

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

1 Scott Edward Cole, Esq. (S.B. #160744)
2 Jeremy A. Graham, Esq. (S.B. #234166)
3 **SCOTT COLE & ASSOCIATES, APC**
4 1970 Broadway, Ninth Floor
5 Oakland, California 94612
6 Telephone: (510) 891-9800
7 Facsimile: (510) 891-7030
8 Email: scole@scalaw.com
9 Email: jgraham@scalaw.com
10 Web: www.scalaw.com

11 Attorneys for Plaintiff Julie Martyn
12 And the Aggrieved Employees

ENDORSED
FILED
ALAMEDA COUNTY

OCT 17 2016

CLERK OF THE SUPERIOR COURT
By K. Ghel Deputy

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF ALAMEDA**

15 JULIE MARTYN, individually, and on)
16 behalf of all other similarly situated)
17 aggrieved employees,)
18)
19 Plaintiff,)
20)
21 vs.)
22)
23 WATERMARK RETIREMENT)
24 COMMUNITIES, INC., and DOES 1)
25 through 100, inclusive,)
26)
27 Defendants.)

Case No. RG16830850

**FIRST AMENDED COMPLAINT FOR CIVIL
PENALTIES, DAMAGES, INJUNCTIVE
RELIEF AND RESTITUTION, AND
PENALTIES PURSUANT TO PRIVATE
ATTORNEYS GENERAL ACT**

[Jury Trial Demanded]

28 Plaintiff alleges as follows:

INTRODUCTION

1. This is an action seeking unpaid regular and overtime wages, including unpaid compensation for interrupted and/or missed meal and/or rest periods, interest thereon, penalties, and reasonable attorneys' fees and costs under, *inter alia*, California Labor Code §§ 200-204, inclusive, 226, 226.7, 400-410, 510, 512, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2699, and/or 2802, California Business & Professions Code §§ 17200, *et seq.*, and California Code of Civil Procedure § 1021.5, for violations commencing September 13, 2012 (the "limitations period"). Plaintiff brings this action on behalf of herself and on behalf of all other persons similarly situated ("Aggrieved Employees") who have been employed as non-exempt retirement home

1 workers by Watermark Retirement Communities, Inc. and Does 1 through 100, inclusive
2 (“Defendant”) for violations commencing August 2, 2015. Additionally, Plaintiff seeks general
3 and special damages, costs of suit, and attorneys’ fees for the violation of her rights as an
4 employee with a disability and/or a serious medical condition under the Fair Employment and
5 Housing Act (“FEHA”), California Government Code § 12940, and/or the California Family
6 Rights Act (“CFRA”), California Government Code § 12945.2.

7 2. During the limitations period, Defendant has had a consistent policy of (1)
8 permitting, encouraging and/or requiring Plaintiff and Aggrieved Employees to work in excess
9 of eight hours per day and/or in excess of forty hours per week without paying them overtime
10 compensation as required by California’s wage and hour laws, (2) unlawfully denying Plaintiff
11 and Aggrieved Employees statutorily-mandated meal and rest periods, (3) willfully failing to
12 provide Plaintiff and Aggrieved Employees with accurate semimonthly itemized wage
13 statements reflecting the total number of hours they worked, the applicable deductions, and the
14 applicable hourly rates in effect during the pay period, (4) willfully failing to pay Plaintiff and
15 Aggrieved Employees all wages due in a timely manner following termination of their
16 employment, and (5) failing to reimburse Plaintiff and Aggrieved Employees for business
17 expenses related to the operations of Defendant.

18 3. Plaintiff consistently performed her duties satisfactorily. During the course of her
19 employment, Plaintiff’s preexisting serious medical condition worsened and limited her ability to
20 perform one or more major life activities. Plaintiff put Defendant on notice of her condition and
21 requested time off and/or other reasonable accommodation that would have allowed her to
22 continue to perform her job duties. Despite having a legal duty to provide such time off and/or
23 other reasonable accommodation, Defendant failed to do so, and, as a result, Plaintiff was forced
24 to resign her position.

25 4. Plaintiff is informed and believes and, based thereon, alleges that officers of
26 Defendant knew of these facts and legal mandates yet, nonetheless, repeatedly authorized and/or
27 ratified the violation of the laws cited herein.

28

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

1 5. Despite Defendant's knowledge of Plaintiff and Aggrieved Employees'
2 entitlement to overtime pay and meal and/or rest periods for all applicable work periods,
3 Defendant failed to provide same to Plaintiff, in violation of California state statutes, the
4 applicable California Industrial Welfare Commission Wage Order(s), and Title 8 of the
5 California Code of Regulations.

6
7 **JURISDICTION AND VENUE**

8 6. This Court has jurisdiction over Plaintiff's claims for unpaid wages, expenses
9 and/or penalties under, *inter alia*, the applicable Industrial Welfare Commission Wage Order(s),
10 Title 8 of the California Code of Regulations, and the statutes cited above.

11 7. This Court also has jurisdiction over Plaintiff's claims for injunctive relief and
12 restitution of ill-gotten benefits arising from Defendant's unfair and/or fraudulent business
13 practices under California Business & Professions Code § 17200, *et seq.*

14 8. This Court also has jurisdiction over Plaintiff's claims for general and special
15 damages, costs of suit, and attorneys' fees under FEHA, California Government Code § 12940,
16 and CFRA, California Government Code § 12945.2.

17 9. Venue as to Defendants is proper in this judicial district pursuant to California
18 Code of Civil Procedure § 395(a). Defendant maintains a retirement home within the County of
19 Alameda where Plaintiff worked, transacts business, has agents, and is otherwise within this
20 Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have and
21 have had a direct effect on Plaintiff within the State of California and within the County of
22 Alameda.

23
24 **PLAINTIFF**

25 10. Plaintiff is a natural person and was, during the limitations period identified
26 herein, employed by Defendant as a non-exempt retirement home worker.

27 11. In this capacity, Plaintiff was entitled to full, uninterrupted and statutorily-
28 permitted meal and rest periods, as well as other benefits of employment, as set forth herein.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

DEFENDANT

12. Defendant employed Plaintiff at Watermark at Rosewood Gardens, 35 Fenton Street, in the city of Livermore, County of Alameda, State of California.

13. Those defendants identified as Does 1 through 100, inclusive, are and were, at all relevant times herein-mentioned, officers, directors, partners, and/or managing agents of Defendant. Plaintiff is informed and believes and, on that basis, alleges that at all relevant times herein mentioned Defendant and those identified as Does 1 through 100, inclusive, employed, and/or exercised control over the wages, hours, and/or working conditions of the Plaintiff at the location identified in the preceding paragraph.

14. Plaintiff is unaware of the true names and capacities of those defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by such fictitious names. Plaintiff will seek leave of court to amend this Complaint when such names are ascertained. Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named defendants was responsible in some manner for, gave consent to, ratified, and/or authorized the conduct herein alleged and that Plaintiff's damages, and that liability for civil penalties as to Plaintiff, as herein alleged, was proximately caused thereby.

15. Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, each of the defendants was the agent and/or employee of each of the remaining defendants and, in doing the acts herein alleged, was acting within the course and scope of such agency and/or employment.

REPRESENTATIVE ACTION ALLEGATIONS

16. Plaintiff brings this action on behalf of herself and as a representative action on behalf of the following category of Aggrieved Employees:

All persons who are and/or were employed as non-exempt retirement home workers by Watermark Retirement Communities, Inc. at any time after August 2, 2015.

1 17. Defendant and its officers and directors are excluded from the category of
2 Aggrieved Employees defined in the previous paragraph.

3
4 **COMMON FACTUAL ALLEGATIONS**

5 18. At all relevant times, Defendant operated a retirement home known as Watermark
6 at Rosewood Gardens, 35 Fenton Street, in the city of Livermore, County of Alameda, State of
7 California, where Plaintiff worked as a non-exempt employee, an employment position which
8 did not meet any test for exemption from the payment of overtime wages and/or the entitlement
9 to meal or rest periods.

10 19. Plaintiff's employment with Defendants began on or about April 17, 2014, and
11 continued until on or about December 7, 2015.

12 20. During the limitations period, Plaintiff and Aggrieved Employees were
13 consistently denied statutorily-permitted meal and rest periods since meal breaks were
14 interrupted on the majority of occasions and rest breaks were rarely provided due to
15 understaffing.

16 21. During the limitations period, Plaintiff and Aggrieved Employees regularly
17 worked in excess of eight hours in a workday and/or forty hours in a workweek. Plaintiff and
18 Aggrieved Employees worked "off-the-clock," on regular workdays and/or their days off,
19 performing tasks such as emailing, taking telephone calls, and attending to retirement home
20 residents.

21 22. At all relevant times, Defendant was aware of these violations, as well as the
22 entitlement of Plaintiff and Aggrieved Employees to overtime compensation by virtue of the
23 additional hours beyond eight per workday and/or 40 per workweek she worked, yet knowingly
24 failed to adequately compensate Plaintiff and Aggrieved Employees for all wages earned
25 (including premium wages such as overtime wages and/or compensation for missed meal and/or
26 rest periods) under the California Labor Code and the applicable IWC Wage Order(s), thereby
27 enjoying a significant competitive edge over other similar service providers.

28

1 23. Defendant has declined to pay these wages, even upon termination of Plaintiff and
2 Aggrieved Employees' employment, in blatant violation of California Labor Code § 201 and/or §
3 202.

4 24. California Labor Code §§ 201 and 202 require Defendants to pay severed
5 employees all wages due and owed thereto immediately upon discharge or within 72 hours of
6 resignation of their positions, in most circumstances. California Labor Code § 203 provides that
7 an employer who willfully fails to timely pay such wages to an employee must, as a penalty,
8 continue to pay the subject employee's wages until the back wages are paid in full or an action is
9 commenced, and the payment of such penalty shall continue for a period of time up to 30 days.

10 25. Furthermore, Defendant failed to provide Plaintiff and Aggrieved Employees with
11 accurate semimonthly itemized statements of the total number of hours worked and all applicable
12 hourly rates in effect during the pay period, in violation of California Labor Code § 226. In
13 failing to provide the required documents, Defendant has not only failed to pay Plaintiff and
14 Aggrieved Employees the full amount of compensation due but the Defendant has also, until
15 now, effectively shielded itself from employee scrutiny by concealing the magnitude and
16 financial impact of the wrongdoing that such documents might otherwise have led Plaintiff and
17 Aggrieved Employees to discover.

18 26. Plaintiff and Aggrieved Employees are entitled to unpaid compensation, yet, to
19 date, have not received such compensation, despite having been terminated by and/or resigned
20 from Defendant's employ. More than 30 days have passed since Plaintiff and certain Aggrieved
21 Employees left Defendant's employ.

22 27. As a consequence of Defendant's willful conduct in not paying compensation for
23 all hours worked in a prompt and timely manner, Plaintiff is entitled to up to 30 days wages as a
24 penalty under California Labor Code §§ 201-204, together with attorneys' fees and costs.

25 28. As a direct and proximate result of Defendant's unlawful conduct, as set forth
26 herein, Plaintiff has sustained damages, as described above, including compensation for loss of
27 earnings for hours worked on behalf of Defendant, in an amount to be established at trial. As a
28 further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff

1 is entitled to recover “waiting time” penalties (pursuant to California Labor Code §§ 201-204)
2 and penalties for failure to provide semimonthly statements of hours worked and all applicable
3 hourly rates (pursuant to California Labor Code § 226) in an amount to be established at trial. As
4 a further direct and proximate result of Defendant’s unlawful conduct, as set forth herein,
5 Plaintiff is also entitled to recover costs and attorneys’ fees pursuant to California Labor Code §
6 1194 and/or California Civil Code § 1021.5, among other authorities.

7 29. Plaintiff seeks injunctive relief prohibiting Defendant from engaging in the
8 complained-of illegal labor acts and practices in the future. Unless enjoined, Defendant’s
9 unlawful conduct will continue unchecked, while other employees similarly situated to Plaintiff
10 bear the financial brunt of Defendant’s unlawful conduct. As a further direct and proximate
11 result of Defendant’s unlawful conduct, as set forth herein, Plaintiff is also entitled to recover
12 costs and attorneys’ fees, pursuant to statute.

13 30. Additionally, during the course of her employment with Defendant, Plaintiff
14 suffered from, without limitation, fibromyalgia, which limited her ability to perform one or more
15 major life activities and required medical treatment. Over time, Plaintiff’s condition worsened
16 and she requested reasonable accommodation, including but not necessarily limited to time off
17 and the ability to return to her position, for her disability and/or serious medical condition, which
18 Defendant failed to provide. Instead, Defendant discriminated against and/or retaliated against
19 Plaintiff by, without limitation, making unwarranted criticisms and/or unreasonable demands,
20 and depriving her of work-related resources. Further, Defendant discouraged Plaintiff from
21 having surgery to remedy her disability. Defendant did all of this maliciously and wantonly, in
22 spite of Plaintiff’s diligent and competent performance of her duties.

23
24 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

25 31. Prior to the filing of this lawsuit, Plaintiff filed a complaint against Defendant
26 with the California Department of Fair Employment and Housing (“DFEH”) pursuant to
27 Government Code §§ 12900, *et seq.*, alleging the claims set forth in this Complaint. On June 20,
28 2016, the DFEH issued a “right to sue” letter. All conditions precedent to the initiation of this

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

1 lawsuit have been fulfilled. This action is filed within one year of the date that the DFEH issued
2 its right to sue letter.

3 32. Plaintiff has met all of the requirements set forth in California Labor Code §
4 2699.3 necessary to maintain a civil action against Defendants for violation of (and/or recovery
5 under) California Labor Code §§ 200-204, inclusive, 226, 226.7, 400-410, 510, 512, 1174,
6 1174.5, 1194, 1197, 1197.1, 1198, 2699, and 2802.

7

8 **FIRST CAUSE OF ACTION**
9 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
10 **(Violation of IWC Wage Order(s) and California Labor Code §§ 510, 1194, and 1198)**

11 33. Plaintiff incorporates in this cause of action each and every allegation of the
12 preceding paragraphs, with the same force and effect as though fully set forth herein.

13 34. During the limitations period, Plaintiff performed work for Defendant, oftentimes
14 in excess of eight hours in a workday and/or forty hours in a workweek. The number of hours
15 will be proven at trial.

16 35. During the limitations period, Defendant refused to compensate Plaintiff for all of
17 the wages earned, in violation of the applicable IWC Wage Order(s) and provisions of the
18 California Labor Code.

19 36. Moreover, during the limitations period, Plaintiff was terminated or resigned from
20 her position with Defendant, yet was not paid all wages due upon said termination or within 72
21 hours of said resignation of employment therefrom. Said non-payment of all wages due was the
22 direct and proximate result of a willful refusal to do so by Defendant.

23 37. More than thirty days have elapsed since Plaintiff was terminated or resigned
24 from Defendant's employ.

25 38. At all relevant times, Defendant was aware of, and was under a duty to comply
26 with, the overtime provisions of the California Labor Code including, but not limited to,
27 California Labor Code §§ 510, 1194, and 1198.

28 39. California Labor Code § 510(a), in pertinent part, provides:

Any work in excess of eight hours in one workday and any work in
excess of 40 hours in any one workweek and the first eight hours

1 worked on the seventh day of work in any one workweek shall be
2 compensated at the rate of no less than one and one-half times the
3 regular rate of pay for an employee

4 40. California Labor Code § 1194(a), in pertinent part, provides:

5 Notwithstanding any agreement to work for a lesser wage, any
6 employee receiving less than the legal minimum wage or the legal
7 overtime compensation applicable to the employee is entitled to
8 recover in a civil action the unpaid balance of the full amount of
9 this minimum wage or overtime compensation, including interest
10 thereon, reasonable attorneys' fees, and costs of suit.

11 41. California Labor Code § 1198, in pertinent part, provides:

12 The maximum hours of work and the standard conditions of labor
13 fixed by the commission shall be the maximum hours of work and
14 the standard conditions of labor for employees. The employment of
15 any employee for longer hours than those fixed by the order or
16 under conditions of labor prohibited by the order is unlawful.

17 42. By refusing to compensate Plaintiff for overtime wages earned, Defendant
18 violated those California Labor Code provisions cited herein as well as the applicable IWC Wage
19 Order(s).

20 43. As a direct and proximate result of Defendant's unlawful conduct, as set forth
21 herein, Plaintiff has sustained damages, including loss of earnings for hours of overtime worked
22 on behalf of Defendant, in an amount to be established at trial. As a further direct and proximate
23 result of Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to recover
24 penalties (including "waiting time" penalties of up to thirty days' wages, pursuant to California
25 Labor Code § 203) in amounts to be established at trial, as well as attorneys' fees and costs, and
26 restitution, pursuant to statute.

27 **SECOND CAUSE OF ACTION**
28 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
(California Labor Code §§ 226.7 and 512)

44. Plaintiff incorporates in this cause of action each and every allegation of the
preceding paragraphs, with the same force and effect as though fully set forth herein.

45. At all relevant times, Defendant was aware of and was under a duty to comply
with California Labor Code § 226.7 and § 512.

46. California Labor Code § 226.7 provides:

1 (a) No employer shall require any employee to work during
2 any meal or rest period mandated by an applicable order of the
3 Industrial Welfare Commission.

4 (b) If an employer fails to provide an employee a meal period
5 or rest period in accordance with an applicable order of the
6 Industrial Welfare Commission, the employer shall pay the
7 employee one additional hour of pay at the employee's regular rate
8 of compensation for each workday that the meal or rest period is
9 not provided.

10 47. Moreover, California Labor Code § 512(a) provides:

11 An employer may not employ an employee for a work period of
12 more than five hours per day without providing the employee with
13 a meal period of not less than 30 minutes, except that if the total
14 work period per day of the employee is no more than six hours, the
15 meal period may be waived by mutual consent of both the
16 employer and employee. An employer may not employ an
17 employee for a work period of more than 10 hours per day without
18 providing the employee with a second meal period of not less than
19 30 minutes, except that if the total hours worked is no more than
20 12 hours, the second meal period may be waived by mutual
21 consent of the employer and the employee only if the first meal
22 period was not waived.

23 48. Sections 11 and 12, respectively, of the applicable IWC Wage Order(s) mandate
24 that employers provide all applicable meal and/or rest periods to non-exempt (including exempt-
25 misclassified) employees.

26 49. Section 11 of the applicable IWC Wage Order(s) provides:

27 (A) No employer shall employ any person for a work period of
28 more than five (5) hours without a meal period of not less than
30 minutes...

(B) An employer may not employ an employee for a work period
of more than ten (10) hours per day without providing the
employee with a second meal period of not less than 30
minutes...

(C) If an employer fails to provide an employee a meal period in
accordance with the applicable provisions of this 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.

50. Moreover, Section 12 of the applicable IWC Wage Order(s) provides:

(A) Every employer shall authorize and permit all employees to
take rest periods, which insofar as practicable shall be in the
middle of each work period. The authorized rest period time shall
be based on the total hours worked daily at the rate of ten (10)

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

minutes net rest time per four (4) hours or major fraction thereof

....
(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this 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 rest period is not provided.

51. By failing to consistently provide uninterrupted thirty-minute meal periods within the first five hours of work each day and/or uninterrupted net ten-minute rest periods to Plaintiff, Defendant violated the California Labor Code and applicable IWC Wage Order provisions.

52. Plaintiff is informed and believes and, on that basis, alleges that Defendant has never paid the one hour of compensation to Plaintiff for its violations of the California Labor Code and applicable IWC Wage Order provisions.

53. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff has sustained damages, including lost compensation resulting from missed meal and/or rest periods, in an amount to be established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to recover "waiting time" and other penalties, in amounts to be established at trial, as well as attorneys' fees and costs, and restitution, pursuant to statute.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code § 226)

54. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

55. California Labor Code § 226(a) provides:

Each employer shall semimonthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized wage statement in writing showing: (1) gross wages earned; (2) total number of hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive date of the period for which the employee is paid; (6) the name of the employee and his or her

1 social security number; and (7) the name and address of the legal
2 entity which is the employer.

3 56. Moreover, California Labor Code § 226(e) provides:

4 An employee suffering injury as a result of a knowing and
5 intentional failure by an employer to comply with subdivision (a)
6 is entitled to recover the greater of all actual damages or fifty
7 dollars (\$50) for the initial pay period in which a violation occurs
8 and one hundred dollars (\$100) per employee for each violation in
9 a subsequent pay period, not exceeding an aggregate penalty of
10 four thousand dollars (\$4,000), and is entitled to an award of costs
11 and reasonable attorney's fees.

12 57. Plaintiff seeks to recover actual damages, costs, and attorneys' fees under these
13 provisions.

14 58. Defendant has failed to provide timely, accurate itemized wage statements to
15 Plaintiff in accordance with California Labor Code § 226. Plaintiff is informed and believes and,
16 on that basis, alleges that none of the statements provided by Defendant accurately reflected
17 actual gross wages earned, net wages earned, or the appropriate deductions of Plaintiff.

18 59. As a direct and proximate result of Defendant's unlawful conduct, as set forth
19 herein, Plaintiff is entitled to recover penalties, in amounts to be established at trial, as well as
20 attorneys' fees and costs, pursuant to statute.

21 **FOURTH CAUSE OF ACTION**
22 **FAILURE TO PAY WAGES ON TERMINATION**
23 **(California Labor Code § 203)**

24 60. Plaintiff incorporates in this cause of action each and every allegation of the
25 preceding paragraphs, with the same force and effect as though fully set forth herein.

26 61. California Labor Code § 203 provides that:

27 If an employer willfully fails to pay, without abatement or reduction, in
28 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
employee who is discharged or who quits, the wages of the employee shall
continue as a penalty from the due date thereof at the same rate until paid or
until an action therefor is commenced; but the wages shall not continue for
more than 30 days.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

1 62. Plaintiff was employed by Defendant during the limitations period and was
2 thereafter terminated or resigned from her position, yet was not paid all wages due upon said
3 termination or within 72 hours of said resignation of employment therefrom. Said non-payment
4 was the direct and proximate result of a willful refusal to do so by Defendant.

5 63. More than 30 days have elapsed since Plaintiff was terminated or resigned from
6 Defendant's employ.

7 64. As a direct and proximate result of Defendant's willful conduct in failing to pay
8 Plaintiff for all hours worked, Plaintiff is entitled to recover "waiting time" penalties of up to
9 thirty days' wages pursuant to California Labor Code § 203 in an amount to be established at
10 trial, together with interest thereon, and attorneys' fees and costs.

11
12 **FIFTH CAUSE OF ACTION**
13 **FAILURE TO REIMBURSE EXPENSES AND/OR PROHIBITED CASH BOND**
14 **(California Labor Code §§ 406 and 2802)**

15 65. Plaintiff incorporates in this cause of action each and every allegation of the
16 preceding paragraphs, with the same force and effect as though fully set forth herein.

17 66. During the limitations period, Defendant required Plaintiff to incur expenses
18 related to the business operations of Defendant. These expenses include(d), without limitation,
19 costs related to mileage and purchases of retirement home supplies.

20 67. These expenditures were incurred in direct consequence of the discharge of
21 Plaintiff's duties, or of her obedience to the directions of the employer and have not yet been
22 reimbursed by Defendant.

23 68. At all relevant times, Defendant was aware of and was under a duty to comply
24 with various provisions of the California Labor Code, including, but not necessarily limited to §§
25 406 and 2802(a).

26 69. California Labor Code § 406 provides:

27 Any property put up by an employee, or applicant as a part of the contract
28 of employment, directly or indirectly, shall be deemed to be put up as a
bond and is subject to the provisions of this article whether the property is
put up on a note or as a loan or an investment and regardless of the
wording of the agreement under which it is put up.

1 70. California Labor Code § 2802(a) provides:

2 An employer shall indemnify his or her employee for all necessary
3 expenditures or losses incurred by the employee in direct consequence of
4 the discharge of his or her duties, or of his or her obedience to the
5 directions of the employer, even though unlawful, unless the employee, at
6 the time of obeying the directions, believed them to be unlawful.

7 71. By requiring Plaintiff to incur uncompensated expenses in direct consequence of
8 the discharge of her duties, Plaintiff was forced and/or brought to contribute to the capital and
9 expenses of Defendant's business which is legally a cash bond and which must be refunded by
10 Defendant to Plaintiff.

11 72. California Labor Code § 2802 (b) and (c) provides for interest at the statutory post
12 judgment rate of ten percent simple interest per annum from the date of the expenditure, plus
13 attorneys' fees to collect reimbursement.

14 73. Therefore, Plaintiff demands reimbursement for expenditures or losses incurred
15 by herself in direct consequence of the discharge of her duties, or of her obedience to the
16 directions of the employer, plus return of all cash bonds or other coerced investments in the
17 business of Defendant, with interest, at the statutory rate, plus attorneys' fees.

18 **SIXTH CAUSE OF ACTION**
19 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
20 **(California Business & Professions Code §§ 17200-17208)**

21 74. Plaintiff incorporates in this cause of action each and every allegation of the
22 preceding paragraphs, with the same force and effect as though fully set forth herein.

23 75. Plaintiff further brings this cause of action seeking equitable and statutory relief to
24 stop Defendant's misconduct, as complained of herein, and to seek restitution of the amounts
25 Defendant acquired through the unfair, unlawful, and fraudulent business practices described
26 herein.

27 76. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or
28 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-

1 17208. Specifically, Defendant conducted business activities while failing to comply with the
2 legal mandates cited herein.

3 77. Defendant's knowing failure to adopt policies in accordance with and/or adhere to
4 these laws, all of which are binding upon and burdensome to their competitors, engenders an
5 unfair competitive advantage for Defendant, thereby constituting an unfair business practice
6 under California Business & Professions Code §§ 17200-17208.

7 78. Defendant has clearly established a policy of accepting a certain amount of
8 collateral damage, as represented by the damages to Plaintiff, as incidental to its business
9 operations, rather than accept the alternative costs of full compliance with fair, lawful, and
10 honest business practices, ordinarily borne by its responsible competitors and as set forth in
11 legislation and the judicial record.

12
13 **SEVENTH CAUSE OF ACTION**
14 **DISCRIMINATION BASED UPON DISABILITY IN VIOLATION OF THE**
15 **CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT**
16 **(California Government Code §§ 12940, et seq.)**

17 79. Plaintiff incorporates in this cause of action each and every allegation of the
18 preceding paragraphs, with the same force and effect as though fully set forth herein.

19 80. At all relevant times, Government Code § 12940, subdivision (a), was in full force
20 and effect, and was binding on Defendant. This section prohibited Defendant from
21 discriminating against an employee, like Plaintiff, who has a physical disability as that term is
22 defined in Government Code § 12926(k). Within the time provided by law, Plaintiff filed a
23 complaint with the California Department of Fair Employment and Housing in full compliance
24 with Government Code § 12940 *et seq.* and received a right-to-sue letter.

25 81. Defendant violated Government Code § 12940, subdivision (a), in numerous
26 respects, including but not necessarily limited to, discriminating against Plaintiff because of her
27 physical disability, and, after a period of satisfactory performance, by constructively discharging
28 Plaintiff because of her known physical disability. Such conduct has resulted in damage and
injury to Plaintiff as alleged herein.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9600

1 82. Additionally, or alternatively, Defendant violated Government Code § 12940,
2 subdivision (a), by discriminating against and/or constructively discharging Plaintiff because it
3 perceived that she was or regarded her as being physically disabled.

4 83. Additionally, or alternatively, Defendant violated Government Code § 12940,
5 subdivision (a), by discriminating against and/or constructively discharging Plaintiff because she
6 had a record of disability.

7 84. As a proximate result of Defendant's willful, knowing and intentional conduct,
8 Plaintiff has sustained and continues to sustain losses in earnings and other employment benefits.

9 85. As a further proximate result of Defendant's willful, knowing and intentional
10 conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental
11 anguish, all to her damage in a sum according to proof.

12 86. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
13 Plaintiff is presently unaware of the precise amount of such expenses and fees, and prays leave
14 of court to amend this complaint when those amounts are more fully known.

15 87. Defendant committed the acts alleged herein maliciously, fraudulently, and
16 oppressively, with the wrongful intention of injuring Plaintiff, and acted with an improper and
17 evil motive amounting to malice and in conscious disregard of Plaintiff's rights. Because the acts
18 taken toward Plaintiff were carried out by Defendant acting in a despicable, deliberate, cold,
19 callous, and intentional manner in order to injure and damage Plaintiff, she is entitled to recover
20 punitive damages in an amount according to proof.

21 **EIGHTH CAUSE OF ACTION**
22 **FAILURE TO PROVIDE REASONABLE ACCOMMODATION IN VIOLATION OF**
23 **THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT**
24 **(California Government Code §§ 12940, et seq.)**

25 85. Plaintiff incorporates in this cause of action each and every allegation of the
26 preceding paragraphs, with the same force and effect as though fully set forth herein.

27 86. At all relevant times, Government Code § 12940, subdivision (m), was in full
28 force and effect, and was binding on Defendant. This section prohibited Defendant from failing
to accommodate an employee, like Plaintiff, who has a physical disability as that term is defined

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 831-9800

1 in Government Code § 12926(k). Within the time provided by law, Plaintiff filed a complaint
2 with the California Department of Fair Employment and Housing in full compliance with
3 Government Code § 12940 *et seq.* and received a right-to-sue letter.

4 87. Defendant violated Government Code § 12940, subdivision (m), in numerous
5 respects, including but not necessarily limited to, failing to make reasonable accommodation for
6 Plaintiff's known physical disability. Such conduct has resulted in damage and injury to Plaintiff
7 as alleged herein.

8 88. Additionally, or alternatively, Defendant violated Government Code § 12940,
9 subdivision (m), by failing to make reasonable accommodation for Plaintiff's perceived physical
10 disability.

11 89. As a proximate result of Defendant's willful, knowing and intentional conduct,
12 Plaintiff has sustained and continues to sustain losses in earnings and other employment benefits.

13 90. As a further proximate result of Defendant's willful, knowing and intentional
14 conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental
15 anguish, all to her damage in a sum according to proof.

16 91. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
17 Plaintiff is presently unaware of the precise amount of such expenses and fees, and prays leave
18 of court to amend this complaint when those amounts are more fully known.

19 92. Defendant committed the acts alleged herein maliciously, fraudulently, and
20 oppressively, with the wrongful intention of injuring Plaintiff, and acted with an improper and
21 evil motive amounting to malice and in conscious disregard of Plaintiff's rights. Because the acts
22 taken toward Plaintiff were carried out by Defendant acting in a despicable, deliberate, cold,
23 callous, and intentional manner in order to injure and damage Plaintiff, she is entitled to recover
24 punitive damages in an amount according to proof.

25
26
27
28

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

NINTH CAUSE OF ACTION
FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN VIOLATION OF CALIFORNIA'S FAIR EMPLOYMENT AND HOUSING ACT
(California Government Code §§ 12940, *et seq.*)

93. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

94. At all relevant times, Government Code § 12940, subdivision (n), was in full force and effect, and was binding on Defendant. This section prohibited Defendant from failing to engage in a timely good faith interactive process with an employee, like Plaintiff, who has a physical disability as that term is defined in Government Code § 12926(k). Within the time provided by law, Plaintiff filed a complaint with the California Department of Fair Employment and Housing in full compliance with Government Code § 12940 *et seq.* and received a right-to-sue letter.

95. Defendant violated Government Code § 12940, subdivision (n), in numerous respects, including but not necessarily limited to, failing to engage in a timely good faith interactive process with Plaintiff to identify reasonable accommodation for Plaintiff's known physical disability. Such conduct has resulted in damage and injury to Plaintiff as alleged herein.

96. Additionally, or alternatively, Defendant violated Government Code § 12940, subdivision (n), by failing to engage in a timely good faith interactive process with Plaintiff to identify reasonable accommodation for Plaintiff's perceived physical disability.

97. As a proximate result of Defendant's willful, knowing and intentional conduct, Plaintiff has sustained and continues to sustain losses in earnings and other employment benefits.

98. As a further proximate result of Defendant's willful, knowing and intentional conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental anguish, all to her damage in a sum according to proof.

99. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is presently unaware of the precise amount of such expenses and fees, and prays leave of court to amend this complaint when those amounts are more fully known.

100. Defendant committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and acted with an improper and

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

1 evil motive amounting to malice and in conscious disregard of Plaintiff's rights. Because the acts
2 taken toward Plaintiff were carried out by Defendant acting in a despicable, deliberate, cold,
3 callous, and intentional manner in order to injure and damage Plaintiff, she is entitled to recover
4 punitive damages in an amount according to proof.

5
6 **TENTH CAUSE OF ACTION**
7 **RETALIATION IN VIOLATION OF THE CALIFORNIA**
8 **FAIR EMPLOYMENT AND HOUSING ACT**
9 **(California Government Code §§ 12940, et seq.)**

10 101. Plaintiff incorporates in this cause of action each and every allegation of the
11 preceding paragraphs, with the same force and effect as though fully set forth herein.

12 102. At all relevant times, Government Code § 12940, subdivision (h), was in full
13 force and effect, and was binding on Defendant. This section prohibited Defendant from
14 retaliating against an employee, like Plaintiff, for exercising her rights under FEHA, including
15 but not limited to, complaining of discrimination, requesting reasonable accommodation, and/or
16 complaining of being denied reasonable accommodation. Within the time provided by law,
17 Plaintiff filed a complaint with the California Department of Fair Employment and Housing in
18 full compliance with Government Code § 12940 *et seq.* and received a right-to-sue letter.

19 103. Defendant violated Government Code § 12940, subdivision (h), in numerous
20 respects, including but not necessarily limited to, retaliating against Plaintiff for exercising her
21 rights under FEHA, including but not limited to, complaining of discrimination, requesting
22 reasonable accommodation, and/or complaining of being denied reasonable accommodation. The
23 retaliation included, but was not necessarily limited to, making unwarranted criticisms and/or
24 unreasonable demands, depriving her of work-related resources, and, after a period of
25 satisfactory performance, constructively discharging Plaintiff. Such conduct has resulted in
26 damage and injury to Plaintiff as alleged herein.

27 104. As a proximate result of Defendant's willful, knowing and intentional conduct,
28 Plaintiff has sustained and continues to sustain losses in earnings and other employment benefits.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9600

1 105. As a further proximate result of Defendant's willful, knowing and intentional
2 conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental
3 anguish, all to her damage in a sum according to proof.

4 106. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
5 Plaintiff is presently unaware of the precise amount of such expenses and fees, and prays leave
6 of court to amend this complaint when those amounts are more fully known.

7 107. Defendant committed the acts alleged herein maliciously, fraudulently, and
8 oppressively, with the wrongful intention of injuring Plaintiff, and acted with an improper and
9 evil motive amounting to malice and in conscious disregard of Plaintiff's rights. Because the acts
10 taken toward Plaintiff were carried out by Defendant acting in a despicable, deliberate, cold,
11 callous, and intentional manner in order to injure and damage Plaintiff, she is entitled to recover
12 punitive damages in an amount according to proof.

13
14 **ELEVENTH CAUSE OF ACTION**
15 **VIOLATION OF THE CALIFORNIA FAMILY RIGHTS ACT**
16 **(California Government Code §§ 12945.2)**

17 108. Plaintiff incorporates in this cause of action each and every allegation of the
18 preceding paragraphs, with the same force and effect as though fully set forth herein.

19 109. At all relevant times, CFRA, Government Code § 12945.2, was in full force and
20 effect and binding on Defendant. Plaintiff is informed and believes and thereon alleges that
21 Defendant was a covered employer according to the CFRA in that it employed fifty or more
22 employees, as required by 2 Cal. Code Regs. Sec. 7297.0(d).

23 110. The CFRA permits eligible employees to take up to twelve weeks of leave each
24 year for their own serious health condition, and guarantees them reinstatement after exercising
25 their right to take a leave of absence. The CFRA prohibits an employer from restraining,
26 discriminating against, interfering with or denying the exercise of or the attempt to exercise any
27 right provided by the CFRA, or from retaliating against an employee who requests protected
28 leave. At all times relevant in this complaint, Plaintiff was an eligible employee suffering from a
serious health condition within the meaning of the CFRA. Within the time provided by law,

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

1 plaintiff filed a complaint with the California Department of Fair Employment and Housing and
2 received a right-to-sue letter.

3 111. Defendant violated the CFRA by denying, restraining, discriminating against,
4 and/or interfering with Plaintiff's right to CFRA-protected leave, by constructively discharging
5 Plaintiff because of her having taken CFRA leave and/or because Defendant anticipated Plaintiff
6 would require CFRA leave in the future. Defendant also violated the CFRA by retaliating against
7 Plaintiff for having taken protected leave.

8 112. As a proximate result of Defendant's violation of the CFRA, Plaintiff has
9 sustained and continues to sustain losses in earnings and other employment benefits.

10 113. As a further proximate result of Defendant's violation of the CFRA, Plaintiff has
11 suffered and continues to suffer humiliation, emotional distress, and mental anguish, all to her
12 damage in a sum according to proof.

13 114. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
14 Plaintiff is presently unaware of the precise amount of such expenses and fees, and prays leave
15 of court to amend this complaint when those amounts are more fully known.

16 115. Defendant committed the acts alleged herein maliciously, fraudulently, and
17 oppressively, with the wrongful intention of injuring Plaintiff, and acted with an improper and
18 evil motive amounting to malice and in conscious disregard of Plaintiff's rights. Because the acts
19 taken toward Plaintiff were carried out by Defendant acting in a despicable, deliberate, cold,
20 callous, and intentional manner in order to injure and damage Plaintiff, she is entitled to recover
21 punitive damages in an amount according to proof.

22
23 **TWELVTH CAUSE OF ACTION**
24 **FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF**
25 **THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT**
26 **(California Government Code §§ 12940, et seq.)**

27 116. Plaintiff incorporates in this cause of action each and every allegation of the
28 preceding paragraphs, with the same force and effect as though fully set forth herein.

117. At all relevant times, Government Code § 12940, subdivision (k), was in full
force and effect, and was binding on Defendant. This subsection requires an employer to take all

1 reasonable steps necessary to prevent discrimination from occurring. As alleged herein,
2 Defendant violated this subsection by failing to take all reasonable steps necessary to prevent
3 disability discrimination, and/or violation of the CFRA, from occurring at Plaintiff's workplace.

4 118. As a proximate result of Defendant's willful, knowing and intentional conduct,
5 Plaintiff has sustained and continues to sustain losses in earnings and other employment benefits.

6 119. As a further proximate result of Defendant's willful, knowing and intentional
7 conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental
8 anguish, all to her damage in a sum according to proof.

9 120. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
10 Plaintiff is presently unaware of the precise amount of such expenses and fees, and prays leave
11 of court to amend this complaint when those amounts are more fully known.

12 121. Defendant committed the acts alleged herein maliciously, fraudulently, and
13 oppressively, with the wrongful intention of injuring Plaintiff, and acted with an improper and
14 evil motive amounting to malice and in conscious disregard of Plaintiff's rights. Because the acts
15 taken toward Plaintiff were carried out by Defendant acting in a despicable, deliberate, cold,
16 callous, and intentional manner in order to injure and damage Plaintiff, she is entitled to recover
17 punitive damages in an amount according to proof.

18
19 **THIRTEENTH CAUSE OF ACTION**
CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY

20 122. Plaintiff incorporates in this cause of action each and every allegation of the
21 preceding paragraphs, with the same force and effect as though fully set forth herein.

22 123. At all relevant times, Government Code § 12940, subdivision (a), was in full force
23 and effect, and was binding on Defendant. This section prohibited Defendant from
24 discriminating against an employee, like Plaintiff, who has a physical disability as that term is
25 defined in Government Code § 12926(k).

26 124. At all relevant times, Government Code § 12940, subdivision (h), was in full
27 force and effect, and was binding on Defendant. This section prohibited Defendant from
28 retaliating against an employee, like Plaintiff, for exercising her rights under FEHA, including

1 but not limited to, complaining of discrimination, requesting reasonable accommodation, and/or
2 complaining of being denied reasonable accommodation.

3 125. At all relevant times, CFRA, Government Code § 12945.2, was in full force and
4 effect and binding on Defendant. Plaintiff is informed and believes and thereon alleges that
5 Defendant was a covered employer according to the CFRA in that it employed fifty or more
6 employees, as required by 2 Cal. Code Regs. Sec. 7297.0(d).

7 126. The CFRA permits eligible employees to take up to twelve weeks of leave each
8 year for their own serious health condition, and guarantees them reinstatement after exercising
9 their right to take a leave of absence. The CFRA prohibits an employer from restraining,
10 discriminating against, interfering with or denying the exercise of or the attempt to exercise any
11 right provided by the CFRA, or from retaliating against an employee who requests protected
12 leave. At all times relevant in this complaint, Plaintiff was an eligible employee suffering from a
13 serious health condition within the meaning of the CFRA.

14 127. Defendant violated the public policy of the State of California, as set forth in the
15 statutes referenced above, by constructively discharging Plaintiff because of her known physical
16 disability, in retaliation for having complained of disability discrimination, in retaliation for
17 having requested reasonable accommodation, in retaliation for having complained that she was
18 denied reasonable accommodation, and/or in retaliation for having requested and/or taken
19 protected leave due to a medical condition (CFRA).

20 128. As a proximate result of Defendant's violation of the public policy of the State of
21 California, Plaintiff has sustained and continues to sustain losses in earnings and other
22 employment benefits.

23 129. As a further proximate result of Defendant's violation of the public policy of the
24 State of California, Plaintiff has suffered and continues to suffer humiliation, emotional distress,
25 and mental anguish, all to her damage in a sum according to proof.

26 130. Defendant committed the acts alleged herein maliciously, fraudulently, and
27 oppressively, with the wrongful intention of injuring Plaintiff, and acted with an improper and
28 evil motive amounting to malice and in conscious disregard of Plaintiff's rights. Because the acts

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

1 taken toward Plaintiff were carried out by Defendant acting in a despicable, deliberate, cold,
2 callous, and intentional manner in order to injure and damage Plaintiff, she is entitled to recover
3 punitive damages in an amount according to proof.

4 **FOURTEENTH CAUSE OF ACTION**
5 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**
6 **(California Labor Code § 2699)**

7 131. Plaintiff incorporates in this cause of action each and every allegation of the
8 preceding paragraphs, with the same force and effect as though fully set forth herein.

9 132. California Labor Code § 2699(a) states:

10 Notwithstanding any other provision of the law, any provision of this code that
11 provides for a civil penalty to be assessed and collected by the Labor and
12 Workforce Development Agency or any of its departments, divisions,
13 commissions, boards, agencies, or employees, for a violation of this code, may, as
14 an alternative, be recovered through a civil action brought by an aggrieved
15 employee on behalf of himself or herself and other current or former employees...

16 133. Plaintiff (and each and every other Aggrieved Employee defined herein) are
17 "aggrieved employees," as defined by California Labor Code § 2699(c), because they were
18 employed by Defendant and were among the many employees against whom violations of law
19 were committed.

20 134. Plaintiff has met all of the requirements set forth in California Labor Code §
21 2699.3 necessary to maintain a civil action against Defendant for violations of (and/or recovery
22 under) California Labor Code §§ 200-204, inclusive, 226, 226.7, 400-410, 510, 512, 1174,
23 1174.5, 1194, 1197, 1197.1, 1198, 2699, and 2802.

24 135. Plaintiff brings this action on behalf of herself and all Aggrieved Employees
25 alleging violations of the California Labor Code sections cited in the preceding paragraph.

26 136. As a direct and proximate result of Defendant's unlawful conduct, as set forth
27 herein, Plaintiff and Aggrieved Employees are entitled to recover various penalties as provided
28 by California Labor Code § 2699, in an amount to be established at trial, as well as costs and
attorneys' fees, pursuant to statute.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

RELIEF SOUGHT

1
2 **WHEREFORE**, Plaintiff prays for judgment and the following specific relief against
3 Defendants, and each of them, jointly and separately, as follows:

4 1. That the Court declare, adjudge, and decree that Defendant willfully violated its
5 legal duties to pay all wages due (including overtime wages) under the California Labor Code
6 and the applicable California Industrial Welfare Commission Wage Order(s);

7 2. That the Court make an award to Plaintiff of one hour of wages at her regular rate
8 of compensation for each duty-free, uninterrupted meal period that was not provided;

9 3. That the Court make an award to Plaintiff of one hour of wages at her regular rate
10 of compensation for each workday that a duty-free, uninterrupted rest period was not provided;

11 4. That the Court make an award to Plaintiff of penalties, pursuant to California
12 Labor Code §§ 203, 226, 1174.5, 1197.1, *et seq.*, in an amount to be proven at trial;

13 5. That the Court order Defendant to pay restitution to Plaintiff due to Defendant's
14 unlawful activities, pursuant to California Business and Professions Code §§ 17200-17208;

15 6. That the Court further enjoin Defendant, ordering it to cease and desist from
16 unlawful activities in violation of California Business and Professions Code § 17200, *et seq.*;

17 7. For interest on the amount of any and all economic losses, at the prevailing legal
18 rate;

19 8. For compensatory damages, including emotional distress, according to proof on
20 each cause of action for which such damages are available;

21 9. For punitive and exemplary damages, according to proof on each cause of action
22 for which such damages are available;

23 10. For reasonable attorneys' fees, pursuant to, *inter alia*, California Labor Code §
24 1194, California Code of Civil Procedure § 1021.5, and/or California Government Code §
25 12965(b), on each cause of action for which such attorneys' fees are available;

26 11. For costs of suit and any and all such other relief as the Court deems just and
27 proper;

28

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE TOWER BUILDING
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

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

12. That the Court declare, adjudge, and decree that this action is a proper representative action pursuant to California Labor Code § 2699;

13. That the Court make an award of civil penalties for violations of the Labor Code, pursuant to California Labor Code § 2699; and

14. For all other Orders, findings and determinations identified and sought in this Complaint.


JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: October 12, 2016

SCOTT COLE & ASSOCIATES, APC

By:


Jeremy A. Graham, Esq.
Attorneys for Plaintiff Julie Martyn
And the Aggrieved Employees