and falls within the definition of “Employer” in
27 Government Code section 12926, subdivision (d).

28 5. Plaintiff is informed and believes, and based thereon alleges, that defendant

1 ALAMO BUFFETS PAYROLL, LLC. (“ALAMO”), is, and at all times relevant hereto was, a
2 limited liability company organized and existing under and by virtue of the laws of the State of
3 Texas and doing business in the County of Los Angeles, State of California. Plaintiff is further
4 informed and believes, and based thereon alleges, that ALAMO owns and operates numerous
5 restaurants in California, regularly employs five or more employees and falls within the definition
6 of “Employer” in Government Code section 12926, subdivision (d).

7 6. Plaintiff is informed and believes, and based thereon alleges, that defendant FOOD
8 MANAGEMENT PARTNERS, INC. (“FMP”), is, and at all times relevant hereto was, a
9 corporation organized and existing under and by virtue of the laws of the State of Texas and doing
10 business in the County of Los Angeles, State of California. Plaintiff is further informed and
11 believes, and based thereon alleges, that FMP owns and operates numerous restaurants in
12 California, regularly employs five or more employees and falls within the definition of
13 “Employer” in Government Code section 12926, subdivision (d).

14 7. Plaintiff is informed and believes, and based thereon alleges, that defendant
15 MARTA CARILLO (“CARILLO”) is, and at all times relevant hereto was, an individual residing
16 in the County of Los Angeles, State of California. Plaintiff is further informed and believes, and
17 based thereon alleges, that CARILLO is, and at all times relevant hereto was, a General Manager
18 employed by HOMETOWN. Plaintiff is further informed and believes and based thereon alleges
19 that CARILLO violated, or caused to be violated, the above-referenced and below-referenced
20 Labor Code provisions in violation of Labor Code section 558.1

21 8. Plaintiff is informed and believes, and based thereon alleges, that defendant
22 VERONICA VENCES (“VENCES”) is, and at all times relevant hereto was, an individual
23 residing in the County of Los Angeles, State of California. Plaintiff is further informed and
24 believes, and based thereon alleges, that VENCES is, and at all times relevant hereto was, a
25 Regional Manager employed by HOMETOWN. Plaintiff is further informed and believes and
26 based thereon alleges that VENCES violated, or caused to be violated, the above-referenced and
27 below-referenced Labor Code provisions in violation of Labor Code section 558.1

28 9. The true names and capacities, whether individual, corporate or associate, or

1 otherwise, of the defendants named herein as DOES 1 through 100, inclusive, are unknown to
2 Plaintiff, who therefore sues said defendants by such fictitious names pursuant to California Code
3 of Civil Procedure section 474, and Plaintiff will amend this complaint to show their true names
4 and capacities when the same have been ascertained. Plaintiff is informed and believes, and based
5 thereon alleges, that all defendants sued herein as DOES are in some manner responsible for the
6 acts herein alleged and that Plaintiff's damages were proximately caused by their conduct.
7 Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all
8 respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme,
9 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
10 attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to
11 "Defendants," it shall include HOMETOWN, BUFFETS, ALAMO. FMP, and any of their parent,
12 subsidiary, or affiliated companies within the State of California, as well as CARILLO, VENCES,
13 and DOES 1 through 100 identified herein.

14 **JOINT LIABILITY ALLEGATIONS**

15 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
16 mentioned herein, each of the defendants was the agent, principal, employee, employer,
17 representative, joint venture or co-conspirator of each of the other defendants, either actually or
18 ostensibly, and in doing the things alleged herein acted within the course and scope of such
19 agency, employment, joint venture, and conspiracy.

20 11. All of the acts and conduct described herein of each and every corporate defendant
21 was duly authorized, ordered, and directed by the respective and collective defendant corporate
22 employers, and the officers and management-level employees of said corporate employers. In
23 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
24 their said employees, agents, and representatives, and each of them; and upon completion of the
25 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
26 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
27 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
28 aforementioned corporate employees, agents and representatives.

1 12. Plaintiff is further informed and believes, and based thereon alleges, that
2 CARILLO and VENCES violated, or caused to be violated, the above-referenced and below-
3 referenced Labor Code provisions in violation of Labor Code section 558.1.

4 13. As a result of the aforementioned facts, Plaintiff is informed and believes, and
5 based thereon alleges that Defendants, and each of them, are joint employers.

6 **FACTUAL ALLEGATIONS**

7 14. In or around June of 2005, Defendants hired Plaintiff as a full-time employee, with
8 duties that included, without limitation, bussing tables, stocking items, washing dishes, taking in
9 customer complaints, cashing out cashiers, and working a register. Plaintiff always performed her
10 duties in a competent manner.

11 15. Throughout Plaintiff's employment with Defendants, she worked at several of
12 Defendants' restaurants, all of which are located in the County of Los Angeles, State of California.
13 Plaintiff primarily worked at Defendants' restaurant located at 4700 Candlewood Street,
14 Lakewood, California 90712.

15 16. In or around July of 2019, Ms. Valenzuela suffered from unbearable head pain.

16 17. In or around late July of 2019, Ms. Valenzuela requested from Defendants that she
17 be allowed to leave work early due to her unbearable head pain and informed Defendants' Human
18 Resources Department that she had made that request.

19 18. The following day, Plaintiff sought treatment from a medical professional, who
20 placed Plaintiff off of work for three days.

21 19. Plaintiff provided her medical professional's recommendation to Defendants.

22 20. When Ms. Valenzuela returned to work, CARILLO and VENCES attempted to
23 discipline Plaintiff for having left work due to her unbearable head pain.

24 21. In or around early August of 2019, Plaintiff continued to suffer from debilitating
25 head pain and again sought treatment from a medical health professional, who recommended that
26 Plaintiff be placed off of work for a week.

27 22. Plaintiff provided the medical professional's recommendation that Plaintiff take a
28 week off of work due to her debilitating head pain to CARILLO.

1 23. In or around September of 2019, Plaintiff had a particularly acute episode of head
2 pain that was so severe that it caused her to tear up. Plaintiff asked CARILLO if Plaintiff could
3 leave work early due to her severe head pain.

4 24. CARILLO initially refused Plaintiff's request to leave work early and reprimanded
5 Plaintiff for asking. Only after the intervention of another manager, Plaintiff was eventually
6 allowed to leave work early that day.

7 25. The next time Plaintiff attempted to clock in to work. CARILLO told Plaintiff that
8 she was suspended for having left work, even though Plaintiff had originally been authorized to do
9 so. VENCES also told Plaintiff that they would they needed to talk to following day.

10 26. When Plaintiff showed up for work the following day, on or around September 25,
11 2019, CARILLO and VENCES told Plaintiff that her employment was terminated.

12 27. Plaintiff, at all times pertinent hereto, was a non-exempt employee within the
13 meaning of the California Labor Code, and the implementing rules and regulations of the IWC
14 California Wage Orders

15 28. Plaintiff is informed and believes, and based thereon alleges that throughout her
16 employment, Plaintiff was not paid one-and-a-half times the regular rate of pay for work
17 performed over eight (8) hours per day, forty (40) hours per week, and seven consecutive work
18 days in a work week without being properly compensated for hours worked in excess of (8) hours
19 per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the
20 seventh consecutive work day in a work week by, among other things, failing to accurately track
21 and/or pay for all hours actually worked at the proper overtime rate of pay; detrimentally rounding
22 time entries; detrimentally editing and/or manipulation of time entries; and engaging, suffering or
23 permitting Plaintiff to work off the clock, including, without limitation, by requiring Plaintiff to
24 don and doff required work uniforms off the clock.

25 29. Plaintiff is informed and believes, and based thereon alleges that throughout her
26 employment, Defendants failed to pay Plaintiff at the regular rate of pay for all minimum wages
27 due, as a result of, without limitation, failing to accurately track and/or pay for all hours actually
28 worked; detrimentally rounding time entries; detrimentally editing and/or manipulation of time

1 entries; and engaging, suffering, or permitting Plaintiff to work off the clock, including, without
2 limitation, by requiring Plaintiff to don and doff required work uniforms off the clock.

3 30. Plaintiff is informed and believes, and based thereon alleges that throughout her
4 employment, Defendants failed to provide Plaintiff with thirty (30) minute timely and
5 uninterrupted meal periods for days on which she worked more than five (5) hours in a work day
6 and a second timely thirty (30) minute uninterrupted meal period for days on which she worked in
7 excess of ten (10) hours in a work day, and failed to provide compensation for such unprovided or
8 untimely meal periods as required by California wage and hour laws.

9 31. Plaintiff is informed and believes, and based thereon alleges that throughout her
10 employment, Defendants failed to provide Plaintiff with uninterrupted and timely paid rest periods
11 of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failed to
12 provide compensation for such unprovided or untimely rest periods as required by California wage
13 and hour laws.

14 32. Plaintiff is informed and believes, and based thereon alleges that throughout her
15 employment, Defendants failed to furnish Plaintiff with itemized wage statements that accurately
16 reflected, among other things: gross wages earned and paid; total hours worked by Plaintiff; net
17 wages earned and paid; all applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate; and other such information as required
19 by Labor Code section 226, subdivision (a).

20 33. Plaintiff is informed and believes and based thereon alleges that at the time
21 Plaintiff's employment ended, Defendants failed to pay Plaintiff the full amount of her wages due
22 upon termination and/or resignation, as required by Labor Code sections 201 and 202.

23 34. Plaintiff is informed and believes, and based thereon alleges that throughout her
24 employment, Defendants failed to indemnify Plaintiff for the out-of-pocket expenses incurred in
25 furtherance of her work duties, including but not limited to, costs incurred for driving her personal
26 vehicle, including mileage and gas, separately laundering her mandatory work uniform, and the
27 purchase and maintenance of cellular phones and cellular phone plans.

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EXHAUSTION OF ADMINISTRATIVE REMEDIES

11. Plaintiff filed a complaint with the Department of Fair Employment and Housing (“DFEH”) against Defendants and obtained the Notice of Right to Sue on November 20, 2020, thereby exhausting her administrative remedies.

JURISDICTION AND VENUE

12. Jurisdiction exists in the Superior Court of the State of California pursuant to Code of Civil Procedure section 410.10.

13. Venue is proper in the County of Los Angeles, California pursuant to Code of Civil Procedure sections 392, *et seq.* and Government Code section 12965, subdivision (b), because, among other things, Los Angeles County is the county in which the unlawful practices herein alleged have been committed, is the county in which the records relevant to the practices are maintained, and is the county in which Plaintiff worked for Defendants.

14. The amount of damages sought by Plaintiff herein exceeds the minimum jurisdictional limit of this Court: \$25,000.00.

FIRST CAUSE OF ACTION

(Disability Discrimination – Against All Defendants)

15. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

16. At all times mentioned herein, Plaintiff was an employee within the meaning of California Government Code section 12926, and at all times during her employment she performed in a competent, satisfactory manner.

17. Government Code section 12920 identifies the policy of this State to be the protection and safeguarding of the right and opportunity of all persons to seek, obtain and hold employment without discrimination on the basis of their disabilities, disability-related activities, complaints against unlawful employment practices, age, race and/or national origin. Therefore, by terminating Plaintiff’s employment in the manner herein alleged, Defendants violated the fundamental public policies of this State codified by Government Code section 12900, *et seq.*

18. Plaintiff is informed and believes that she was discriminated against during her

1 employment with Defendants on the basis of her physical disabilities arising from her debilitating
2 head pain in violation of, *inter alia*, Government Code section 12940, subdivision (a).

3 19. Plaintiff filed Charges of Discrimination with the DFEH. Plaintiff has exhausted
4 her administrative remedies, received her Notice of Right to Sue, and timely files this action.

5 20. At all times mentioned herein, Defendant knew that Plaintiff suffered from physical
6 disabilities related to her debilitating head pain that required treatment from her healthcare
7 provider. Plaintiff is informed and believes that her employment was terminated as a result of her
8 physical disabilities in violation of, *inter alia*, Government Code section 12940, subdivision (a).

9 21. Plaintiff is informed and believes and based thereon alleges that in addition to the
10 practices enumerated above, Defendants may have engaged in other discriminatory practices
11 against her which are not yet fully known. At such time as such discriminatory practices become
12 known, Plaintiff will seek leave of Court to amend this Complaint in that regard.

13 22. As a direct, foreseeable, legal and proximate result of Defendants' illegal conduct,
14 acts, and/or omissions, as herein alleged, Plaintiff has suffered and continues to suffer, substantial
15 losses in earnings and job benefits, humiliation, embarrassment, mental and emotional distress and
16 discomfort, security, solace, and peace of mind for which Plaintiff entered the employment
17 relationship with Defendants, all to Plaintiff's damage in an amount to be proven at trial.

18 23. As further direct, foreseeable, legal and proximate result of said discriminatory
19 conduct, acts, and/or omissions, Plaintiff has also been caused to retain attorneys and has thus
20 incurred legal fees, expenses and costs, entitling her to reimbursement of same pursuant to
21 Government Code section 12965, subdivision (b), in amount to be proven.

22 24. Furthermore, Defendants committed the illegal acts and/or omissions described
23 herein deliberately, intentionally, oppressively, fraudulently, maliciously and in conscious
24 disregard for Plaintiff's rights and safety. As such, Defendants acted in a willful and intentional
25 manner and their conduct continues to be despicable, malicious and outrageous in that it has
26 caused and continues to cause Plaintiff to needlessly suffer cruel and unjust hardship. Therefore,
27 Defendants' conduct, as herein alleged, justifies an award of punitive and exemplary damages in
28 an amount sufficient to deter them from ever engaging in such conduct again in the future.

1 Punitive and exemplary damages are further warranted to deter other employers who are similarly
2 situated to Defendants from also behaving in the same manner as Defendants.

3 **SECOND CAUSE OF ACTION**

4 **(Harassment – Against All Defendants)**

5 25. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
6 the preceding paragraphs of this Complaint as though fully set forth herein.

7 26. At all times relevant hereto, Defendants were employers within the meaning of
8 Government Code section 12926.

9 27. At all times relevant hereto, Plaintiff was an employee within the meaning of
10 California Government Code section 12926, and at all times during her employment she
11 performed in a competent, satisfactory manner.

12 28. At all times relevant herein, California Government Code section 12940,
13 subdivision (j) prohibited employers from harassing employees on the basis of their physical
14 disability.

15 29. California Government Code section 12940, subdivision (j) further provides that
16 harassment of an employee shall be unlawful if the entity, or its agents or supervisors, know or
17 should have known of the conduct and fail to take immediate and appropriate corrective action.

18 30. As identified herein, during Plaintiff's employment with Defendants, Defendants
19 engaged in actions that constituted harassment of Plaintiff on the basis of her physical disabilities.
20 Defendants failed to take immediate and appropriate action to prevent harassment against Plaintiff.
21 Further, on or around September 5, 2019, Defendants terminated Plaintiff's employment. These
22 actions created a hostile working environment for Plaintiff.

23 31. Plaintiff filed Charges of Discrimination with the DFEH. Plaintiff has exhausted
24 her administrative remedies, received her Notice of Right to Sue, and timely files this action.

25 32. As a direct, foreseeable, legal and proximate result of Defendants' illegal conduct,
26 acts, and/or omissions, as herein alleged, Plaintiff has suffered and continues to suffer, substantial
27 losses in earnings and job benefits, humiliation, embarrassment, mental and emotional distress,
28 discomfort, and a lack of security, solace, and peace of mind for which Plaintiff entered the

1 employment relationship with Defendants, all to Plaintiff's damage in an amount to be proven at
2 trial.

3 33. As further direct, foreseeable, legal and proximate result of said unlawful conduct,
4 acts, and/or omissions, Plaintiff has also been caused to retain attorneys and has thus incurred
5 legal fees, expenses and costs, entitling her to reimbursement of the same pursuant to Government
6 Code section 12965, subdivision (b), in amount to be proven.

7 34. Furthermore, Defendants committed the illegal acts and/or omissions described
8 herein deliberately, intentionally, oppressively, fraudulently, maliciously and in conscious
9 disregard for Plaintiff's rights and safety. As such, Defendants acted in a willful and intentional
10 manner and their conduct continues to be despicable, malicious and outrageous in that it has
11 caused and continues to cause Plaintiff to needlessly suffer cruel and unjust hardship. Therefore,
12 Defendants' conduct, as herein alleged, justifies an award of punitive and exemplary damages in
13 an amount sufficient to deter them from ever engaging in such conduct again in the future.
14 Punitive and exemplary damages are further warranted to deter other employers who are similarly
15 situated to Defendants from also behaving in the same manner as Defendants.

16 **THIRD CAUSE OF ACTION**

17 **(Failure to Provide Reasonable Accommodation – Against All Defendants)**

18 35. Plaintiff realleges and incorporates by reference all of the allegations contained in
19 the preceding paragraphs of this Complaint as though fully set forth herein.

20 36. While working with Defendants, Plaintiff requested accommodations in connection
21 with her physical disability, including, without limitation: temporary absence from work for rest or
22 to attend doctors' appointments and modified working hours.

23 37. Plaintiff is informed and believes and based thereon alleges that Defendants failed
24 and refused to grant Plaintiff's requests for reasonable accommodations for conditions/disabilities
25 related to her physical disability in violation of the FEHA, codified at Government Code section
26 12900, *et seq.* Plaintiff is informed and believes, and based thereon alleges that the reasonable
27 accommodations she requested would not have created an undue burden for Defendants.

28 38. At all times relevant hereto, Defendants were employers within the meaning of

1 Government Code section 12926.

2 39. At all times during her employment, Plaintiff could competently perform her job
3 duties with or without a reasonable accommodation.

4 40. Plaintiff filed Charges of Discrimination with the DFEH. Plaintiff has exhausted
5 her administrative remedies, received her Notice of Right to Sue, and timely files this Action.

6 41. Plaintiff is informed and believes, and based thereon alleges, that in addition to the
7 practices enumerated above, Defendants may have engaged in other discriminatory practices
8 against her which are not fully known yet. At such time as such discriminatory practices become
9 known to her, Plaintiff will seek leave of Court to amend this Complaint in that regard.

10 42. As a direct and proximate result of Defendants' conduct, Plaintiff has sustained,
11 and continues to sustain, loss of earnings and benefits, the full nature and extent of which are
12 presently unknown to Plaintiff, who, therefore, will seek leave of Court to amend her Complaint at
13 such time as these damages are fully ascertained.

14 43. As a further direct and proximate result of Defendants' conduct against her in
15 violation of Government Code section 12900, *et seq.* as heretofore described. Plaintiff has been
16 damaged and deprived of the security, solace, and peace of mind for which she entered the
17 employment relationship with Defendants, and each of the, thereby causing her to suffer emotional
18 and mental distress, anguish, embarrassment, and humiliation, all to her general damages in an
19 amount according to proof at trial, but in excess of the jurisdictional amount of this Court.

20 44. As a further result of Defendants' conduct, Plaintiff has incurred, and will continue
21 to incur, attorney's fees and costs and is entitled to recover reasonable attorneys' fees and costs
22 from Defendants pursuant to Government Code section 12965.

23 45. Plaintiff is informed and believes, and based thereon alleges, that the outrageous
24 conduct of Defendants described above was done with malice, fraud, and oppression with
25 conscious disregard for her rights and with the intent, design, and purpose of injuring her.
26 Defendants, through their officers, managing agents, and/or supervisors, authorized, condoned
27 and/or ratified the unlawful conduct of all of the other Defendants named in this Action. By reason
28 thereof, Plaintiff is entitled to punitive or exemplary damages from Defendants in a sum according

1 to proof of at trial.

2 **FOURTH CAUSE OF ACTION**

3 **(Failure to Engage in a Good Faith Interactive Process – Against All Defendants)**

4 46. Plaintiff realleges and incorporates by reference all of the allegations contained in
5 the preceding paragraphs of this Complaint as though fully set forth herein.

6 47. At all times mentioned herein, Plaintiff was an employee within the meaning of
7 Government Code section 12926, and at all times relevant performed in a competent, satisfactory
8 manner.

9 48. At all times relevant hereto, Defendants were employers within the meaning of
10 Government Code section 12926.

11 49. FEHA requires an employer who knows, or has reason to know, of an employee's
12 disability, or regards and employee a disabled, to engaged in a timely good faith interactive
13 process to identify all available accommodations. The interactive process mandates an employer
14 to engage the employee in an open dialogue and good-faith exploration of all possible available
15 accommodations, including other suitable job opportunities.

16 50. Government Code section 12940(n) makes an employer's failure to engage an
17 employee with a known and/or perceived disability in a timely, good faith interactive process
18 unlawful.

19 51. As a result of her disability, Plaintiff requested reasonable accommodations,
20 including taking time off for a doctors' appointments or rest and modified working hours. Despite
21 knowing of Plaintiff's actual and/or perceived disabilities and despite knowing of her need for
22 reasonable accommodations, as herein alleged, Defendants failed to engage her in a timely, good
23 faith interactive process to identify all available accommodations in violation of Government Code
24 section 12940(n). Had Defendants carried out their duty under FEHA, reasonable
25 accommodations could have been identified, enabling her to continue performing the essential
26 functions of her job.

27 52. Plaintiff is informed and believes, and based thereon alleges. that the reasonable
28 accommodations she requested would not have created an undue burden for Defendants.

1 53. Plaintiff is informed and believes, and based thereon alleges, that in addition to the
2 practices enumerated above, Defendants may have engaged in other discriminatory practices
3 against her which are not fully known yet. At such time as such discriminatory practices become
4 known to her, Plaintiff will seek leave of Court to amend this Complaint in that regard.

5 54. Plaintiff filed Charges of Discrimination with the DFEH. Plaintiff has exhausted
6 her administrative remedies, received her Notice of Right to Sue, and timely files this Action.

7 55. As a direct and proximate result of Defendants' conduct, Plaintiff has sustained,
8 and continues to sustain, loss of earnings and benefits, the full nature and extent of which are
9 presently unknown to Plaintiff, who, therefore, will seek leave of Court to amend her Complaint at
10 such time as these damages are fully ascertained.

11 56. As a further direct and proximate result of Defendants' conduct against her in
12 violation of Government Code section 12940, subdivision (n), Plaintiff has been damaged and
13 deprived of the security, solace, and peace of mind for which she entered the employment
14 relationship with Defendants, and each of the, thereby causing her to suffer emotional and mental
15 distress, anguish, embarrassment, and humiliation, all to her general damages in an amount
16 according to proof at trial, but in excess of the jurisdictional amount of this Court.

17 57. As a further result of Defendants' conduct, Plaintiff has incurred, and will continue
18 to incur, attorney's fees and costs and is entitled to recover reasonable attorneys' fees and costs
19 from Defendants pursuant to Government Code section 12965.

20 58. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
21 about Plaintiff's disability and need for reasonable accommodations yet they oppressively,
22 fraudulently, maliciously and in conscious disregard for Plaintiff's rights and safety failed to
23 engage in the requisite interactive process. As such, Defendants acted in a willful and intentional
24 manner and their conduct, as herein described, was and continues to be despicable, malicious and
25 outrageous in that it has caused Plaintiff to needlessly suffer cruel and unjust hardship. Therefore,
26 Defendants' conduct, acts and/or omissions, as herein alleged, justify an award of punitive and
27 exemplary damages in an amount sufficient to deter them from ever engaging in such conduct
28 again in the future. Punitive and exemplary damages are further warranted to deter other

1 employers from also behaving in the same manner as Defendants.

2 **FIFTH CAUSE OF ACTION**

3 **(Denial of Medical Leave - Against All Defendants)**

4 59. Plaintiff realleges and incorporates by reference all of the allegations contained in
5 the preceding paragraphs of this Complaint as though fully set forth herein.

6 60. Defendants are subject to the laws of the State of California and are entities subject
7 to suit for failing to provide Plaintiff with medical leave as required under the California Family
8 Rights Act (“CFRA”), codified at Government Code Section 12945.2, in that each of the
9 Defendants is an employer who regularly employs fifty (50) or more persons.

10 61. In or about July of 2019, and through the time of her termination, including in or
11 around September of 2019, when Plaintiff requested leave for treatment and rest due to her serious
12 health condition, she qualified for twelve (12) weeks of leave under CFRA because the reason for
13 her leave was a serious health condition, she had worked for Defendants in excess of twelve (12)
14 months, and she had at least 1,250 hours of service with Defendants.

15 62. Under CFRA, medical leave requested pursuant to that law is not deemed to have
16 been granted unless the employer provides the employee, upon granting the leave request, a
17 guarantee of employment in the same or comparable position upon the termination of the leave.

18 63. By failing to guarantee Plaintiff her same or comparable position upon the
19 completion of her medical leave, and by terminating her shortly thereafter, Defendants, and each
20 of them, failed to grant Plaintiff her legally entitled medical leave in violation of CFRA.

21 64. At all times during her employment, Plaintiff could competently perform her job
22 duties with or without a reasonable accommodation.

23 65. Plaintiff is informed and believes, and based thereon alleges that the reasonable
24 period of time that she requested for medical leave would not have created an undue burden for
25 Defendants.

26 66. Plaintiff is informed and believes, and based thereon alleges, that in addition to the
27 practices enumerated above, Defendants may have engaged in other discriminatory practices
28 against her which are not fully known yet. At such time as such discriminatory practices become

1 known to her, Plaintiff will seek leave of Court to amend this Complaint in that regard.

2 67. Plaintiff filed Charges of Discrimination with the DFEH. Plaintiff has exhausted
3 her administrative remedies, received her Notice of Right to Sue, and timely files this Action.

4 68. As a direct and proximate result of Defendants' conduct, Plaintiff has sustained,
5 and continues to sustain, loss of earnings and benefits, the full nature and extent of which are
6 presently unknown to Plaintiff, who, therefore, will seek leave of Court to amend her Complaint at
7 such time as these damages are fully ascertained.

8 69. As a further direct and proximate result of Defendants' conduct, Plaintiff has been
9 damaged and deprived of the security, solace, and peace of mind for which she entered the
10 employment relationship with Defendants, and each of them, thereby causing her to suffer
11 emotional and mental distress, anguish, embarrassment, and humiliation. all to her general
12 damages in an amount according to proof at trial, but in excess of the jurisdictional amount of this
13 Court.

14 70. As a further result of Defendants' conduct, Plaintiff has incurred, and will continue
15 to incur, attorney's fees and costs and is entitled to recover reasonable attorneys' fees and costs
16 from Defendants pursuant to Government Code section 12965.

17 71. Plaintiff is informed and believes, and based thereon alleges. that the outrageous
18 conduct of Defendants described above was done with malice. fraud, and oppression with
19 conscious disregard for her rights and with the intent, design, and purpose of injuring her.
20 Defendants, through their officers, managing agents, and/or supervisors, authorized, condoned
21 and/or ratified the unlawful conduct of all of the other Defendants named in this Action. By reason
22 thereof, Plaintiff is entitled to punitive or exemplary damages from all Defendants in a sum
23 according to proof of at trial.

24 **SIXTH CAUSE OF ACTION**

25 **(Retaliation - Against All Defendants)**

26 72. Plaintiff realleges and incorporates by reference all of the allegations contained in
27 the preceding paragraphs of this Complaint as though fully set forth herein.

28 73. At all times relevant hereto, Defendants were employers within the meaning of

1 Government Code section 12926.

2 74. Government Code section 12940, subdivision (m)(2), and section 11021 of Title 2
3 of the California Code of Regulations makes it unlawful for an employer to retaliate against a
4 person for requesting an accommodation based on a disability. Moreover, Government Code
5 section 12945.2(l) and section 11094 of the California Code of Regulations prohibit an employer
6 from retaliating against an employee for exercising their right to leave under CFRA.

7 75. Plaintiff is informed and believes, and based thereon alleges that, among other
8 things, that when Plaintiff suffered a physical disability, requested reasonable accommodations,
9 and requested medical leave, she was subjected to retaliation, including, without limitation, denial
10 of full employment benefits, denial of a good faith, interactive process, denial of accommodation,
11 denial of leave, reprimand, and termination by Defendants.

12 76. At all times during her employment, Plaintiff could competently perform her job
13 duties with or without a reasonable accommodation.

14 77. Plaintiff filed Charges of Discrimination with the DFEH. Plaintiff has exhausted
15 her administrative remedies, received her Notice of Right to Sue, and timely files this Action.

16 78. As a direct and proximate result of Defendants' willful, knowing and intentional
17 retaliatory conduct against her, Plaintiff has sustained, and continues to sustain, loss of earnings
18 and benefits, the full nature and extent of which are presently unknown to Plaintiff, who,
19 therefore, will seek leave of Court to amend her Complaint at such time as these damages are fully
20 ascertained.

21 79. As a further direct and proximate result of Defendants' retaliatory conduct against
22 her in violation of Government Code sections 12940 and 12945.2, as heretofore described,
23 Plaintiff has been damaged and deprived of the security, solace, and peace of mind for which she
24 entered the employment relationship with Defendants, and each of them, thereby causing her to
25 suffer emotional and mental distress, anguish, embarrassment, and humiliation, all to her general
26 damages in an amount according to proof at trial, but in excess of the jurisdictional amount of this
27 Court.

28 80. As a further result of Defendants' conduct, Plaintiff has incurred, and will continue

1 to incur, attorney's fees and costs and is entitled to recover reasonable attorneys' fees and costs
2 from Defendants pursuant to Government Code section 12965.

3 81. Plaintiff is informed and believes, and based thereon alleges that, furthermore,
4 Defendants committed the retaliatory conduct, acts and/or omissions described and alleged herein,
5 deliberately, intentionally, oppressively, fraudulently, maliciously and in conscious disregard for
6 Plaintiff's rights and safety. As such, Defendants acted in a willful and intentional manner and
7 their conduct, as herein set forth, was and continues to be despicable, malicious and outrageous in
8 that it caused Plaintiff to needlessly suffer cruel and unjust hardship. Therefore, Defendants
9 retaliatory conduct, acts and/or omissions, as herein alleged, justifies an award of punitive and
10 exemplary damages in an amount sufficient to deter them from ever engaging in such conduct
11 again in the future. Punitive and exemplary damages are further warranted to deter other
12 employers who are similarly situated to Defendants from also behaving in the same manner as
13 Defendants.

14 **SEVENTH CAUSE OF ACTION**

15 **(Failure to Prevent Discrimination, Harassment, and Retaliation in Violation of**
16 **Government Code § 12940(k) - Against All Defendants)**

17 82. Plaintiff realleges and incorporates by reference all of the allegations contained in
18 the preceding paragraphs of this Complaint as though fully set forth herein.

19 83. At all times relevant hereto, Defendants were employers within the meaning of
20 Government Code section 12926.

21 84. At all relevant times hereto, Plaintiff was an employee within the meaning of
22 Government Code section 12926 and at all times during her employment she performed in a
23 competent, satisfactory manner.

24 85. Government Code section 12940, subdivision (k), makes it unlawful for an
25 employer to "fail to take all reasonable steps necessary to prevent discrimination and harassment
26 from occurring."

27 86. Plaintiff is informed and believes that Defendants violated Government Code
28 section 12940, subdivision (k) by failing to take all reasonable steps to prevent discrimination,

1 harassment, and retaliation against Plaintiff from occurring when Defendants knew that Plaintiff
2 was being illegally discriminated against, harassed, and retaliated against.

3 87. Plaintiff filed Charges of Discrimination with the DFEH. Plaintiff has exhausted
4 her administrative remedies, received her Notice of Right to Sue, and timely files this Action.

5 88. As a direct and proximate result of Defendants' willful, knowing and intentional
6 unlawful conduct, Plaintiff has sustained, and continues to sustain, loss of earnings and benefits,
7 the full nature and extent of which are presently unknown to Plaintiff, who, therefore, will seek
8 leave of Court to amend this Complaint at such time as these damages are fully ascertained.

9 89. As a further direct and proximate result of Defendants' unlawful conduct, as
10 heretofore described, Plaintiff has been damaged and deprived of the security, solace, and peace of
11 mind for which she entered the employment relationship with Defendants, and each of them,
12 thereby causing her to suffer emotional and mental distress, anguish, embarrassment, and
13 humiliation, all to her general damages in an amount according to proof at trial, but in excess of
14 the jurisdictional amount of this Court.

15 90. As a further result of Defendants' conduct, Plaintiff has incurred, and will continue
16 to incur, attorney's fees and costs and is entitled to recover reasonable attorneys' fees and costs
17 from Defendants pursuant to Government Code section 12965.

18 91. Plaintiff is informed and believes, and based thereon alleges that, furthermore,
19 Defendants committed unlawful conduct, acts and/or omissions described and alleged herein,
20 deliberately, intentionally, oppressively, fraudulently, maliciously and in conscious disregard for
21 Plaintiff's rights and safety. As such, Defendants acted in a willful and intentional manner and
22 their conduct, as herein set forth, was and continues to be despicable, malicious and outrageous in
23 that it caused Plaintiff to needlessly suffer cruel and unjust hardship. Therefore, Defendants'
24 unlawful conduct, acts and/or omissions, as herein alleged, justify an award of punitive and
25 exemplary damages in an amount sufficient to deter them from ever engaging in such conduct
26 again in the future. Punitive and exemplary damages are further warranted to deter other
27 employers who are similarly situated to Defendants from also behaving in the same manner as
28 Defendants.

EIGHTH CAUSE OF ACTION

(Wrongful Termination - Against All Defendants)

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92. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

93. At all times relevant hereto, Defendants were employers within the meaning of Government Code section 12926.

94. At relevant times, Plaintiff was an employee within the meaning of Government Code section 12926 and at all times during her employment she could perform in a competent, satisfactory manner.

95. Plaintiff is informed and believes, and based thereon alleges, that her employment was terminated as a result of her physical disability and her requests for reasonable accommodations and medical leave in violation of Government Code sections 12940 and 12945.2.

96. Plaintiff filed Charges of Discrimination with the DFEH. Plaintiff has exhausted her administrative remedies, received her Notice of Right to Sue, and timely files this Action.

97. As a direct and proximate result of Defendants' conduct against her in violation of Government Code sections 12940 and 12945.2, Plaintiff has sustained, and continues to sustain, loss of earnings and benefits, the full nature and extent of which are presently unknown to Plaintiff, who, therefore, will seek leave of Court to amend her Complaint at such time as these damages are fully ascertained.

98. As a further direct and proximate result of Defendants' conduct against her in violation of Government Code sections 12940 and 12945.2, as heretofore described, Plaintiff has been damaged and deprived of the security, solace, and peace of mind for which she entered the employment relationship with Defendants, and each of them, thereby causing her to suffer emotional and mental distress, anguish, embarrassment, and humiliation. all to her general damages in an amount according to proof at trial, but in excess of the jurisdictional amount of this Court.

99. As a further result of Defendants' conduct, Plaintiff has incurred, and will continue to incur, attorney's fees and costs and is entitled to recover reasonable attorneys' fees and costs

1 from Defendants pursuant to Government Code section 12965.

2 100. Plaintiff is informed and believes, and based thereon alleges, that the outrageous
3 conduct of Defendants described above was done with malice, fraud, and oppression with
4 conscious disregard for her rights and with the intent, design, and purpose of injuring her.
5 Defendants, through their officers, managing agents, and/or supervisors, authorized, condoned
6 and/or ratified the unlawful conduct of all of the other Defendants named in this Action. By
7 reason thereof, Plaintiff is entitled to punitive or exemplary damages from all Defendants in a sum
8 according to proof of at trial.

9 NINTH CAUSE OF ACTION

10 **(Wrongful Termination in Violation of Public Policy – Against All Defendants)**

11 101. Plaintiff realleges and incorporates by reference all of the allegations contained in
12 the preceding paragraphs of this Complaint as though fully set forth herein.

13 102. It is the public policy of the State of California as expressed in the FEHA and the
14 that individuals shall not be terminated from their employment due to their physical disability or
15 requesting reasonable accommodations therefor.

16 103. It is the public policy of the State of California as expressed in CFRA that
17 individuals shall not be terminated from their employment due to exercising their right to medical
18 leave under CFRA.

19 104. Plaintiff is informed and believes, and based thereon alleges that her employment
20 was terminated, and she was discriminated against, as a result of her disability, requesting
21 reasonable accommodations, and attempting to exercise her right to medical leave under CFRA.

22 105. Plaintiff is informed and believes, and based thereon alleges that her disabilities,
23 requests for accommodation, and attempts to exercise her rights under CFRA were substantial
24 motivating reasons for Plaintiff's discharge.

25 106. As a direct and proximate result of Defendants' wrongful termination of Plaintiff's
26 employment in violation of public policy, Plaintiff has sustained, and continues to sustain, loss of
27 earnings and benefits, the full nature and extent of which are presently unknown to Plaintiff, who,
28 therefore, will seek leave of court to amend her complaint at such time as these damages are fully

1 ascertained.

2 107. As a further direct and proximate result of Defendants' wrongful termination of
3 Plaintiff's employment in violation of public policy, Plaintiff has been damaged and deprived of
4 the security, solace, and peace of mind for which she entered the employment relationship with
5 Defendants, and each of them, thereby causing her to suffer emotional and mental distress,
6 anguish, embarrassment, and humiliation, all to her general damages in an amount according to
7 proof at trial, but in excess of the jurisdictional amount of this Court.

8 108. Plaintiff is informed and believes, and based thereon alleges, that the outrageous
9 conduct of Defendants described above was done with malice, fraud, and oppression with
10 conscious disregard for her rights and with the intent, design, and purpose of injuring her.
11 Defendants, through their officers, managing agents, and/or supervisors, authorized, condoned
12 and/or ratified the unlawful conduct of all of the other Defendants named in this Action. By reason
13 thereof, Plaintiff is entitled to punitive or exemplary damages from all Defendants in a sum
14 according to proof of at trial.

15 **TENTH CAUSE OF ACTION**

16 **(Failure to Pay Overtime Wages – Against all Defendants)**

17 109. Plaintiff realleges and incorporates by reference all of the allegations contained in
18 the preceding paragraphs of this Complaint as though fully set forth hereat.

19 110. At all times relevant to this Complaint, Plaintiff was an employee of Defendants
20 covered by Labor Code sections 510 and 1194.

21 111. At all times relevant to this Complaint, Labor Code section 510 provided that
22 "[e]ight hours of labor constitutes a day's work." Moreover, at all times relevant to this
23 Complaint, Labor Code section 510 provided that, "[a]ny work in excess of eight hours in one
24 workday and any work in excess of forty hours in any one workweek and the first eight hours on
25 the seventh day of work in any one workweek shall be compensated at the rate of no less than one
26 and one-half times the regular rate of pay for an employee."

27 112. At all times relevant to this Complaint, Labor Code section 510 further provided
28 that "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than

1 twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on
2 any seventh day of a workweek shall be compensated at the rate of no less than twice the regular
3 rate of pay of an employee.”

4 113. By requiring Plaintiff to work during shifts that consisted of more than eight (8)
5 hours per day, more than forty (40) hour in a work week, or seven (7) days in a row in one
6 workweek without receiving compensation for those hours at a rate of one-and-one-half times her
7 regular rate of work, and requiring Plaintiff to work more than twelve (12) hours in one day or in
8 excess of eight hours on any seventh day of a workweek without receiving compensation for those
9 hours at a rate of no less than twice her regular rate of pay, a result of, including but not limited to,
10 failing to accurately track and/or pay for all hours actually worked at the proper overtime rate of
11 pay; detrimentally rounding time entries; detrimentally editing and/or manipulation of time
12 entries; and engaging, suffering or permitting Plaintiff to work off the clock, including, without
13 limitation, by requiring Plaintiff to don and doff required work uniforms off the clock, Defendants
14 willfully violated the provisions of Labor Code section 1194.

15 114. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of
16 wages, including overtime and/or double time wages, in amounts to be determined at trial, and is
17 entitled to recovery of such amounts, plus interest and penalties thereon, as well as attorneys’ fees
18 and costs pursuant to Labor Code sections 1194 and 218.6, Code of Civil Procedure sections
19 1021.5 and 1032, and Civil Code section 3287.

20 **ELEVENTH CAUSE OF ACTION**

21 **(Failure to Pay Minimum Wages – Against all Defendants)**

22 115. Plaintiff realleges and incorporates by reference all of the allegations contained in
23 the preceding paragraphs of this Complaint as though fully set forth hereat.

24 116. At all relevant times, Plaintiff was an employee of Defendant's covered by Labor
25 Code section 1197 and applicable Wage Orders.

26 117. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff was
27 entitled to receive minimum wages for all hours worked.

28 118. Defendants failed to pay Plaintiff minimum wages for all hours worked in violation

1 of Labor Code section 1197 and applicable wage orders as a result of, without limitation, failing to
2 accurately track and/or pay for all hours actually worked; detrimentally rounding time entries;
3 detrimentally editing and/or manipulation of time entries; and engaging, suffering, or permitting
4 Plaintiff to work off the clock, including, without limitation, by requiring Plaintiff to don and doff
5 required work uniforms off the clock.

6 119. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
7 amount, subject to proof, to the extent Plaintiff was not paid minimum wages for all hours worked
8 or otherwise under Defendants' control.

9 120. Pursuant to Labor Code sections 218.6, 1194, and 1194.2, Plaintiff is entitled to
10 recover the full amount of unpaid minimum wages, prejudgment interest, liquidated damages, as
11 well as attorneys' fees and costs pursuant to Labor Code sections 1194 and 218.6, Code of Civil
12 Procedure section 1021.5 and 1032, and Civil Code section 3287.

13 TWELFTH CAUSE OF ACTION

14 **(Failure to Provide Meal Periods or Compensation in Lieu Thereof – Against all Defendants)**

15 121. Plaintiff realleges and incorporates by reference all of the allegations contained in
16 the preceding paragraphs of this Complaint as though fully set forth hereat.

17 122. Pursuant to Labor Code section 512, no employer shall employ an employee for a
18 work period of more than five (5) hours without an uninterrupted meal break of not less than thirty
19 (30) minutes in which the employee is relieved of all of his or her duties. The "first meal periods
20 must start after no more than five hours." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53
21 Cal.4th 1004, 1042.)

22 123. Furthermore, pursuant to Labor Code section 512, no employer shall employ an
23 employee for a work period of more than ten (10) hours per day without providing the employee
24 with a second uninterrupted meal period of not less than thirty (30) minutes in which the employee
25 is relieved of all of his or her duties. The second meal period must begin "after no more than 10
26 hours of work in a day, i.e., no later than what would be the start of the 11th hour of work..."
27 (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042.)

28 124. Plaintiff was not provided with the requisite meal breaks as required under the law.

1 2001) at p.4.)

2 131. Plaintiff was not provided with requisite rest periods as contemplated under the
3 law.

4 132. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
5 with a rest period as provided in the applicable Wage Order of the Industrial Welfare Commission,
6 the employer shall pay the employee one additional hour of pay at the employee's regular rate of
7 compensation for each work day that the timely rest period is not provided.

8 133. By their failure to provide Plaintiff with timely rest periods contemplated by
9 California law, and failing to provide compensation for such unprovided timely rest periods, as
10 alleged above, Defendants willfully violated the provisions of Labor Code section 226.7 and
11 applicable Wage Orders.

12 134. As a result of Defendants' unlawful conduct, Plaintiff has been deprived of one
13 additional hour of pay at Plaintiff's regular rate of compensation for each work day that an
14 uninterrupted rest period was not provided, in amounts to be determined at trial, and is entitled to
15 recovery of such amounts, plus interest and costs under Labor Code sections 226.7, Code of Civil
16 Procedure section 1032, and Civil Code section 3287.

17 **FOURTEENTH CAUSE OF ACTION**

18 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

19 135. Plaintiff realleges and incorporates by reference all of the allegations contained in
20 the preceding paragraphs of this Complaint as though fully set forth hereat.

21 136. Pursuant to Labor Code section 226, subdivision (a), Plaintiff was entitled to
22 receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement
23 showing gross wages earned, net wages earned, all applicable hourly rates in effect during the pay
24 period and the corresponding number of hours worked at each hourly rate by the employee.

25 137. Defendants failed to furnish Plaintiff with itemized wage statements that accurately
26 reflected, among other things: gross wages earned and paid; total hours worked by Plaintiff; net
27 wages earned and paid; all applicable hourly rates in effect during the pay period and the
28 corresponding number of hours worked at each hourly rate; and other such information as required

1 by Labor Code section 226, subdivision (a).

2 138. Defendants' failure to provide Plaintiff with accurate wage statements was
3 knowing and intentional. Defendants had the ability to provide Plaintiff with accurate wage
4 statements, but intentionally failed to provide Plaintiff with accurate wage statements.

5 139. As a result of Defendants' unlawful conduct, Plaintiff has suffered injury. The
6 absence of accurate information on her wage statements has delayed timely challenge to
7 Defendants' unlawful pay practices, requires discovery and mathematical computations to
8 determine the amount of wages owed, causes difficulty and expense in attempting to reconstruct
9 time and pay records, and led to submission of inaccurate information about wages and amounts
10 deducted from wages to state and federal governmental agencies.

11 140. Pursuant to Labor Code section 226, subdivision (e), Plaintiff is entitled to recover
12 Fifty Dollars (\$50) for the initial pay period during the period in which violation of Labor Code
13 section 226 occurred and One Hundred Dollars (\$100) for each violation of Labor Code section
14 226 in a subsequent pay period, not to exceed an aggregate penalty of Four Thousand Dollars
15 (\$4,000).

16 141. Furthermore, pursuant to Labor Code section 226, subdivisions (e) and (g), Plaintiff
17 is entitled to recover the full amount of penalties due under Labor Code section 226, subdivision
18 (e), as well as reasonable attorney's fees and costs of suit.

19 **FIFTEENTH CAUSE OF ACTION**

20 **(Waiting Time Penalties - Against all Defendants)**

21 142. Plaintiff realleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs of this Complaint as though fully set forth hereat.

23 143. At all relevant times, Plaintiff was an employee of Defendants covered by Labor
24 Code sections 201 and 202.

25 144. California Labor Code section 201 states that if an employer discharges an
26 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.
27 Labor Code section 203 provides that if an employer willfully fails to timely pay such wages the
28 employer must, as a penalty, continue to pay the subject employees' wages until the back wages

1 are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

2 145. Defendants failed to pay Plaintiff all wages earned and unpaid prior to her
3 termination in accordance with Labor Code section 201, including, without limitation, as a
4 consequence of, among other things, failing to pay all overtime wages, regular wages, meal break
5 premiums, and rest break premiums owed.

6 146. Defendants' failure to pay Plaintiff all wages earned prior to her termination in
7 accordance with Labor Code section 201 was willful. Defendants had the ability to pay all wages
8 earned by Plaintiff at the time of termination in accordance with Labor Code section 201, but
9 intentionally adopted policies or practices incompatible with the requirements of Labor Code
10 section 201.

11 147. Pursuant to Labor Code section 203, Plaintiff is entitled to penalty wages from the
12 date her earned and unpaid wages were due, upon termination, until paid, up to a maximum of 30
13 days.

14 148. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
15 amount subject to proof, to the extent she was not paid all waiting time penalties and penalty
16 wages owed pursuant to Labor Code section 203.

17 149. As a consequence of Defendants' willful conduct in not paying wages owed upon
18 her termination, Plaintiff is entitled to thirty (30) days wages as a penalty under Labor Code
19 section 203, together with interest thereon and attorneys' fees and costs pursuant to Labor Code
20 sections 218.5 and 1194, Code of Civil Procedure section 1021.5, and Civil Code section 3287.

21 **SIXTEENTH CAUSE OF ACTION**

22 **(Violation of Labor Code § 2802 – Against all Defendants)**

23 150. Plaintiff realleges and incorporates by reference all of the allegations contained in
24 the preceding paragraphs of this Complaint as though fully set forth hereat.

25 151. California Labor Code section 2802, subdivision (a) provides that “an employer
26 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
27 employee in direct consequence of the discharge of his duties . . .”

28 152. At all relevant times, Defendants required Plaintiff to incur expenses to perform job

1 duties by requiring Plaintiff to incur costs for, including but not limited to, costs incurred for
2 driving her personal vehicle, including mileage and gas, separately laundering her mandatory work
3 uniform, and the purchase and maintenance of cellular phones and cellular phone plans.

4 153. At all relevant times, Defendants failed and refused, and still fail and refuse, to
5 reimburse Plaintiff for costs incurred for driving her personal vehicle, including mileage and gas,
6 separately laundering her mandatory work uniform, and the purchase and maintenance of cellular
7 phones and cellular phone plans.

8 154. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
9 amount subject to proof, to the extent Plaintiff was not reimbursed, for costs incurred for driving
10 her personal vehicle, including mileage and gas, separately laundering her mandatory work
11 uniform, and the purchase and maintenance of cellular phones and cellular phone plans.

12 155. Pursuant to Labor Code section 2802, Code of Civil Procedure section 1032, and
13 Civil Code section 3287, Plaintiff is entitled to reimbursement for costs Plaintiff incurred for
14 driving her personal vehicle, including mileage and gas, separately laundering her mandatory work
15 uniform, and the purchase and maintenance of cellular phones and cellular phone plans, interest
16 and penalties thereon, reasonable attorney's fees, and costs of suit.

17 **SEVENTEENTH CAUSE OF ACTION**

18 **(Unfair Competition – Against all Defendants)**

19 156. Plaintiff realleges and incorporates by reference all of the allegations contained in
20 the preceding paragraphs of this Complaint as though fully set forth hereat.

21 157. The unlawful conduct of Defendants alleged herein constitutes unfair competition
22 within the meaning of Business and Professions Code section 17200. Due to their unlawful
23 business practices in violation of the Labor Code, Defendants have gained a competitive
24 advantage over other comparable companies doing business in the State of California that comply
25 with their obligations to compensate employees in accordance with the Labor Code.

26 158. Plaintiff is entitled to an injunction and other equitable relief against such unlawful
27 practices in order to prevent future damage, for which there is no adequate remedy at law, and to
28 avoid a multiplicity of lawsuits.

PRAYER

WHEREFORE, Plaintiff prays for Judgment against Defendants as follows:

- A. For general and compensatory damages according to proof, including, without limitation, past, present and future economic and non-economic damages;
- B. For lost salary, both front and back pay, bonuses, benefits, and any other benefits to which Plaintiff would have been entitled to by reason of her employment with Defendants, according to proof;
- C. For punitive and exemplary damages against Defendants;
- D. Damages for all wages earned and owed, including minimum and overtime wages under Labor Code sections 510, 558.1, 1194, and 1197;
- E. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- F. Damages for unpaid premium wages from missed meal and rest periods under, among other Labor Code sections, 512, 558.1, and 226.7;
- G. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision (e) and 558.1.
- H. Waiting time penalties under Labor Code sections 203 and 558.1;
- I. Damages under Labor Code sections 2802 and 558.1;
- J. Preliminary and permanent injunctions prohibiting Defendants from further violating the California Labor Code and requiring the establishment of appropriate and effective means to prevent future violations;
- K. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof;
- L. For prejudgment and post-judgment interest at the maximum rate allowed by law;
- M. For reasonable attorneys' fees;
- N. For costs of suit incurred herein; and

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

Dated: December 3, 2020

BIBIYAN LAW GROUP, P.C.

BY:  _____

DAVID D. BIBIYAN
ANTON SWAIN-GIL

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VALENZUELA