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JANE DOE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

JANE DOE, an individual;

Plaintiff,

vs.

GAVIN NEWSOM, an individual; PLUMPJACK MANAGEMENT GROUP LLC, a California limited liability company; BALBOA CAFÉ PARTNERS, a California limited partnership; HILARY NEWSOM, an individual; JEREMY SCHERER, an individual; DEANN GRAFFIGNA, an individual; ADRIAN SUAREZ, an individual; MIGUEL RUIZ, an individual; GUILLAUME ISSAVERDENS, an individual; and DOES 1 through 50, inclusive;

Defendants.

Case No.

COMPLAINT FOR:

CGC-24-619361

1. **SEXUAL BATTERY IN VIOLATION OF CIV. CODE §1708.5**
2. **COMMON LAW BATTERY**
3. **SEXUAL ASSAULT**
4. **SEXUAL HARASSMENT IN VIOLATION OF FEHA (GOV. CODE §12940(J))**
5. **SEX DISCRIMINATION IN VIOLATION OF FEHA (GOV. CODE §12940(A))**
6. **RETALIATION IN VIOLATION OF FEHA (GOV. CODE §12940(H))**
7. **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION IN VIOLATION OF FEHA (GOV. CODE §12940(K))**
8. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
9. **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
10. **RETALIATION IN VIOLATION OF LABOR CODE §98.6**

11. **WHISTLEBLOWER RETALIATION (LABOR CODE §1102.5)**
12. **NEGLIGENT HIRING AND RETENTION**
13. **FAILURE TO WARN AND NEGLIGENT SUPERVISION**
14. **FAILURE TO PAY WAGES (LABOR CODE §§204 AND 210)**
15. **FAILURE TO PROVIDE MEAL BREAKS (WAGE ORDER 4-2001 AND LABOR CODE §§226.7 AND 512)**
16. **FAILURE TO PROVIDE REST BREAKS (WAGE ORDER 4-2001 AND LABOR CODE §226.7)**
17. **FAILURE TO PAY MINIMUM WAGES (WAGE ORDER 4-2001 AND LABOR CODE §§1194(A), 1194.2(A), 1197, 1197.1 AND 1182.12)**
18. **FAILURE TO PAY OVERTIME (WAGE ORDER 4-2001 AND LABOR CODE §§510, 558, 1194 AND 1198)**
19. **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (LABOR CODE §226)**
20. **FAILURE TO PAY ALL WAGES EARNED UPON DISCHARGE (LABOR CODE §§201, 202 AND 203)**
21. **RETALIATION FOR TAKING SICK LEAVE (LABOR CODE §§233 AND 234 ET. SEQ.)**
22. **FAILURE TO PROVIDE TIMELY ACCESS TO PERSONNEL RECORDS (LABOR CODE §1198.5)**
23. **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY (CONSTRUCTIVE DISCHARGE)**
24. **DECLARATORY JUDGMENT – ILLEGAL MEAL PERIOD POLICY**
25. **INJUNCTIVE RELIEF – ILLEGAL IP AGREEMENT & NON-COMPETE**

26. UNLAWFUL BUSINESS PRACTICES (BUSINESS AND PROFESSIONS CODE §17200)

DEMAND FOR JURY TRIAL

Plaintiff Jane Doe ("**Plaintiff**" or "**Doe**") hereby alleges the following Complaint against Defendants Gavin Newsom ("**G. Newsom**"), Plumpjack Management Group LLC ("**Plumpjack**"), Balboa Café Partners ("**Balboa**"), Hilary Newsom ("**H. Newsom**"), Jeremy Scherer ("**Scherer**"), Deann Graffigna ("**Graffigna**"), Adrian Suarez ("**Suarez**"), Miguel Ruiz ("**Ruiz**"), Guillaume Issaverdens ("**Issaverdens**"), and Does 1 through 50 (collectively, the "**Defendants**") as follows:

THE PARTIES

1. Plaintiff was and at all times relevant hereto was a resident of the State of California, County of San Francisco.

2. During her tenure with Plumpjack and Balboa, Plaintiff was employed by and performed services for Plumpjack and Balboa in the County of San Francisco.

3. Plaintiff is informed and believes that Plumpjack is presently a California limited liability company located in San Francisco, California and that it does business in and employs individuals in the state of California and the County of San Francisco.

4. Plumpjack was Plaintiff's employer within the meaning of Government Code §§ 12926(d), 12940 (a), (h), (l), (h) (3) (A) and (i), and 12950, and the Labor Code, and regularly employs five (5) or more persons and is therefore subject to the jurisdiction of this Court.

5. Plaintiff is informed and believes that Balboa is presently a California limited partnership located in San Francisco, California. Balboa does business in and employs individuals in the state of California and the County of San Francisco.

6. Balboa is a joint employer along with Plumpjack of Plaintiff, H. Newsom, Graffigna, Scherer, Suarez, and Ruiz, as well as all of the other Plumpjack and Balboa employees mentioned herein.

7. Balboa was Plaintiff's employer within the meaning of Government Code §§ 12926(d), 12940 (a), (h), (l), (h) (3) (A) and (i), and 12950, and the Labor Code, and regularly employs five (5) or more persons and is therefore subject to the jurisdiction of this Court.

8. Plaintiff is informed and believes that G. Newsom is and at all times relevant hereto was a resident of the State of California, County of Sacramento.

9. Plaintiff is informed and believes that H. Newsom is and at all times relevant hereto

was a resident of the State of California, County of San Francisco.

10. Plaintiff is informed and believes that Scherer is and at all times relevant hereto was a resident of the State of California, County of San Francisco.

11. Plaintiff is informed and believes that Graffigna is and at all times relevant hereto was a resident of the State of California, County of San Francisco.

12. Plaintiff is informed and believes that Suarez is and at all times relevant hereto was a resident of the State of California, County of San Francisco.

13. Plaintiff is informed and believes that Ruiz is and at all times relevant hereto was a resident of the State of California, County of San Francisco.

14. Plaintiff is informed and believes that Issaverdens is and at all times relevant hereto was a resident of the State of California, County of San Francisco.

15. The true names and capacities, whether individual, corporate, associate, or otherwise of the Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this Complaint to insert the true names and capacities of said Defendants when the same become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of the fictitiously named Defendants is responsible for the wrongful acts alleged herein and is therefore liable to Plaintiff as alleged hereinafter.

16. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of the other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part within the course and scope of said agency, employment, conspiracy, joint employment, alter ego status, and/or joint venture and with the permission and consent of each of the other Defendants.

17. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each of them, including those Defendants named DOES 1-50, acted in concert with one another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled, and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed

and believes, and based thereupon alleges, that the Defendants, and each of them, including those Defendants named as DOES 1-50, formed and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to and actually causing Plaintiff harm.

18. Whenever and wherever reference is made in this Complaint to any act or failure to act by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts and/or failures to act by each Defendant acting individually, jointly and severally.

JURISDICTION AND VENUE

19. The monetary value of Plaintiff's claim exceeds $25,000.

20. The amount in controversy herein is within the jurisdiction of this Court.

21. The acts, omissions, damages, and injury that form the basis of this lawsuit were sustained in the County of San Francisco.

22. Plaintiff was a resident of the County of San Francisco at all times relevant hereto.

23. Plaintiff is informed and believes that Plumpjack, Balboa, H. Newsom, Scherer, Graffigna, Suarez, Ruiz, and Issaverdens are residents of the County of San Francisco.

24. This Court is the proper Court, and this action is properly filed in San Francisco County because (i) at least one Defendant resides in San Francisco County, (ii) Defendants' obligations and liability arise therein, (iii) Plumpjack transacts business within San Francisco County, (iv) Balboa transacts business within San Francisco County, and (v) because the work that is the subject of this action was performed by Plaintiff in San Francisco County.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

25. At all times herein mentioned, the Fair Employment and Housing Act, California Government Code §§ 12900 through 12996 (hereinafter "**FEHA**"), was in full force and effect and binding on Defendants.

26. Within the time provided by FEHA and in compliance with the requirements of FEHA, Plaintiff filed a complaint with the California Department of Fair Employment and Housing now the Civil Rights Division ("**CRD**") and received a right to sue letter. As such, Plaintiff has satisfied Plaintiff's administrative prerequisites with respect to these and all related filings.

ALTER EGO, AGENCY, AND JOINT EMPLOYER

27. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity of interest and ownership between Defendants and DOES 1-50 that the individuality and separateness of Defendants have ceased to exist.

28. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of purported corporate existence, DOES 1-50 are, in reality, one and the same as Defendants, including, but not limited to because:

a. Defendants are completely dominated and controlled by DOES 1-50, who personally violated the laws as set forth in this complaint, and who have hidden and currently hid behind Defendants to circumvent statutes or accomplish some other wrongful or inequitable purpose.

b. DOES 1-50 derive actual and significant monetary benefits by and through Defendants' unlawful conduct, and by using Defendants as the funding source for their own personal expenditures.

c. Plaintiff is informed and believes that Defendants and DOES l-50, while really one and the same, were segregated to appear as though separate and distinct for purposes of circumventing a statute or accomplishing some other wrongful or inequitable purpose.

d. Plaintiff is informed and believes that Defendants do not comply with all requisite corporate formalities to maintain a legal and separate corporate existence.

e. Plaintiff is informed and believes, and based thereon alleges, that the business affairs of Defendants and DOES 1-50 are, and at all times relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in inextricable confusion. Defendants are, and at all times relevant hereto were, used by DOES 1-50 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and were, the alter ego of DOES 1-50. The recognition of the separate existence of Defendants would not promote justice, in that it would permit Defendants to insulate themselves from liability to Plaintiff for violations of the Government Code, Labor Code, and other statutory violations. The corporate existence of Defendants and DOES 1-50 should be disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

29. Accordingly, Defendants constitute the alter ego of DOES 1-50, and the fiction of their separate corporate existence must be disregarded.

30. As a result of the aforementioned facts, Plaintiff is informed and believes, and based thereon alleges that Defendant and DOES 1-50 are Plaintiff's joint employers by virtue of a joint enterprise, and that Plaintiff was an employee of Defendants and DOES 1-50. Plaintiff performed services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff as an employee, either directly or indirectly, in the manner in which Defendants' business was and is conducted.

FACTUAL ALLEGATIONS

31. Plaintiff is a hardworking woman, who was an exceptional employee with extensive experience in the service industry. She started working at Balboa in or around August 2021, all while attending school to earn her Bachelor's degree at San Francisco State University. Plaintiff is a go-getter, and juggles work and school with determination and a positive attitude.

32. Between September 2021 and March 2023, Plaintiff worked as a Server at Balboa, a highly populated restaurant bar with a fast-paced working environment located in San Francisco, California.

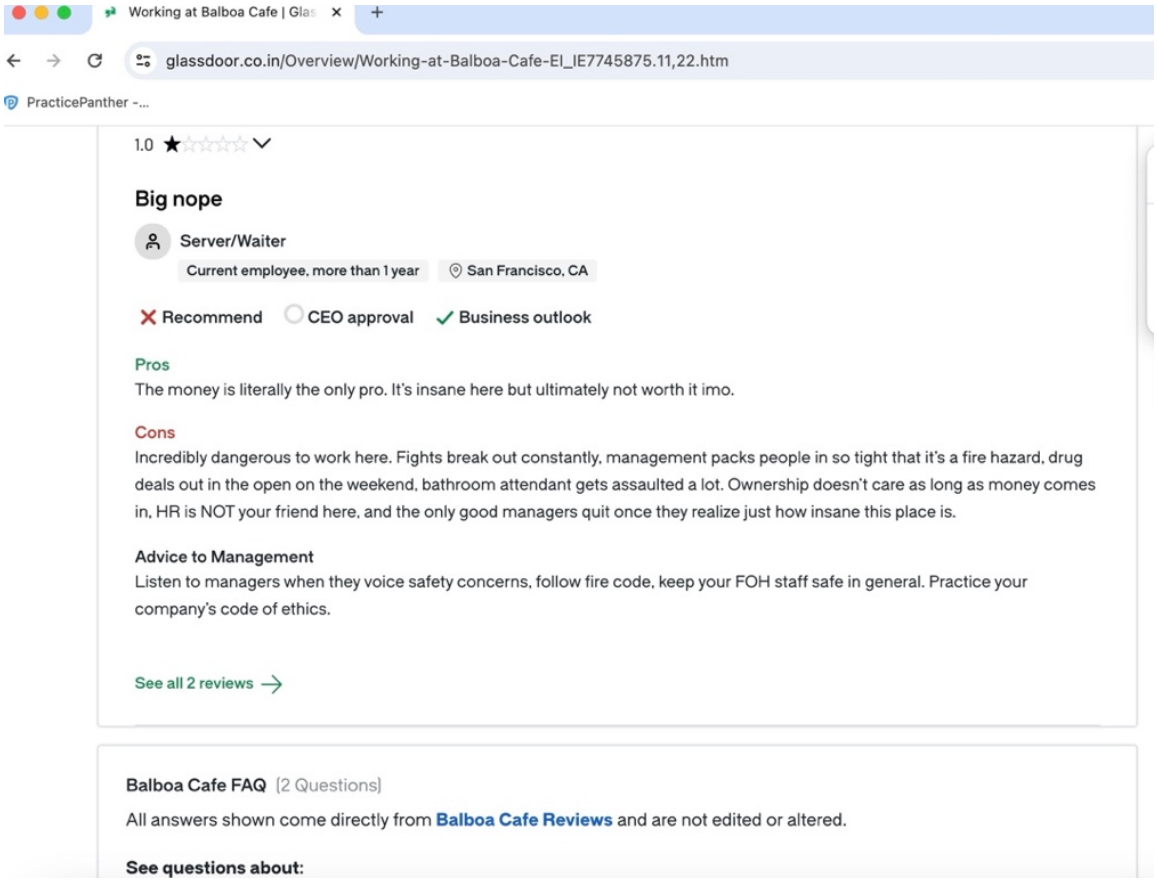
33. Balboa is one of the many establishments under the parent company of Plumpjack and both are owned by the Newsom family. Gavin Newsom, the Governor of California, is the Founder and owner of Plumpjack and the many restaurants, wineries, and retail establishments in Plumpjack's current portfolio. H. Newsom, Gavin Newsom's sister, and Scherer are Plumpjack's Co-Presidents.

34. During her tenure as a Server at Balboa, Plaintiff earned $16.99 per hour, making her a nonexempt employee. She also earned roughly $1,000 to $1,500 a pay period in tips.

Defendants Subjected Plaintiff to Sexual Harassment

35. Since the start of her employment at Balboa, Plaintiff experienced relentless harassment, discrimination, and retaliation without any protection whatsoever from Plumpjack and Balboa despite having complained numerous times.

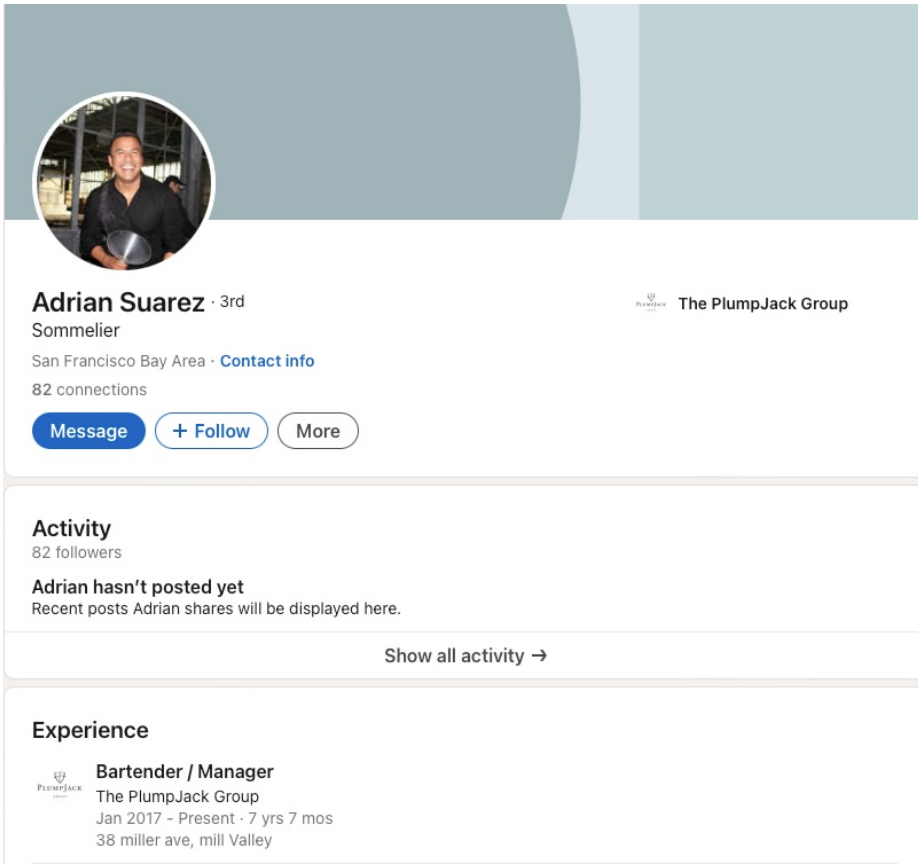
36. In fact, it was commonly known that Balboa was not a safe place to work. Glassdoor reviews about the working conditions at Balboa indicate as much:



37. From the get-go, Plaintiff was subjected to sexual harassment by her male colleagues. Having worked in the service industry for many years, sexual harassment was not unfamiliar to Plaintiff. However, the sexual harassment at Balboa and the reaction to said sexual harassment by Plumpjack management, went beyond mere harassment and bled into criminality.

38. After several negative experiences working as a woman at other restaurants and bars, Plaintiff learned that sexual commentary from male colleagues is commonplace in the industry. As such, being the tough woman she is, Plaintiff begrudgingly sucked it up and dealt with it as she needed to remain employed in order to afford her basic living expenses and to put herself through school. For this reason, Plaintiff begrudgingly put up with the sexually harassing commentary from the other male servers, bartenders, and barbacks at Balboa until the sexual misconduct escalated to a point where she could no longer tolerate or ignore it anymore, not just for her sake but for all former, current, and prospective female employees of Balboa.

39. From the get-go, the sexual harassment Plaintiff experienced at Balboa was relentless, particularly by Suarez, a Balboa bartender and manager, and Ruiz, a Balboa busser. In fact, Suarez specifically holds himself out and presents himself publicly as a manager – both at Balboa to patrons, to Balboa employees, and to the general public on his LinkedIn profile:



40. Specifically, these men, especially Ruiz, were extremely handsy with Plaintiff. Not a single shift went by without Suarez and/or Ruiz either physically grabbing Plaintiff or shooting sexual commentary in her direction. This included, but is not limited to, such actions as:

- Coming behind Plaintiff and squeezing her hips without her consent;
- Regularly slapping and grabbing Plaintiff's butt without her consent;
- Hugging Plaintiff and leaning in to try to kiss her without her consent;
- Commenting on Plaintiff's appearance; and
- Making sexually inappropriate gestures and/or noises in Plaintiff's direction.

41. Ruiz would often approach Plaintiff and kiss her on the cheek when she would walk in for her shift and then, when Plaintiff would pull away, he would try to kiss her on the lips. Plaintiff

was extremely uncomfortably by this unwanted behavior and rejected the unwanted kiss on the check (much less the attempt to try to kiss her on the lips), clearly signaling to Ruiz that this action was unwanted as well.

42. Nonetheless, this type of behavior by Ruiz persisted even over Plaintiff's repeated rejections and consistent objections. The harassment Plaintiff endured by these employees was constant, and the culture at Balboa, that has been cultivated by its management and ownership, condoned harassment.

Plaintiff Complains to Her Manager at Balboa

43. By the spring of 2022, the sexual harassment was so relentless that it finally reached the point where Plaintiff had been harassed so much that she could no longer bear it, and she had to notify management of the ongoing sexual harassment as she could no longer suffer in silence.

44. In or around March 2022, Plaintiff had just finished her shift and decided to enjoy the rest of her evening at Balboa with a friend. It was nearing the time when the restaurant portion of Balboa was closing, and Plaintiff was preparing to leave Balboa to go home.

45. Prior to leaving Balboa, she entered Balboa's women's restroom to use the facilities before leaving and what followed would give any woman nightmares.

46. Unbeknownst to Plaintiff, Suarez followed Plaintiff into the women's restroom. Then, while inside the women's bathroom, Suarez cornered her and told her that he wanted to "see her outfit." Then, immediately, Suarez then grabbed Plaintiff's hand and twirled her around. As Suarez spun Plaintiff back around facing him and before Plaintiff even knew or could comprehend what was happening to her, Suarez proceed to pull Plaintiff in really close to him and slid his other hand along her entire vaginal area and cupped her vagina. Immediately, Plaintiff pulled away and looked Suarez dead in the eyes and said, "That is not okay."

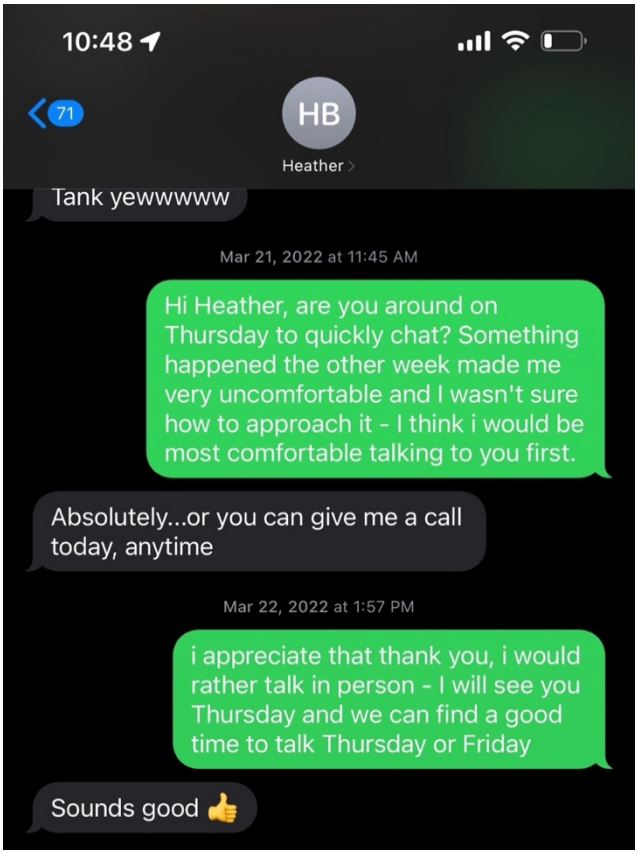
47. Understandably, Plaintiff was mortified and very shook up by the situation. Even more embarrassing was that several of her coworkers witnessed the incident as well. One even went out of their way to ask if Plaintiff was okay and proceeded to tell Plaintiff that if she were to complain to management, they would back Plaintiff up because Suarez had done things like this in the past to other female workers.

48. In fact, Suarez was notorious at Balboa for this type of overtly sexual, predator-like behavior – numerous Balboa employees and even Balboa's management knew of Suarez's predatory behaviors, including, but not limited to, Balboa's General Manager, Issaverdens and Plaintiff's direct manager Heather Zeigra ("**Zeigra**").

49. Even though Balboa's management was keenly aware of Suarez' predatory behavior and the overall culture in the restaurant, Balboa and its management did nothing to stop or prevent this type of behavior in the workplace and, by their actions, tacitly approved of it.

50. Plaintiff was so distraught by the incident that she complained to Balboa's management, specifically her direct manager, Zeigra, about all of the sexual harassment she was experiencing at work.

51. In fact, Plaintiff even expressly text Zeigra after the incident to speak about the incident in person because she was so distraught:



52. During their in-person meeting, Plaintiff complained to Zeigra about the sexual harassment that she was suffering from. Zeigra then informed Plaintiff that she was going to escalate

and forward Plaintiff's complaint to Balboa's human resources and Issaverdens.

53. After complaining and being told that her complaint was going to be escalated and reported to Balboa's management, Plaintiff expected some kind of follow-up but, ultimately, heard nothing.

54. Rather, it was quite the opposite as Suarez faced **no** discipline whatsoever.

55. Moreover, despite Plaintiff's complaints, Balboa and PlumpJack did not even bother to investigate Suarez's actions, the sexual harassment being suffered by Plaintiff, or the rampant sexual harassment that was taking place at Balboa.

56. Plaintiff's complaints were not only well founded, but verifiable, yet Balboa and PlumpJack management did nothing to protect Plaintiff in the workplace from the intense sexual harassment that she was suffering or even make Plaintiff feel safe. Instead, Plaintiff's complaint went unheard and uninvestigated as Balboa treated her like the classic sexual harassment victim – unbelieved and left to fend for herself.

57. In fact, Balboa and PlumpJack management were keenly aware of the sexual harassment taking place at the Company, but intentionally turned a blind eye to it and, as a result, continued to foster a workplace that was intensely hostile to not only Plaintiff, but women in general.

58. The lack of action taken by Balboa and PlumpJack is especially disturbing and disgraceful given that the founder and one of the current owners of Plumpjack and Balboa is California's Governor, Gavin Newsom, and the Company is run by Gavin Nesom's own sister, Hilary Newsome.

59. Gavin Newsom presents himself as a champion of women's rights, publicly denouncing other politicians, such as Donald Trump, for their inhumane treatment of women.

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60. When a video of former President (then candidate) Donald Trump discussing grabbing women "by the pussy" was leaked to the media in 2016, Gavin Newsom put out the following Instagram post:

61. Apparently, groping women in their genital region and sexually harassing women is intolerable when it is done by Gavin Newsom's political rivals, but when the male employees at his own family run business subject his female employees to this exact same unspeakable treatment, suddenly it is shrugged off and sanctioned by the entire Newsome family.

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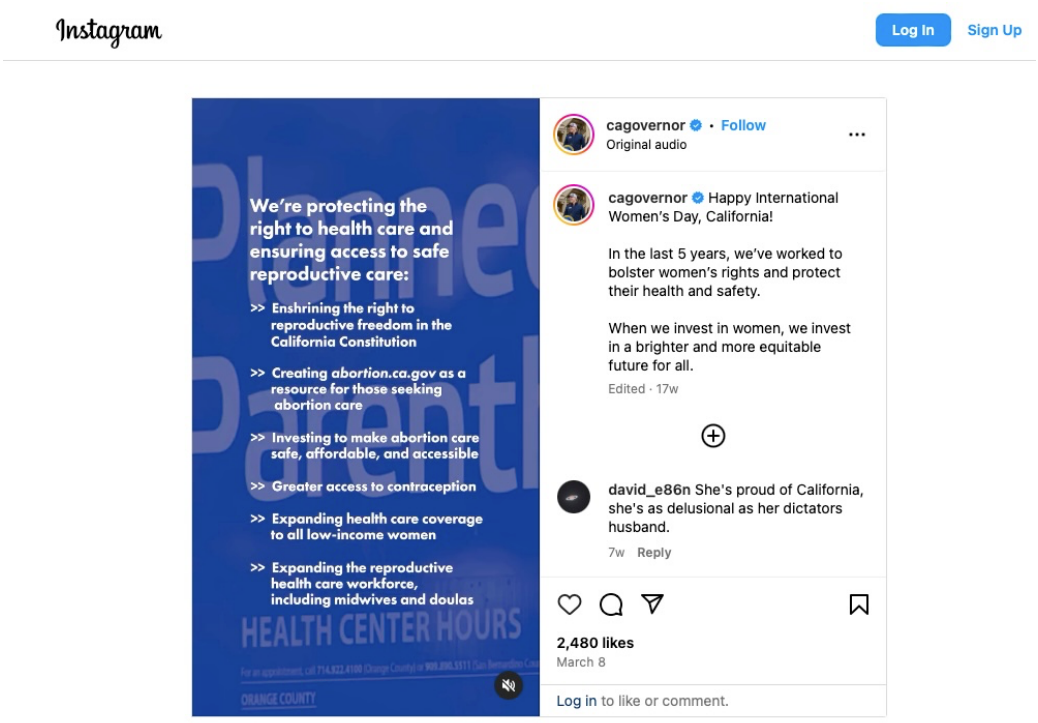
62. In fact, G. Newsom and his family have made countless statements about his so-called mission to protect and fight for women in California, including:

- California must do everything it can to protect the fundamental rights of all women – in California and beyond," said Governor Newsom.[1]
- "Gov. Gavin Newsom has vowed to make California a sanctuary for women[.]"[2]
- "That's why I'm proud to reside in, and raise my children in California where our Governor, Administration, and Legislature trust women, and respect our authority to make decisions about our own reproductive health and futures."[3]

63. And have posted things such on Instagram and other social media platforms such as champion women's rights such as:



[1] Link to article in which G. Newsom is quoted: https://www.gov.ca.gov/2022/06/24/in-response-to-supreme-court-decision-governor-newsom-signs-legislation-to-protect-women-and-providers-in-california-from-abortion-bans-by-other-states/

[2] https://www.pbs.org/newshour/politics/watch-california-gov-newsom-speaks-on-abortion-rights-climate-change-fight

[3] Comment by G. Newsom's wife regarding his leadership in California at https://www.gov.ca.gov/2022/06/24/in-response-to-supreme-court-decision-governor-newsom-signs-legislation-to-protect-women-and-providers-in-california-from-abortion-bans-by-other-states/.

64. Gavin Newsom has also called out other politicians for their sexist statements towards women. In reference to Larry Edler,[4] Gavin Newsom was quoted as saying: "'[h]e actually wrote an op-ed saying women are not as smart as men on issues of civic affairs, on issues of economics, on issues of politics."

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[4] https://abc7.com/larry-elder-california-recall-election-gavin-newsom-women-comments/10960411/

65. Gavin Newsom's most prominent statements though are about Trump:

66. The current President of the United States, Joe Biden, even highlights Gavin Newsom as a champion for women: "California, keep Gavin Newsom and send a message to the nation. (Applause.) Women are to be respected and their rights protected."[5]

67. Likewise, the current Vice President of the United States and the Democratic Party's nominee for President in the 2024 election, Kamala Harris, has also applauded Gavin Newsom's fight for women: "Congratulations to my friend, Governor Gavin Newsom. The pandemic has reminded us who we can count on, and Californians know they can count on Governor Newsom. He is focused on beating back COVID-19, and helping the state make a big comeback. In resoundingly rejecting

[5] https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/14/remarks-by-president-biden-at-a-get-out-the-vote-event-with-governor-newsom/

this recall attempt, California's voters made it clear that the American people want leaders who stand for women's rights, voting rights, and workers' rights."[6]

68. Gavin Newsom's wife has also taken an active role in fighting for women, especially women who are victims of sexual harassment and assault: "Written on a dry-erase board in Jennifer Siebel Newsom's office overlooking the dome of the California Capitol are two phrases: 'gender equity' and 'support for survivors.' As a feminist and documentary filmmaker, Siebel Newsom has been on a mission to tell women's stories and upend the gender imbalance that permeates life in America. As the first partner of California and wife of Democratic Gov. Gavin Newsom, she has influence at the highest tier of state government."

69. H. Newsom, who was, herself, complicit in covering up and sanctioning the sexual harassment of Plaintiff described herein, claims publicly to support these endeavors by her sister-in-law when in the public eye, "At the USC Women's Conference in early March, Siebel Newsom joined her sister-in-law, Hilary Newsom, who runs PlumpJack Group, the winery and hospitality company that the governor founded decades ago. […] On stage, Siebel Newsom talked about the underfunding of women's health research and offered a line she would repeat at other events: that women make up more than 50 percent of the population and deserve better care and support[.] […] Hilary Newsom cheered on her sister-in-law from the crowd."[7] Though behind closed doors, H. Newsom does anything but advocate for women, as illustrated below.

70. The entire Newsom family publicly champions women's rights and condemns sexual harassment, but when it comes to their own businesses, the Newsom family not only turns a blind eye to the rampant sexual harassment committed by their male employees, but expressly condone it as they refuse to discipline or terminate the perpetrators such as Suarez and Ruiz even when they openly admit to sexually harassing female employees.

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[6] https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/15/statement-by-vice-president-kamala-harris-on-california-governor-gavin-newsoms-recall-election-victory/

[7] https://www.governing.com/politics/jennifer-siebel-newsoms-past-helps-shape-californias-future

71. In fact, the perpetrators of these heinous acts described in this Complaint are still employed by the Newsom family, PlumpJack group and Balboa today even though Newsom family, PlumpJack group and Balboa are all aware of their admitted behavior. Clearly, their statements above ring hollow when it comes to their own businesses and protecting their own female employees.

Plaintiff is Drugged and Raped at Balboa

72. While Plaintiff did not think the sexual harassment or matters could get any worse at Balboa, she was wrong as in or around June 2022, they unfortunately got much worse. In fact, what occurred is quite literally every woman's nightmare.

73. Plaintiff was planning on having a nice relaxing night home on the couch on the evening of June 17, 2022, when she realized that her wallet was missing. When Plaintiff tried to remember where her wallet could be, she remembered that the last place that she had her wallet was at Balboa during her work shift the night before. As Balboa was the last place Plaintiff remembered having her wallet in her possession, Plaintiff decided that to get off her couch and walk to Balboa to get her wallet. As Plaintiff was already going to be walking to Balboa, she was motivated to turn the short walk to Balboa into a longer walk for exercise before continuing her relaxing night in on the couch. As a result, Plaintiff left her apartment at around 7:00 p.m. in her workout gear and head to Balboa to pick up her wallet before continuing on her long walk.

74. Upon arriving to Balboa, Plaintiff immediately encountered Ruiz, whom she asked if he had seen her wallet. Ruiz indicated that he had seen her wallet and brought Plaintiff to the storage room where her wallet was located.

75. As Plaintiff was retrieving her wallet from the storage room, Ruiz proceeded to ask Plaintiff if he could make her a quick drink before she left on her walk. As this was Plaintiff's place of employment and her coworker offering to make her drink, Plaintiff, who did not want to be antisocial with her coworkers, and thinking it was harmless to accept a drink made at her place of work and by a coworker, accepted Ruiz's offer. However, Plaintiff stated that she could only stay for a single drink since she needed to be quick as she planned on finishing up her walk and heading home for the night.

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76. At this point, it was around 7:00 p.m., and Balboa was not crowded. Plaintiff returned to the main area from the storage area. As the bar was nearly empty, Plaintiff took a seat at the bar while Ruiz made Plaintiff's drink. However, Plaintiff was not watching Ruiz make her drink as she was engaged in a conversation with a regular bar patron who was there as well.

77. Ruiz then handed Plaintiff an espresso martini that he stated that he had made. However, as Plaintiff planned on having a quiet night in after her walk, she did not want to consume the caffeine and asked Ruiz if he could make her a different type of drink that did not have espresso in it as she did not want to be up late from drinking espresso.

78. Ruiz then made Plaintiff a new drink. Again, Plaintiff was not watching or paying attention to Ruiz make her drink. Ruiz then handed Plaitniff the new drink and stated that he made it. Again, as Plaintiff did not want to be unsocial with her coworkers and thought it was harmless to accept a drink made at her place of work by a coworker, took the drink from Ruiz. Although, Plaintiff had no intent of finishing the drink that Ruiz had provided to her as she did not want to drink that night and, in fact, had just stopped in from her night "in" at home to pick up her wallet. Plaintiff's plan was merely to take a few sips to be social and then leave to finish her walk and continue with her relaxing night in at home.

79. As a result, Plaintiff only took a few small sips of the new drink that Ruiz had made for her and never let the drink out of her sight. In fact, even though the bar was virtually empty, Plaintiff still kept the drink covered with her hand, as many women have trained themselves to do out of an abundance of caution.

80. What happened next is every woman's worst nightmare.

81. The last thing Plaintiff remembers is taking those two sips of that drink before everything went completely black, erasing and blurring the memories of the hours that follow. The next she knew she was in her bed, and it was morning.

82. Confused, she started asking around about what happened the night before as she had no recollection of the night. She picked up her phone to discover a random text from an unknown number, asking her how she was feeling. She replied, "Who is this?" The number replied back stating that he was the bouncer from Comet Club, a bar neighboring Balboa. This bouncer said he found

Plaintiff extremely out of it, limp, and passed out on the sidewalk right next to Balboa, with a group of "sketchy men" hovering over her. He quickly intervened and helped her get home.

83. Other than that, Plaintiff had no information and no lead as to what transpired that night. Knowing it was completely unlike her, or highly unlikely for *anyone*, for that matter, to black out after sipping on no more than a few sips of a single drink, she immediately went to the hospital that morning terrified of what had happened to her the night before.

84. When Plaintiff arrived at the hospital, she told the reception that she needed a toxicology report and rape kit done. Plaintiff then underwent this extremely traumatizing, humiliating, and violating process.

85. After the tests were completed, the hospital staff told her that her results would be back in ten (10) weeks, which meant ten long agonizing weeks to find out if every woman's worst nightmare had come true for Plaintiff.

The Toxicology Report and Rape Kit Results

86. Ten (10) weeks later Plaintiff did get her results back, which confirmed her worst fears, namely **she had been drugged and raped**.

87. From the toxicology report, the following unfamiliar substances, in addition to alcohol, were in Plaintiff's system:

- Diphenhydramine – an antihistamine compound used for the symptomatic relief of allergies. When taken with alcohol, it can cause drowsiness, sedation, and trouble doing physical and mental tasks that require alertness.
- Norephedrine – a sympathomimetic used as a decongestant and appetite suppressant. It was commonly used in prescription and over-the-counter cough and cold medicines. Interactions with alcohol include nervous system side effects such as dizziness, drowsiness, depression, and difficulty concentrating.

88. As such, the toxicology report clearly showed traces of substances resembling Benadryl and/or cough syrup, which, when mixed with alcohol, make it difficult, if not impossible, to remain conscious.

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89. However, at no point in time did Plaintiff knowingly ingest Benadryl, cough syrup, or any other similar type of medication that day nor did she ingest any substances or medication containing these substances. The only medications taken by Plaintiff that day were her prescription medications, which do **not** contain any of the aforementioned ingredients.

90. Clearly, Plaintiff had been drugged by Ruiz who made Plaintiff's drink.

91. The last thing Plaintiff remembers was taking two sips of the drink made by Ruiz. Ruiz had been sexually harassing her for months by this point and had already committed other acts of sexual deviancy towards Plaintiff, including, but not limited to, grabbing her vagina and repeatedly trying to kiss her. Plaintiff was not giving into Ruiz advances, and so, he determined to render her unconscious to finally get his way with Plaintiff sexually.

92. There can be no other conclusion – Plaintiff was drugged by the person who made the drink: Ruiz, a Balboa employee, while he was on duty and working at Balboa.

93. The rape kit's results were even more horrifying. Three (3) different DNA profiles of sperm, i.e., three different male profiles, were picked up on Plaintiff's rape kit. Specifically:

- In the neck area, at least two, possibly three, samples of sperm were found.
- The cervical swab found two sperm contributors.
- The interior vaginal wall contained one sperm contributor.
- The vulva swab found two sperm contributors.
- The perianal swab found three sperm contributors.

94. Plaintiff was ***raped*** and sexually assaulted by not just one, but multiple people at Balboa, her place of employment, after being knocked unconscious by a cocktail dosed with sedatives by one of Balboa's employees.

95. Sadly, while sexual assault happens, you never think it will happen to you much less at your place of employment, but it did happen to Plaintiff, and it happened because of Balboa and the culture that Balboa, PlumpJack Group, and the Newsom's perpetuate at their restaurants and businesses.

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96. And, as described herein below, rather than come to the aid of Plaintiff, who was a clear sexual assault victim, Defendants engaged in a pattern of retaliation, denial, coverup as well as outright victim blaming in direct contrast to their very public statements and positions of allegedly not only supporting women and their rights but believing and supporting sexual assault and harassment victims.

Plaintiff Informs Balboa and Plumpjack that She Was Sexually Assaulted

97. Immediately after going to the hospital, but before she received her results back from the toxicology report and the rape kit, Plaintiff immediately texted Zeigra, stating that she had been roofied at Balboa last night and spent the entire morning at the Emergency Room with no memory of anything that occurred the night before. Plaintiff went on to tell Zeigra that she knew exactly who at Balboa made the drink too.

98. In fact, Plaintiff told Zeigra that this was the "second time" that her drink had been spiked at Balboa. The first time occurred a few months prior on a night when Plaintiff was out with a friend. Plaintiff had only two drinks that night when she was out, and she blacked out after the second drink. Thankfully, her friend was with her that night, so she was safe. At the time, Plaintiff did not know what happened, nor did she know who was to blame. However, one of the drinks that she had that night was made by Ruiz as well. While Plaintiff would have never assumed that her co-worker was responsible for spiking her drink previously, now, because of this, Plaintiff became confident that it was Ruiz who likely also spiked her drink months earlier as Ruiz was now the common denominator here between both events.

99. Plaintiff never received a response from Zeigra to the aforementioned text. Rather, Balboa's HR department reached out to her to schedule a meeting.

100. Plaintiff then met and spoke with H. Newsom, the Co-President of Plumpjack (and sister of Gavin Newsom), and Graffigna, the Vice President of Human Resources at Plumpjack. She did not leave a single detail out and told H. Newsom and Graffigna every detail she remembered.

101. Plaintiff also expressly informed H. Newsom and Graffigna that she had gone to the hospital and was waiting on the results from the toxicology report and the rape kit, which she expected to receive back sometime in September 2022.

102. In fact, H. Newsom and Graffigna demanded to see the results of the rape kit in order to "corroborate" her story. All the while, Gavin Newsom publicly states that this kind of need for proof by rape victims is inherently wrong:

103. Also in this meeting, Plaintiff reiterated to H. Newsom and Graffigna her previous complaints that she made to the Company about the relentless sexual harassment she had been continuously subjected to by Ruiz and Suarez, and that she was still suffering from since her complaints. Plaintiff also expressly complained that Defendants failed to take any action to rectify or prevent future harassment from occurring, which ultimately has led to a culture at Balboa where sexually harassing female employees not only goes unpunished, but is accepted and expressly allowed by PlumpJack Group, Balboa, and the Newsom family.

104. Plaintiff spent most of the meeting with H. Newsom and Graffigna crying hysterically, while she was re-traumatized, over-criticized, victim blamed and picked apart.

105. In response to her complaints, H. Newsom and Graffigna conducted a so-called "investigation," which ended up being a spree of victim blaming, even in spite of the fact that Plaintiff's accusations were corroborated, in part, by the *perpetrators themselves*, and expressly admitted that Ruiz and Suarez engaged in conduct in violation of company policy.

106. Concerning her allegations of rape, H. Newsom and Graffigna claimed to have interviewed all of the employees about Plaintiff's allegations. After allegedly speaking to all of Balboa's employees, H. Newsom and Graffigna circled back with Plaintiff to belittle, humiliate, and gas light Plaintiff by lying to her and telling her that nobody else believed her.[8] They told her that no one else experienced Plaintiff's version of events and that her coworkers all unanimously agreed that Plaintiff was probably making it all up. They then told Plaintiff there was nothing they could do since no one could corroborate her story.

107. What makes these actions worse by H. Newsom and Graffigna is that the *perpetrators themselves* (i.e., Ruiz and Suarez) had already expressly admitted to Defendants that they had sexually harassed Plaintiff, so their statements that "nobody believed her" and that "her coworkers all unanimously agreed that she was probably making it all up" was a bold-faced lie as Ruiz and Suarez had already admitted to Defendants that they had, indeed, sexually harassed Plaintiff.

108. It is evident that Defendants were gaslighting Plaintiff in order to protect their own financial interests as well as Gavin Newsom's political career rather than take any actions.

109. If that is not enough, even though Suarez and Ruiz openly admitted to sexually harassing Plaintiff, they received no punishment whatsoever and Suarez and Ruiz both still work at Balboa today.

110. To be clear, these means that the Newsom family, Balboa, PlumpJack and Defendants are still, today, knowingly employing two individuals that have admitted to sexually harassing their female employees putting not only every other female employee at Balboa at risk, but also every single female patron that enters the bar or restaurant.

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[8] Sadly, these same victim-blaming tactics were also weaponized and used against Jennifer Siebel Newsom, which is G. Newsom's wife and H. Newsom's sister-in-law, in the criminal trial for charges brought against Harvey Weinstein, which was downright atrocious for anyone to do Ms. Newsom. However, in a twist of irony, while these types of attacks were roundly criticized by the entire Newsom family as deplorable and reprehensible (which they were), H. Newsome and Defendants then instituted the same lines of attack (which they had just railed against being used against their family member) against Plaintiff when she raised complaints of sexual harassment and rape:

https://www.theguardian.com/culture/2022/nov/20/jennifer-siebel-newsom-harvey-weinstein-rape-trial-tactics

111. Distraught and in tears, Plaintiff then asked if she could have the video footage of the cameras inside the bar from the night that she was sexually assaulted to see if that would shed any light on what happened the night she was raped at Balboa. Conveniently, H. Newsom and Graffigna claimed that the cameras were allegedly "broken" so they could not provide her with any video footage from the night that she was raped at Balboa.

112. H. Newsom and Graffigna concluded their meeting with Plaintiff by telling her that could take some unpaid time off if she needed it.[9] Because of rent and the sheer cost of living expenses in San Francisco, Plaintiff could not afford to go without any income for any real length of time and, as a result, was only able to take a week off before having to return to work.

Defendants Embark on a Retaliation Spree Against Plaintiff

113. As Plaintiff needed to work to survive in San Francisco, Plaintiff tried to return to Balboa and her job, as best she could, and desperately attempted to block out her assault as Defendants' consistent gaslighting of Plaintiff truly made Plaintiff feel that nobody was ever going to believe her anyways not to mention the fact that these people were, essentially, protected by the Governor of California, who founded and owns Balboa and PlumpJack.

114. Rather than terminate Suarez and Ruiz for their admitted sexual harassment of Plaintiff, Defendants retaliated against Plaintiff and forced Plaintiff to return to work with not only her harassers, but the individual that facilitated and participated in raping Plaintiff.

115. This would only be the beginning of Defendants' campaign of retaliation against Plaintiff for her complaints and brining to light Defendants facilitation of a work environment where sexual harassment is not only condoned and tolerated, but tacitly encouraged by the Newsom family, Balboa and PlumpJack group as admitted sexual harassers not only go unpunished but are given preferential treatment over the victims of their abuse.

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[9] To clarify, Plaintiff was not paid her regular hourly wages while she took time off to recover from this traumatic incident. Rather, Defendants just had her "tipped out" for the days she missed, which meant Plaintiff's co-workers who worked those days had to share their tips with Plaintiff for those days, but Defendants themselves did not have to pay her at all (i.e., they left the burden on Plaintiff's co-workers to provide any compensation to her whatsoever).

116. Anyone that has ever stepped foot inside of Balboa knows and understands that Balboa is not a big restaurant or bar. And, everyone, including servers and staff are always in close proximity to one another.

117. Understanding the foregoing, Defendants solution to Plaintiff's sexual harassment complaints, her allegations of rape by a Balboa employee that had already admitted to sexually harassing her, and Suarez' and Ruiz' admitted sexual harassment of Plaintiff was, again, not to terminate Suarez and Ruiz, but just to have Plaintiff serve and wait on tables in the front section of the restaurant even though Plaintiff would still have to regularly run into as well as interact with Suarez and Ruiz during her shifts given the incredibly small size of Balboa. To make matters worse, Suarez and Ruiz were able to maintain their existing positions at Balboa without any modifications. Clearly, Defendants were punishing the victim and not the admitted sexual harassers.

118. Defendants also knew that, by placing Plaintiff in the front of the restaurant, they could turn Balboa's employees against Plaintiff, which, Defendants knew would result in them retaliating against Plaintiff. This was specifically designed to try to force Plaintiff to quit.

119. The front section of Balboa contains larger tables than the other areas of Balboa's restaurant and, as a result, many of Balboa's servers believed this section produced better tips. As a result, it is well known at Balboa and to Defendants that this section was sought-after by a lot of other employees. Thus, Defendants knew that by placing Plaintiff exclusively in this section, Defendants other employees would do their dirty work for them and retaliate against Plaintiff. And Defendants' actions had the desired result as Plaintiff immediately faced intense backlash and retaliation from her coworkers (including being ignored and extremely passive-aggressive behavior).

120. The backlash and retaliation was so intense that Defendants' on-sight management only placed her there for a day and placed Plaintiff back in her normal location. As a result, even Defendants alleged "solution" to Plaintiff's complaints lasted only a day and Plaintiff was forced right back into the same exact situation that she was in previously as Defendants would stop at nothing to protect the actual admitted sexual harasser.

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121. Even after being removed from the front section of the restaurant, Plaintiff's co-workers, who were previously friendly to Plaintiff prior to making her complaints, continued to ignore Plaintiff and be extremely passive-aggressive towards Plaintiff. Confused as to why everyone was suddenly so upset with her and treating her so poorly, Plaintiff asked a coworker what the issue was and if she did something to upset someone. Her coworker then expressly told Plaintiff that she was not allowed to say anything about it because if she did, she would get in trouble. Clearly, word had come down to freeze Plaintiff out and retaliate against her for her complaints.

122. Management itself, specifically Issaverdens, Graffigna, and Zeigra, were aware of the backlash and retaliation that Plaintiff was facing because of her complaints and just allowed it to continue.

123. While Defendants tried to spin that placing Plaintiff in the front section was "favorable," they knew it was actually a death sentence for Plaintiff with her co-workers. So much so that she had to be removed almost as soon as she was put there because her coworkers were retaliating against her and treating her so poorly. Defendants knew that this would cause a divide between Plaintiff and her co-workers, which was their intent from the beginning in order to try to force Plaintiff to quit. And, Defendants actions had its intended results as animosity grew towards Plaintiff by Balboa staff.

124. Not only did Plaintiff face backlash and retaliation from her co-workers, but also Defendants' management started to retaliate against her as well.

125. At one point during a walk home where Plaintiff had to pass by Balboa, Plaintiff noticed that her friends were sitting in Balboa's outside seating section (which is essentially just some tables on the public sidewalk that has non-customers regularly walking through traversing the public sidewalk and a "parklet" in Greenwich street, which is also a location that is open to the public as it is just some tables in the street), which was erected during the COVID-19 pandemic. As her friends flagged her down to come say hi, Plaintiff briefly walked over to say hi to them; however, Plaintiff, who was not working that night, had no desire to step foot in Balboa after what had occurred to her there and did not enter the premises at all.

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126. In response to Plaintiff just being in the vicinity of the restaurant, Issaverdens then immediately reprimanded Plaintiff for saying hi to her friends (who were outside of the restaurant in a public area and not inside) on her walk home. Issaverdens then erroneously tried claiming that she was in violation of the no-drinking policy even though (1) Plaintiff was not working, (2) not actually drinking, and (3) on a public sidewalk (which is not Balboa's property) saying hi to her friends that were also in a public space. Plaintiff immediately broke down in tears because of Issaverdens' retaliation and told him that she was not patronizing Balboa (i.e., she was not a customer) nor was she drinking at Balboa either and she also expressly told him that, in fact, she did not even want to be at Balboa in the first place, due to the trauma she had experienced there, and she was merely saying hi to her friends on her walk home.

127. To make matters worse, other Balboa employees regularly drink during and outside of their working hours at Balboa and Balboa's bartenders regularly take shots with customers sitting at the bar. However, these employees are never reprimanded, but Plaintiff who was not working, not drinking, and not even on Balboa's property (she was on a public sidewalk) was immediately reprimanded by Issaverdens, which was clearly done to retaliate against Plaintiff for her complaints.

128. Also, right around this time, and in the wake of Plaintiff's complaints about sexual harassment and misconduct, Defendants began their relentless smear campaign against Plaintiff.

129. Almost immediately after meeting with H. Newsom and Graffigna, Plaintiff started getting mysteriously written up for a slew of purported policy violations, in an effort to retaliate against Plaintiff and make a baseless paper trail which substantiate Defendants' retaliatory termination of Plaintiff down the line.

130. Before complaining, Plaintiff had been written up *only five (5) times*, nearly all of which were very early on in her employment at Balboa for very minor things when she was not fully accustomed to various policies and procedures and, to make matters worse, most of these write-ups were not even legal as they disciplined Plaintiff for calling in sick and missing shifts due to illness, which is well within Plaintiff's right to do under California law, as outlined further below.

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131. However, **after complaining**, Plaintiff was disciplined with ***twenty-eight (28) write-ups*** for things that included taking and using her legally protected sick time and other trivial issues that other employees who committed the same infractions were not written up for. In fact, some of these so-called "policy violations" and writeups are blatantly unlawful and a grotesque violation of Plaintiff's rights under California law, as detailed further below.

132. After her complaints, the write-ups increased exponentially and at a rapid rate, culminating in an alleged final retaliatory write-up which ended in her termination. Clearly, Balboa management was targeting Plaintiff for complaining about the sexual harassment because Balboa wanted Plaintiff to remain silent.

Plaintiff Is Disciplined on Unlawful Grounds as Defendants Grasp for Straws to Find Any Reason to Retaliate Against Plaintiff

133. Defendants came up with any reason, no matter the legality, to discipline and thereby retaliate against Plaintiff for her complaints, including, but not limited to, write-ups for taking sick time and for not clocking in and then immediately out thirty (30) minutes before her shift even started so that Defendants could evade its legal obligations to provide Plaintiff with a meal break.

134. It goes without saying that Plaintiff is entitled to paid sick time as an employee in the state of California. *See* Cal. Lab. Code §246.

135. Plaintiff is also entitled to use that sick time as needed and is only required to provide notice of her need to use her sick leave as soon as practicable if the need for use is unforeseen. Cal. Lab. Code §246.

136. In fact, Balboa's owner, Gavin Newsom, himself championed and effected a new law into place increasing workers' entitlement to paid sick leave, stating, "Too many folks are still having to choose between skipping a day's pay and taking care of themselves or their family members when they get sick," said Governor Newsom. "We're making it known that the health and wellbeing of workers and their families is of the utmost importance for California's future."[10]

[10] Link to article in which G. Newsom is quoted: https://www.gov.ca.gov/2023/10/04/workers-just-got-more-paid-sick-days/#:~:text=SACRAMENTO%20–%20Governor%20Gavin%20Newsom%20today,the%20accrual%20and%20carryover%20amounts.

137. However, Defendants consistently wrote Plaintiff up for calling in sick despite providing notice to Defendants as soon as practicable after Plaintiff fell sick. In nearly every case, Plaintiff provided notice at least ninety (90) minutes before her shift or even the night before her shift. As a result, Plaintiff complied with the very law that Gavin Newsom, Balboa's owner, championed. Yet, despite her compliance with her legal obligations under Gavin Newsom's and California's sick time law to provide notice as soon as practicable, Defendants still disciplined her for it and directly retaliated against Plaintiff for taking her sick leave in blatant and direct violation of the very California law that Gavin Newsom, its own owner, has championed since becoming the governor of California.

138. In fact, Plaintiff was written up for missing work due to an unforeseen illness on February 20, 2022; May 5, 2022; September 4, 2022; December 4, 2022; and January 9, 2023. To make matters worse, one of the days Plaintiff called in sick, September 4, 2022, was the very day that Plaintiff received the results of the toxicology report from the night she was sexually assaulted. Yet, Defendants still wrote Plaitniff up for missing work in order to process the alarmingly earth-shattering and traumatizing results of her hospital visit the morning after she was raped! Defendants will stop at nothing in their demonstrated lack of empathy and compassion and unjust treatment of Plaintiff.

139. Moreover, Balboa and Plumpjack had a pattern and practice of requiring its non-exempt employees to arrive thirty (30) minutes before their actual shift was scheduled to start, and mandated said employees clock in thirty (30) minutes early (i.e., before their scheduled shift), then immediately clock out seconds later for thirty (30) minutes, and finally clocked back in at the beginning of their shift, or roughly when their shift was scheduled to start. During this so-called "break," Plaintiff was also regularly required to remain on the premises and prevented from leaving the premises. In fact, more often than not, the pre-shift staff meeting, in which management would instruct the servers on that night's specials, would take place during Plaintiff's break, resulting in unpaid time working.

140. For example, Balboa and Plumpjack would schedule employees to start their shift at 5 p.m., but Balboa's and Plumpjack's management expressly told the employees that they would need to arrive thirty (30) minutes **before** their actual shift was scheduled to start and clock in (i.e., at 4:30 p.m.), then immediately clock back out (i.e., at 4:30 p.m.), so that Balboa and Plumpjack could skirt

California's meal break requirements and would not have to provide its employees with a lunch break during their actual scheduled shift. In this example, Balboa and Plumpjack would then have the employees clock back in at 5 p.m. to start their actual scheduled shift.

141. In fact, as stated above, Balboa would prevent the employees from leaving during this clocked out period and would hold the pre-shift staff meetings so as not to pay employees for time spent working and/or under the control of Defendants.

142. By engaging in the foregoing scheme, Balboa and Plumpjack systematically and regularly prevented Plaintiff and all of their employees from being able to take an uninterrupted thirty (30) minute lunch break during their actual scheduled shift.

143. Many of the write-ups Plaintiff received were based on her purportedly being thirty (30) minutes late for her shift, when in fact, she was right on time for her shift, according to the shift schedule. For example, even if Plaintiff 's scheduled shift was to start her shift at 5:00 p.m., if Plaintiff did not show up thirty (30) minutes before her actual shift was scheduled to start (i.e., at 4:30 p.m.) and instead showed up at 5:00 p.m., when her shift actually started, she would be considered thirty (30) minutes late. In sum, because Plaintiff did not arrive thirty (30) minutes prior to her scheduled shift, she was written up because now Balboa would have to give her a meal break within her workday, as required by California law.

144. Specifically, even though Plaintiff was actually on-time for her scheduled shift, Plaintiff was written up unlawfully by Balboa and PlumpJack managements for being "late" to her shift on July 17, 2022; July 19, 2022; July 20, 2022; August 14, 2022; August 31, 2022; September 7, 2022; October 2, 2022; February 1, 2023; and March 5, 2023. However, in reality, Plaintiff was on time if Defendants abided by California wage and hour law.

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Other California Labor Code Violations by Defendants

145. Furthermore, the nature of the work performed by Plaintiff prevented her from taking her ten (10) minute rest breaks, and Balboa and Plumpjack also intentionally do **not** schedule any breaks into employees' workdays. This is in spite of G. Newsom's public statements about "maintain[ing] strong protections for workers[.]"[11]

146. Plaintiff also regularly worked more than ten (10) hours without a second meal period. Most of Plaintiff's shifts would start around 3:30 p.m. and end around 1:30 a.m.

147. Additionally, Plaintiff did not sign or execute any written agreement to take "on-duty" meal periods within the meaning of Wage Order 4-2001, §11, nor did she sign any agreements waiving her statutory meal periods.

148. Finally, Plaintiff was not paid her earned wages due upon discharge and still to this day has not received her wages in full. After being terminated, Balboa provided Plaintiff with a faulty check for her final wages. She notified Balboa that the check would not go through, and Balboa management had claimed her bank processed it, when it had not.

Balboa and Plumpjack Terminate Plaintiff in an Act of Retaliation

149. Balboa's written dress code policy requires servers to wear "black pants." No where does it indicate that black slacks or any other form of black pants are required, nor does it list any kind of excluded types of clothing. Rather, it simply states that employees must be wearing black pants to work, which Plaintiff always did.

150. Because of the foregoing policy, female employees at Balboa regularly wore black leggings to work, which makes sense as leggings are a form of pants. In fact, it was common to regularly see at least one female employee on a shift wearing black leggings as it was commonly accepted attire by Balboa management. That is, of course, unless you make complaints as none of these other female servers who regularly wore black leggings ever faced any kind of discipline for doing so, but Plaintiff did once she complained.

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[11] https://calmatters.org/politics/capitol/2024/06/california-workers-labor-violations-deal/

151. On March 27, 2023, Plaintiff, like nearly every other female server and employee at Balboa, also wore black leggings to work. And, when Plaintiff walked into work that day, another female server was also wearing black leggings. In fact, she and this other server were wearing nearly identical attire for their shifts.

152. Later that day, however, and to her surprise, Issaverdens walked into Balboa and immediately sent Plaintiff home for an alleged policy violation based on the dress code (which Plaintiff did not violate). Yet, the other female server who was on duty at the exact same time as Plaintiff was not sent home or disciplined, even though she was wearing the **exact same outfit** as Plaintiff. Instead, the other server, who was also wearing leggings, was allowed to continue working her shift. Issaverdens never reprimanded the other worker for, let alone even mentioned, an issue with this other worker's attire. But he expressly singled Plaintiff for a non-policy violation to expressly retaliate against her for her complaints.

153. Approximately two (2) days later, Balboa notified Plaintiff that her employment was being terminated, effective March 29, 2023. The justification for her termination was a policy/rule violation, specifically that Plaintiff failed to follow the proper dress code, and as a result, failed to follow expected standards of conduct.

154. Contrary to Defendants' assertions, Plaintiff did not violate any policy. It was a customary understood at Balboa that black leggings were an acceptable form of black pants as nearly every one of Balboa's female employees wore them without incident, as described herein. As a result, Plaintiff also did not violate any policy or practice as it was the commonly accepted practice and policy of other Balboa to allow its female servers to wear black leggings, which are indeed black pants.

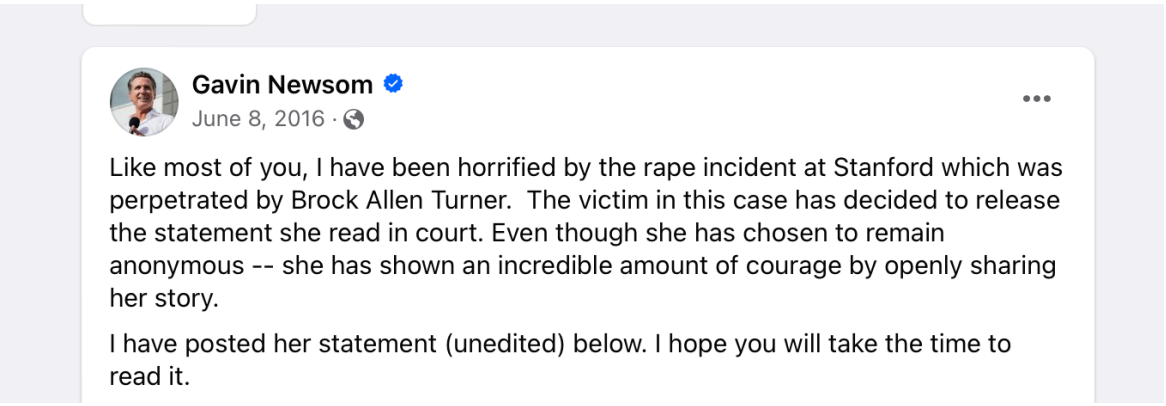
155. It is glaringly apparent (if it hadn't been before) that Defendants' justification for Plaintiff's termination was merely pre-text – as evidenced by the fact that Plaintiff was the only employee singled out for wearing leggings at work (and despite other female employees regularly wearing the exact same outfit without consequence and, more specifically, another employee during the exact same shift wearing the exact same outfit was not terminated or disciplined), Defendants real reason for terminating Plaintiff was to retaliate and silence Plaintiff and her complaints of sexual

assault and sexual harassment.

156. Ironically, violating California law and stopping employees from using their legally protected sick time as well as selectively enforcing arbitrary (and what appears to be made-up) dress code rules against a single employee apparently matters more to Defendants than enforcing their policy on preventing sexual harassment and stopping sexual assault in their workplace.

157. Balboa's, PlumpJack's and the Newsom family's written sexual harassment prevention policy claims to be a zero-tolerance policy. Yet, Suarez and Ruiz openly admitted to sexually harassing Plaintiff and were not disciplined or terminated. In fact, **both are still employed** by Balboa, PlumpJack and the Newsom family today.

158. Yet, the Newsom family present themselves as champions for survivors of sexual assault. When Harvey Weinstein was exposed for sex crimes, G. Newsom point-blank stated: "Harvey Weinstein is a stone-cold predator. He's a rapist, twice convicted. Not once, twice[.]".[12] And when Brock Turner was charged with sexual assault on Stanford's campus, G. Newsom took to social media to state the following:



159. Clearly, Balboa, PlumpJack and the Newsom family do not take the sexual harassment and assault of their female employees by their male colleagues and supervisors seriously. They could not even be bothered to discipline or terminate their male employees and supervisors who openly admitted to them that they sexually harassed Plaintiff in violation of their alleged sexual harassment policy!

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[12] https://www.cbsnews.com/sacramento/news/gavin-newsom-on-harvey-weinsteins-2020-rape-conviction-being-overturned-hes-a-rapist/

160. In fact, Defendants' purported sexual harassment policy is nothing more than a proverbial show policy that they put into place to say that they checked the box of having a policy in place to try to shield them from liability, but, in practice, they never enforce it and, worse, they reward those male employees and supervisors that violate it by continuing to employ them and firing the female employees that complain.

161. After everything Plaintiff went through, with no support from any leaders at Balboa and even outright victim blaming from management, including, but not limited to, H. Newsom and Graffigna, Plaintiff was singled out and fired over *the type of black pants* she was wearing even though other female employees were allowed to wear the same pants to work (and were wearing the same pants on the day that she was sent home). The egregiousness of Defendants' actions is not just unlawful, it's despicable.

162. Plaintiff deserves justice for the trauma she endured at the hands of Defendants.

FIRST CAUSE OF ACTION

SEXUAL BATTERY IN VIOLATION OF CALIFORNIA CIVIL CODE

(California Civil Code §1708.5)

(Against Defendants Suarez, Ruiz, And Does 1-50)

163. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

164. Suarez and Ruiz are both a "person" under California Civil Code §1708.5.

165. In doing the acts described herein, Suarez and Ruiz acted with the intent to make offensive contact with intimate parts of Plaintiff. They did, in fact, bring themselves into offensive and unwelcome sexual contact with Plaintiff as described herein above.

166. As described more fully above, Suarez and Ruiz subjected Plaintiff to unconsented and intentional invasions of her right to be free from sexually offensive and harmful physical contact.

167. As a direct and proximate result of Suarez and Ruiz's actions, Plaintiff has suffered and will continue to suffer pain and suffering, extreme and severe mental anguish and emotional distress, and Plaintiff has suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities.

168. Suarez and Ruiz's conduct was malicious and oppressive, and done with a conscious disregard of Plaintiff's rights. Their unlawful acts were carried out with full knowledge of the extreme risk of injury. Accordingly, an aware of punitive damages is warranted in an amount to be determined at the time of trial.

SECOND CAUSE OF ACTION

COMMON LAW BATTERY

(Against Defendants Suarez, Ruiz, And Does 1-50)

169. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

170. In doing the acts described herein, Suarez and Ruiz acted with the intent to make offensive contact with intimate parts of Plaintiff. They did, in fact, bring themselves into offensive and unwelcome sexual contact with Plaintiff as described herein above.

171. As described more fully above, Suarez and Ruiz subjected Plaintiff to unconsented and intentional invasions of her right to be free from sexually offensive and harmful physical contact.

172. As a direct and proximate result of Suarez and Ruiz's actions, Plaintiff has suffered and will continue to suffer pain and suffering, extreme and severe mental anguish and emotional distress, and Plaintiff has suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities.

173. Suarez and Ruiz's conduct was malicious and oppressive, and done with a conscious disregard of Plaintiff's rights. Their unlawful acts were carried out with full knowledge of the extreme risk of injury. Accordingly, an aware of punitive damages is warranted in an amount to be determined at the time of trial.

THIRD CAUSE OF ACTION

SEXUAL ASSAULT

(Against Defendants Suarez, Ruiz, And Does 1-50)

174. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

175. In doing the acts described herein, Suarez and Ruiz acted with the intent to cause

Plaintiff apprehension of immediate offensive touching. As a result of the conduct alleged above, Plaintiff had a reasonable apprehension of immediate touching. Plaintiff did not consent to any of the aforementioned acts of Suarez or Ruiz.

176. As a direct and proximate result of Suarez and Ruiz's actions, Plaintiff has suffered and will continue to suffer pain and suffering, extreme and severe mental anguish and emotional distress, and Plaintiff has suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities.

177. Suarez and Ruiz's conduct was malicious and oppressive, and done with a conscious disregard of Plaintiff's rights. Their unlawful acts were carried out with full knowledge of the extreme risk of injury. Accordingly, an aware of punitive damages is warranted in an amount to be determined at the time of trial.

FOURTH CAUSE OF ACTION

SEXUAL HARASSMENT IN VIOLATION OF FEHA

(California Government Code §12940(j))

(Against Defendants Plumpjack, Balboa, H. Newsom, Graffigna, Suarez, Ruiz, Issaverdens, And Does 1-50)

178. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

179. At all times relevant to this action, FEHA was in full force and binding upon Defendants. FEHA requires Defendants to refrain from harassing any employee on the basis of a protected characteristic, including, but not limited to gender and sex.

180. FEHA also makes it an unlawful employment practice for Defendants to harass any employee based upon the perception that the employee is a member of a protected class of that the employee is taking or has taken certain actions because the employee is a member of a protected class.

181. Pursuant to California Government Code §12940(j)(3), Plumpjack and Balboa's supervisors are personally liable for any harassment prohibited by FEHA that is perpetrated by them.

182. Plaintiff was a member of a protected class within the meaning of California Government Code §12940 *et. seq*., because Plaintiff is a woman. Defendants were aware of Plaintiff's

gender and sex.

183. Within the time provided under FEHA, Plaintiff filed complaints against Defendants with the CRD in full compliance with these sections and received right-to-sue letters.

184. At all times relevant to this action, Defendants unlawfully harassed Plaintiff, as previously alleged, on the basis of Plaintiff's gender and sex.

185. In addition to the foregoing, California Government Code §12940(i) also prohibits any individual from actually or attempting to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under FEHA.

186. If an individual participates in the decision-making process, tacitly approves of the improper action, fails to take action upon learning of the unlawful conduct, or participates in the unlawful conduct that is the basis of the discriminatory condition, the individual is considered to have aided and abetted under FEHA. *Matthews v. Superior Court* (1995) 34 Cal.App.4th 598.

187. Here, Issaverdens, H. Newsom, and Graffigna had the ability to stop the illegal activity and harassment experienced by Plaintiff; however, H. Newsom and Graffigna not only failed to take any actions to stop the discriminatory conduct, but, as alleged herein, H. Newsom and Graffigna participated in conduct and decision-making processes designed to illegally harass and discriminate against Plaintiff as well as tacitly approved of the harassing behavior and discriminatory conduct that was undertaken towards Plaintiff.

188. As a direct and proximate result of Defendants' harassment, Plaintiff has suffered, and continues to suffer, substantial damages including, but not limited to, back wages, future wages, lost benefits, severe emotional distress, and other pecuniary and non-pecuniary losses in an amount to be proven at trial.

189. As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered loss of financial stability, peace of mind and future security, and has suffered embarrassment, humiliation, severe mental and emotional pain and distress and discomfort, all to Plaintiff's detriment and damage in amount not fully ascertained but with the jurisdiction of this court and subject to proof at the time of trial.

190. Plaintiff is informed and believes, and thereon alleges that the employees, officers,

directors, and/or managing agents of Defendants acted intentionally with malice and oppression, as their unlawful acts were carried out with full knowledge of the extreme risk of injury, involved, and with willful and conscious disregard for Plaintiff's rights. They also acted fraudulently, as they willfully concealed the fact that Plaintiff's employment rights were being violated, with the intent to deprive Plaintiff of employment benefits. Accordingly, an aware of punitive damages is warranted in an amount to be determined at the time of trial.

191. Plaintiff is informed and believes and thereon alleges that the actions of Defendants' employees, officers, directors, and/or managing agents were undertaken with the prior approval, consent, and authorization of Defendants and were subsequently authorized and ratified by it as well by the and through its officers, directors, and/or managing agents.

192. Pursuant to Government Code §12965(b), Plaintiff is entitled to recover Plaintiff's reasonable attorneys' fees and costs, including expert fees pursuant to the FEHA.

FIFTH CAUSE OF ACTION

SEX DISCRIMINATION IN VIOLATION OF FEHA

(California Government Code §12940(a))

(Against Defendants Plumpjack, Balboa, And Does 1-50)

193. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

194. At all times relevant to this action, FEHA was in full force and binding upon Defendants. FEHA requires Defendants to refrain from discriminating against any employee "in terms, conditions, or privileges of employment," including, but not limited to, terminating, or demoting such employee, on the basis of a protected characteristic, including, but not limited to gender and sex.

195. FEHA also makes it an unlawful employment practice for Defendants to discriminate against any employee based upon the perception that the employee is a member of a protected class of that the employee is taking or has taken certain actions because the employee is a member of a protected class.

196. Plaintiff was a member of a protected class within the meaning of California

Government Code §12940 *et. seq*., because Plaintiff is a woman. Defendants were aware of Plaintiff's gender and sex.

197. Within the time provided under FEHA, Plaintiff filed complaints against Defendants with the CRD in full compliance with these sections and received right-to-sue letters.

198. At all times relevant to this action, Defendants unlawfully harassed Plaintiff, as previously alleged, on the basis of Plaintiff's gender and sex, including by retaliating against her, formally disciplining her, and terminating her.

199. Defendants were substantially motivated to discriminate against Plaintiff, including, but not limited to, disciplinary action and termination, because of Plaintiff's sex and gender.

200. As a direct and proximate result of Defendants' discrimination, Plaintiff has suffered, and continues to suffer, substantial damages including, but not limited to, back wages, future wages, lost benefits, severe emotional distress, and other pecuniary and non-pecuniary losses in an amount to be proven at trial.

201. As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered loss of financial stability, peace of mind and future security, and has suffered embarrassment, humiliation, severe mental and emotional pain and distress and discomfort, all to Plaintiff's detriment and damage in amount not fully ascertained but with the jurisdiction of this court and subject to proof at the time of trial.

202. Plaintiff is informed and believes, and thereon alleges that the employees, officers, directors, and/or managing agents of Defendants acted intentionally with malice and oppression, as their unlawful acts were carried out with full knowledge of the extreme risk of injury, involved, and with willful and conscious disregard for Plaintiff's rights. They also acted fraudulently, as they willfully concealed the fact that Plaintiff's employment rights were being violated, with the intent to deprive Plaintiff of employment benefits. Accordingly, an aware of punitive damages is warranted in an amount to be determined at the time of trial.

203. Plaintiff is informed and believes and thereon alleges that the actions of Defendants' employees, officers, directors, and/or managing agents were undertaken with the prior approval, consent, and authorization of Defendants and were subsequently authorized and ratified by it as well

by the and through its officers, directors, and/or managing agents.

204. Pursuant to Government Code §12965(b), Plaintiff is entitled to recover Plaintiff's reasonable attorneys' fees and costs, including expert fees pursuant to the FEHA.

SIXTH CAUSE OF ACTION

RETALIATION IN VIOLATION OF FEHA

(California Government Code §§12940(h))

(Against Defendants Plumpjack, Balboa, And Does 1-50)

205. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

206. At all times relevant to this action, FEHA was in full force and binding upon Defendants. FEHA requires Defendants to refrain from retaliating against any employee for exercising rights under FEHA, including, but not limited to, complaining of discrimination and/or sexual harassment.

207. FEHA also makes it an unlawful employment practice for Defendants to retaliate against any employee based upon the perception that the employee is a member of a protected class or that the employee is taking or has taken certain actions because the employee is a member of a protected class.

208. Within the time provided under FEHA, Plaintiff filed complaints against Defendants with the CRD in full compliance with these sections and received right-to-sue letters.

209. Plaintiff exercised her rights under FEHA including, but not limited to, by opposing the discrimination as well as harassment that Plaintiff was being subjected to by Defendants.

210. Defendants, as alleged herein above, retaliated against Plaintiff for exercising her rights under the FEHA, including, but not limited to, opposing the discrimination and harassment that she was being subjected to by Defendants.

211. Plaintiff's exercise of her rights under FEHA was a motivating reason for Defendants' retaliation towards Plaintiff complained of herein.

212. As a direct and proximate result of Defendants' retaliation, Plaintiff has suffered, and continues to suffer, substantial damages including, but not limited to, back wages, future wages, lost

benefits, severe emotional distress, and other pecuniary and non-pecuniary losses in an amount to be proven at trial.

213. As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered loss of financial stability, peace of mind and future security, and has suffered embarrassment, humiliation, severe mental and emotional pain and distress and discomfort, all to Plaintiff's detriment and damage in amount not fully ascertained but with the jurisdiction of this court and subject to proof at the time of trial.

214. Plaintiff is informed and believes, and thereon alleges that the employees, officers, directors, and/or managing agents of Defendants acted intentionally with malice and oppression, as their unlawful acts were carried out with full knowledge of the extreme risk of injury, involved, and with willful and conscious disregard for Plaintiff's rights. They also acted fraudulently, as they willfully concealed the fact that Plaintiff's employment rights were being violated, with the intent to deprive Plaintiff of employment benefits. Accordingly, an aware of punitive damages is warranted in an amount to be determined at the time of trial.

215. Plaintiff is informed and believes and thereon alleges that the actions of Defendants' employees, officers, directors, and/or managing agents were undertaken with the prior approval, consent, and authorization of Defendants and were subsequently authorized and ratified by it as well by the and through its officers, directors, and/or managing agents.

216. Pursuant to Government Code §12965(b), Plaintiff is entitled to recover Plaintiff's reasonable attorneys' fees and costs, including expert fees pursuant to the FEHA.

SEVENTH CAUSE OF ACTION

FAILURE TO PREVENT DISCRIMINATION, HARASSMENT AND RETALIATION IN VIOLATION OF FEHA

(California Government Code §12940(k))

(Against Defendants Plumpjack, Balboa, And Does 1-50)

217. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

218. At all times hereto, the FEHA, including Government Code§ 12940(k), was in full

force and effect and was binding upon Defendants. This subsection imposes a duty on Plumpjack and Balboa to take all reasonable steps necessary to prevent the discrimination, harassment, and retaliation alleged herein from occurring. As alleged above, Defendants violated this subsection and breached their duty by failing to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation from occurring.

219. Moreover, Plaintiff complained about Suarez and Ruiz's sexual harassment numerous times as alleged above, yet nothing was done to remedy the harassment or prevent further harassment.

220. Furthermore, Plaintiff is informed and believes that other employees complained of Suarez and Ruiz's harassing conduct.[13] Even so, Plumpjack and Balboa have done nothing to prevent this discrimination, harassment, and retaliation from occurring again. Quite the opposite, Suarez and Ruiz *still* work at Balboa even after openly admitting to sexually harassing Plaintiff. Had they faced any discipline whatsoever, perhaps Plaintiff would not have been raped or subject to continual sexual harassment. Even worse, because Ruiz felt vindicated in harassing Plaintiff and effectively got away with it, he upped the ante to sexual assault, knowing Defendants would do nothing to stop him.

221. The above said acts of Defendants constitute violations of the FEHA and were a proximate cause in Plaintiff's damage as stated below.

222. As a direct and proximate result of Defendants' failure to prevent discrimination, harassment and retaliation, Plaintiff has suffered, and continues to suffer, substantial damages including, but not limited to, back wages, future wages, lost benefits, severe emotional distress, and other pecuniary and non-pecuniary losses in an amount to be proven at trial.

223. As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered loss of financial stability, peace of mind and future security, and has suffered embarrassment, humiliation, severe mental and emotional pain and distress and discomfort, all to Plaintiff's detriment and damage in amount not fully ascertained but with the jurisdiction of this court and subject to proof at the time of trial.

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[13] In fact, some of this information was public knowledge – reviews about the working conditions at Balboa on Glassdoor indicate, "Incredibly dangerous to work [at Balboa]. […] Ownership doesn't care as long as money comes in, HR is NOT your friend here, and the only good managers quit once they realize just how insane [Balboa] is." *See* https://www.glassdoor.co.in/Overview/Working-at-Balboa-Cafe-EI_IE7745875.11,22.htm.

224. Plaintiff is informed and believes, and thereon alleges that the employees, officers, directors, and/or managing agents of Defendants acted intentionally with malice and oppression, as their unlawful acts were carried out with full knowledge of the extreme risk of injury, involved, and with willful and conscious disregard for Plaintiff's rights. They also acted fraudulently, as they willfully concealed the fact that Plaintiff's employment rights were being violated, with the intent to deprive Plaintiff of employment benefits. Accordingly, an aware of punitive damages is warranted in an amount to be determined at the time of trial.

225. Plaintiff is informed and believes and thereon alleges that the actions of Defendants' employees, officers, directors, and/or managing agents were undertaken with the prior approval, consent, and authorization of Defendants and were subsequently authorized and ratified by them as well by the and through their officers, directors, and/or managing agents.

226. Pursuant to Government Code §12965(b), Plaintiff is also entitled to recover Plaintiff's reasonable attorneys' fees and costs, including expert fees pursuant to the FEHA.

EIGHTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(Against Defendants Plumpjack, Balboa, H. Newsom, Graffigna, Suarez, Ruiz, And Does 1-50)

227. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

228. The conduct complained of hereinabove was intentional and malicious and done for the purpose of causing Plaintiff to suffer humiliation, mental anguish, and emotional and physical distress. Defendants, and each of their conduct, in confirming and ratifying the complained of conduct, was done with the knowledge that Plaintiff's emotional and physical distress would thereby increase and was done with a wanton and reckless disregard of the consequences to Plaintiff.

229. Defendants are also liable for intentional infliction of emotional distress if they were "aware, but [act] with reckless disregard, of the plaintiff and the probability that [their] conduct will cause severe emotional distress to that plaintiff" *Christensen v. Superior Court*, 54 Cal.3d 868, 905 (Cal. 1991).

230. Here, Defendants not only acted intentionally and directly towards Plaintiff, but also

with reckless disregard of Plaintiff and that their actions would cause severe emotional distress to Plaintiff.

231. In fact, Defendants have intentionally and repeatedly harassed, discriminated against, and retaliated against Plaintiff as described herein above in order to cause Plaintiff to suffer humiliation, mental anguish, and emotional and physical distress.

232. As a proximate result of Defendants and each of their, intentional infliction of emotional distress as hereinabove alleged, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish, and emotional and physical distress, and has been injured in mind and health. As a result of said distress and consequential harm, Plaintiff has suffered such damages in an amount in accordance with proof at the time of trial.

233. Defendants, and each of them, engaging in the conduct hereinabove alleged, acted fraudulently, maliciously, oppressively and with reckless disregard of Plaintiff's rights and safety, and thereby entitling Plaintiff to an award of punitive damages. Defendants, and each of them, authorized, ratified, knew of the wrongful conduct complained of herein, but failed to take immediate and appropriate corrective action to remedy the situation and thereby acted fraudulently, maliciously, oppressively and with reckless disregard of Plaintiff's rights and safety, and thereby entitling Plaintiff to an award of punitive damages.

NINTH CAUSE OF ACTION

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

(Against Defendants Plumpjack, Balboa, H. Newsom, Graffigna, Suarez, Ruiz, And Does 1-50)

234. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

235. In the alternative, if said conduct of Defendants, and each of them, and of their agents and employees was not intentional, it was negligent, and Plaintiff is thereby entitled to general damages for negligent infliction of emotional distress.

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TENTH CAUSE OF ACTION

RETAILATION IN VIOLATION OF LABOR CODE §98.6

(California Labor Code §98.6)

(Against Defendants Plumpjack, Balboa, And Does 1-50)

236. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

237. California Labor Code §98.6 prohibits an employer from retaliating against an employee for filing a bona fide complaint, or a claim, or instituted any proceeding relating to rights under the jurisdiction of the labor commission.

238. Plaintiff's aforementioned protected activity, as described hereinabove, was a motivating factor in Defendants' decisions that were adverse to Plaintiff, in regard to compensation and terms, conditions and privileges of employment.

239. Defendants retaliated against Plaintiff as manifested by several acts depicted above and Defendants, among other things, unlawfully disciplined Plaintiff without valid justification.

240. The aforementioned acts are retaliatory against Plaintiff, and a violation against California Labor Code § 98.6. As a result of the foregoing wrongful conduct, Plaintiff is entitled to recover restitution damages in the form of payment of unlawfully withheld wages, including overtime.

241. Pursuant to California Labor Code § 98.6(b)(3), Plaintiff is also entitled to recover a civil penalty of up to ten thousand dollars ($10,000.00) for each of Defendants' violations of California Labor Code § 98.6.

242. As a direct and proximate result of Defendants' retaliation, Plaintiff has suffered, and continues to suffer, substantial damages including, but not limited to, back wages, future wages, lost benefits, severe emotional distress, and other pecuniary and non-pecuniary losses in an amount to be proven at trial.

243. As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered loss of financial stability, peace of mind and future security, and has suffered embarrassment, humiliation, severe mental and emotional pain and distress and discomfort, all to Plaintiff's detriment

and damage in amount not fully ascertained but with the jurisdiction of this court and subject to proof at the time of trial.

244. Plaintiff is informed and believes, and thereon alleges that the employees, officers, directors, and/or managing agents of Defendants acted intentionally with malice and oppression, as their unlawful acts were carried out with full knowledge of the extreme risk of injury, involved, and with willful and conscious disregard for Plaintiff's rights. They also acted fraudulently, as they willfully concealed the fact that Plaintiff's employment rights were being violated, with the intent to deprive Plaintiff of employment benefits. Accordingly, an aware of punitive damages is warranted in an amount to be determined at the time of trial.

245. Plaintiff is informed and believes and thereon alleges that the actions of Defendants' employees, officers, directors, and/or managing agents were undertaken with the prior approval, consent, and authorization of Defendants and were subsequently authorized and ratified by it as well by the and through its officers, directors, and/or managing agents.

246. Plaintiff is also entitled to recover Plaintiff's reasonable attorneys' fees pursuant to Code of Civil Procedure Section 1021.5, the substantial benefit doctrine.

ELEVENTH CAUSE OF ACTION

WHISTLEBLOWER RETAILATION

(California Labor Code §1102.5)

(Against Defendants Plumpjack, Balboa, And Does 1-50)

247. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

248. At all times material to this Complaint, Labor Code §1102.5 was in effect and binding on Defendants. This section requires Defendants, or any person acting on behalf of Defendants, to refrain from retaliating against an employee who discloses information to a person with authority over the employee or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's

job duties.

249. Labor Code 1102.5 also prohibits Defendants, or any person acting on behalf of Defendants, from retaliating against an employee because Defendants believes that the employee disclosed or may disclose information to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

250. As alleged hereinabove, Plaintiff disclosed to Defendants, including H. Newsom, Defendants' Human Resources Department, and Defendants' supervisors, the illegal discrimination, harassment, and retaliation that was taking place at Balboa in violation of state and federal laws.

251. All of the individuals that Plaintiff disclosed the illegal behavior to either had authority over Plaintiff or the authority to investigate, discover, or correct the violations.

252. Defendants retaliated against Plaintiff for Plaintiff's whistleblowing, by disciplining her and refusing to allow her to return to work after the expiration of her medical leave of absence, among other things that are alleged herein above, in violation of Labor Code §1102.5.

253. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered, and continues to suffer, substantial damages including, but not limited to, back wages, future wages, lost benefits, severe emotional distress, and other pecuniary and non-pecuniary losses in an amount to be proven at trial.

254. As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered loss of financial stability, peace of mind and future security, and has suffered embarrassment, humiliation, severe mental and emotional pain and distress and discomfort, all to Plaintiff's detriment and damage in amount not fully ascertained but with the jurisdiction of this court and subject to proof at the time of trial.

255. Plaintiff is informed and believes and thereon alleges that the actions of Defendants'

employees, officers, directors, and/or managing agents were undertaken with the prior approval, consent, and authorization of Defendants and were subsequently authorized and ratified by it as well by the and through its officers, directors, and/or managing agents.

256. Defendants committed the acts alleged herein oppressively and maliciously, with the wrongful intention of injuring Plaintiff, from an evil and improper motive amounting to malice, and in conscious disregard of Plaintiff's rights. Thus, an award of punitive damages is warranted in an amount to be determined at the time of trial.

257. Pursuant to Labor Code §1102.5(f) and in addition to the foregoing, Plaintiff is entitled to the imposition and recovery of a civil penalty of $10,000.00 for each violation.

TWELFTH CAUSE OF ACTION

NEGLIGENT HIRING AND RETENTION

(Against Defendants Plumpjack, Balboa, And Does 1-50)

258. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

259. California recognizes that "an employer can be liable to a third person for negligently hiring, supervising, or retaining an unfit employee." *Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1054.

260. "In California, an employer can be held liable for negligent hiring if he knows the employee is unfit, or has reason to believe the employee is unfit or fails to use reasonable care to discover the employee's unfitness before hiring him." *Juarez v. Boy Scouts of Am*., (2000) 81 Cal.App.4th 377, 395; *Evan F. v. Hughson United Methodist Church*, (1992) 8 Cal.App.4th 828, 843; *see also Virgina G. v. ABC Unified Sch. Dist*., (1993) 15 Cal.App.4th 1848, 1855.

261. Negligence liability will be imposed on a defendant if it knew or should have known that the employee created a particular risk or hazard, and that particular harm materializes. *Phillips v. TLC Plumbing, Inc*. (2009) 172 Cal.App.4th 1133, 1139.

262. It is "not necessary for a plaintiff to prove that the very injury which occurred must have been foreseeable," but rather negligence is established if a "reasonably prudent person would foresee that injuries of the same general type would be likely to happen in the absence of [adequate]

safeguards." *D.Z. v. Los Angeles Unified School Dist.* (2019) 35 Cal.App.5th 210, 229.

263. Defendants negligently hired and retained Suarez and Ruiz. And, to reiterate, both Suarez and Ruiz are still employed at Balboa despite having admitted to sexual harassment and misconduct. There can be no doubt then that Defendants not only negligently retained these unfit employees but retained them with the knowledge of their unfitness.

264. Defendants not only failed to use reasonable care to determine if Suarez and Ruiz were unfit for this position, but specifically knew that Suarez and Ruiz were unfit for the position as illustrated above by the numerous complaints lodged against Suarez and Ruiz, including explicitly complaints of sexual harassment.

265. Suarez and Ruiz were unfit to perform the work for which they were hired for due to Suarez and Ruiz's tendency to sexually harass and discriminate against Plaintiff and other Balboa employees.

266. Defendants knew or should have known that Suarez and Ruiz were unfit and sexually harassed others, due to the fact that Plaintiff and other employees as alleged herein complained to management and HR about Suarez and Ruiz's unlawful conduct, thereby creating an extreme risk of sexual harassment and discrimination being perpetrated against Defendants' employees.

267. Specifically, Plaintiff complained about Suarez and Ruiz's sexual harassment numerous times as alleged above, yet nothing was done to remedy the harassment or prevent further harassment.

268. However, despite all of these complaints alerting Defendants to Suarez and Ruiz's propensity to harass and discriminate against employees in protected classes, including sexually harassing female employees, Defendants took no actions and continued to retain and employ Suarez and Ruiz.

269. As a proximate result of Defendants' negligent hiring, retention, and supervision as hereinabove alleged, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish, and emotional and physical distress, and has been injured in mind and health. As a result of said distress and consequential harm, Plaintiff has suffered such damages in an amount in accordance with proof at the time of trial.

270. Defendants, engaging in the conduct hereinabove alleged, acted fraudulently, maliciously, oppressively and with reckless disregard of Plaintiff's rights and safety, and thereby entitling Plaintiff to an award of punitive damages. Defendants authorized, ratified, knew of the wrongful conduct complained of herein, but failed to take immediate and appropriate corrective action to remedy the situation and thereby acted fraudulently, maliciously, oppressively and with reckless disregard of Plaintiff's rights and safety, and thereby entitling Plaintiff to an award of punitive damages.

THIRTEENTH CAUSE OF ACTION

FAILURE TO WARN AND NEGLIGENT SUPERVISION

(Against Defendants Plumpjack, Balboa, And Does 1-50)

271. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

272. Defendants had a duty to provide reasonable supervision of Suarez and Ruiz, to use reasonable care in investigating Suarez and Ruiz, and to provide adequate warning to Plaintiff of Suarez and Ruiz's unfitness.

273. Defendants are liable for failing to warn and/or negligent supervision if it knew or should have known of Suarez and Ruiz's alleged misconduct and did not act in a reasonable manner. *See Lopez v. Watchtower Bible & Tract Society of New York*, Inc. (2016) 246 Cal.App.4th 566, 591.

274. Here, Defendants knew or should have known that Suarez and Ruiz were unfit and sexually harassed others, due to the fact that Plaintiff and numerous other employees as alleged herein repeatedly complained to management and HR about Suarez and Ruiz's unlawful conduct, thereby creating an extreme risk of sexual harassment and discrimination being perpetrated against Defendants' employees.

275. Specifically, Plaintiff complained about Suarez and Ruiz's sexual harassment numerous times as alleged above, yet nothing was done to remedy the harassment or prevent further harassment.

276. Despite such knowledge, Defendants negligently failed to supervise Suarez and Ruiz, where they were able to sexually harass Plaintiff and other Balboa employees. And, to reiterate, both

Suarez and Ruiz are still employed at Balboa despite having admitted to sexual harassment and misconduct. There can be no doubt then that Defendants not only negligently failed to supervise these unfit employees but did nothing to supervise them closer after learning of their unfitness.

277. Upon information and belief, Defendants failed to provide reasonable supervision of Suarez and Ruiz, failed to use reasonable care in investigating Suarez and Ruiz, and failed to provide adequate warning to Plaintiff of Suarez and Ruiz's unfitness.

278. Defendants further failed to take reasonable measures to prevent future sexual harassment by Suarez and Ruiz.

279. As a proximate result of Defendants' negligent supervision and failure to warn as hereinabove alleged, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish, and emotional and physical distress, and has been injured in mind and health. As a result of said distress and consequential harm, Plaintiff has suffered such damages in an amount in accordance with proof at the time of trial.

280. Defendants, engaging in the conduct hereinabove alleged, acted fraudulently, maliciously, oppressively and with reckless disregard of Plaintiff's rights and safety, and thereby entitling Plaintiff to an award of punitive damages. Defendants authorized, ratified, knew of the wrongful conduct complained of herein, but failed to take immediate and appropriate corrective action to remedy the situation and thereby acted fraudulently, maliciously, oppressively and with reckless disregard of Plaintiff's rights and safety, and thereby entitling Plaintiff to an award of punitive damages.

FOURTEENTH CAUSE OF ACTION

FAILURE TO PAY WAGES

(California Labor Code §204)

(Against Defendants Plumpjack, Balboa, G. Newsom, H. Newsom, Scherer, And Does 1-50)

281. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

282. Pursuant to Labor Code §558.1, not only Defendants, but any other natural person who is an owner, director, officer, or managing agent of Defendants may be held personally liable for

violations of the directives appearing in the wage orders and in various provisions of the Labor Code, including any PAGA claims or penalties. *See Turman v. Superior Court (Koji's Japan Inc.)* (2017) 17 Cal. App. 5th 969, 986; *see also Atempa v Pedrazzani* (2018) 27 Cal. App. 5th 809, 820.

283. Plaintiff is informed and believes that G. Newsom, H. Newsom, and Scherer purposefully violated the Labor Code provisions herein and each of them either (i) were responsible for implementing and/or approving the implementation of the illegal policies and procedures that violated the California Labor code provisions alleged herein, (ii) had oversight of Balboa's and Plumpjacks' operations at the time the illegal policies and procedures that violated the California Labor code provisions alleged herein were put into place, (iii) were able to influence and did influence Balboa's and Plumpjacks' corporate policies and procedures that violated the California Labor code provisions alleged herein.

284. In fact, G. Newsom is an owner and operator of Plumpjack and Balboa. On information and belief, he put employment policies into effect at Balboa, are still followed to this day at violated the California Labor code provisions alleged herein. On further information and belief, G. Newsom owned and operated Plumpjack and Balboa at the time of Suarez' hiring in 2017 and, as such, was responsible for the employment of Suarez as well as the policies applicable to Suarez. Moreover, H. Newsom and Scherer are operators of Plumpjack and Balboa. On information and belief, they put employment policies into effect at Balboa, which are still followed to this day.

285. Labor Code §204 provides in part that "all wages […] earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular pay days."

286. Labor Code §204 further provides that all wages earned by any employee between the 1st and 15th days of any calendar month must be paid by no later than the 26th day of the month during which the labor was performed, and all wages earned between the 16th and last day of the month must be paid by the 10th day of the following month.

287. Labor Code §204(b) also requires an employer to pay all wages earned for labor in excess of the normal work period by no later than the payday for the next regular payroll period.

288. Because Plaintiff worked Because of Defendants failed to provide meal and rest

breaks, Plaintiff, Defendants failed to timely pay any wages, such as premium pay, by the 10th or 26th day of the month. And, as alleged herein above in detail, any "break" that Plaintiff was provided, such as the purported meal period at the start of a shift, was spent working on the premises as she was prevented from leaving Balboa as well as working as she was required to attend the pre-shift staff meeting during her meal period.

289. In violation of Labor Code §204, Defendants knowingly and willfully refused to pay and failed to perform Defendants' obligation to timely pay and compensate Plaintiff for the wages earned by her as outlined herein above, including, but not limited to, meal and rest period wages.

290. As a direct and proximate result of Defendants' conduct, Plaintiff has been damaged in an amount according to proof at trial, and seek all wages earned and due and interest thereon.

291. Pursuant to Labor Code §210, Plaintiff is entitled to recover a penalty of $100.00 for Defendants' initial failure to timely pay all of their wages earned, and $200.00 for each subsequent failure to timely pay all of their wages earned.

292. Additionally, pursuant to Labor Code §210, for each subsequent failure to pay in compliance with Labor Code §204, Plaintiff is entitled to recover an additional amount equal to 25% of the unlawfully withheld wages.

293. Pursuant to Labor Code §218.5, Plaintiff is also entitled to recover her reasonable attorneys' fees and costs.

294. As a direct and proximate result of Defendants' conduct in violation of Labor Code §204 as alleged above, Plaintiff has suffered, and will continue to suffer, losses related to the use and enjoyment of wages and lost interest on such wages all to their damage in an amount according to proof at trial.

FIFTEENTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL BREAKS

(California Wage Order 4-2001, §11 and California Labor Code §§512 and 226.7)

(Against Defendants Plumpjack, Balboa, G. Newsom, H. Newsom, Scherer And Does 1-50)

295. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

296. Pursuant to Labor Code §558.1, not only Defendants, but any other natural person who is an owner, director, officer, or managing agent of Defendants may be held personally liable for violations of the directives appearing in the wage orders and in various provisions of the Labor Code, including any PAGA claims or penalties. *See Turman v. Superior Court (Koji's Japan Inc.)* (2017) 17 Cal.App.5th 969, 986; *see also Atempa v Pedrazzani* (2018) 27 Cal.App.5th 809, 820.

297. Plaintiff is informed and believes that G. Newsom, H. Newsom, and Scherer purposefully violated the Labor Code provisions herein and each of them either (i) were responsible for implementing and/or approving the implementation of the illegal policies and procedures that violated the California Labor code provisions alleged herein, (ii) had oversight of Balboa's and Plumpjacks' operations at the time the illegal policies and procedures that violated the California Labor code provisions alleged herein were put into place, (iii) were able to influence and did influence Balboa's and Plumpjacks' corporate policies and procedures that violated the California Labor code provisions alleged herein

298. In fact, G. Newsom is an owner and operator of Plumpjack and Balboa. On information and belief, he put employment policies into effect at Balboa, are still followed to this day at violated the California Labor code provisions alleged herein. On further information and belief, G. Newsom owned and operated Plumpjack and Balboa at the time of Suarez' hiring in 2017 and, as such, was responsible for the employment of Suarez as well as the policies applicable to Suarez. Moreover, H. Newsom and Scherer are operators of Plumpjack and Balboa. On information and belief, they put employment policies into effect at Balboa, which are still followed to this day.

299. Wage Order 4-2001, §11 and Labor Code §512 provide that an employer "shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not

waived." Furthermore, "[u]nless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to."

300. Labor Code §226.7(b) provides that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

301. Additionally, Labor Code §226.7 requires employers to pay an additional one hour of pay at the employee's "regular rate of compensation" for each workday that the meal or rest or recovery period is not provided (also known as a Premium Payment). The Premium Payment must be made by the employer concurrently with the other wages due within the pay period when the break violation occurred.

302. The California Supreme Court has also determined that the term "*regular rate of compensation*" for the required Premium Payment is synonymous with the term the "regular rate of pay" for the purposes of calculating overtime. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858. As such, employers were and are required to pay meal, rest, or recovery period premiums at the same regular rate used for overtime calculations. *See id.* The California Supreme Court also applied this standard retroactively to all previous payments *See id.*

303. Plaintiff did not sign or execute any written agreement with Defendants to take "on-duty" meal periods within the meaning of Wage Order 4-2001, §11, nor did she sign any agreement waiving her statutory meal periods.

304. Pursuant to Wage Order 4-2001, in order for an employee to be exempt from California's meal break regulations, an employee must be an exempt employee. As articulated herein above, Plaintiff was not exempt from California's meal break regulations.

305. During Plaintiff's employment with Defendants, Plaintiff was not provided as well as denied meal breaks as required by Wage Order 4-2001 §11 and Labor Code §512.

306. More specifically, Plaintiff was required to arrive thirty (30) minutes before her shift was scheduled to start and mandated to clock in thirty (30) minutes early, then immediately clock out seconds later for thirty (30) minutes, and finally clocked back in at the beginning of her shift, or roughly when her shift was scheduled to start. In short, Plaintiff was required to arrive at Balboa thirty (30) minutes before her shift started to clock in, only to immediately clock out for an alleged meal break, despite her shift technically not starting for another thirty (30) minutes.

307. Moreover, during these alleged work breaks, Plaintiff was not relieved of all duty as she was required to attend meetings during her alleged meal break and was also prevented from leaving Balboa's premises.

308. Furthermore, Plaintiff often worked more than ten (10) hours in a shift without being provided a second meal break.

309. Plaintiff also never signed a waiver agreeing to an on-duty meal period or waiving her meals breaks.

310. By doing so, Balboa and Plumpjack systematically and regularly prevented Plaintiff and all of their employees from being able to take an uninterrupted thirty (30) minute lunch break during their actual shift.

311. California law "requires a first meal period no later than the end of an employee's **fifth hour of *work***." *Brinker Rest. Corp. v. Superior Ct.* (2012) 53 Cal.4th 1004, 1041 (emphasis added). Because Plaintiff was required to clock in and clock out for lunch before she even began working her shift, Defendants have violated *Brinker*. Plaintiff's work and scheduled shift had not yet even started and thus Plaintiff was effectively robbed of a meal break *during* her shift and *while* she was working.

312. Pursuant to Labor Code §226.7, Plaintiff is entitled to recover from Defendants damages equal to her applicable hourly rate of pay times the total number of days worked during which she was not provided meal periods as well as interest thereon.

313. Pursuant to California Labor Code §218.5, Plaintiff is entitled to recover, and hereby seek recovery of, her attorneys' fees and costs.

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SIXTEENTH CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(California Wage Order 4-2001, §12 and California Labor Code §226.7)

(Against Defendants Plumpjack, Balboa, G. Newsom, H. Newsom, Scherer, And Does 1-50)

314. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

315. Pursuant to Labor Code §558.1, not only Defendants, but any other natural person who is an owner, director, officer, or managing agent of Defendants may be held personally liable for violations of the directives appearing in the wage orders and in various provisions of the Labor Code, including any PAGA claims or penalties. *See Turman v. Superior Court (Koji's Japan Inc.)* (2017) 17 Cal.App.5th 969, 986; *see also Atempa v Pedrazzani* (2018) 27 Cal.App.5th 809, 820.

316. Plaintiff is informed and believes that G. Newsom, H. Newsom, and Scherer purposefully violated the Labor Code provisions herein and each of them either (i) were responsible for implementing and/or approving the implementation of the illegal policies and procedures that violated the California Labor code provisions alleged herein, (ii) had oversight of Balboa's and Plumpjacks' operations at the time the illegal policies and procedures that violated the California Labor code provisions alleged herein were put into place, (iii) were able to influence and did influence Balboa's and Plumpjacks' corporate policies and procedures that violated the California Labor code provisions alleged herein

317. In fact, G. Newsom is an owner and operator of Plumpjack and Balboa. On information and belief, he put employment policies into effect at Balboa, are still followed to this day at violated the California Labor code provisions alleged herein. On further information and belief, G. Newsom owned and operated Plumpjack and Balboa at the time of Suarez' hiring in 2017 and, as such, was responsible for the employment of Suarez as well as the policies applicable to Suarez. Moreover, H. Newsom and Scherer are operators of Plumpjack and Balboa. On information and belief, they put employment policies into effect at Balboa, which are still followed to this day.

318. Pursuant to Wage Order 4-2001, §12 requires that "[e]very 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) minutes net rest time per four (4) hours or major fraction thereof. […] Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

319. Labor Code §226.7(b) provides that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

320. Additionally, Labor Code §226.7 requires employers to pay an additional one hour of pay at the employee's "regular rate of compensation" for each workday that the meal or rest or recovery period is not provided (also known as a Premium Payment). The Premium Payment must be made by the employer concurrently with the other wages due within the pay period when the break violation occurred.

321. The California Supreme Court has also determined that the term "*regular rate of compensation*" for the required Premium Payment is synonymous with the term the "regular rate of pay" for the purposes of calculating overtime. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858. As such, employers were and are required to pay meal, rest, or recovery period premiums at the same regular rate used for overtime calculations. *See id.* The California Supreme Court also applied this standard retroactively to all previous payments *See id.*

322. Pursuant to Wage Order 4-2001, in order for an employee to be exempt from California's rest break regulations, an employee must be an exempt employee. As articulated herein above, Plaintiff was not exempt from California's rest break regulations.

323. During Plaintiff's employment, Plaintiff was regularly prevented from taking a rest period of ten (10) consecutive minutes for each four (4) hour work period, or major fraction thereof. All of this was done knowingly and intentionally in violation of Labor Code §§226.7 as well as IWC Wage Order 4-2001.

324. In fact, Plaintiff rarely, if ever, took rest breaks as Defendants did not incorporate breaks into Plaintiff's workday. Defendants did not authorize or permit rest breaks, and "if a break is not authorized, an employee has no opportunity to decline to take it." *Brinker Rest. Corp. v.*

Superior Ct. (2012) 53 Cal.4th 1004, 1033. Plaintiff was denied her rest breaks in violation of Labor Code §§226.7 as well as IWC Wage Order 4-2001 as Defendants failed to authorize or permit rest breaks by their employees.

325. Pursuant to Labor Code §226.7, Plaintiff is entitled to recover from Defendants damages equal to her applicable hourly rate of pay times the total number of days worked during which she was not provided rest periods as well as interest thereon.

326. Pursuant to California Labor Code §218.5, Plaintiff is entitled to recover, and hereby seeks recovery of, her attorneys' fees and costs.

SEVENTEENTH CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(California Wage Order 4-2001 and California Labor Code §§1194, 1197 and 1182.12)

(Against Defendants Plumpjack, Balboa, G. Newsom, H. Newsom, Scherer, And Does 1-50)

327. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

328. Pursuant to Labor Code §558.1, not only Defendants, but any other natural person who is an owner, director, officer, or managing agent of Defendants may be held personally liable for violations of the directives appearing in the wage orders and in various provisions of the Labor Code, including any PAGA claims or penalties. *See Turman v. Superior Court (Koji's Japan Inc.)* (2017) 17 Cal. App. 5th 969, 986; *see also Atempa v Pedrazzani* (2018) 27 Cal. App. 5th 809, 820.

329. Plaintiff is informed and believes that G. Newsom, H. Newsom, and Scherer purposefully violated the Labor Code provisions herein and each of them either (i) were responsible for implementing and/or approving the implementation of the illegal policies and procedures that violated the California Labor code provisions alleged herein, (ii) had oversight of Balboa's and Plumpjacks' operations at the time the illegal policies and procedures that violated the California Labor code provisions alleged herein were put into place, (iii) were able to influence and did influence Balboa's and Plumpjacks' corporate policies and procedures that violated the California Labor code provisions alleged herein

330. In fact, G. Newsom is an owner and operator of Plumpjack and Balboa. On

information and belief, he put employment policies into effect at Balboa, are still followed to this day at violated the California Labor code provisions alleged herein. On further information and belief, G. Newsom owned and operated Plumpjack and Balboa at the time of Suarez' hiring in 2017 and, as such, was responsible for the employment of Suarez as well as the policies applicable to Suarez. Moreover, H. Newsom and Scherer are operators of Plumpjack and Balboa. On information and belief, they put employment policies into effect at Balboa, which are still followed to this day.

331. At all times herein, Wage Order 4-2001 applied to Defendants' employment of Plaintiff.

332. Wage Order 4-2001, §4 and Labor Code §§1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Specifically, Labor Code §1197 provides that "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

333. As stated herein, Plaintiff worked straight time and overtime hours without any compensation for these hours due to the fact that Plaintiff was prevented from taking her breaks as prescribed by law as she often worked in excess of forty (40) hours in a week and/or eight (8) hours in a day. Thus, she worked for Defendants in violation of Wage Order 4-2001, §4 and California Labor Code §§1197 and 1182.12.

334. Pursuant to Labor Code §1194(a), Plaintiff is entitled to recover the full amount of the unpaid balance of wages, including interest thereon, along with attorneys' fees and costs.

335. Pursuant to Labor Code §1194.2(a), Plaintiff is entitled to recover liquidated damages in the amount of wages unlawfully withheld and interest accrued thereon.

336. Pursuant to Labor Code §1197.1, Plaintiff is also entitled to recover a penalty of $100.00 for the first pay period that they were underpaid, and $250.00 for each subsequent pay period that they were underpaid.

337. As a direct and proximate result of Defendant's conduct in violation of Wage Order 4-2001, §4 and California Labor Code §§1197 and 1182.12, Plaintiff has suffered, and continue to suffer, losses related to the use and enjoyment of wages and lost interest on such wages all to their

damage in an amount according to proof at trial.

338. Pursuant to California Labor Code §218.5, Plaintiff is entitled to recover, and hereby seeks recovery of, their attorneys' fees and costs.

EIGHTEENTH CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(California Wage Order 4-2001 and California Labor Code §§510 and 1198)

(Against Defendants Plumpjack, Balboa, G. Newsom, H. Newsom, Scherer, And Does 1-50)

339. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

340. Pursuant to Labor Code §558.1, not only Defendant, but any other natural person who is an owner, director, officer, or managing agent of Defendant may be held personally liable for violations of the directives appearing in the wage orders and in various provisions of the Labor Code, including any PAGA claims or penalties. *See Turman v. Superior Court (Koji's Japan Inc.)* (2017) 17 Cal. App. 5th 969, 986; *see also Atempa v Pedrazzani* (2018) 27 Cal. App. 5th 809, 820.

341. Plaintiff is informed and believes that G. Newsom, H. Newsom, and Scherer purposefully violated the Labor Code provisions herein and each of them either (i) were responsible for implementing and/or approving the implementation of the illegal policies and procedures that violated the California Labor code provisions alleged herein, (ii) had oversight of Balboa's and Plumpjacks' operations at the time the illegal policies and procedures that violated the California Labor code provisions alleged herein were put into place, (iii) were able to influence and did influence Balboa's and Plumpjacks' corporate policies and procedures that violated the California Labor code provisions alleged herein

342. In fact, G. Newsom is an owner and operator of Plumpjack and Balboa. On information and belief, he put employment policies into effect at Balboa, are still followed to this day at violated the California Labor code provisions alleged herein. On further information and belief, G. Newsom owned and operated Plumpjack and Balboa at the time of Suarez' hiring in 2017 and, as such, was responsible for the employment of Suarez as well as the policies applicable to Suarez. Moreover, H. Newsom and Scherer are operators of Plumpjack and Balboa. On information and

belief, they put employment policies into effect at Balboa, which are still followed to this day.

343. At all relevant times herein, California Labor Code §510 mandates Defendants compensate their non-exempt employees for their overtime at one and a half (1.5) times their *regular rate of* pay for the hours that they work each day in excess of eight (8) hours (up to twelve [12] hours) or each week for the hours that they work in excess of forty (40) hours or for the first eight (8) hours worked on a seventh consecutive day of a workweek.

344. Additionally, California Labor Code §510 mandates that Defendants are also required to compensate their non-exempt employees at two times (2x) their *regular rate of pay* for the hours that they work each day in excess of twelve (12) hours or in excess of eight (8) hours worked on a seventh consecutive day of a workweek.

345. An employee's regular rate of pay is calculated by adding all remuneration for employment (i.e., all compensation and earnings), except statutory exclusions, in any workweek divided by the total hours worked by that employee in the workweek.

346. Wage Order 4-2001, §3 and Labor Code §§510 and 1198 make it unlawful to pay employees for overtime work at less than the applicable overtime rate.

347. Specifically, Labor Code §1198 prohibits, among other things, the employment of any employee for longer hours than those fixed by under conditions of labor prohibited the labor commission's wage order, which for Defendants' employees are listed in Wage Order 4-2001.

348. As articulated above, Plaintiff worked overtime hours without any compensation for these hours due to the fact that Plaintiff missed breaks prescribed to her under California law, as she often worked in excess of forty (40) hours in a week. Thus, Defendants forced Plaintiff to work more than forty (40) hours a week without overtime pay and under conditions that violated Wage Order 4 and in violation of Labor Code §1198.

349. Plaintiff worked overtime as defined by Wage Order 4-2001, §3 and Labor Code §510, including, but not limited to, working in excess of eight (8) hours in one day, forty (40) hours in each workweek and seven days in a workweek, without overtime pay and under conditions that violated Wage Order 4-2001 and Labor Code §1198.

350. Pursuant to Labor Code §558, Plaintiff is entitled to recover for a civil penalty of

$50.00 for the initial failure to compensate them at the statutory overtime rate for any work in excess of eight (8) hours in one day or any work in excess of forty (40) hours in any workweek and/or failure to compensate Plaintiff at the statutory double time rate for any work in excess of twelve (12) hours in one day or any work in excess of eight (8) hours on the seventh day of a workweek in addition to any underpaid wages; and $100.00 for each subsequent failure to compensate Plaintiff at the statutory overtime rate for any work in excess of eight (8) hours in one day or any work in excess of forty (40) hours in any workweek and/or failure to compensate Plaintiff at the statutory double time rate for any work in excess of twelve (12) hours in one day or any work in excess of eight (8) hours on the seventh day of a workweek in addition to any underpaid wages.

NINETEENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code §226)

(Against Defendants Plumpjack, Balboa, And Does 1-50)

351. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

352. As Labor Code § 226(a) requires an employer to provide its employees with accurate itemized wage statements in writing showing: (1) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at the rate by the employee; (2) total number of hours worked; (3) gross wages earned; (4) net wages earned; (5) all deductions; (6) inclusive dates of the period for which the employee is paid; (7) the name of the employee and either an employee identification or the last four digits of the employee's social security number; and, (8) the name and address of the legal entity that is the employer.

353. Defendants failed to properly pay Plaintiff wages as articulated herein. As a result of these violations, Defendants also failed to provide Plaintiff with accurate itemized wage statements as required by Labor Code § 226(a).

354. As a result of Defendants' failure to provide accurate itemized wages statements, Plaintiff suffered actual damages and harm by being unable to determine her applicable pay rate and amounts due to her for each pay period, which prevented her from becoming aware of these violations

and losing actual wages as well as from asserting Plaintiff's statutory protections under California law to recover such wages.

355. Defendants knowingly and intentionally failed to comply with Labor Code §226(a) on each and every wage statement provided to Plaintiff.

356. Pursuant to Labor Code § 226.3(e), Plaintiff is entitled to recover the greater of all actual damages or fifty dollars ($50.00) for the initial pay period in which a violation occurs and one hundred dollars ($100.00) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000.00).

357. As Plaintiff has suffered actual damages in the form of lost wages as alleged herein and, as a result, Plaintiff is entitled to recovery of those amounts under Labor Code §226(e).

358. Plaintiff is also entitled to an award of costs and reasonable attorneys' fees under Labor Code §226(h).

TWENTIETH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED UPON DISCHARGE

(California Labor Code §§201, 202 and 203)

(Against Defendants Plumpjack, Balboa, G. Newsom, H. Newsom, Scherer, And Does 1-50)

359. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

360. Pursuant to Labor Code §558.1, not only Defendants, but any other natural person who is an owner, director, officer, or managing agent of Defendants may be held personally liable for violations of the directives appearing in the wage orders and in various provisions of the Labor Code, including any PAGA claims or penalties. *See Turman v. Superior Court (Koji's Japan Inc.)* (2017) 17 Cal. App. 5th 969, 986; *see also Atempa v Pedrazzani* (2018) 27 Cal. App. 5th 809, 820.

361. Plaintiff is informed and believes that G. Newsom, H. Newsom, and Scherer purposefully violated the Labor Code provisions herein and each of them either (i) were responsible for implementing and/or approving the implementation of the illegal policies and procedures that violated the California Labor code provisions alleged herein, (ii) had oversight of Balboa's and Plumpjacks' operations at the time the illegal policies and procedures that violated the California

Labor code provisions alleged herein were put into place, (iii) were able to influence and did influence Balboa's and Plumpjacks' corporate policies and procedures that violated the California Labor code provisions alleged herein

362. In fact, G. Newsom is an owner and operator of Plumpjack and Balboa. On information and belief, he put employment policies into effect at Balboa, are still followed to this day at violated the California Labor code provisions alleged herein. On further information and belief, G. Newsom owned and operated Plumpjack and Balboa at the time of Suarez' hiring in 2017 and, as such, was responsible for the employment of Suarez as well as the policies applicable to Suarez. Moreover, H. Newsom and Scherer are operators of Plumpjack and Balboa. On information and belief, they put employment policies into effect at Balboa, which are still followed to this day.

363. California Labor Code §§201 and 202 requires an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges an employee, or an employee provides at least 72 hours of notice of their intent to quit.

364. Labor Code §203 provides that an employer who fails to do so must pay a waiting time penalty of one day of an employee's wages for each calendar day thereafter that they remain unpaid, up to a maximum of thirty (30) days.

365. Waiting time penalties must be paid at the employee's daily wage rate, which is calculated by adding the employee's base wages, commissions, bonuses, and vacation pay that the employee earns in a year, dividing that sum by 52 weeks, and dividing that result by 40 hours. *Drumm v. Morningstar, Inc.* (N.D. Cal. 2010) 695 F.Supp.2d 1014, 1019. Furthermore, waiting time penalties must be paid as a penalty and without taxes or other withholdings taken out of the waiting time penalty.

366. Defendants have not paid Plaintiff for all of her wages due at the time of her separation as there are still wages outstanding as a result of Defendants' violations as articulated herein, nor have Defendants provided her with all of the waiting time penalties that are required as a result of Defendants' failure to pay all of her wages due.

367. As a result, and pursuant to Labor Code §203, Plaintiff is entitled to recover a "waiting time" penalty of one day of her wages for each calendar day that they remain unpaid, up to a maximum

of thirty (30) days.

TWENTY-FIRST CAUSE OF ACTION

RETALIATION FOR TAKING SICK LEAVE

(California Labor Code §§233 and 234 et. seq.)

(Against Defendants Plumpjack, Balboa, and Does 1-50)

368. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

369. Pursuant to Labor Code §§233 and 246.5 et. seq., an employer who provides sick leave for its employees shall permit its employees to use the employee's accrued and available sick leave for the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or an employee's family member. Additionally, Labor Code §233 provides that "[a]n employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness."

370. Labor Code §234 provides in relevant part: "An employer absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233."

371. Plaintiff attempted to take, requested, and/or took paid sick leave to care for herself and, in doing so, had protected status under the Labor Code.

372. Defendants terminated Plaintiff, in part based on the fact that she called out of work sick several times during her employment at Balboa. Thus, Defendants have denied Plaintiff her right to use sick leave.

373. Defendants also have an absence control policy that counts sick leave as an unexcused absence, which is how Defendants justified writing up Plaintiff for calling out sick and missing work for being sick. Therefore, Defendants' violation of §233 is twofold.

374. Under Labor Code §246.5, an employer shall not deny the use of paid sick leave and shall not take adverse action against the employee for taking and/or requesting paid sick leave. Further, there is a rebuttable presumption of unlawful retaliation, under Labor Code §246.5, if the

denial of the right and/or taking of the adverse action is within thirty (30) days of various actions, which occurred in this case (given that Plaintiff was immediately written up each time she took sick leave) and for which Plaintiff seeks the presumption.

375. "If the need for paid sick leave is foreseeable, the employee shall provide reasonable advance notification. If the need for paid sick leave is unforeseeable, the employee shall provide notice of the need for the leave as soon as practicable." Cal. Lab. Code §246. Plaintiff always notified Defendants as soon as practicable that she would be out sick, yet Defendants still wrote her up for taking paid sick leave in violation of the Labor Code.

376. Plaintiff was subjected to a variety of adverse actions for her taking and/or requesting to utilize accrued Paid Sick Leave, including, but not limited to, discharging Plaintiff, harassing Plaintiff, subjecting Plaintiff to a hostile work environment, subjecting Plaintiff to false/unjustified reprimands, discriminating against Plaintiff, as well as other adverse actions.

377. Not only did Defendants violate Labor Code §233 et seq., Defendants also immediately began retaliating against Plaintiff by taking adverse action, violating Labor Code §246.5 as set forth above.

378. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered, and continues to suffer, substantial damages including, but not limited to, back wages, future wages, lost benefits, severe emotional distress, and other pecuniary and non-pecuniary losses in an amount to be proven at trial.

379. As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered loss of financial stability, peace of mind and future security, and has suffered embarrassment, humiliation, severe mental and emotional pain and distress and discomfort, all to Plaintiff's detriment and damage in amount not fully ascertained but with the jurisdiction of this court and subject to proof at the time of trial.

380. Plaintiff is informed and believes and thereon alleges that the actions of Defendants' employees, officers, directors, and/or managing agents were undertaken with the prior approval, consent, and authorization of Defendants and were subsequently authorized and ratified by it as well by the and through its officers, directors, and/or managing agents.

381. Defendants committed the acts alleged herein oppressively and maliciously, with the wrongful intention of injuring Plaintiff, from an evil and improper motive amounting to malice, and in conscious disregard of Plaintiff's rights. Thus, an award of punitive damages is warranted in an amount to be determined at the time of trial.

382. Plaintiff seeks declaratory and injunctive relief, including public injunctive relief, that Plaintiff's rights under Paid Sick Leave law pursuant to the Labor Code were violated, that Defendants violated them, that training and education needs to occur to get Defendants to comply with Paid Sick Leave law, and other forms of declaratory and injunctive relief.

383. Plaintiff is also entitled to an award of costs and reasonable attorneys' fees under Labor Code §1102.5 and Code of Civil Procedure §1021.5 et seq.

TWENTY-SECOND CAUSE OF ACTION

FAILURE TO PROVIDE TIMELY ACCESS TO PERSONNEL RECORDS

(California Labor Code §1198.5)

(Against Defendants Plumpjack, Balboa, And Does 1-50)

384. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

385. Under Labor Code §1198.5, Defendants were required to provide Plaintiff with access to her personnel records within thirty (30) calendar days of making a request.

386. Plaintiff, through her counsel of record, made a written request to Defendants to obtain a copy of Plaintiff's personnel records on February 2, 2024.

387. Defendants were required to produce the records or permit Plaintiff to inspect the records by no later than February 23, 2024, which is thirty (30) calendar days from the date the written request was made.

388. Defendants did not provide the records to Plaintiff until February 29,2024, after the required deadline.

389. As a direct result of Defendants' failure to permit Plaintiff to inspect or copy of her personnel records within the 30-day time period, Plaintiff is entitled to recover a seven hundred and fifty dollar ($750) penalty as well as reasonable attorneys' fees and costs, pursuant to statute.

TWENTY-THIRD CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Against Defendants Plumpjack, Balboa, And Does 1-50)

390. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

391. At all times relevant to this action, Plaintiff was subject to working conditions that violated public policy, including, but not limited to her rights under FEHA (Cal. Gov't Code § 12900 et seq), CFRA (Cal. Gov't Code §§ 12945.1, 1945.2 and 19702.3), California Labor Code §98.6, and California Labor Code §1102.5.

392. California Government Code and the California Labor Code evince policies that benefits society at large, was well-established at the time of Plaintiff's employment, and is substantial and fundamental.

393. At all times alleged herein, Defendants intentionally created or knowingly permitted these working conditions, which include, but are not limited to, harassing, discriminating, and retaliating against Plaintiff for complaining of sexual harassment and misconduct.

394. Defendants' actions were designed to terminate Plaintiff without Defendants having to say that it was, in fact, a retaliatory termination.

395. Defendants did in fact terminate Plaintiff.

396. As a direct and proximate result, Plaintiff has suffered, and continues to suffer, substantial damages including, but not limited to, back wages, future wages, lost benefits, severe emotional distress, and other pecuniary and non-pecuniary losses in an amount to be proven at trial.

397. As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered loss of financial stability, peace of mind and future security, and has suffered embarrassment, humiliation, severe mental and emotional pain and distress and discomfort, all to Plaintiff's detriment and damage in amount not fully ascertained but with the jurisdiction of this court and subject to proof at the time of trial.

398. Plaintiff is informed and believes, and thereon alleges that the employees, officers, directors, and/or managing agents of Defendants acted intentionally with malice and oppression, as

their unlawful acts were carried out with full knowledge of the extreme risk of injury, involved, and with willful and conscious disregard for Plaintiff's rights. They also acted fraudulently, as they willfully concealed the fact that Plaintiff's employment rights were being violated, with the intent to deprive Plaintiff of employment benefits. Accordingly, an aware of punitive damages is warranted in an amount to be determined at the time of trial.

399. Plaintiff is informed and believes and thereon alleges that the actions of Defendants' employees, officers, directors, and/or managing agents were undertaken with the prior approval, consent, and authorization of Defendants and were subsequently authorized and ratified by it as well by the and through its officers, directors, and/or managing agents.

TWENTY-FOURTH CAUSE OF ACTION

DECLARATORY JUDGMENT – ILLEGAL MEAL PERIOD POLICY

(Against Defendants Plumpjack, Balboa, And Does 1-50)

400. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

401. An actual controversy has arisen and now exists between the parties regarding the legality of Defendants' meal period policy.

402. Wage Order 4-2001, §11 and Labor Code §512 provide that an employer "shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived." Furthermore, "[u]nless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal

period is agreed to."

403. Labor Code §226.7(b) provides that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

404. Additionally, Labor Code §226.7 requires employers to pay an additional one hour of pay at the employee's "regular rate of compensation" for each workday that the meal or rest or recovery period is not provided (also known as a Premium Payment). The Premium Payment must be made by the employer concurrently with the other wages due within the pay period when the break violation occurred.

405. The California Supreme Court has also determined that the term "*regular rate of compensation*" for the required Premium Payment is synonymous with the term the "regular rate of pay" for the purposes of calculating overtime. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858. As such, employers were and are required to pay meal, rest, or recovery period premiums at the same regular rate used for overtime calculations. *See id.* The California Supreme Court also applied this standard retroactively to all previous payments *See id.*

406. Plaintiff did not sign or execute any written agreement with Defendants to take "on-duty" meal periods within the meaning of Wage Order 4-2001, §11, nor did she sign any agreement waiving her statutory meal periods.

407. Pursuant to Wage Order 4-2001, in order for an employee to be exempt from California's meal break regulations, an employee must be an exempt employee. As articulated herein above, Plaintiff was not exempt from California's meal break regulations.

408. During Plaintiff's employment with Defendants, Plaintiff was not provided as well as denied meal breaks as required by Wage Order 4-2001 §11 and Labor Code §512.

409. More specifically, Plaintiff was required to arrive thirty (30) minutes before her shift was scheduled to start and mandated to clock in thirty (30) minutes early, then immediately clock out seconds later for thirty (30) minutes, and finally clocked back in at the beginning of her shift, or roughly when her shift was scheduled to start. For example, if Plaintiff was scheduled to start her

shift at 5:00 p.m., she was expected to show up to work at 4:30 p.m. (i.e., thirty (30) minutes before her actual shift was scheduled to start). In short, Plaintiff was required to arrive at Balboa thirty (30) minutes before her shift started to clock in, only to immediately clock out for an alleged meal break, despite her shift technically not starting for another thirty (30) minutes.

410. Moreover, as alleged herein above, during these alleged meal breaks, Plaintiff was not relieved of all duty as she was regularly prevented from leaving Balboa's premises and had to attend meetings during her alleged meal break, which was "off the clock" work.

411. By doing so, Balboa and Plumpjack systematically and regularly prevented Plaintiff and all of their employees from being able to take an uninterrupted thirty (30) minute lunch break during their actual shift.

412. California law "requires a first meal period no later than the end of an employee's **fifth hour of *work***." *Brinker Rest. Corp. v. Superior Ct.* (2012) 53 Cal.4th 1004, 1041 (emphasis added). Because Plaintiff was required to clock in and clock out for lunch before she began working her shift, Defendants have violated *Brinker*. Plaintiff's work and scheduled shift had not yet started and thus Plaintiff was effectively robbed of a meal break *during* her shift and *while* she was working.

413. A judicial declaration is necessary and appropriate at this time, so that each of the parties may know their respective rights and duties and act accordingly.

414. As such, Plaintiff seeks a judicial declaration that Defendants' meal period policy is illegal under California law.

TWENTY-FIFTH CAUSE OF ACTION

INJUNCTIVE RELIEF – ILLEGAL IP AGREEMENT & NON-COMPETE

(Against Defendants Plumpjack, Balboa, And Does 1-50)

415. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

416. Upon information and belief, Plaintiff alleges that, unless enjoined by order of the Court, Defendants will continue to operate for their sole benefit and to the detriment its non-exempt California employees by continuing to enforce and threatening to enforce its illegal meal period policy as alleged herein above against its non-exempt California employees.

417. No adequate remedy exists at law for the injuries alleged herein, and Defendants' non-exempt California employees will continue to suffer great and irreparable injury if Plumpjack's and Balboa's illegal conduct is not immediately enjoined and restrained.

418. Plumpjack and Balboa will continue to act in their own self-interest and to commit the acts that have damaged Plaintiff as well as all of their other non-exempt California employees, and Plumpjack and Balboa will continue to act to injure their non-exempt employees in the state of California.

419. As such, Plaintiff seeks an injunction preventing Plumpjack and Balboa from enforcing its illegal period policy as alleged herein above against any of their non-exempt California employees.

TWENTY-SIXTH CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

(California Business and Professions Code §17200)

(Against Defendants Plumpjack, Balboa, And Does 1-50)

420. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

421. Plaintiff is informed, believes, and based thereon alleges, that the practices alleged herein constitute an unlawful, unfair, and/or fraudulent business practice, as set forth in Business & Professions Code §17200, *et. seq*.

422. Plaintiff is informed, believes, and based thereon alleges, that the practices alleged herein present a continuing threat to members of the public as Defendants conducted and continue to conduct business activities while failing to comply with the legal mandates cited herein.

423. Furthermore, such skirting of the legal mandates cited herein presents a threat to the general public in that the enforcement of such laws is essential to ensure that all California employers complete equally, and that no California employer receives an unfair competitive advantage at the expense of its employees.

424. As a result of Defendants' conduct, Plaintiff has suffered damages, in an amount to be determined according to proof at trial.

425. Defendants, engaging in the conduct hereinabove alleged, acted fraudulently, maliciously, and oppressively, and thereby entitling Plaintiff to an award of punitive damages pursuant to California Civil Code §3294.

426. As a result of Defendants' unlawful and unfair business practices, Plaintiff is entitled and does seek restitution, and other appropriate relief available under Business and Professions Code §§17200 and 17203.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants, and each of them, in an amount according to proof, as follows:

1. For an order declaring that Defendants' conduct violate the statutes and laws referenced herein;

2. For an order finding in favor of Plaintiff on all counts asserted herein;

3. For general, compensatory, and consequential damages according to proof, including, but not limited to, for lost wages, earnings, and other employee benefits, and all other sums of money, together with interest on these amounts;

4. For all liquidated damages and statutory penalties authorized or required by law;

5. For restitution of all wrongfully withheld amounts in an amount according to proof;

6. For special damages according to proof;

7. For all equitable relief;

8. For general damages for mental pain and anguish and emotional distress;

9. For a declaration that Balboa and Plumpjack's meal period policy is invalid and illegal;

10. Preliminary and permanent injunctions enjoining and restraining Defendants from continuing the unfair and unlawful business practices set for above, and the requiring the establishment of appropriate and effective policies, procedures, and practices in place to prevent future violations of the aforementioned California laws;

11. Disgorgement of illegally acquired profits by Defendants during the period starting four years before the filing of the Complaint through the present pursuant to Business & Professions

Code §17200, *et. seq*.;

12. For declaratory relief;

13. For pre-judgment and post-judgment interest on each of the foregoing at the legal rate from the date the obligation became due through the date of judgment on this matter as required by law, including, but not limited to Labor Code §218.6;

14. For punitive and exemplary damages on all applicable causes of action in amounts sufficient to punish Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

15. For an award to Plaintiff of her reasonable costs of suit, attorneys' fees, and expert witness fees under all applicable statutory or contractual basis; and

16. For such other and further relief as this Court may deem just and proper.

DATED: October 30, 2024

Respectfully submitted,

VALLES LAW, P.C.

By: _____

Daniel Valles
Kayla Rathjen
Attorneys for Plaintiff JANE DOE

DEMAND FOR JURY TRIAL

Plaintiff Jane Doe hereby demands a jury trial on all issues so triable.

DATED: October 30, 2024

Respectfully submitted,

VALLES LAW, P.C.

By: _____

Daniel Valles
Kayla Rathjen
Attorneys for Plaintiff JANE DOE