

**Fill in this information to identify the case:**

Debtor 1 Food Management Partners, Inc.

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

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

Case number 21-30730-11

E-Filed on 08/27/2021  
Claim # 361

# 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. <b>Where should notices and payments to the creditor be sent?</b>	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
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</u> <u>CA</u> <u>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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7 Telephone: (310) 438-5555  
Facsimile: (310) 300-1705  
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 C FRA.

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)**

1  
2  
3       92. Plaintiff realleges and incorporates by reference all of the allegations contained in  
4 the preceding paragraphs of this Complaint as though fully set forth herein.

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

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

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

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

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

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

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

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

6 126. By failing to provide Plaintiff with the meal periods contemplated by California  
 7 law, and by failing to provide compensation for such unprovided meal periods, as alleged above,  
 8 Defendants willfully violated the provisions of Labor Code section 512 and applicable Wage  
 9 Orders.

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

15 **THIRTEENTH CAUSE OF ACTION**

16 **(Failure to Provide Rest Periods or Compensation in Lieu Thereof - Against all Defendants)**

17 128. 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.

19 129. California law and applicable Wage Orders require that employers "authorize and  
 20 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour  
 21 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-  
 22 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who  
 23 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20)  
 24 minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be  
 25 provided thirty (30) minutes of paid rest period.

26 130. Moreover, the Industrial Wage Orders require that the rest periods "insofar as  
 27 practicable ... shall be in the middle of each work period." (*Brinker Restaurant Corp. v. Superior*  
 28 *Court* (2012) 53 Cal.4th 1004, 1032-1033, citing DLSE Opn. Letter No. 2001.09.17 (Sept. 17,

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.

1 159. As a result of Defendants' unfair competition as alleged herein. Plaintiff has  
2 suffered injury in fact and lost money or property. Plaintiff has been deprived from not being  
3 compensated overtime, regular, and/or minimum wages, from not being provided with meal and  
4 rest breaks or compensation in lieu thereof, from being provided with accurate wage statements,  
5 and for not being indemnified for costs incurred in furtherance of her work duties.

6 160. As a direct and proximate result of the unfair business practices of Defendants, and  
7 each of them, Plaintiff is entitled to equitable and injunctive relief, including full restitution and/or  
8 disgorgement of all wages, overtime, and costs which have been unlawfully withheld from  
9 Plaintiff as a result of the business acts and practices described herein and enjoining Defendants to  
10 cease and desist from engaging in the practices described herein. Restitution of the money owed  
11 to Plaintiff is necessary to prevent Defendants from becoming unjustly enriched by their failure to  
12 comply with the Labor Code.

13 161. The illegal conduct alleged herein is continuing, and there is no indication that  
14 Defendants will not continue such activity into the future. Plaintiff alleges that if Defendants, and  
15 each defendant constituting Defendants, is not enjoined from the conduct set forth in the  
16 Complaint, they will continue to fail to pay overtime, regular, and/or minimum wages, will  
17 continue fail to pay premium pay for missed meal and rest periods, will continue to fail to issue  
18 accurate wage statements, will continue to fail to reimburse for costs incurred in furtherance of  
19 work duties, and will continue to fail to pay appropriate taxes, and insurance, and unemployment  
20 withholdings.

21 162. Plaintiff is entitled to recover reasonable attorneys' fees in connection with her  
22 unfair competition claims pursuant to Code of Civil Procedure section 1021.5. the substantial  
23 benefit doctrine and/or the common fund doctrine. Plaintiff is entitled to costs of suit under Code  
24 of Civil Procedure section 1032 and interest under Civil Code sections 218.6 and 3287.

25 **EIGHTEENTH CAUSE OF ACTION**

26 **(Intentional Infliction of Emotional Distress – Against All Defendants)**

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

1 164. The wrongful and unlawful practices and other misconduct set forth herein,  
2 committed by Defendants, and each of them, exceeded the normal risks of the employment  
3 relationship that Plaintiff had with Defendants. Defendants wrongfully, willfully and/or  
4 intentionally sought to inflict emotional distress upon Plaintiff through the conduct, actions and/or  
5 omissions described herein. As such, the subject conduct was so extreme and outrageous that it  
6 exceeded the boundaries of a decent society and lies outside the compensation bargain.

7 165. Plaintiff is informed and believes, and based thereon alleges that Defendants, and  
8 each of them, knew, must have known, should have known, or had reason to know that their  
9 conduct, as herein alleged, was substantially certain to inflict emotional distress upon Plaintiff. As  
10 such, Defendants' conduct was intentional, malicious and carried out with a deliberate, conscious  
11 and/or reckless disregard of the high degree of probability that such conduct would inflict extreme  
12 emotional distress upon Plaintiff. Additionally, the aforesaid conduct was also in direct violation  
13 of California law and public policy.

14 166. Therefore, as a direct, foreseeable, legal and proximate result of Defendants'  
15 intentional, willful, deliberate conduct, as herein alleged, Plaintiff suffered and continues to suffer  
16 loss of her reputation, shame, mortification, humiliation, embarrassment, severe mental and  
17 emotional distress and anguish, as well as severe anxiety, trepidation, apprehension, panic, dread,  
18 fear, worry, and hurt feelings all to her damage in an amount to be proven at trial. The acts,  
19 omissions and conduct of Defendants were, and continue to be, oppressive, deliberate, intentional,  
20 reprehensible, malicious and were carried out in conscious disregard of their probable outcome.

21 167. Defendants acted in a willful, deliberate and intentional manner, and their  
22 conduct was and continues to be despicable, malicious and outrageous in that it has caused and  
23 continues to cause Plaintiff to needlessly suffer cruel and unjust hardship. Thus, Defendants'  
24 conduct, actions and/or omissions, as herein set forth, justify an award of punitive damages in an  
25 amount sufficient to deter them from ever engaging in such conduct again in the future.

26 **JURY TRIAL**

27 168. Plaintiff prays for a trial by jury.

28 ///

**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