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**FILED**  
Superior Court of California  
County of Riverside

**5/3/2021**

**A. Vargas**

**Electronically Filed**

9 **IN THE SUPERIOR COURT FOR THE**  
10 **COUNTY OF RIVERSIDE**

11 KAYLA IRVING, an individual,

12 Plaintiff,

13 vs.

14 A B CARING SENIOR LIVING, INC.;  
15 REBECCA CARRASCO, an  
16 individual; and DOES 1-25,

17 Defendants.

Case No.: CVRI2102326

COMPLAINT FOR DAMAGES AND  
DEMAND FOR JURY TRIAL FOR:

- (1) Racial Discrimination/Harassment;
- (2) Failure to Prevent Racial  
Discrimination/Harassment;
- (3) Retaliation for Reporting and  
Resisting Racial  
Discrimination/Harassment;
- (4) Whistleblower Retaliation for  
Reporting and Resisting Illegal  
Conduct;
- (5) Wrongful Termination in Violation  
of Public Policy;
- (6) Assault and Battery;
- (7) Bane Act Violations;
- (8) Ralph Civil Rights Act Violations;
- (9) Failure to Reimburse Necessary  
Business Expenses;
- (10) Failure to Pay Wages and  
Overtime Wages;
- (11) Failure to Pay Premium Wages  
for Meal and Rest Break Violations;
- (12) Waiting Time Penalties;

- (13) Failure to Furnish Compliant Wage statements;
- (14) Conversion/Theft;
- (15) Unjust Enrichment;
- (16) Unfair/Unlawful Business Practices;
- (17) Negligent Hiring/Training/Supervision/Retention

**TO THE CLERK OF THE COURT, THE PARTIES AND COUNSEL:**

1. By this action, PLAINTIFF KAYLA IRVING (hereinafter “PLAINTIFF”) seeks penalties, damages, restitution, and any other remedies the Court deems just, due to the misconduct committed by the DEFENDANTS as alleged in this Complaint for violations including, but not limited to, racial discrimination/harassment and wrongful retaliation and wrongful termination.

2. Furthermore, pursuant to Government Code § 12923, made effective January 1, 2019, entitled “Application of laws about harassment; legislative intent”:

The Legislature hereby declares its intent with regard to application of the laws about harassment contained in this part.

(a) The purpose of these laws is to provide all Californians with an equal opportunity to succeed in the workplace and should be applied accordingly by the courts. The Legislature hereby declares that harassment creates a hostile, offensive, oppressive, or intimidating work environment and deprives victims of their statutory right to work in a place free of discrimination when the harassing conduct sufficiently offends, humiliates, distresses, or intrudes upon its victim, so as to disrupt the victim's emotional tranquility in the workplace, affect the victim's ability to perform the job as usual, or otherwise interfere with and undermine the victim's personal sense of well-being. In this regard, the Legislature affirms its approval of the standard set forth by Justice Ruth Bader Ginsburg in her concurrence in Harris v. Forklift Systems (1993) 510 U.S. 17 that in a workplace harassment suit “the plaintiff

1 need not prove that his or her tangible productivity has declined as a  
2 result of the harassment. It suffices to prove that a reasonable person  
3 subjected to the discriminatory conduct would find, as the plaintiff did,  
4 that the harassment so altered working conditions as to make it more  
difficult to do the job.” (Id. at 26).

5 (b) A single incident of harassing conduct is sufficient to create a triable  
6 issue regarding the existence of a hostile work environment if the  
7 harassing conduct has unreasonably interfered with the plaintiff's work  
8 performance or created an intimidating, hostile, or offensive working  
9 environment. In that regard, the Legislature hereby declares its rejection  
10 of the United States Court of Appeals for the 9th Circuit's opinion  
11 in Brooks v. City of San Mateo (2000) 229 F.3d 917 and states that the  
opinion shall not be used in determining what kind of conduct is  
sufficiently severe or pervasive to constitute a violation of the California  
Fair Employment and Housing Act.

12 (c) The existence of a hostile work environment depends upon the  
13 totality of the circumstances and a discriminatory remark, even if not  
14 made directly in the context of an employment decision or uttered by a  
15 non-decisionmaker, may be relevant, circumstantial evidence of  
16 discrimination. In that regard, the Legislature affirms the decision  
17 in Reid v. Google, Inc. (2010) 50 Cal.4th 512 in its rejection of the  
“stray remarks doctrine.”

18 (d) The legal standard for sexual harassment should not vary by type of  
19 workplace. It is irrelevant that a particular occupation may have been  
20 characterized by a greater frequency of sexually related commentary or  
21 conduct in the past. In determining whether or not a hostile environment  
22 existed, courts should only consider the nature of the workplace when  
23 engaging in or witnessing prurient conduct and commentary is integral  
to the performance of the job duties. The Legislature hereby declares its  
disapproval of any language, reasoning, or holding to the contrary in the  
decision Kelley v. Conco Companies (2011) 196 Cal.App.4th 191.

24 (e) Harassment cases are rarely appropriate for disposition on summary  
25 judgment. In that regard, the Legislature affirms the decision in Nazir v.  
26 United Airlines, Inc. (2009) 178 Cal.App.4th 243 and its observation  
27 that hostile working environment cases involve issues “not determinable  
on paper.”

1  
2 3. PLAINTIFF is an individual, residing in the County of Riverside, State  
3 of California.

4 4. Defendant A B CARING SENIOR LIVING, INC. (hereinafter,  
5 “DEFENDANT A B CARING”), is a California Corporation registered with the  
6 State of California with its principal place of business located at 470 Meadowlark  
7 Lane, City of Perris, County of Riverside.

8 5. Defendant REBECCA CARRASCO (hereinafter, “DEFENDANT  
9 CARRASCO”) is an individual, residing within the City of Perris, County of  
10 Riverside.

11 6. All Defendants are sometimes collectively referred to as  
12 “DEFENDANTS”, but conduct attributable to only one DEFENDANT or specific  
13 DEFENDANTS will be specified by the names above.

14 7. The true names and capacities, whether individual, corporate, associate,  
15 or otherwise of the Defendants named herein as DOES 1 through 25, are unknown  
16 to PLAINTIFF at this time. PLAINTIFF therefore sues said Defendants by such  
17 fictitious names pursuant to § 474 of the California Code of Civil Procedure.  
18 PLAINTIFF will seek leave to amend this Complaint to allege the true names and  
19 capacities of DOES 1 through 25 when their names are ascertained. PLAINTIFF  
20 is informed and believes, and based thereon alleges, that each of the DOE  
21 Defendants is in some manner liable to PLAINTIFF for the events and actions  
22 alleged herein.

23 8. PLAINTIFF is informed, believes, and based thereon alleges, that at all  
24 times relevant, each Defendant was acting as an agent, joint venturer, and/or alter  
25 ego for each of the other Defendants, and each were co-conspirators with respect to  
26 the acts and the wrongful conduct alleged herein so that each is responsible for the  
27

1 acts of the other in connection with the conspiracy in such wrongful acts with the  
2 other Defendants.

3 9. PLAINTIFF is informed, believes, and based thereon alleges, that each  
4 Defendant was acting partly within and partly without the scope and course of their  
5 employment, and was acting with the knowledge, permission, consent, and  
6 ratification of every other Defendant.

7 10. PLAINTIFF is informed and believes, and therefore alleges, that each  
8 of the Defendants was an agent, managing general partner, managing member,  
9 owner, co-owner, partner, employee, and/or representative of each of the  
10 Defendants and was at all times material hereto, acting within the purpose and  
11 scope of such agency, employment, contract and/or representation, and that each of  
12 them is jointly and severally liable to PLAINTIFF.

13 11. PLAINTIFF is informed and believes, and therefore alleges, that each  
14 of the Defendants is liable to PLAINTIFF under legal theories and doctrines  
15 including but not limited to (1) joint employer; (2) integrated enterprise; (3)  
16 agency; and/or (4) alter ego, based in part, on the facts set forth below.

17 12. PLAINTIFF is informed and believes, and therefore alleges, that each  
18 of the named Defendants are part of an integrated enterprise and have acted or  
19 currently act as the employer and/or joint employer of PLAINTIFF making each of  
20 them liable for the violations alleged herein.

21 **FACTUAL ALLEGATIONS**

22 13. DEFENDANT A B CARING owns and operates at least three  
23 dependent adult residential care facilities within the County of Riverside.

24 14. At all relevant times, DEFENDANT CARRASCO was the general  
25 manager and supervisor of all three facilities.

26 15. At all times relevant, all actions taken by DEFENDANT CARRASCO  
27 were done as the agent of DEFENDANT A B CARING, and were done in

1 association with, at the direction of, and with the knowledge and ratification of,  
2 DEFENDANT A B CARING.

3 16. PLAINTIFF is presently a 38-year-old woman, is mixed race (Black and  
4 Hispanic), and is a single mother of two minor children also of mixed race (both  
5 under age 10).

6 17. At some point in September 2018, PLAINTIFF and her two minor  
7 children were given an offer by DEFENDANTS to move into and reside within  
8 one of the residential homes owned and/or operated by DEFENDANTS in the City  
9 of Perris.

10 18. The reason is because PLAINTIFF had to vacate her residence at the  
11 time and was unable to locate other accommodations, and because her father  
12 knows DEFENDANT CARRASCO personally DEFENDANT CARRASCO  
13 offered for PLAINTIFF and her two minor children to move into one of the  
14 bedrooms of one of the facilities.

15 19. PLAINTIFF was thereafter given an offer to work for DEFENDANTS,  
16 helping to care for the 6 dependent adult residents of the home (each of whom  
17 suffer some form of dementia and other ailments) into which she moved in  
18 September 2018.

19 20. As a result of the offer, which she accepted, PLAINTIFF began working  
20 for DEFENDANTS in the position of Caregiver.

21 21. PLAINTIFF'S employment thereafter began in October 2018.

22 22. PLAINTIFF eventually quit working for her previous employer in  
23 December 2018 so that she could increase her hours available to work for  
24 DEFENDANTS.

25 23. Despite this retention of PLAINTIFF for employment, DEFENDANTS  
26 have never provided to Plaintiff the required written notice of the terms of her  
27 employment pursuant to Labor Code 2810.5.

1 24. There was also never any agreement, verbal or otherwise, for  
2 DEFENDANTS to deduct any amount from PLAINTIFF’S wages for room and  
3 board.

4 25. In other words, PLAINTIFF’S wages were not to be offset in any way  
5 by the fact that she began living in the house with her children prior to starting  
6 work for DEFENDANTS.

7 26. Furthermore, more than 20 percent of PLAINTIFF’S time was spent on  
8 “non-attendant” household duties, such as making beds, cooking, laundry, or other  
9 duties related to the maintenance of a private household or the premises.

10 27. Over time, DEFENDANT CARRASCO began uttering on multiple  
11 occasions derogatory racial slurs to PLAINTIFF (who is of mixed race-black and  
12 Hispanic), her two minor children (who are also of mixed race), and also to the  
13 only black adult resident (who suffers from dementia).

14 28. For example, on multiple occasions, DEFENDANT CARRASCO called  
15 PLAINTIFF “Ni\*\*er”, “monkey”, and other racial slurs.

16 29. On at least once occasion, PLAINTIFF witnessed DEFENDANT  
17 CARRASCO also called PLAINTIFF’S two minor children “Ni\*\*er” directly to  
18 their faces.

19 30. PLAINTIFF also witnessed at least one incident when DEFENDANT  
20 CARRASCO called the only black adult resident of the facility a “Ni\*\*er” to her  
21 face as well, and also witnessed DEFENDANT CARRASCO physically shove that  
22 resident (who suffers dementia, among other conditions) with physical force.

23 31. Furthermore, when the coronavirus pandemic began, DEFENDANTS  
24 refused to implement any COVID safety precautions at all (not even masks) for  
25 either staff or residents.

26 32. PLAINTIFF and residents repeatedly complained to DEFENDANT  
27 CARRASCO about the lack of any safety precautions at all, which would always

1 result in DEFENDANT CARRASCO rebuffing and rejecting such complaints with  
2 the claim of “It’s my business” and “I will run this business how I want to”, among  
3 others.

4 33. On multiple occasions, in retaliation to PLAINTIFF’S numerous  
5 complaints about lack of proper safety protocols, DEFENDANT CARRASCO  
6 claimed to PLAINTIFF that she was firing PLAINTIFF, but then later that evening  
7 sent text messages to PLAINTIFF instructing her to work again to cover shifts that  
8 were not able to be covered by other staff members.

9 34. Plaintiff tried finding other living arrangements in order to move out of  
10 the facility to escape DEFENDANT CARRASCO, including looking at homeless  
11 shelters, but was unable to find suitable living arrangements for herself and her two  
12 minor children.

13 35. Eventually, on or about January 10, 2021, DEFENDANT CARRASCO  
14 physically battered and assaulted PLAINTIFF by smacking and punching  
15 PLAINTIFF and shoving her to the ground and calling PLAINTIFF derogatory  
16 racial slurs, all of which occurred in front of not only PLAINTIFF’S two minor  
17 children but also in front of residents of the facility.

18 36. The assault and battery committed by DEFENDANT CARRASCO upon  
19 PLAINTIFF was unjustified, was not consented to by PLAINTIFF, and

20 37. DEFENDANT CARRASCO then terminated PLAINTIFF again on the  
21 spot.

22 38. Retaliation for PLAINTIFF’S complaints and resistance to racial  
23 discrimination and complaints about improper COVID precautions was at least a  
24 contributing factor in DEFENDANTS’ termination of PLAINTIFF.

25 39. Any other reasoning for PLAINTIFF’S termination is false and  
26 pretextual.

27 40. PLAINTIFF was thereafter evicted from the property by

1 DEFENDANTS in January 2021, despite the residence being her personal  
2 residence for herself and her two minor children based on an agreement from prior  
3 to PLAINTIFF being employed by DEFENDANTS, which has forced PLAINTIFF  
4 to live as a transient with her two minor children, moving from one motel to the  
5 next.

6 41. During all relevant times of her employment, PLAINTIFF was required  
7 to suffer personal expenses in the discharge of her duties for DEFENDANTS,  
8 including but not limited to driving her personal vehicle multiple times to drive  
9 residents to medical appointments, driving her personal vehicle to purchase  
10 groceries for the residents, purchasing groceries and household items for the  
11 residents, and utilizing her personal cellular telephone to communicate with  
12 DEFEDANTS and other staff members as to various aspects of their employment  
13 and job duties.

14 42. Despite this, however, DEFENDANTS failed to, and refused to, provide  
15 any sort of reimbursement or indemnification of multiple items of personal  
16 expenses.

17 43. Also, during all relevant times of her employment, PLAINTIFF was  
18 always paid in cash and never received any wage statements or timesheets.

19 44. Each time PLAINTIFF was paid, her wages varied each pay period and  
20 she was never informed of what her actual hourly wage was.

21 45. Despite the constant change in her rate of pay, DEFENDANTS have  
22 never provided to Plaintiff the required written notice of the changes in her terms  
23 of her employment pursuant to Labor Code 2810.5.

24 46. To this day, PLAINTIFF is still unaware of what her actual hourly wage  
25 was, as her pay each time was varied according to whatever DEFENDANTS  
26 decided to pay her.

27 47. It is, and was, a common and regular occurrence for PLAINTIFF to

1 work 12 hours in a day on weekdays and 24/7 three days in a row on weekends.

2 48. However, DEFENDANTS failed to pay any overtime wages for these  
3 hours in violation of Wage Order 15.

4 49. Furthermore, on the days that PLAINTIFF was scheduled to work 24/7,  
5 she was not provided the hours of duty-free period mandated by Wage Order  
6 15(3)(A).

7 50. Furthermore, PLAINTIFF was required to work more than 5 days in a  
8 workweek without a day off of 24 consecutive hours, in violation of Wage Order  
9 15(3)(B).

10 51. Also, during all relevant times of her employment, DEFENDANTS  
11 failed to provide to PLAINTIFF any wage statements at all.

12 52. Also, during all relevant times of her employment, PLAINTIFF was not  
13 provided any opportunities to take 30-minute meal periods for each shift in excess  
14 of 5 hours, and was not provided any opportunities to take 10 minute rest periods  
15 for each shift between 3.5 and 4 hours.

16 53. Despite this fact, DEFENDANTS have never provided to PLAINTIFF  
17 premium wages of 1 hours' worth of pay for each workday that the meal and rest  
18 periods were not provided.

19 54. Despite being terminated on the spot, on January 10, 2021, after being  
20 battered and assaulted by DEFENDANT CARRASCO, DEFENDANTS failed to  
21 promptly pay to PLAINTIFF all wages owed to her for not only overtime wages  
22 owed but also failed to pay to her any of the wages that she was owed for time  
23 working during the pay period leading up to her termination.

24 55. Additionally, DEFENDANTS fail to keep any records at all as to  
25 PLAINTIFF as mandated by Wage Order 15(7).

26 56. After being battered and assaulted by DEFENDANT CARRASCO,  
27 PLAINTIFF was evicted from the residence and forced her to be homeless and

1 transient with her two minor children.

2 57. Despite evicting PLAINTIFF in January 2021, DEFENDANTS refused  
3 to allow PLAINTIFF to retrieve her personal property from the residence.

4 58. PLAINTIFF has since attempted to obtain her personal property, but  
5 DEFENDANTS have refused to do so.

6 59. Consequently, PLAINTIFF has been harmed by the knowing and  
7 deliberate theft of her personal property.

8 60. Plaintiff is informed and believes that at all times herein mentioned  
9 Defendants were advised by skilled lawyers and other professionals, employees,  
10 and advisors knowledgeable about California labor and wage law, employment and  
11 personnel practices, and about the requirements of California law.

12 61. At all material times, DEFENDANTS were PLAINTIFF'S employers or  
13 persons acting on behalf of PLAINTIFF'S employer, who violated or caused to be  
14 violated, the California Labor Code or any provision in any Order of the Industrial  
15 Welfare Commission and, as such, are subject to penalties.

16 62. As a direct result of the foregoing actions of DEFENDANTS,  
17 PLAINTIFF has suffered financial damages, and also emotional distress and  
18 mental anguish evidenced by symptoms including but not limited to, loss of sleep,  
19 nervousness, feelings of loss of self-worth and despair, feelings of hopelessness,  
20 sadness, fear, public and private embarrassment, and shame.

21 63. PLAINTIFF has exhausted administrative remedies by filing a  
22 complaint and obtaining a Right to Sue letter from the Department of Fair  
23 Employment and Housing on April 30, 2021.

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**FIRST CAUSE OF ACTION**  
**Racial Discrimination/Harassment**  
**California Government Code § 12940(j)**  
**(As against all Defendants)**

64. PLAINTIFF re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

65. At all times herein mentioned, California Government Code §§ 12940, *et seq.* of the Fair Employment and Housing Act (“FEHA”) and the corresponding regulations of the California Department of Fair Employment and Housing Act were in full force and effect and were binding on DEFENDANTS.

66. These sections, *inter alia*, require DEFENDANTS, as employers or employees, to refrain from harassing or discriminating against any employee on the basis of, among other things, their race.

67. Specifically, employers are strictly liable for harassment and discrimination committed by a supervising employee. § 12940(j)(1).

68. DEFENDANT CARRASCO is a supervising employee of DEFENDANT A B CARING, which means DEFENDANT A B CARING suffers strict liability for the actions of DEFENDANT CARRASCO.

69. As alleged above, PLAINTIFF was subjected to a pattern and practice of racial discrimination and harassment that unreasonably interfered with PLAINTIFF’S work performance and created an intimidating, hostile, and offensive working environment.

70. Within the time provided by law, PLAINTIFF filed a complaint with the California Department of Fair Employment and Housing, in full compliance with the law, and has received a right to sue letter, thereby exhausting any applicable administrative remedy requisite to the commencement of this lawsuit.

71. As a direct, foreseeable, and proximate result of DEFENDANTS’

1 conduct, PLAINTIFF has suffered, and continues to suffer, emotional distress,  
2 losses in salary, wages, job benefits, health insurance, and other employment  
3 benefits that she would have received from DEFENDANTS, plus expenses for not  
4 being regularly employed at her full-time position, all to her damage in a sum  
5 within the jurisdiction of this Court, to be ascertained according to proof.

6 72. PLAINTIFF also prays for reasonable costs and attorney fees against  
7 DEFENDANTS, as allowed by any and all applicable statutes.

8 73. DEFENDANTS' actions were willful, malicious, oppressive, and were  
9 committed with the wrongful intent to injure PLAINTIFF and in conscious  
10 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or  
11 punitive damages in an amount to be proven at trial.

12 74. To the extent that any violations of the above cause of action is based  
13 upon the conduct of executives, managers, and supervisors, DEFENDANT A B  
14 CARING knew about such conduct and ratified such conduct and did so with the  
15 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
16 rights.

17 **SECOND CAUSE OF ACTION**  
18 **Failure to Prevent Racial Discrimination/Harassment**  
19 **California Government Code § 12940(k)**  
20 **(As against all Defendants)**

21 75. PLAINTIFF re-alleges and incorporates by reference the foregoing  
22 allegations, as though set forth herein.

23 76. At all times herein mentioned, California Government Code section  
24 12940, *et seq.* of the Fair Employment and Housing Act and the corresponding  
25 regulations of the California Department of Fair Employment and Housing Act  
26 were in full force and effect and were binding on Defendants.

1           77. These sections, *inter alia*, require DEFENDANTS, as employers, “to  
2 take all reasonable steps necessary to prevent discrimination and harassment from  
3 occurring”.

4           78. As alleged above, PLAINTIFF was subjected to a pattern and practice of  
5 racial discrimination and harassment that unreasonably interfered with  
6 PLAINTIFF’S work performance and created an intimidating, hostile, and  
7 offensive working environment.

8           79. DEFENDANT A B CARING knew about, or should have known about,  
9 the mistreatment engaged in by its General Manager CARRASCO, but failed to  
10 take all steps reasonably necessary to prevent the harassment and discrimination  
11 from occurring in violation of the applicable provisions of Government Code  
12 sections 12940, *et seq.*

13           80. Within the time provided by law, PLAINTIFF filed a complaint with the  
14 California Department of Fair Employment and Housing, in full compliance with  
15 the law, thereby exhausting any applicable administrative remedy requisite to the  
16 commencement of this lawsuit.

17           81. As a direct, foreseeable, and proximate result of DEFENDANTS’  
18 conduct, PLAINTIFF has suffered, and continues to suffer, emotional distress,  
19 losses in salary, wages, job benefits, health insurance, and other employment  
20 benefits that she would have received from DEFENDANTS, plus expenses for not  
21 being regularly employed at her full-time position, all to her damage in a sum  
22 within the jurisdiction of this Court, to be ascertained according to proof.

23           82. PLAINTIFF also prays for reasonable costs and attorney fees against  
24 DEFENDANTS, as allowed by any and all applicable statutes.

25           83. DEFENDANTS’ actions were willful, malicious, oppressive, and were  
26 committed with the wrongful intent to injure PLAINTIFF and in conscious  
27

1 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or  
2 punitive damages in an amount to be proven at trial.

3 84. To the extent that any violations of the above cause of action is based  
4 upon the conduct of executives, managers, and supervisors, DEFENDANT A B  
5 CARING knew about such conduct and ratified such conduct and did so with the  
6 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
7 rights.

8 **THIRD CAUSE OF ACTION**  
9 **Retaliation for Reporting and Resisting Racial Discrimination/Harassment**  
10 **California Government Code § 12940(h)**  
11 **(As against all Defendants)**

12 85. PLAINTIFF re-alleges and incorporates by reference the foregoing  
13 allegations, as though set forth fully herein.

14 86. At all times herein mentioned, California Government Code sections  
15 12940, *et seq.* of the Fair Employment and Housing Act and the corresponding  
16 regulations of the California Department of Fair Employment and Housing Act  
17 were in full force and effect and were binding on DEFENDANTS.

18 87. These sections, *inter alia*, prohibit DEFENDANTS, from retaliating  
19 against employees for reporting or opposing discrimination and harassment.

20 88. As alleged above, PLAINTIFF was subjected to a pattern and practice of  
21 racial discrimination and harassment that unreasonably interfered with  
22 PLAINTIFF'S work performance and created an intimidating, hostile, and  
23 offensive working environment.

24 89. PLAINTIFF reported and complained about such conduct, requested that  
25 such conduct be stopped, and expressed her reasonable belief that such conduct  
26 was illegal.

1 90. DEFENDANTS failed to take all steps reasonably necessary to prevent  
2 the harassment and discrimination from occurring.

3 91. Instead, DEFENDANTS physically beat PLAINTIFF and ultimately  
4 terminated her employment.

5 92. PLAINTIFF'S complaints and opposition to the conduct complained  
6 about were at least a substantial motivating factor in DEFENDANTS' decision to  
7 terminate PLAINTIFF.

8 93. Such conduct violates sections of the California Fair Employment and  
9 Housing Act.

10 94. Within the time provided by law, PLAINTIFF filed a complaint with the  
11 California Department of Fair Employment and Housing, in full compliance with  
12 the law, and has obtained a right to sue letter, thereby exhausting any applicable  
13 administrative remedy requisite to the commencement of this lawsuit.

14 95. As a direct, foreseeable, and proximate result of DEFENDANTS'  
15 conduct, PLAINTIFF has suffered, and continues to suffer, emotional distress,  
16 losses in salary, wages, job benefits, health insurance, and other employment  
17 benefits that she would have received from DEFENDANTS, plus expenses for not  
18 being regularly employed at her full-time position, all to her damage in a sum  
19 within the jurisdiction of this Court, to be ascertained according to proof.

20 96. PLAINTIFF also prays for reasonable costs and attorney fees against  
21 DEFENDANTS, as allowed by any and all applicable statutes.

22 97. DEFENDANTS' actions were willful, malicious, oppressive, and were  
23 committed with the wrongful intent to injure PLAINTIFF and in conscious  
24 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or  
25 punitive damages in an amount to be proven at trial.

26 98. To the extent that any violations of the above cause of action is based  
27 upon the conduct of executives, managers, and supervisors, DEFENDANT A B

1 CARING knew about such conduct and ratified such conduct and did so with the  
2 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
3 rights.

4 **FOURTH CAUSE OF ACTION**  
5 **Whistleblower Retaliation for Reporting and Resisting Illegal Activity**  
6 **Cal Labor Code § 1102.5**  
7 **(As against all Defendants)**

8 99. PLAINTIFF re-alleges and incorporates herein by this reference the  
9 allegations in the foregoing paragraphs, as though set forth herein.

10 100. This cause of action is based on DEFENDANTS' conduct in violation  
11 of California Labor Code § 1102.5, including but not limited to subdivision (b),  
12 which prohibits employers from retaliating against employees that disclose  
13 information to an employer where the employee has reasonable cause to believe  
14 that the information discloses a violation of state or federal law, or a violation or  
15 noncompliance with a state or federal rule or regulation.

16 101. This cause of actions is also based on subdivision (c), which prohibits  
17 employers from retaliating against an employee for refusing to participate in an  
18 activity that would result in a violation of state or federal statute, or a violation or  
19 noncompliance with a state or federal rule or regulation.

20 102. DEFENDANTS physically beat PLAINTIFF and terminated her  
21 employment based on her complaints about the racial discrimination/harassment  
22 and hostile work environment created by the General Manager and also in  
23 retaliation for PLAINTIFF'S complaints about failure to implement proper COVID  
24 safety protocols.

25 103. Any other purported basis for PLAINTIFF'S termination is false and  
26 pretextual.



1           110. Section 12940 of the California Government Code expresses  
2 California’s fundamental public policy of requiring work environments to be free  
3 from discrimination and harassment due to immutable traits, including race, among  
4 others.

5           111. Section 1102.5 of the California Labor Code recognizes a  
6 fundamental public policy interest in preventing employers from terminating or  
7 retaliating against employees who oppose, report, or resist and complain about  
8 what employees believe are illegal practices, in order to protect the California  
9 workforce as a whole.

10           112. During the time that PLAINTIFF worked for DEFENDANTS,  
11 PLAINTIFF was forced to suffer racial discrimination and harassment and hostile  
12 work environment.

13           113. PLAINTIFF complained about the same and expressed in her  
14 complaints that she believed such conduct to be illegal.

15           114. PLAINTIFF also complained about DEFEDNANTS’ failure to  
16 implement proper COVID safety protocols.

17           115. PLAINTIFF was physically beaten and ultimately terminated.

18           116. At least as a contributing factor, DEFENDANTS’ intent for beating  
19 and terminating PLAINTIFF was retaliation for her reporting and resisting the  
20 suspected illegal actions of DEFENDANTS.

21           117. DEFENDANTS’ discharge of PLAINTIFF therefore violated the  
22 public policy of the State of California.

23           118. As a direct, foreseeable, and proximate result of DEFENDANTS’  
24 conduct, PLAINTIFF has suffered, and continues to suffer, emotional distress,  
25 losses in salary, wages, job benefits, health insurance, and other employment  
26 benefits that she would have received from DEFENDANTS, plus expenses for not  
27

1 being regularly employed at her full-time position, all to her damage in a sum  
2 within the jurisdiction of this Court, to be ascertained according to proof.

3 119. PLAINTIFF also prays for reasonable costs and attorney fees against  
4 DEFENDANTS, as allowed by any and all applicable statutes.

5 120. DEFENDANTS' actions were willful, malicious, oppressive, and  
6 were committed with the wrongful intent to injure PLAINTIFF and in conscious  
7 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or  
8 punitive damages in an amount to be proven at trial.

9 121. To the extent that any violations of the above cause of action is based  
10 upon the conduct of executives, managers, and supervisors, DEFENDANT A B  
11 CARING knew about such conduct and ratified such conduct and did so with the  
12 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
13 rights.

14 **SIXTH CAUSE OF ACTION**  
15 **Assault and Battery**  
16 **Civil Code § 43**  
17 **(As against all Defendants)**

18 122. PLAINTIFF re-alleges and incorporates by reference the foregoing  
19 allegations as though set forth fully herein.

20 123. DEFENDANT CARRASCO, and vicariously via *respondeat superior*,  
21 DEFENDANT A B CARING, are liable for assault and battery committed against  
22 PLAINTIFF when: (a) DEFENDANTS touched PLAINTIFF in reckless disregard  
23 of PLAINTIFF'S rights or intended to cause a harmful or offensive contact with  
24 PLAINTIFF, and an offensive contact with PLAINTIFF resulted; (b) PLAINTIFF  
25 did not consent to the touching; (c) PLAINTIFF was harmed or offended by  
26 DEFENDANTS' conduct; and (d) a reasonable person in PLAINTIFF'S situation  
27 would have been harmed or offended by the touching.

124. As a direct, foreseeable, and proximate result of DEFENDANTS'

1 conduct, PLAINTIFF has suffered, and continues to suffer, emotional distress and  
2 other pecuniary loss that she, all to her damage in a sum within the jurisdiction of  
3 this Court, to be ascertained according to proof.

4 125. PLAINTIFF also prays for reasonable costs and attorney fees against  
5 DEFENDANTS, as allowed by any and all applicable statutes.

6 126. DEFENDANTS' actions were willful, malicious, oppressive, and were  
7 committed with the wrongful intent to injure PLAINTIFF and in conscious  
8 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or  
9 punitive damages in an amount to be proven at trial.

10 127. To the extent that any violations of the above cause of action is based  
11 upon the conduct of executives, managers, and supervisors, DEFENDANT A B  
12 CARING knew about such conduct and ratified such conduct and did so with the  
13 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
14 rights.

15 **SEVENTH CAUSE OF ACTION**  
16 **Bane Act Violations**  
17 **Civil Code § 52.1**  
18 **(As against all Defendants)**

19 128. PLAINTIFF re-alleges and incorporates by reference the foregoing  
20 allegations as though set forth fully herein.

21 129. DEFENDANT CARRASCO, and vicariously via *respondeat superior*,  
22 DEFENDANT A B CARING, are liable to PLAINTIFF for violations of the Bane  
23 Act because DEFENDANTS: (a) by threat, intimidation or coercion; (b) interfered  
24 or attempted to interfere; (c) with the exercise or enjoyment of PLAINTIFF'S  
25 rights (e.g., Civil Code § 43; Cal. Const., Art. 1, Secs. 1 and 13; Gov't Code §  
26 12940; Lab. Code §1102.5); and (d) DEFENDANTS' conduct was a substantial  
27 factor in causing PLAINTIFF harm.

130. As a direct, foreseeable, and proximate result of DEFENDANTS'

1 conduct, PLAINTIFF has suffered, and continues to suffer, emotional distress and  
2 other pecuniary loss that she, all to her damage in a sum within the jurisdiction of  
3 this Court, to be ascertained according to proof.

4 131. PLAINTIFF also prays for reasonable costs and attorney fees against  
5 DEFENDANTS, as allowed by any and all applicable statutes.

6 132. DEFENDANTS' actions were willful, malicious, oppressive, and were  
7 committed with the wrongful intent to injure PLAINTIFF and in conscious  
8 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or  
9 punitive damages in an amount to be proven at trial.

10 133. To the extent that any violations of the above cause of action is based  
11 upon the conduct of executives, managers, and supervisors, DEFENDANT A B  
12 CARING knew about such conduct and ratified such conduct and did so with the  
13 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
14 rights.

15 **EIGHTH CAUSE OF ACTION**  
16 **Ralph Civil Rights Act Violations**  
17 **Civil Code § 51.7**  
**(As against all Defendants)**

18 134. PLAINTIFF re-alleges and incorporates by reference the foregoing  
19 allegations as though set forth fully herein.

20 135. DEFENDANT CARRASCO, and vicariously via *respondeat superior*,  
21 DEFENDANT A B CARING, are liable to her for violation of the Ralph Act  
22 because DEFENDANTS: (a) by violence and intimidation by the threat of  
23 violence; (b) seized PLAINTIFF without any lawful basis, committed a battery  
24 against PLAINTIFF, and/or committed assault and battery against PLAINTIFF; (c)  
25 because of her race; and (d) DEFENDANTS' conduct was a substantial factor in  
26 the harm PLAINTIFF suffered.

27 136. As a direct, foreseeable, and proximate result of DEFENDANTS'

1 conduct, PLAINTIFF has suffered, and continues to suffer, emotional distress and  
2 other pecuniary loss that she, all to her damage in a sum within the jurisdiction of  
3 this Court, to be ascertained according to proof.

4 137. PLAINTIFF also prays for reasonable costs and attorney fees against  
5 DEFENDANTS, as allowed by any and all applicable statutes.

6 138. DEFENDANTS' actions were willful, malicious, oppressive, and were  
7 committed with the wrongful intent to injure PLAINTIFF and in conscious  
8 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or  
9 punitive damages in an amount to be proven at trial.

10 139. To the extent that any violations of the above cause of action is based  
11 upon the conduct of executives, managers, and supervisors, DEFENDANT A B  
12 CARING knew about such conduct and ratified such conduct and did so with the  
13 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
14 rights.

15 **NINTH CAUSE OF ACTION**  
16 **Failure to Reimburse Business Expenses**  
17 **Labor Code § 2802**  
**(As against all Defendants)**

18 140. PLAINTIFF re-alleges and incorporates by reference the foregoing  
19 allegations as though set forth fully herein.

20 141. Labor Code § 2802 provides that “[a]n employer shall indemnify his  
21 or her employee for all necessary expenditures or losses incurred by the employee  
22 in direct consequence of the discharge of his or her duties.”

23 142. Pursuant to Labor Code §§ 218.5 and 218.6, an action may be brought  
24 for the nonpayment of wages and fringe benefits.

25 143. While discharging her duties for DEFENDANTS, PLAINITFF  
26 incurred necessary work-related expenses.

1 144. DEFENDANTS failed to reimburse PLAINTIFF for these  
2 expenditures and losses.

3 145. By requiring PLAINTIFF to pay expenses and cover losses that she  
4 incurred in direct consequence of the discharge of her duties for DEFENDANTS  
5 and/or in obedience of DEFENDANTS' direction or expectations, DEFENDANTS  
6 have violated and continues to violate Labor Code § 2802.

7 146. PLAINTIFF also prays for reasonable costs and attorney fees against  
8 DEFENDANTS, as allowed by any and all applicable statutes.

9 147. As a direct, foreseeable, and proximate result, PLAINTIFF has  
10 suffered injury and losses in an amount not yet ascertained but within the  
11 jurisdiction of this Court.

12 148. To the extent that any violations of the above cause of action is based  
13 upon the conduct of executives, managers, and supervisors, DEFENDANT A B  
14 CARING knew about such conduct and ratified such conduct and did so with the  
15 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
16 rights.

17 **TENTH CAUSE OF ACTION**  
18 **Failure to Pay Wages and Overtime Wages**  
19 **California Labor Code §§ 204, 210, 510, and 1194**  
20 **(As against all Defendants)**

21 149. PLAINTIFF re-alleges and incorporates by reference the foregoing  
22 allegations as though set forth fully herein.

23 150. California law requires an employer to pay each employee accurately.  
24 If hourly, the employer is required to compensate the employee for the actual hours  
25 worked, including all overtime compensation. (See Cal. Labor Code §§204, 510,  
26 1194.)

27 151. At all times relevant during her employment, PLAINTIFF worked  
many hours in excess of the threshold number of hours that would trigger her right

1 to receive overtime wages, but she was not properly compensated because of  
2 DEFENDANTS' unlawful policies.

3 152. In committing the violations of state law as herein alleged,  
4 DEFENDANTS have knowingly and willfully refused to perform their obligations  
5 to compensate PLAINTIFF for all wages earned based on hours worked, including  
6 overtime.

7 153. PLAINTIFF is entitled to recover such amounts owed as wage  
8 premiums, plus interest thereon, attorney's fees and costs, plus statutory and civil  
9 penalties pursuant to the Labor Code and other applicable laws and regulations.

10 154. PLAINTIFF also prays for reasonable costs and attorney fees against  
11 DEFENDANTS, as allowed by any and all applicable statutes.

12 155. As a direct, proximate, and foreseeable result of DEFENDANTS'  
13 failure to pay wages owed, PLAINTIFF has suffered and continues to suffer, losses  
14 related to the use and enjoyment of such compensation, wages, lost interest on such  
15 monies, as well as expenses and attorney's fees in seeking to compel  
16 DEFENDANTS to fully perform their obligation under state law.

17 156. Furthermore, as a direct and proximate result of the above unlawful  
18 actions, PLAINTIFF has suffered and continue to suffer loss of wages, expenses,  
19 and earnings in amount yet ascertained.

20 157. To the extent that any violations of the above cause of action is based  
21 upon the conduct of executives, managers, and supervisors, DEFENDANT A B  
22 CARING knew about such conduct and ratified such conduct and did so with the  
23 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
24 rights.

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1 165. PLAINTIFF also prays for reasonable costs and attorney fees against  
2 DEFENDANTS, as allowed by any and all applicable statutes.

3 166. Furthermore, as a direct and proximate result of the above unlawful  
4 actions, PLAINTIFF has suffered and continues to suffer loss of wages, expenses,  
5 and earnings in amount yet ascertained.

6 167. To the extent that any violations of the above cause of action is based  
7 upon the conduct of executives, managers, and supervisors, DEFENDANT A B  
8 CARING knew about such conduct and ratified such conduct and did so with the  
9 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
10 rights.

11 **TWELFTH CAUSE OF ACTION**  
12 **Failure to Pay Wages Due at Separation**  
13 **Cal. Lab. Code §§ 201, 202, 203**  
14 **(As against all Defendants)**

15 168. PLAINTIFF re-alleges and incorporates by reference the foregoing  
16 allegations as though set forth fully herein.

17 169. California Labor Code §§ 201 and 202 requires DEFENDANTS to  
18 pay all compensation due and owing at or around the time employment is  
19 separated.

20 170. Pursuant to Section 201(a), when an employee is discharged, the  
21 wages earned and unpaid are due and payable immediately.

22 171. Pursuant to Section 202(a), for those who resign, the time period for  
23 such payment cannot exceed 72 hours after resignation.

24 172. Section 203 of the California Labor Code provides that if an employer  
25 willfully fails to pay compensation promptly upon discharge or resignation, as  
26 required by §§ 201 and 202, then the employer is liable for penalties in the form of  
27 continued compensation up to thirty (30) workdays.

1 173. At all times relevant during the liability period, PLAINTIFF was an  
2 employee of DEFENDANTS covered by Labor Code § 203.

3 174. However, PLAINTIFF was not paid for work performed, as set forth  
4 herein, including overtime pay or premium wages for missed/interrupted/untimely  
5 breaks.

6 175. DEFENDANTS willfully failed to pay PLAINTIFF such wages owed  
7 upon termination or separation from employment with DEFEDNANTS as required  
8 by California Labor Code §§ 201 and 202.

9 176. As a result, DEFENDANTS are liable to PLAINTIFF for all wages or  
10 compensation owed, as well as waiting time penalties amounting to thirty days'  
11 worth of wages pursuant to California Labor Code § 203.

12 177. PLAINTIFF also prays for reasonable costs and attorney fees against  
13 DEFENDANTS, as allowed by any and all applicable statutes.

14 178. To the extent that any violations of the above cause of action is based  
15 upon the conduct of executives, managers, and supervisors, DEFENDANT A B  
16 CARING knew about such conduct and ratified such conduct and did so with the  
17 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
18 rights.

19 **THIRTEENTH CAUSE OF ACTION**  
20 **Failure to Furnish Compliant Wage Statements**  
21 **Cal. Lab. Code §§ 201, 202, 203**  
22 **(As against all Defendants)**

23 179. PLAINTIFF repeats, re-alleges, and incorporates by reference all  
24 other paragraphs, as if fully set forth herein.

25 180. Labor Code § 226(a) requires, in pertinent part, that “Every employer  
26 shall, [...] furnish each of her or her employees, [...], an accurate itemized  
27 statement in writing showing (1) gross wages earned, (2) total hours worked by the

1 employee, [...] (4) all deductions, [...] (5) net wages earned, (6) the inclusive dates  
2 of the period for which the employee is paid, (7) the name of the employee and her  
3 or her social security number, [...], (8) the name and address of the legal entity that  
4 is the employer, and (9) all applicable hourly rates in effect during the pay period  
5 and the corresponding number of hours worked at each hourly rate by the  
6 employee [ . . . ].” (Labor Code § 226 subdivision (a).)

7 181. Subdivision (e)(1) provides liquidated damages as follows: “An  
8 employee suffering injury as a result of a knowing and intentional failure by an  
9 employer to comply with subdivision (a) is entitled to recover the greater of all  
10 actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
11 occurs and one hundred dollars (\$100) per employee for each violation in a  
12 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars  
13 (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.”

14 182. Here, DEFENDANTS knowingly and intentionally failed to provide  
15 to PLAINTIFF wage statements containing all of the required and applicable  
16 information set forth under Labor Code § 226, including accurate information  
17 regarding hours worked to where an hourly wage was earned, hours worked that  
18 entitle overtime compensation, and meal and rest break premium payments earned.

19 183. The above-mentioned inaccuracies and the failure to provide  
20 PLAINTIFF with wage and earning statements caused injury to PLAINTIFF  
21 within the meaning of Labor Code § 226.

22 184. For DEFENDANTS’ misconduct as alleged herein, PLAINTIFF seeks  
23 all damages, civil and statutory penalties, costs and attorneys’ fees, including but  
24 not limited to those available pursuant to Labor Code § 226(e).

25 185. To the extent that any violations of the above cause of action is based  
26 upon the conduct of executives, managers, and supervisors, DEFENDANT A B  
27 CARING knew about such conduct and ratified such conduct and did so with the

1 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
2 rights.

3 **FOURTEENTH CAUSE OF ACTION**  
4 **CONVERSION/THEFT**  
5 **(As against all Defendants)**

6 186. PLAINTIFF re-alleges and incorporates by reference the foregoing  
7 allegations as though set forth fully herein.

8 187. Conversion is a strict liability tort. The foundation of the action rests  
9 neither in the knowledge nor the intent of the defendant. Instead, the tort consists  
10 in the breach of an absolute duty; the act of conversion itself is tortious. Therefore,  
11 questions of the defendant's good faith, lack of knowledge, and motive are  
12 ordinarily immaterial. *Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066.

13 188. At all relevant times, PLAINTIFF owned personal property and had a  
14 right to possess her personal property that has been unlawfully kept at  
15 DEFENDANTS' residence where PLAINTIFF lived her with two minor children.

16 189. DEFENDANTS have refused and failed to return to PLAINTIFF her  
17 personal property.

18 190. DEFENDANTS are still in possession of PLAINTIFF'S personal  
19 property, despite her requests for such property to be returned to her.

20 191. DEFENDANTS therefore have substantially, and willfully, interfered  
21 with PLAINTIFF'S rights to her personal property.

22 192. As a direct, foreseeable, and proximate result of DEFENDANTS'  
23 conduct, PLAINTIFF has suffered, and continues to suffer, emotional distress and  
24 damages in a sum within the jurisdiction of this Court, to be ascertained according  
25 to proof.

26 193. PLAINTIFF also prays for reasonable costs and attorney fees.

27 194. DEFENDANTS' actions were willful, malicious, oppressive, and

1 were committed with the wrongful intent to injure PLAINTIFF and in conscious  
2 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or  
3 punitive damages in an amount to be proven at trial.

4 195. To the extent that any violations of the above cause of action is based  
5 upon the conduct of executives, managers, and supervisors, DEFENDANT A B  
6 CARING knew about such conduct and ratified such conduct and did so with the  
7 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
8 rights.

9 **FIFTEENTH CAUSE OF ACTION**

10 **Unjust Enrichment**  
11 **(As against all Defendants)**

12 196. PLAINTIFF re-alleges and incorporates by reference the foregoing  
13 allegations as though set forth fully herein.

14 197. At all relevant times, PLAINTIFF owned personal property and had a  
15 right to possess her personal property that has been unlawfully kept at  
16 DEFENDANTS' residence where PLAINTIFF lived her with two minor children.

17 198. DEFENDANTS have refused and failed to return to PLAINTIFF her  
18 personal property.

19 199. DEFENDANTS are still in possession of PLAINTIFF'S personal  
20 property, despite her requests for such property to be returned to her.

21 200. DEFENDANTS therefore have substantially, and willfully, interfered  
22 with PLAINTIFF'S rights to her personal property.

23 201. In doing so, DEFENDANTS have been unjustly enriched to the  
24 detriment and loss of PLAINTIFF.

25 202. As a direct, foreseeable, and proximate result of DEFENDANTS'  
26 conduct, PLAINTIFF has suffered, and continues to suffer, emotional distress and  
27 damages in a sum within the jurisdiction of this Court, to be ascertained according

1 to proof.

2 203. PLAINTIFF also prays for reasonable costs and attorney fees.

3 204. DEFENDANTS' actions were willful, malicious, oppressive, and  
4 were committed with the wrongful intent to injure PLAINTIFF and in conscious  
5 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or  
6 punitive damages in an amount to be proven at trial.

7 205. To the extent that any violations of the above cause of action is based  
8 upon the conduct of executives, managers, and supervisors, DEFENDANT A B  
9 CARING knew about such conduct and ratified such conduct and did so with the  
10 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
11 rights.

12 **SIXTEENTH CAUSE OF ACTION**  
13 **Unfair/Unlawful Business Practices**  
14 **Bus. & Professions Code §§ 17200, et seq.**  
15 **(As against all Defendants)**

16 206. PLAINTIFF repeats, re-alleges, and incorporates by reference all  
17 other paragraphs, as if fully set forth herein.

18 207. DEFENDANTS' acts, conduct, and practices, as alleged herein, were  
19 unlawful in that DEFENDANTS' conduct violated multiple sections of the Labor  
20 Code, Government Code, and Civil Code, as set forth in the preceding causes of  
21 action.

22 208. The injury to PLAINTIFF greatly outweighs any alleged  
23 countervailing benefit to consumers or competition under all of the circumstances,  
24 and the actions have served no purpose but to benefit DEFENDANTS' financially.

25 209. There were reasonably available alternatives to further  
26 DEFENDANTS' legitimate business interests, other than the conduct described  
27 herein.

1           210. Because DEFENDANTS have violated the unfair competition laws,  
2 Bus. & Prof. Code §§ 17200, *et seq.*, an action under Bus. & Prof. Code § 17206 is  
3 proper and necessary to prevent DEFENDANTS from continuing to engage in  
4 further improper and unlawful employment practices.

5           211. As a result of DEFENDANTS' unlawful, unfair and fraudulent  
6 business practices, PLAINTIFF has suffered injury in fact and has lost money or  
7 property.

8           212. Pursuant to California Bus. and Prof. Code § 17203, PLAINTIFF is  
9 therefore entitled to restitution of all monies paid to and/or received by  
10 DEFENDANTS and disgorgement of all profits accruing to DEFENDANTS  
11 because of such unfair and improper business practices.

12           213. PLAINTIFF also prays for reasonable costs and attorney fees against  
13 DEFENDANTS, as allowed by any and all applicable statutes.

14           214. DEFENDANTS' actions were willful, malicious, oppressive, and were  
15 committed with the wrongful intent to injure PLAINTIFF and in conscious  
16 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or  
17 punitive damages in an amount to be proven at trial.

18           215. To the extent that any violations of the above cause of action is based  
19 upon the conduct of executives, managers, and supervisors, DEFENDANT A B  
20 CARING knew about such conduct and ratified such conduct and did so with the  
21 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
22 rights.

23                           **SEVENTEENTH CAUSE OF ACTION**  
24                           **Negligent Hiring/Training/Supervision/Retention**  
25                           **(As against Defendant A B CARING only)**

26           216. PLAINTIFF repeats, re-alleges, and incorporates by reference all  
27 other paragraphs, as if fully set forth herein.

1           217. DEFENDANT A B CARING is liable for PLAINTIFF'S harm not only  
2 for the reasons specified in each cause of action above, but also because it  
3 negligently hired, trained, supervised, and/or retained its employees,  
4 representatives, agents or contractors when: (a) DEFENDANT A B CARING  
5 failed to train its supervisors, managers, and agents on preventing racial  
6 discrimination and harassment, and/or how to take prompt corrective action to  
7 prevent or stop such discrimination/harassment; (b) DEFENDANT A B  
8 CARING'S supervisors, managers, and agents were unfit to perform the duties for  
9 which they were hired and created a particular risk to PLAINTIFF and others; (c)  
10 DEFENDANT A B CARING knew or should have known that its supervisors,  
11 managers, and agents posed a particular risk to PLAINTIFF and others; (d)  
12 DEFENDANT A B CARING'S supervisors, managers, and agents' unfitness  
13 harmed PLAINTIFF; and (e) DEFENDANT A B CARING'S negligence in hiring,  
14 training, supervision, and retention of its supervisors, managers, and agents was a  
15 substantial factor in causing PLAINTIFF'S harm.

16           218. As a direct, foreseeable, and proximate result of DEFENDANTS'  
17 conduct, PLAINTIFF has suffered, and continues to suffer, emotional distress and  
18 other pecuniary loss that she.

19           219. PLAINTIFF also prays for reasonable costs and attorney fees against  
20 DEFENDANTS, as allowed by any and all applicable statutes.

21           220. DEFENDANTS' actions were willful, malicious, oppressive, and were  
22 committed with the wrongful intent to injure PLAINTIFF and in conscious  
23 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or  
24 punitive damages in an amount to be proven at trial.

25           221. To the extent that any violations of the above cause of action is based  
26 upon the conduct of executives, managers, and supervisors, DEFENDANT A B  
27 CARING knew about such conduct and ratified such conduct and did so with the

1 wrongful intent to injure PLAINTIFF and in conscious disregard of PLAINTIFF'S  
2 rights.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANT  
5 individually, and that PLAINTIFF be awarded the following:

- 6 1. That PLAINTIFF is entitled to punitive or exemplary damages against said  
7 Defendants, and each of them, for their acts as described in this cause of  
8 action in a sum to be determined at the time of trial;
- 9 2. For penalties, special damages, and general damages in an amount to be  
10 proven at trial;
- 11 3. Statutory penalties and liquidated penalties permitted by any and all  
12 applicable statutes;
- 13 4. For emotional distress damages;
- 14 5. Loss of income incurred and to be incurred, including any and all damages  
15 flowing therefrom, according to proof;
- 16 6. Injunctive relief in the type and manner deemed appropriate by the Court,  
17 such as mandatory training for supervisors;
- 18 7. For prejudgment interest at the legal rate;
- 19 8. Costs and attorneys' fees; and
- 20 9. Such other and further relief as the Court may deem proper and just.

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1 **TRIAL BY JURY**

2 Pursuant to the Seventh Amendment to the Constitution of the United States  
3 of America, PLAINTIFF is entitled to, and demands, a trial by jury.  
4

5 Dated: April 30, 2021

**SEMNAR & HARTMAN, LLP**

6  
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8 By: Jared M. Hartman  
9 Jared M. Hartman, Esq.  
10 Attorneys for Plaintiff,  
11 KAYLA IRVING  
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