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**FILED**  
 Superior Court of California  
 County of Los Angeles

DEC 20 2018

Sherri R. Carter, Executive Officer/Clerk  
 By Ricardo Perez Deputy  
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Attorneys for Plaintiff Dora Mendoza

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

9 DORA MENDOZA,

10 Plaintiff,

11 vs.

12 KAISER FOUNDATION HEALTH PLAN,  
 13 INC. and DOES 1 to 25, inclusive,  
 14 Defendants.

) CASE NO.: **18STCV09150**

) COMPLAINT FOR DAMAGES FOR:

- ) 1) FAILURE TO COMPENSATE FOR ALL HOURS WORKED;
- ) 2) FAILURE TO PAY MINIMUM WAGES;
- ) 3) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;
- ) 4) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;
- ) 5) FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;
- ) 6) VIOLATION OF LABOR CODE SECTION 558;
- ) 7) FAILURE TO MAINTAIN ACCURATE RECORDS;
- ) 8) FAILURE TO GIVE REST BREAKS;
- ) 9) FAILURE TO GIVE MEAL BREAKS
- ) 10) PRIVATE ATTORNEYS GENERAL ACT ("PAGA");
- ) 11) FAILURE TO REIMBURSE FOR BUSINESS EXPENSES;
- ) 12) RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5;
- ) 13) RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6;
- ) 14) CONSTRUCTIVE WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
- ) 15) VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS



1 responsible for the conduct alleged herein. Upon discovering the true names and capacities of  
 2 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names  
 3 and capacities of these fictitiously named defendants.

4 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of  
 5 that information and belief, alleges that at all times herein mentioned, each of the remaining  
 6 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and  
 7 under the authority of their agency, employment, or representative capacity, with the consent  
 8 of his/her codefendants.  
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10 **GENERAL ALLEGATIONS**

11 6. Plaintiff was hired as an "On-Call Enroller" for KAISER on or around November 2016.  
 12 Plaintiff officially started performing duties as an On-Call Enroller in August 2017. Plaintiff's  
 13 job duties included giving presentations, answering questions, educating people about various  
 14 different health plans, and essentially promoting the Kaiser brand. Plaintiff would retrieve her  
 15 assignments through a program called "salesforce". Plaintiff was an hourly, non-exempt  
 16 employee and was paid \$26.00 per hour. When Plaintiff was first hired, she was expected to do  
 17 her work (including trainings and communication with management) via her personal computer  
 18 and personal cell phone (incurring data charges). Enrollers like Plaintiff were given used iPads  
 19 only recently, in January 2018 and only later were given new iPads. Furthermore, there were  
 20 absolutely no guidelines for training time and for time reporting.  
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22 7. Plaintiff is informed and believes and thereon alleges that Kaiser has committed several  
 23 labor code violations against Plaintiff and similarly situated aggrieved employees.

24 8. KAISER violated Labor Code §§ 512 and 226.7 because it failed to provide Plaintiff and  
 25 other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods  
 26 for every five (5) hours of work throughout their employment, and Plaintiff did not validly waive  
 27 said meal periods. KAISER did not completely relieve Plaintiff of all duties during said meal  
 28 periods. KAISER did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of

1 compensation for each workday that one or more statutory meal periods was not provided.

2 9. KAISER violated Labor Code § 226.7 because it failed to provide Plaintiff and other  
3 similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or  
4 majority portion thereof, throughout their employment. KAISER did not completely relieve  
5 Plaintiff of all duty during said rest periods. KAISER did not pay to Plaintiff one additional hour  
6 of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory  
7 rest periods was not provided.

8 10. Further, KAISER did not provide Plaintiff and other aggrieved employees with the  
9 minimum wages to which they were entitled for work performed "off the clock", pursuant to  
10 California Labor Code sections 1194, 1197 and 1197.1. "Off the clock" hours were those hours  
11 wherein Plaintiff and other aggrieved employees would watch training videos, prepare for  
12 presentations, respond to work-related texts/emails sent during weekends, respond to text  
13 messages from dispatch, and install/monitor the "Microsoft Outlook" program on personal cell  
14 phones, among other things.

15 11. Furthermore, during the relevant time period, KAISER failed to pay Plaintiff and other  
16 similarly situated aggrieved employees all wages due to them within any time period specified  
17 by California Labor Code section 204. KAISER was also in violation of California Labor Code  
18 section 226(a) by failing to include pertinent information on the wage statements, including but  
19 not limited to, all hours worked, gross wages earned, all deductions, and net wages earned, and  
20 premiums for missed meal and rest breaks, among others. As such, KAISER did not provide  
21 Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized  
22 wage statements.

23 12. KAISER violated Labor Code § 203 because it willfully failed to pay Plaintiff and other  
24 similarly situated aggrieved employees earned and due wages upon separation of employment,  
25 either immediately upon involuntary termination, or within 72 hours of resignation. After  
26 Plaintiff stopped working at KAISER and after Plaintiff's employment with KAISER ended,  
27 KAISER failed and refused to pay all wages earned and due immediately upon separation. These  
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1 earned but unpaid wages include the unpaid minimum wages and premiums for missed meal and  
2 rest breaks, among others.

3 13. During the relevant time period, KAISER also failed to keep accurate and complete  
4 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and  
5 other aggrieved employees pursuant to California Labor Code sections 1174(d).

6 14. During the relevant time period, Plaintiff and other aggrieved employees incurred  
7 necessary, business-related expenses and costs that were not reimbursed by KAISER. These  
8 costs include, but are not limited to, use of personal computers and phones for business-related  
9 purposes. Accordingly, KAISER was in violation of California Labor Code sections 2800 and  
10 2802.

11 15. Plaintiff's manager, Monique Belusa, harassed Plaintiff after Plaintiff complained about  
12 various labor code violations (including not being paid for all hours worked) and made  
13 Plaintiff's job more difficult. Ms. Belusa harassed Plaintiff by changing her time cards,  
14 refusing to pay Plaintiff for hours worked, refusing to reimburse Plaintiff for legitimate  
15 business expenses, and removing Plaintiff from the "Mobility Champions" team. In doing so,  
16 KAISER violated Labor Code sections 98.6 and 1102.5 by retaliating against Plaintiff.

17 16. As such and due to the labor code violations being committed against Plaintiff as well as  
18 the retaliatory conduct Plaintiff experienced after bringing to light the wage and hour violations,  
19 Plaintiff was eventually forced to quit her employment with KAISER and did so on September  
20 10, 2018

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

23 (California Industrial Welfare Commission Order 4-2001, California Code of  
24 Regulations Title 8 Section 11040, and California Labor Code Section 1198)

25 (Plaintiff against all named defendants and all DOE defendants)

26 17. Plaintiff re-alleges and incorporates by reference each and every allegation in  
27 paragraphs 1 through 16, inclusive, of this Complaint as though fully set forth herein.  
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1 18. At all times relevant herein, Defendants were required to compensate its employees for  
 2 all hours worked upon reporting for work at the appointed time stated by the employer  
 3 pursuant to Industrial Welfare Commission Order 4-2001, California Code of Regulations,  
 4 Title 8, Section 11040.

5 19. For the three (3) years preceding filing of this action, Defendants failed to compensate  
 6 Plaintiff for all hours worked.

7 20. Under the aforementioned wage order and regulations, Plaintiff is to recover  
 8 compensation for all hours worked but not paid by Defendants for the three (3) years  
 9 preceding the filing of this Complaint.

10 21. As a proximate result of the aforementioned violations, Plaintiff has been damaged in  
 11 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of  
 12 this Court.

13 22. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and  
 14 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is  
 15 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus  
 16 reasonable attorney's fees and costs of suit.

17 23. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
 18 along with any allowable interest, penalties, attorney's fees, and costs which will equal an  
 19 amount known to Plaintiff once she has obtained all of her payroll records from  
 20 Defendants.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES**

23 **(California Labor Code Sections 1194, 1194.2, 1197)**

24 **(Plaintiff against all named defendants and all DOE defendants)**

25 24. Plaintiff re-alleges and incorporates by reference each and every allegation in  
 26 paragraphs 1 through 23, inclusive, of this Complaint as though fully set forth herein.  
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28 25. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer

1 to suffer or permit a California employee to work without paying wages at the minimum wage  
 2 rate for all hours worked as required by the applicable Industrial Welfare Commission  
 3 (hereinafter "IWC") Wage Order No. 4-2001, codified at California Code of Regulations, Title  
 4 8, Section 11040, subdivision 4.

5 26. Pursuant to IWC Wage Order no. 4-2001, subdivision 2(K), at all relevant times, "hours  
 6 worked" included "the time during which an employee is subject to the control of an employer,  
 7 and includes all the time the employee is suffered or permitted to work, whether or not required  
 8 to do so..."

9 27. During his employment, Plaintiff was regularly required as a matter of uniform  
 10 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff  
 11 was paid less than the minimum wage rate by Defendants for hours worked in violation of  
 12 California Labor Code Section 1197 and the applicable California Industrial Wage  
 13 Commission wage order(s).

14 28. Plaintiff was, at all relevant times, under the control of Defendants and suffered or  
 15 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately  
 16 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants  
 17 to believe that their acts or omissions were not contrary to California law.

18 29. For all hours worked by Plaintiff for which she was paid less than the minimum wage  
 19 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum  
 20 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount  
 21 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,  
 22 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

23 30. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
 24 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
 25 trial.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(California Labor Code Section 226)**

4 **(Plaintiff against all named defendants and all DOE defendants)**

5 31. Plaintiff re-alleges and incorporates by reference each and every allegation in  
6 paragraphs 1 through 30, inclusive, of this Complaint as though fully set forth herein.

7 32. Pursuant to California Labor Code Section 226, every employer must furnish each  
8 employee an itemized statement of wages and deductions at the time of payment of wages.

9 33. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that  
10 accurately reflected all information required by Labor Code Section 226, including but not  
11 limited to, gross wages earned, net wages earned, total hours worked by the employee,  
12 premium pay for missed rest and meal breaks, and all deductions. Therefore, Defendants failed  
13 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with  
14 California Labor Code Section 226(a).

15 34. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the  
16 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
17 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay  
18 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and  
19 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to  
20 the 3-year period immediately preceding the date this lawsuit was filed.

21 35. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has  
22 sustained damages, including loss of earnings, in an amount to be established at trial. As a  
23 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,  
24 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs  
25 and attorney's fees pursuant to statute.

26 36. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
27 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
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1 trial.

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**FOURTH CAUSE OF ACTION**

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**FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

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**(California Labor Code Sections 201, 202, 203)**

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**(Plaintiff against all named defendants and all DOE defendants)**

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37. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 36, inclusive, of this Complaint as though fully set forth herein.

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38. Pursuant to California Labor Code Section 201(a), an employer who discharges an employee must immediately pay for all compensation due and owing.

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39. Pursuant to California Labor Code Section 202, when an employee resigns, the employer must pay all compensation due and owing within 72 hours of resignation, or on the employee's last day of work, if the employee gives more than 72 hours notice of resignation.

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40. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay, without abatement or reduction, any wages of an employee whose employment ends, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; however, the wages shall not continue for more than 30 days for failure to pay an employee owed wages.

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41. After Plaintiff's employment with Defendants ended, Defendants willfully refused and continue to refuse to pay her unpaid wages as required by Labor Code Section 203.

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42. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately preceding the filing of this lawsuit.

43. Under this cause of action, Plaintiff also prays for attorney's fees and costs under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

44. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
2 trial.

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

5 **(California Labor Code Section 204)**

6 **(Plaintiff against all named defendants and all DOE defendants)**

7 45. Plaintiff re-alleges and incorporates by reference each and every allegation in  
8 paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

9 46. California Labor Code Section 204 establishes the fundamental right of all employees  
10 in the State of California to be paid wages in a timely fashion for their work.

11 47. At all times relevant during the liability period, Defendants failed to pay Plaintiff the  
12 full amount of all owed wages when due as required by California Labor Code Section 204.

13 48. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is  
14 informed, believes, and thereon alleges, that all times relevant during the liability period,  
15 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,  
16 including the minimum wage for all hours worked along with premium pay for missed rest and  
17 meal breaks.

18 49. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an  
19 amount, subject to proof, to the extent she was not paid all wages each pay period. The precise  
20 amount of unpaid wages is not presently known to Plaintiff but can be determined directly  
21 from Defendants' records or indirectly based on information from Defendants' records.

22 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
23 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
24 trial.

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**SIXTH CAUSE OF ACTION**

**VIOLATION OF LABOR CODE SECTION 558**

**(California Labor Code Section 558)**

**(Plaintiff against all named defendants and all DOE defendants)**

51. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

52. California Labor Code Section 558 states that any person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was filed.

53. Plaintiff hereby alleges that named Defendants violated Labor Code Section 558. Thus, Defendants are subject to civil penalties under the following laws:

- a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular wages for all hours worked. As such, Defendants violated Section 558 under which penalties are due. Plaintiff therefore prays for penalties of \$50.00 for the first pay period and \$100.00 for each subsequent violation for each pay period for which Plaintiff was underpaid in addition to an amount sufficient to recover underpaid wages.
- b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for relief associated with Plaintiff's prosecution of this cause of action under California

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Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not paying Plaintiff for all hours worked.

c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's fees for relief associated with Plaintiff's prosecution of this cause of action under California Labor Code Sections 200, et seq.

54. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

55. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs and attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

**SEVENTH CAUSE OF ACTION**

**FAILURE TO MAINTAIN ACCURATE RECORDS**

**(California Labor Code Section 1174(d))**

**(Plaintiff against all named defendants and all DOE defendants)**

56. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 55, inclusive, of this Complaint as though fully set forth herein.

57. Labor Code section 1174(d) requires that employers, including Defendants, maintain accurate records showing the hours worked daily by its employees and to whom wages were paid.

58. Additionally, the "Records" section of the applicable IWC Wage Order obligates the employer, including Defendants, to keep accurate information with respect to each one of their employees including, but not limited to, the total wages paid each payroll period, and time records showing when the employee begins and ends each work period, meal periods, split shift intervals; the total daily hours worked; the total hours worked in the payroll period, and the applicable rates of pay.

59. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails

1 to maintain accurate and complete records required by Labor Code section 1174(d) is subject  
 2 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate  
 3 records of Plaintiff's total daily hours, the total hours worked in the payroll period, the  
 4 applicable rates of pay, and total wages earned for the payroll period.

5 60. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and  
 6 continues to suffer substantial losses related to Defendants' failure to record and maintain  
 7 records of meal and rest periods as well as time records.

8 61. Plaintiff seeks all available remedies for Defendants' violations including, but not  
 9 limited penalties, and costs to the extent permitted by law and according to proof at trial.

10 **EIGHTH CAUSE OF ACTION**

11 **FAILURE TO GIVE REST BREAKS**

12 (Plaintiff against all named defendants and all DOE defendants)

13 62. Plaintiff re-alleges and incorporates by reference each and every allegation in  
 14 paragraphs 1 through 61, inclusive, of this Complaint as though fully set forth herein.

15 63. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 16 a. Title 8 of the California Code of Regulations Sections 11040(12)(A), which  
 17 provides that every employer shall authorize and permit all employees to take rest  
 18 periods, which insofar as practicable shall be in the middle of each work period.  
 19 The authorized rest period time shall be based on the total hours worked daily at the  
 20 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- 21 b. Title 8 of the California Code of Regulations Sections 11040(12)(B), which provides  
 22 that if an employer fails to provide an employee a rest period in accordance with the  
 23 applicable provisions of this order, the employer shall pay the employee one (1)  
 24 hour of pay at employee's regular rate of compensation for each workday that the  
 25 rest period is not provided;
- 26 c. Title 8 of the California Code of Regulations sections 11040(20)(A), which  
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penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and

d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

64. Plaintiff alleges that she was not authorized and permitted to take a ten (10) minute rest break after every four (4) hours of work or major fraction thereof, as required by California law.

65. Under this cause of action, Plaintiff prays for wages due to her under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

66. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code section 218.6.

67. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

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**NINTH CAUSE OF ACTION**

**FAILURE TO GIVE MEAL BREAKS**

**(Plaintiff against all named defendants and all DOE defendants)**

68. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.

69. Plaintiff brings this cause of action under the following laws, for the following reasons:

- a. California Labor Code section 512(a), which requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;
- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- c. California Industrial Welfare Commission Order No. 4 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11040, which state that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- d. California Industrial Welfare Commission Wage Order No. 4 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11040 a, which

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requires an employer to maintain records documenting its employees' meal periods:

- e. California Industrial Welfare Commission wage order No. 4 Section 20(A), as codified under California Code of Regulations Section 11040, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4) as enforceable law.

70. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 4, as codified under California Code of Regulations Sections 11040 et. seq., requires that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty. California Labor Code section 226.7 provides that employers may not require their employees to work through their meal periods. California Labor Code section 226.7 and California Code of Regulations section 11040 require that if the employer fails to provide the employee with an uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each work day that the meal period is not given.

71. Under this cause of action, Plaintiff prays for wages due to her under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

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1 72. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's  
2 fees as well as interest under Labor Code section 218.6.

3 73. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
4 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
5 trial.

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7 **TENTH CAUSE OF ACTION**

8 **PRIVATE ATTORNEYS GENERAL ACT**

9 **Individual and Representative Claim for PAGA penalties under California Labor Code**  
10 **sections 98.6, 201, 202, 203, 204 and/or 204b, 226, 226.3, 226.7, 432, 510, 512, 538, 1102.5,**  
11 **1174, 1174.5, 1194, 1197, 1198, 1802)**

12 **(Against Defendant KAISER and all DOE Defendants)**

13 74. Plaintiff re-alleges and incorporates by reference each and every allegation in  
14 paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.

15 75. Pursuant to law, Plaintiff provided the required written notice to the LWDA and  
16 Defendant FARQUHAR of the specific violations of the California Labor Code that Defendant  
17 FARQUHAR and DOE defendants have violated and continue to violate.

18 76. Pursuant to California Labor code section 2699.3, no response was received from the  
19 LWDA within 65 days of the postmark date of the above-alleged letter.

20 77. Plaintiff therefore has exhausted all administrative remedies required of her under  
21 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this  
22 cause of action and pursue penalties in a representative action for Defendants' violations of the  
23 Labor Code.

24 78. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that  
25 provides for a civil penalty to be assessed and collected by the LWDA or any of its  
26 departments, divisions, commissions, boards, agencies, or employees for violation of the code  
27 may, as an alternative, be recovered through a civil action brought by an aggrieved employee  
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1 on behalf of himself or herself and other current or former employees pursuant to the  
 2 procedures specified in California Labor Code section 2699.3.

3 79. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged  
 4 violator and had one or more of the alleged violations committed against him, and therefore is  
 5 properly suited to represent the interests of other current and former employees.

6 80. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks  
 7 penalties under California Labor Code sections 2698 and 2699 because of Defendants'  
 8 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

9 81. Plaintiff therefore has exhausted all administrative remedies required of her under  
 10 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this  
 11 cause of action and pursue penalties in a representative action for Defendants' violations of the  
 12 Labor Code.

13 82. California Labor Code section 2699 et seq. imposes penalties upon culpable  
 14 Defendants for violating the Labor Code.

15 83. California Labor Code section 558 establishes a civil penalty as follows: Any  
 16 employer or other person action on behalf of an employer who violates, or causes to be  
 17 violated, a section of this chapter or any provision regulating hours and days of work in any  
 18 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section  
 19 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty  
 20 dollars (\$50) for each underpaid employee for each pay period for which the employee was  
 21 underpaid in addition to an amount sufficient to recover underpaid wage; (2) for each  
 22 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay  
 23 period for which the employee was underpaid in addition to an amount sufficient to recover  
 24 underpaid wages; and (3) wages recovered pursuant to this section shall be paid to the  
 25 affected employee.

26 84. Plaintiff seeks unpaid wage and penalties for Defendants' misconduct as alleged  
 27 herein as permitted by law.

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1 85. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for  
2 the following:

3 Violations of California Labor Code sections 98.6, 201, 202, 203, 204 and/or 204b, 226,  
4 226.3, 226.7, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1198, 2802 via  
5 2698 and 2699 and any other Labor Codes violated based on the facts alleged in this  
6 Complaint.

7 86. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,  
8 costs, civil penalties, and wages on behalf of Plaintiff and other current and former aggrieved  
9 employees as alleged herein in an amount to be shown according to proof at trial and within the  
10 jurisdictional limits of this Court.

11 **ELEVENTH CAUSE OF ACTION**

12 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

13 (Plaintiff against all Defendants and DOE Defendants, and each of them)

14 87. Plaintiff re-alleges and incorporates by reference each and every allegation in  
15 paragraphs 1 through 86, inclusive, of this Complaint as thought fully set forth herein.

16 88. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her  
17 employee for all necessary expenditures or losses incurred by the employee in direct  
18 consequence of the discharge of his or her duties."

19 89. Beginning at least 3 years prior to the filing of this complaint, in order to discharge  
20 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course  
21 of completing her job duties, which were not reimbursed by Defendant. These expenses  
22 include, but are not limited to, use of personal cell phones and computers for business-related  
23 purposes.

24 90. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest  
25 and attorney's fees and costs, under Labor Code section 2802.

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**TWELFTH CAUSE OF ACTION**

**RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

**(Plaintiff against all Defendants and DOE Defendants, and each of them)**

91. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 90, inclusive, of this Complaint as though fully set forth herein.

92. At all times material to this Complaint, California Labor Code § 1102.5 was in effect and binding on Defendant. This section requires Defendant to refrain from retaliating against an employee for refusing to participate in an activity that he/she reasonably believes would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation. California Labor Code section 1102.5 also requires Defendant to refrain from retaliating against an employee for disclosing information to a person with authority over the employee if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

93. As discussed fully above, Plaintiff complained to Defendants about wage and hour violations being committed against her by Defendants.

94. Defendant retaliated against Plaintiff for her whistleblowing and complaints, as alleged above, all in violation of Labor Code § 1102.5.

95. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff suffered general and compensatory damages, including but not limited to, loss of income (past and future), loss of employment benefits (past and future), general and compensatory damages (past and future), mental pain and anguish and emotional distress (past and future), and will continue to suffer in the future, in an amount to be proved at trial.

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96. Plaintiff requests all available relief under Labor Code § 1102.5 including damages and the imposition of civil penalties of \$10,000 for each violation.

**THIRTEENTH CAUSE OF ACTION**

**RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6**

**(California Labor Code section 98.6)**

**(Plaintiff against all Defendants and DOE Defendants, and each of them)**

97. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 96, inclusive, of this Complaint as though fully set forth herein.

98. California Labor Code section 98.6 provides, in pertinent part, as follows:

"A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter...or because the employee or applicant...made a written or oral complaint that he or she is owed unpaid wages..."

99. In doing the things herein alleged, Defendants and each of them, violated Labor Code section 98.6 in that they retaliated against Plaintiff for complaining about her wages and about the labor code violations that were being committed by Defendants.

100. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff suffered general and compensatory damages, including but not limited to, loss of income (past and future), loss of employment benefits (past and future), general and compensatory damages (past and future), mental pain and anguish and emotional distress (past and future), and will continue to suffer in the future, in an amount to be proved at trial. Moreover, pursuant to Labor Code section 98.6, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section.

101. The foregoing conduct engaged in by Defendants and each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified, and carried on with a conscious and willful disregard of their workers' right to work in an

1 environment free of retaliation, so as to justify the imposition of punitive damages to punish  
2 and set an example of said Defendants.

3 **FOURTEENTH CAUSE OF ACTION**

4 **CONSTRUCTIVE WRONGFUL TERMINATION IN VIOLATION OF PUBLIC**  
5 **POLICY**

6 (Plaintiff against FARQUHAR and all DOE defendants)

7 102. Plaintiff re-alleges and incorporates by reference each and every allegation in  
8 paragraphs 1 through 101, inclusive, of this Complaint as though fully set forth herein.

9 103. At all times during his employment with Defendants, Plaintiff performed her duties  
10 with the utmost diligence and competence.

11 104. Plaintiff is informed and believes and thereon alleges that Defendants' decisions to  
12 retaliate against her, as alleged herein, was motivated by Plaintiff's whistleblowing about  
13 the wage and hour violations being committed. Defendants intentionally created the  
14 aforementioned retaliatory conduct, thereby not giving Plaintiff an opportunity to work in an  
15 environment free of retaliation.

16 105. Plaintiff's employment was wrongfully constructively terminated in September 2018  
17 in violation of the fundamental public policy of the State of California with respect to  
18 retaliating against an employee on account of her whistleblowing and on account of her  
19 bringing to light the unlawful conduct of the employer, including wage and hour violations  
20 being committed. Moreover, Plaintiff was forced to hire an attorney to assist her to end these  
21 illegal activities. Said conduct violated statutory and constitutional expressions of public policy  
22 including, but not limited to, California Labor Code Sections 98.6, 1102.5, and the California  
23 Constitution, Article 1 section 8.

24 106. As set forth above, said actions by Defendants were wrongful and in violation of the  
25 fundamental principles of the public policy of the State of California as reflected in its laws,  
26 objectives and policies. Said statutes and constitutional expressions of public policy include,  
27 but are not limited to, California Labor Code sections 98.6, 1102.5, and the California  
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1 Constitution, Article 1 section 8. These laws inure to the benefit of the public at large, and not  
2 just the private interests of the employers and employees whom they govern or protect.

3 107. As a direct and proximate result of the aforementioned acts and omissions of  
4 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,  
5 loss of income (past and future), loss of employment benefits (past and future), general and  
6 compensatory damages (past and future), mental pain and anguish and emotional distress (past  
7 and future), and will continue to suffer in the future, in an amount to be proved at trial.

8 108. The foregoing conduct engaged in by Defendants and each of their directors, officers  
9 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,  
10 and carried on with a conscious and willful disregard of their workers' right to work in an  
11 environment free of retaliation, so as to justify the imposition of punitive damages to punish  
12 and set an example of said Defendants.

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14 **FIFTEENTH CAUSE OF ACTION**

15 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

16 **(California Business and Professions Code Section 17200)**

17 **(Plaintiff against Defendant KAISER and all DOE defendants)**

18 109. Plaintiff re-alleges and incorporates by reference each and every allegation in  
19 paragraphs 1 through 108, inclusive, of this Complaint as though fully set forth herein.

20 110. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendant  
21 KAISER constitutes unfair and unlawful business practices under California Business and  
22 Professions Code Section 17200, et seq.

23 111. Defendant's violations of California labor laws constitutes a business practice because  
24 it was done repeatedly over a significant period of time in a systematic manner that was  
25 detrimental to Plaintiff.

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1 112. For the four years preceding the filing of this action, Plaintiff has suffered damages  
 2 and request damages and/or restitution of all monies and profits to be disgorged from  
 3 Defendant KAISER in an amount according to proof at time of trial, but in excess of the  
 4 jurisdiction of this Court.

5 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as  
 6 follows:

- 7 1. For damages to Plaintiff in an amount subject to proof at trial;
- 8 2. For damages for wages not paid to Plaintiff in an amount subject to proof  
 9 at trial;
- 10 3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount  
 11 subject to proof at trial;
- 12 4. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to  
 13 proof at trial;
- 14 5. For restitution and disgorgement for all unfair business practices by KAISER  
 15 against Plaintiff in an amount subject to proof at trial;
- 16 6. For an order enjoining Defendant KAISER from further unfair and unlawful  
 17 business practices in violation of Business and Professions Code Sections 17200, et  
 18 seq.;
- 19 7. For one hour of wages due to Plaintiff for each work period of more than five (5) hours  
 20 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 21 8. For one hour of wages due to Plaintiff for each work period of four (4) hours or major  
 22 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 23 9. For general, special, and consequential damages to the extent allowed by law;
- 24 10. For maximum civil penalties available under the Labor Code and applicable Wage  
 25 Order against Defendant KAISER as described more particularly in the Complaint,  
 26 representative PAGA claims including the payment of wages as set forth in Labor Code  
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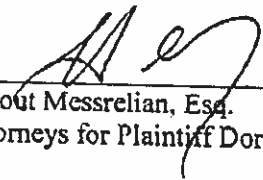
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section 558;

- 11. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law via PAGA;
- 12. For restitution and/or damages for all amounts unlawfully withheld from the wages of Plaintiff, as may be proven;
- 13. For the imposition of civil penalties and/or statutory penalties;
- 14. For all interest as allowed by law;
- 15. For all costs and disbursements incurred in this suit;
- 16. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and
- 17. For an award of punitive damages against Defendants according to proof;
- 18. For such other and further relief as this Court may deem proper.

DATED: December 19, 2018

MESSRELIAN LAW INC.

By   
 Harout Messrelian, Esq.  
 Attorneys for Plaintiff Dora Mendoza

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**DEMAND FOR JURY TRIAL**

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Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

DATED: December 19, 2018

MESSRELIAN LAW INC.

By   
Harout Messrelian, Esq.  
Attorneys for Plaintiff Dora Mendoza

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