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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
06/09/2022
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)
12 **CGC-22-600095**

13 **COMPLAINT**

14 JENNIFFER L. WESTMORELAND, an
15 Individual,
16 Plaintiff,
17 v.
18 MATTHEW C. MULLENWEG, an
19 Individual; AUDREY HC, LLC, a California
20 Limited Liability Corporation; and DOES 1
21 through 10 inclusive,
22 Defendants.

- 1. Failure to Pay Overtime Compensation;
- 2. Violations of California Labor Code § 226 for Failure to Provide Accurate Wage Statements;
- 3. Failure to Provide Proper Rest Periods;
- 4. Waiting Time Penalties Pursuant to California Labor Code § 203;
- 5. Penalties Under California Labor Code § 558;
- 6. Violation of California Labor Code §970 for Misrepresenting Nature of Work and Conditions;
- 7. Hostile Work Environment (Gov. Code §12940, §12926);
- 8. Failure to Prevent Discrimination (Gov. Code §12940 (k)) and
- 9. Wrongful Termination in Violation of Public Policy

23 **JURY TRIAL DEMANDED**

24
25
26 Plaintiff, JENNIFFER L. WESTMORELAND (hereinafter "Plaintiff WESTMORELAND"
27 or "Plaintiff"), alleges as follows:
28

LAW OFFICES
SUSAN RUBENSTEIN

1 **NATURE OF THE ACTION**

2 1. Plaintiff files this action seeking compensation for her unpaid wages, overtime
3 wages, interest on unpaid wages, and other statutory penalties for Defendants' egregious violations
4 of the California Labor Code. Plaintiff also seeks to recover damages pursuant to the California Fair
5 Employment and Housing Act for having to work in an abusive, hostile, and sexual and racial
6 discriminatory work environment where she was subjected to pervasive and severe discriminatory
7 harassment on a daily basis which greatly impacted her ability to carry out the duties of her job.

8 **THE PARTIES**

9 2. Plaintiff JENNIFFER L. WESTMORELAND is a female individual currently
10 residing in the County of Harris, City of Houston, Texas.

11 3. Defendant MATTHEW MULLENWEG is an individual residing in the City and
12 County of San Francisco, State of California and doing business in San Francisco City and County.
13 Defendant MULLENWEG is an online social media "entrepreneur" and web developer known for
14 developing the open-source web blogging software WordPress used by over 40% of the web.
15 Defendant MULLENWEG is also the founder, President, and CEO of Automattic, a distributed
16 company with nearly 2000 employees, which owns WordPress, Tumblr, and several other
17 companies.

18 4. Defendant AUDREY HC, LLC is a California Limited Liability Company doing
19 business in the City and County of San Francisco, California which employs in excess of 30
20 individuals. Defendant Mullenweg personally acts as the agent for Defendant AUDREY HC, LLC
21 and is the founder, owner and President of the company which primarily serves as an employer to
22 individuals working in his residence.

23 5. The true names and capacities, whether individual, corporate, associate or otherwise
24 of the Defendants named herein as DOES 1 through 10, are unknown to Plaintiff at this time.
25 Plaintiff therefore sues said Defendants by such fictitious names pursuant to § 474 of the California
26 Code of Civil Procedure. Plaintiff will seek leave to amend this Complaint to allege the true names
27 and capacities of DOES 1 through 10 when their names are ascertained. Plaintiff is informed and
28

1 believes, and based thereon alleges, that each of the DOE Defendants is in some manner liable to
2 Plaintiff for the events and actions alleged herein.

3 6. All named Defendants, and DOES 1 through 10, will be collectively referred to as
4 “Defendants.”

5 7. Plaintiff is informed and believes, and thereon alleges, that each of the defendants
6 named herein have at all times relevant to this action been acting as an agent, officer, employee,
7 and/or representative of the remaining defendants and have acted within the course and scope of
8 such agency and employment, and within the permission and consent of the co-defendants with
9 respect to the acts and the wrongful conduct alleged herein.

10 **JURISDICTION OF VENUE**

11 8. Venue as to each Defendant is proper in this judicial district, pursuant to California
12 Government Code §12965. Each of the actions and/or omissions leading to liability in this case
13 occurred in the City and County of San Francisco.

14 **ALTER EGO ALLEGATIONS**

15 9. Plaintiff alleges that, at all times mentioned herein, Defendants MULLENWEG,
16 AUDREY HC, and DOES 1-10 co-used and co-mingled assets and caused assets to be transferred
17 between them without adequate consideration.

18 10. Plaintiff further alleges that, at all times mentioned herein, Defendant AUDREY HC
19 LLC was a mere shell and naked framework used by Defendant MULLENWEG and DOES 1-10
20 pursuant to a fraudulent plan, scheme, and device whereby income, revenue and profits were
21 diverted.

22 11. Plaintiff alleges that, at all times mentioned herein, there existed such a unity of
23 interest and ownership between Defendants MULLENWEG, AUDREY HC LLC and DOES 1-10,
24 that any individual and separateness between them is non-existent.

25 12. Plaintiff alleges that, at all times mentioned herein, Defendants MULLENWEG and
26 DOES 1-10 dominated, controlled, and influenced Defendant AUDREY HC LLC, and the officers
27 thereof as well as the business, property, and affairs of Defendant AUDREY HC LLC.

28 13. Plaintiff alleges that, at all times mentioned herein, that Defendant MULLENWEG

1 and DOES 1-10 created a situation where Defendant AUDREY HC LLC has insufficient resources
2 to satisfy its creditors.

3 14. Plaintiff alleges that Defendant MULLENWEG and DOES 1-10 inadequately
4 capitalized Defendant AUDREY HC LLC such that Defendant AUDREY HC LLC did not have
5 sufficient assets to conduct its business. Furthermore, Defendants MULLENWEG and DOES 1-10
6 concealed the extent of this lack of capitalization to Plaintiff.

7 15. By virtue of the foregoing, inequity will result if the acts in question are treated as
8 those of one of those Defendants over the other. Adherence to the fiction of the separate corporate
9 existence of Defendant AUDREY HC LLC would, under the circumstances, sanction a fraud and
10 promote injustice in that Plaintiff would be unable to realize upon any judgment in her favor.
11 Defendants MULLENWEG, AUDREY HC LLC. and DOES 1-10 should thus be held collectively
12 liable for the acts complained of herein.

13 **FACTUAL ALLEGATIONS**

14 16. Defendant MULLENWEG was at all times relevant, the owner and/or manager of
15 several companies, including Defendant AUDREY HC, LLC. located at 660 4th Street, San
16 Francisco, California, and, as such, owned, controlled, or operated a business or establishment that
17 employed Plaintiff, other employees, and members of the general public within the meaning of
18 Industrial Welfare Commission (“IWC”) Order No. 15, 8 Cal. Code of Regulations § 11050, *et seq.*

19 17. In June 2020, Plaintiff WESTMORELAND was offered a job to work for
20 Defendants MULLENWEG and AUDREY HC, LLC in San Francisco, California, on the condition
21 that Plaintiff agree to live in San Francisco on a full-time basis and serve as MULLENWEG’s
22 mother’s personal assistant. Plaintiff was promised housing, benefits, and a regular 40-hour work
23 week. Plaintiff accepted the job offer because at the time MULLENWEG extended the offer,
24 Plaintiff’s mother had lost her job, and Plaintiff was solely responsible for her mother’s complete
25 support. Plaintiff’s family live extremely modestly with very limited resources in Texas, and
26 Plaintiff’s mother was in a desperate situation having no income and fully dependent on Plaintiff for
27 support. Plaintiff was in no financial position to refuse the job. Plaintiff also had never been to San
28 Francisco, and she was led to believe that accepting this position would provide career opportunities

1 for herself that she never believed she would see again. Plaintiff moved to San Francisco with
2 Defendants with the hope that she would enjoy the job, provide financial security for her mother,
3 experience living in a new city, and return to Texas in two months.

4 18. Defendants, who were each Plaintiff's employers for purposes of the California labor
5 laws, employed Plaintiff in California from on or about July 1, 2020 through March, 2022. During
6 this time period, Plaintiff was placed in housing directly across the street from Defendants and
7 basically lived at Defendants' residence while looking after Kathleen Mullenweg, Defendant
8 MATTHEW MULLENWEG's mother. Serving as the primary assistant to Kathleen Mullenweg,
9 Plaintiff was working on practically a live-in basis, seven (7) days a week with little to no time off
10 on a twenty-four (24) hour a day basis. Kathleen Mullenweg was Plaintiff's supervisor for all intents
11 and purposes, even though Defendant MULLENWEG controlled the activities at the property and
12 controlled the company.

13 19. When Plaintiff agreed to move to San Francisco with Defendants, her understanding
14 was that she would be working as a Personal Assistant for \$60,000 per year. The terms and
15 conditions of employment, all of which were verbalized by Defendant MULLENWEG to Plaintiff,
16 included the promise that Plaintiff would be provided with an apartment free of charge. Defendant
17 MULLENWEG further agreed to provide Plaintiff with medical benefits, and an opportunity to
18 expand the scope of her experience and be able to explore San Francisco on her spare time. She was
19 also induced to accept the position because Defendant MULLENWEG represented that the work
20 would last only two months and would involve administrative work, providing her with a new
21 career opportunity and career trajectory. Defendant MULLENWEG was aware of the desperate
22 situation Plaintiff's family was in, and he also knew that Plaintiff had no resources whatsoever to
23 assist her mother other than what MULLENWEG agreed to pay her. MULLENWEG did not
24 mention that Plaintiff was expected to work 24-hour days, seven (7) days per week. There was also
25 no mention that Plaintiff would essentially be a housekeeper. There was no mention that Plaintiff's
26 movements would be restricted and tracked, and that she would not be allowed to leave town. Nor
27 was there any mention that Plaintiff would be abused by Kathleen Mullenweg. Defendant
28 MULLENWEG misled Plaintiff regarding the nature and character of the work as well as the duration

1 of the work and the compensation.

2 20. The representations made by Defendant MULLENWEG about the California
3 position were false, and had Plaintiff known that she would be expected to work 24 hour shifts
4 without receiving a day off for months, and that she would be denied overtime pay, rest periods, and
5 proper treatment, and had she been told that the job would last for years rather than two months, and
6 had she been advised that her chores primarily included housework, she would have never left her
7 family and friends in Texas to take the position.

8 21. Plaintiff's duties as assistant to MULLENWEG'S mother included, but were not
9 limited to providing Kathleen Mullenweg with meals, taking care of her animals, cleaning the
10 apartment, doing the laundry, arranging for appointments- both personal and medical, running
11 errands, stocking the apartment with food, toiletries, and household goods, assisting the nurses and
12 other of MULLENWEG's staff as needed, covering other employee shifts as needed, providing
13 services for Defendant MULLENWEG, including gathering and opening his deliveries, going
14 grocery shopping and ordering food, keeping track of the staff, arranging for mail deliveries,
15 policing the premises, maintaining the property, cleaning up trash, and other similar tasks. Plaintiff
16 was also responsible for providing light nursing duties, including giving Kathleen Mullenweg
17 Lymphatic massages, and providing other occasional assistance to nurses when needed. Plaintiff
18 essentially lived at the residence, even though she had a place to sleep across the street. Routinely,
19 when Plaintiff would go to her own apartment for sleep, she would be called back to the residence at
20 all hours of the night and the early hours in the morning. Plaintiff rarely, if ever, got a full night's
21 sleep.

22 22. Defendants and Kathleen Mullenweg required Plaintiff to carry a cell phone with her
23 at all times to enable Defendant MULLENWEG's mother to track her whereabouts, which she did
24 on a regular basis including on those weekends and the occasional evening that she was not at the
25 residence working. Plaintiff was instructed that she was not allowed to leave town or there would be
26 consequences. On one occasion, when Plaintiff took a day off to leave San Francisco for the day,
27 she was called, chastised, and told she was insubordinate. She was warned by Kathleen Mullenweg
28 never to leave town again or she would be terminated.

1 23. Plaintiff initially was placed on a salary of \$60,000 per year for completing her
2 regular non-exempt tasks and was never paid overtime even though she routinely worked well in
3 excess of 12 hours per day and was on-call for the remaining 12 hours per day, seven days a week.
4 While on-call, Plaintiff was not able to engage in any personal activity of her choice or leave her
5 premises. Most nights while on-call, Plaintiff WESTMORELAND would be called across the street
6 to the Mullenweg residence to perform chores for Kathleen Mullenweg and/or to cover for nurses
7 who would not show up for their shift or who would be fired without notice (each a common
8 occurrence). Plaintiff was never free to participate in her own activities while “on-call.” Defendants
9 and Kathleen Mullenweg were well aware of the excessive hours that Plaintiff was working,
10 however neither of them took any action whatsoever to alleviate Plaintiff’s exhaustion or to ensure
11 that Plaintiff would receive compensation for the overtime hours she routinely worked.

12 24. On or about June 14, 2021, the parties entered into a “Change of Status” agreement
13 changing Plaintiff’s compensation structure from a salaried employee to an hourly worker. Plaintiff
14 was to be paid \$24.00 per hour for her compensation rather than continue receiving the annual
15 salary of \$60,000 per year. Even though this was considered a wage reduction, Plaintiff was advised
16 that the hourly designation would provide her with the opportunity to get paid for her overtime
17 hours worked. Even though her duties prior to the change of status were the same and always non-
18 exempt and always entitled her to receive overtime compensation, she was intentionally misled by
19 Defendants who told her that because she was salaried, she was not eligible for receiving overtime
20 pay. Even though this characterization of the law was erroneous and contrary to the labor laws of
21 California, Plaintiff was unaware of the wage and hour laws at the time and believed Defendants.

22 25. Plaintiff WESTMORELAND was never properly paid for the considerable overtime
23 hours that she routinely worked, either before or after her change of status from a salaried to an
24 hourly employee. WESTMORELAND, who essentially worked 24-hour days without a break or a
25 day off continuously for *months*, was neither compensated time and a half or double-time in
26 accordance with California’s wage and hour laws. Defendant MULLENWEG, who was personally
27 advised of the excessive number of hours that Plaintiff had been working since moving to
28 California, did nothing to ensure that the California labor laws were adhered to, notwithstanding

1 advice from attorneys and consultants that his employment practices were in violation of California
2 labor laws.

3 26. What ensued for approximately a two-year period, was a working relationship with
4 demands and conditions that matched 19th century slavery for Plaintiff WESTMORELAND.
5 Plaintiff worked morning, noon and night without a break or rest period, she was routinely called in
6 the middle of the night to assist Defendant MULLENWEG's mother for any number of unimportant
7 and harassing reasons, and she was abused by Kathleen Mullenweg (Defendant MULLENWEG and
8 other members of his family had full knowledge of the abuse and cruel treatment and even
9 witnessed it). Plaintiff was called in the middle of the night routinely by Kathleen Mullenweg who
10 would be needlessly cruel and disrespectful to Plaintiff, including throwing an object at her head,
11 among many other grossly inappropriate things.

12 27. Defendants never provided Plaintiff with timecards or any other
13 documentation reflecting an accurate and complete accounting of the hours she worked, or the
14 overtime calculations of the wages due and owing to her – either before or after her change of status.
15 Plaintiff received virtually nothing from Defendants; no job description was ever provided to
16 Plaintiff, no policies regarding employee rights were ever provided to Plaintiff, and no human
17 resources department existed at Defendant AUDREY HC, LLC. Defendant MULLENWEG held
18 himself out to be the boss, owner, HR Director, policy maker, and individual in control of every
19 aspect of Plaintiff's employment. Plaintiff felt she had no one to protect her from the abuse, the
20 excessive demand to work months without a day off, and she lacked the resources to escape the
21 situation she found herself in.

22 28. Defendants do not possess accurate or complete timecards or other documentation
23 which properly and accurately memorializes Plaintiff's thousands of overtime hours worked over the
24 course of the two-year period she worked for Defendants. For a brief period, occurring late in
25 Plaintiff's employment, a supervisor was hired who began to track Plaintiff's hours, who expressed
26 concern about the amount of hours Plaintiff had been working and who advised Defendants that
27 Plaintiff needed to work fewer hours in order to conform to the labor laws of California. The new
28 supervisor also suggested that Defendants adhere to California wage and hour laws and establish

1 guidelines to ensure payment of overtime wages owed to employees. Defendant MULLENWEG
2 also received this same advice from attorneys, however Defendant MULLENWEG chose to ignore
3 the advice, and instead, fired the supervisor shortly after she started, stating to the employees that
4 this supervisor was not acting in conformity with Defendant AUDREY's policies and therefore
5 needed to be terminated.

6 29. At all times herein relevant, Plaintiff considered herself Defendants' employee and,
7 as such, she performed duties for Defendants under their direct supervision and control. Defendant
8 MULLENWEG's mother, Kathleen Mullenweg, acted as Plaintiff WESTMORELAND's supervisor
9 at all times herein.

10 30. Throughout the years she worked for Defendants MULLENWEG and AUDREY HC,
11 and for MULLENWEG's mother, Plaintiff worked tirelessly, in a dedicated and loyal fashion,
12 without taking any time off, and dutifully working 24-hour days, 7 days a week, under cruel,
13 abusive and inhumane conditions. Plaintiff was often ridiculed, bullied, and humiliated by Kathleen
14 Mullenweg in front of others, and defendants did nothing to stop the behavior. For instance,
15 Defendants did not allow for any sick leave, and Plaintiff was required to work even when she was
16 ill. Defendant MULLENWEG was himself callous and cruel to Plaintiff.

17 31. Plaintiff was also required to work on holidays without overtime compensation. On
18 Thanksgiving, the first holiday that Plaintiff was away from her family, she was working at the
19 MULLENWEG residence. A private chef brought in a large, fully prepared catered dinner for the
20 family. Plaintiff, who was alone, and knew no one in San Francisco, was denied a plate of food, and
21 was sent across the street. She was asked to return to do the dishes. Plaintiff did not get dinner, nor
22 was she compensated for overtime hours worked or holiday pay.

23 32. As time passed, the conditions grew worse for Plaintiff while living and working in
24 California for the MULLENWEG's. Defendant MULLENWEG routinely fired any responsible
25 supervisor who might have offered protection for Plaintiff, and MULLENWEG's mother became
26 increasingly more abusive with no one available to keep her behavior in check.

27 33. On a daily basis, Kathleen Mullenweg would engage in racist rants about African
28 American people, Asian people, Mexican people, Filipino people, and gay people. She would tell

1 Plaintiff that she did not want the African American nurses to use her bathrooms or to sit on her
2 toilets because “black people are not clean.” She called Asian women “whores,” “sluts,” “gold-
3 diggers,” and “skanks” because her son dated Asian women. Kathleen Mullenweg also detested
4 Mexicans and told Plaintiff that “Mexicans are stupid and illiterate,” and “Mexican schools are
5 inferior,” and “Mexicans are not smart.” She told Plaintiff dozens of times that “Filipinos are
6 dishonest,” “Filipino’s steal and are untrustworthy” and she routinely falsely accused one of the
7 Filipina nurses of stealing her jewelry. Kathleen Mullenweg would also malign gay/transgender
8 people, referring to them as “diseased,” “dirty,” and “unsanitary.” Defendants knew about all of
9 Kathleen Mullenweg’s pervasive and unrelenting racist and sexual rants which greatly impacted the
10 ability of Plaintiff and other workers to perform the duties of their jobs, but Defendants did nothing
11 to prevent the harassing and pervasive harassment that created a hostile working environment for
12 Plaintiff.

13 34. In addition to the racism, Kathleen Mullenweg engaged in a pattern of continuous,
14 pervasive, and severe daily sexual banter which occurred directly in Plaintiff’s presence in her
15 immediate work environment. In addition to the racism, the workplace was permeated with
16 sexually-charged harassment which embarrassed, humiliated, and offended Plaintiff. For example,
17 Kathleen Mullenweg would discuss in graphic detail the sex between defendant MULLENWEG and
18 his Asian girlfriends even though Plaintiff begged her not to discuss such private matters. Kathleen
19 Mullenweg at one point asked Plaintiff to spy on her son having sex with his girlfriends. She also
20 asked Plaintiff to check the trash cans to search for condoms. Plaintiff made numerous complaints
21 directly to Defendant MATTHEW MULLENWEG, AUDREY and to MULLENWEG’s mother
22 regarding the severity of Kathleen Mullenweg’s racism and sexually charged non-stop rants, and the
23 discomfort it was causing her, however Defendants did absolutely nothing to prevent it from
24 occurring. In fact, to the contrary, Defendant MULLENWEG would share Plaintiff’s complaints
25 with his mother who would then retaliate against Plaintiff and threaten her with termination if she
26 ever complained about her harassment to her son again.

27 35. The racism and sexually harassing hostile working environment was witnessed by
28 vendors, physicians, consultants and others who had occasion to work at the residence. Defendant

1 MULLENWEG was personally advised about the offensive behavior which created an extremely
2 hostile and offensive work environment, however he did nothing to correct or curtail the racist or
3 sexually charged behavior.

4 36. Plaintiff regularly worked in excess of 8 hours per day and/or 40 hours per week but
5 did not receive proper overtime wages for the nearly two years that she worked for Defendants and
6 lived in California.

7 37. Plaintiff also was not authorized or permitted to take all her proper meal and rest
8 periods. On the rare occasion that Plaintiff took a lunch or dinner break, it was always interrupted.

9 38. When Plaintiff was constructively discharged, Defendants failed to pay Plaintiff all
10 of Plaintiff's final wages that were due and owing to her pursuant to California labor laws.

11 39. Plaintiff WESTMORELAND timely filed her Complaint of Discrimination with the
12 California Department of Fair Employment and Housing ("DFEH") against each Defendant within
13 the statutory time period. On that same date, the DFEH issued Plaintiff her Right-to-Sue letter. This
14 action is filed within one year of the date of the Right-to-Sue letter which was forwarded to the
15 Defendants.

16
17 **FIRST CAUSE OF ACTION**

18 **(Failure to Pay Overtime Compensation in violation of**
19 **California Labor Code § 510 and Wage Order No.15)**

20 **(Against All Defendants)**

21 40. Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1
22 through 39 inclusive, as though set forth herein.

23 41. Eight hours of labor constitutes a day's work, and any work in excess of 8 hours in
24 one (1) workday and any work in excess of 40 hours in any one (1) workweek shall be compensated
25 at the rate of no less than one-and one-half times the regular rate of pay for an employee. Any work
26 in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular
27 rate of pay for an employee. (Labor Code § 510 and IWC Wage Order No. 15, Section 3 (C) (1) (2).

28 42. Plaintiff alleges that she routinely worked more than 8 hours per workday, and/or

1 more than 40 hours per workweek, but did not receive all overtime wages owed. Plaintiff typically
2 worked an egregious amount of overtime hours amounting to nearly a 24-hour day, 7-day a week
3 schedule continuously for nearly two years.

4 43. An employer is required to provide an employee all his or her unpaid wages
5 immediately upon the employee's termination. (Labor Code § 201.)

6 44. Defendants did not provide Plaintiff with all of her final pay, including thousands of
7 hours of overtime wages immediately due upon her constructive termination.

8 45. If an employer willfully fails to pay an employee wages according to Labor Code §
9 201, these wages shall continue as a penalty for up to a maximum of 30 days. (Labor Code § 203.)

10 46. Plaintiff is informed and believes and thereon alleges that Defendants willfully failed
11 to pay her final unpaid wages and therefore she is entitled to a 30-day waiting time penalty.

12 47. Plaintiff is entitled to recover interest, reasonable attorneys' fees, and costs. (Labor
13 Code § 1194.)

14 **SECOND CAUSE OF ACTION**

15 **(Violations of California Labor Code § 226 for**

16 **Failure to Provide Accurate Wage Statements)**

17 **(Against All Defendants)**

18 48. Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1
19 through 47 inclusive, as though set forth herein.

20 49. Pursuant to Labor Code § 226 subdivision (a), "Every employer shall, semimonthly
21 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
22 part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid
23 by personal check or cash, an accurate itemized statement in writing showing . . . (2) total hours
24 worked by the employee, except for any employee whose compensation is solely based on a salary
25 and who is exempt from payment of overtime under subdivision (a) of § 515 or any applicable order
26 of the Industrial Welfare Commission, . . . (4) all deductions, provided that all deductions made on
27 written orders of the employee may be aggregated and shown as one item, . . . [and] (9) all
28 applicable hourly rates in effect during the pay period and the corresponding number of hours

1 worked at each hourly rate by the employee.” (Labor Code § 226 subdivision (a).)

2 50. Plaintiff alleges that on numerous occasions, an exact amount of which will be
3 proven at trial, Defendants violated various provisions of § 226, including but not limited to
4 subdivision (a)(2), by failing to provide Plaintiff “an accurate itemized statement in writing showing
5 . . . [the] total hours worked by the employee.”

6 51. Plaintiff further alleges that on numerous occasions, an exact amount of which will
7 be proven at trial, Defendants violated various provisions of § 226, including but not limited to
8 subdivision (a)(4), by failing to provide Plaintiff “an accurate itemized statement in writing showing
9 . . . all deductions.”

10 52. Plaintiff further alleges that on numerous occasions, an exact amount of which will
11 be proven at trial, Defendant violated various provisions of § 226, including but not limited to
12 subdivision (a)(9), by failing to provide her “an accurate itemized statement in writing showing . . .
13 all applicable hourly rates in effect during the pay period and the corresponding number of hours
14 worked at each hourly rate by the employee.”

15 53. Upon information and belief, Plaintiff alleges that Defendants' failure to provide
16 Plaintiff with accurate wage statements was knowing and intentional.

17 54. As a result of Defendants' conduct, Plaintiff has suffered injury in that, among other
18 things, the lack of the required information hindered her from determining the amount of wages
19 owed to her and led her to believe she was not entitled to be paid wages for missed meal and rest
20 breaks, or for each hour of labor she performed, although she was so entitled. The absence of
21 accurate wage statements has prevented timely challenges to Defendants' unlawful pay practices,
22 caused difficulty and expense in attempting to reconstruct time and pay records, and resulted in the
23 submission by Defendants of inaccurate information about wages and deductions from wages to
24 state and federal government agencies. Plaintiff's entitlement to social security benefits, as well as
25 employer contributions to social security benefits, FICA, and FUTA is based upon the total amount
26 of wages earned and deductions from wages as reflected on her wage statements, and she is thereby
27 injured by the Defendants' failure to report the total amount of wages earned during each pay period
28 on each paycheck stub. As a result of Defendants' conduct, Plaintiff has suffered injury because her

1 legal right to receive accurate wage statements was violated.

2 55. For Defendants' misconduct as alleged herein, Plaintiff seeks penalties, costs, and
3 attorneys' fees pursuant to Labor Code § 226 subdivision (e) in an amount to be proven at trial.

4 56. For Defendants' misconduct as alleged herein, Plaintiff seeks penalties pursuant to
5 Labor Code § 226 subdivision (f), in an amount to be proven at trial.

6 57. For Defendants' misconduct as alleged herein, Plaintiff seeks attorneys' fees
7 pursuant to § 226 subdivision (g) in an amount to be proven at trial.

8

9

THIRD CAUSE OF ACTION

10

(Failure to provide proper meal and rest periods

11

in violation of California Labor Code §§ 226.7 and 512 and Wage Order No. 15)

12

(Against All Defendants)

13

14 58. Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1
14 through 56 inclusive, as though set forth herein.

15

16 59. Every employer shall authorize and permit all employees to take rest periods, which
16 insofar as practicable shall be in the middle of each work period. The authorized rest period time
17 shall be based on the total hours worked daily at the rate of 10 minutes net rest time per 4 hours of
18 work or major fraction thereof. Authorized rest period time shall be counted as hours worked for
19 which there shall be no deduction from wages. (Wage Order No. 15 (A)(B)).

20

21 60. Likewise, under IWC Orders and Labor Code Section 512, employees must be
21 provided with no less than a thirty-minute meal period when the work period is more than five
22 hours. Employees who work more than 10 hours a day are entitled to a second meal period. In order
23 to qualify as a meal period, employees must be relieved of all duties and permitted to leave the
24 premises.

25

26 61. If an employer fails to provide an employee a proper rest period, the employer shall
26 pay the employee 1 hour of pay at the employee's regular rate of compensation for each workday
27 the rest period is not provided. (Labor Code § 226.7, subdivision (b) and Wage Order No. 15 §(B).)

28

62. If an employer unlawfully fails to provide an employee with a proper meal period,

1 the employee is entitled to one extra hour of pay at their regular hourly rate for each workday the
2 violation occurs.

3 63. Plaintiff alleges that she was not authorized or permitted to take a 10-minute rest
4 period for every 4-hour period of work that she worked when employed by Defendants. Nor was she
5 allowed to take an uninterrupted meal period for every 7-hour period of work that she worked when
6 employed by Defendants. On the many days and evenings that Plaintiff worked in excess of 12
7 hours, she was not provided with a second meal period that was off the premises or uninterrupted.

8 64. As a result, Defendants must pay Plaintiff 1 hour of pay at her regular rate of
9 compensation for each workday that a rest period and/or a meal period was not provided.

10 65. An employer is required to provide an employee all his or her unpaid wages
11 immediately upon the employee's termination. (Labor Code § 201.)

12 66. Defendants did not provide Plaintiff with all of her final pay, including wages due for
13 failure to provide rest periods and meal periods immediately upon her constructive termination.

14 67. If an employer willfully fails to pay an employee wages according to Labor Code §
15 201, these wages shall continue as a penalty for up to a maximum of 30 days. (Labor Code § 203.)

16 68. Plaintiff is informed and believes and thereon alleges that Defendants willfully failed
17 to pay her final unpaid wages, and therefore she is entitled to a 30-day waiting time penalty.

18 69. Plaintiff is entitled to recover interest, reasonable attorneys' fees, and costs. (Labor
19 Code §§ 218.5, 218.6.)

20 **FOURTH CAUSE OF ACTION**

21 **(Waiting Time Penalties Pursuant to California Labor Code § 203)**

22 **(Against All Defendants)**

23 70. Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1
24 through 69 inclusive, as though set forth herein.

25 71. Labor Code § 203 provides, in pertinent part: "If an employer willfully fails to pay,
26 without abatement or reduction, ... any wages of an employee who is discharged or who quits, the
27 wages of the employee shall continue as a penalty from the due date thereof at the same rate until
28 paid or until an action therefore is commenced; but the wages shall not continue for more than 30

1 days. ..."

2 72. For the reasons alleged herein, Plaintiff alleges that the waiting time penalty
3 provisions of Labor Code § 203 are invoked against Defendants because Plaintiff contends that
4 Defendants violated Labor Code §§ 226.7, 510, 512, 1194, and various other provisions of the
5 Labor Code alleged herein, by failing to pay Plaintiff "without abatement or reduction" wages owed
6 to Plaintiff.

7 73. For the reasons alleged herein, Plaintiff seeks waiting time penalties, interest,
8 reasonable attorneys' fees, and costs from all Defendants.

9 **FIFTH CAUSE OF ACTION**

10 **(Penalties Under California Labor Code § 558)**

11 **(Against All Defendants)**

12 74. Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1
13 through 73 inclusive, as though set forth herein.

14 75. Labor Code § 558 provides that "Any employer or other person acting on behalf of
15 an employer who violates or causes to be violated" the overtime and rest and meal period provisions
16 of California law, are liable for these violations.

17 76. Defendants, as alleged above, have violated Labor Code §§ 227.7, 510, 512, 1194
18 and various provisions of the applicable Wage Orders promulgated by the Industrial Welfare
19 Commission, which govern rest periods, meal periods, and overtime compensation, among other
20 things.

21 77. As a result of these violations and pursuant to § 558, Plaintiff seeks civil penalties in
22 an amount to be determined at trial.

23 **SIXTH CAUSE OF ACTION**

24 **(Misrepresentation about the character, length of time, and work conditions, in violation of**

25 **California Labor Code §§ 970, 971 and 972)**

26 **(Against All Defendants)**

27 78. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1
28 through 77 inclusive, as though set forth herein.

1 79. No person, or agent or officer, directly or indirectly, shall influence, persuade, or
2 engage any person to relocate from one place to another, including from any place outside of this
3 State to any place within this State, for the purpose of working by means of knowingly making false
4 representations, whether spoken or written, concerning the kind or character of such work, the
5 length of time of such work, the conditions surrounding the work, or the compensation of such
6 work.

7 80. Plaintiff was a resident of Texas when asked to relocate to the State of California to
8 work for Defendants. Defendant MULLENWEG described the position as a regular full-time
9 position which would last approximately two months. He also advised Plaintiff that she would be
10 provided with housing and benefits and would be provided with the opportunity to explore San
11 Francisco and see the sights. Plaintiff was also advised that her job would allow for administrative
12 duties to provide her with office experience. Plaintiff was led to believe that accepting the position
13 in San Francisco would allow for her to develop new skills and career opportunities. Unfortunately
14 for Plaintiff, none of these representations about the California position were true.

15 81. To compound the misrepresentations made by MULLENWEG regarding the nature
16 and duration of the job, he also knew that Plaintiff was desperate for employment, that she was fully
17 responsible for the support of her mother, that her mother had lost her job and was unable to work,
18 that Plaintiff and her mother had virtually no financial resources, and in misrepresenting the work
19 conditions surrounding the actual job, he could induce Plaintiff to accept the job offer.

20 82. Defendants violated § 970 of the California Labor Code, and accordingly, Plaintiff is
21 entitled to remedies under California Labor Code §972 which provides for double damages that
22 result from such misrepresentations.

23 83. Plaintiff's reputation and career path have been damaged in addition to the damages
24 she sustained regarding the length of time she had to remain away from home, the failure on the part
25 of Defendants to compensate Plaintiff as promised and in accordance with law, and the nature of the
26 work which was not at all as it was described by Defendants before Plaintiff decided to relocate to
27 California. None of the promises made to her by Defendants were honored, and Plaintiff is therefore
28 entitled to recover double damages in a civil action under Labor Code § 972.

1 84. Plaintiff is entitled to recover double damages, attorney's fees, and costs pursuant to
2 Labor Code §972 from all Defendants.

3
4 **SEVENTH CAUSE OF ACTION**

5 **Hostile Work Environment**

6 **(California Government Code §§ 12940, *et seq.*)**

7 **(Against Defendant AUDREY HC LLC)**

8 85. Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1
9 through 84 inclusive, as though set forth herein.

10 86. At all times relevant to this Complaint, the California Fair Employment and Housing
11 Act ("FEHA") (Cal. Gov. Code §12900 *et seq.*) and its implementing regulations were in full force
12 and effect and binding on Defendants.

13 87. Pursuant to Government Code §§12940 and 12926 it is unlawful for an employer to
14 create a hostile and abusive working environment which includes harassing behavior so severe and
15 pervasive that it interferes with Plaintiff's ability to perform the duties of her job. Defendants herein
16 created an abusive and offensive work atmosphere for Plaintiff. Defendants and Kathleen
17 Mullenweg engaged in an inappropriate sexually charged and racially harassing behavior which
18 occurred repeatedly, on a daily basis, creating an abusive and hostile working environment, causing
19 Plaintiff to feel extreme discomfort and intimidation, which interfered with her job functions. The
20 harassment, in particular the sexually charged behavior, was severe, continuous, and occurred on
21 nearly a daily basis and was directed at Plaintiff with the intent to make Plaintiff feel uncomfortable,
22 embarrassed, and sickened. The sexual banter permeated the workplace environment, and Plaintiff's
23 requests for the behavior to stop were ignored.

24 88. Defendants were aware of Plaintiff's discomfort regarding working under these
25 abusive and hostile conditions, however Defendants and Kathleen Mullenweg did not cease the
26 harassment. In fact, when Plaintiff complained about the offensive, harassing behavior, the conduct
27 of Kathleen Mullenweg became more threatening. When Plaintiff complained about the harassment,
28 she would be threatened with termination.

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89. As a direct and proximate result of Defendants’ wrongful conduct, Plaintiff WESTMORELAND has suffered damages including, but not limited to, a loss of income and benefits, and has further suffered emotional distress and other general damages.

90. In doing the things alleged herein, the Defendants’ conduct was despicable, and Defendants acted toward WESTMORELAND with malice, oppression, fraud, and with willful and conscious disregard of Plaintiff’s rights, entitling WESTMORELAND to an award of punitive damages. The Defendants’ conduct described herein was engaged in by Defendants and managing agents for the Defendants and/or ratified by managing agents.

EIGHTH CAUSE OF ACTION
Failure to Prevent Discrimination
(California Government Code §12940 (k))

91. Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1 through 90 inclusive, as if set forth herein.

92. At all times relevant to this Complaint, the FEHA and its implementing regulations were in full force and effect and binding on the Defendants.

93. Pursuant to California Government Code §12940 (k), it is unlawful for an employer to fail to prevent discrimination or retaliation from existing in the workplace.

94. In engaging in the conduct described above, the Defendants failed to engage in any reasonable steps or corrective action to prevent the unlawful discriminatory harassment from occurring against Plaintiff.

95. WESTMORELAND is informed and believes and thereon alleges that Defendants do not have appropriate policies, procedures, practices, guidelines, rules, and/or trainings regarding the prevention of discrimination and harassment in the workplace. Plaintiff sought guidance from Defendants regarding the behavior of her supervisor, Kathleen Mullenweg, however her grievances were ignored and no corrective action was taken to stop the offensive and illegal conduct set forth above.

1 obligation to work months on end without a day off in violation of numerous labor laws, caused
2 Plaintiff to suffer extreme and severe emotional distress to the point that she could no longer work
3 for Defendants.

4 103. As a direct and proximate result of the Defendants' wrongful conduct,
5 WESTMORELAND has suffered damages including, but not limited to a loss of income and
6 benefits and has further suffered emotional distress and other general damages.

7 104. In doing the things alleged herein, the Defendants' conduct was despicable, and the
8 Defendants acted toward WESTMORELAND with malice, oppression, fraud, and with willful and
9 conscious disregard of WESTMORELAND's rights, entitling WESTMORELAND to an award of
10 punitive damages. The Defendants' conduct described herein was engaged in by Defendants and
11 managing agents for the Defendants and/or ratified by managing agents.

12 WHEREFORE, Plaintiff prays for relief as set forth below.

13
14 **PRAYER FOR JUDGMENT**

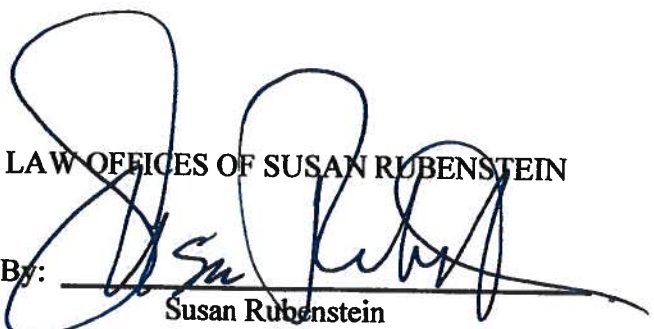
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16 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 17 1. For special, general, and compensatory according to proof at trial;
- 18 2. For punitive damages according to proof at trial;
- 19 3. For all unpaid wages, including statutory penalties and liquidated damages, according to
20 proof at trial;
- 21 4. For additional compensation for Defendants' failure to provide rest and meal periods,
22 according to proof at trial;
- 23 5. For waiting time continuation of wages for up to thirty (30) days as provided for in
24 Labor Code § 203, according to proof at trial;
- 25 6. For the amounts provided for in Labor Code § 226(e);
- 26 7. For reasonable attorneys' fees, expert witness fees, and other litigation expenses pursuant
27 to the California Government Code and the California Labor Code;
- 28 8. For pre-judgment interest and cost of suit incurred herein;

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- 9. For an accounting of all unpaid wages, deductions from wages, all rest periods not provided to Plaintiff for the last two years from the date this Complaint was filed;
- 10. For such other and further relief as the court deems just and proper.

Dated:

LAW OFFICES OF SUSAN RUBENSTEIN

By: _____
Susan Rubenstein
Attorneys for Plaintiff Jenniffer Westmoreland

JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial.

LAW OFFICES OF SUSAN RUBENSTEIN

By: _____
Susan Rubenstein
Attorneys for Plaintiff Jenniffer Westmoreland

LAW OFFICES
SUSAN RUBENSTEIN