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RACHELLE GULI

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RACHELLE GULI,

Plaintiff,

v.

UNITED STATES ATTORNEY’S OFFICE
OF THE NORTHERN DISTRICT OF
CALIFORNIA

Defendants.

**PLAINTIFF’S FIRST COMPLAINT FOR
DAMAGES FOR:**

1. Race, Sex and National Origin Discrimination in Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C, Section 2000e, et seq.
2. Retaliation in Violation of 24 U.S.C, Section 2000e(3)(a).
3. Discrimination in Violation of the Uniformed Services and Reemployment Rights Act, Title 38, U.S.C, Sections 4301-4333.
4. Retaliation in Violation of California Labor Code Section 98.6 and Civil Code 1102.5
5. Violation of California Labor Code §226.7 (Failure to Provide Meal and Rest Breaks)
6. Violation of California Labor Code (Failure to Pay Overtime Wages)
7. Violation of California Labor Code (Willful Failure to Pay Wages Upon Separation)
8. Violation of California Labor Code (Failure to Provide Accurate Itemized Wage Statements and to Maintain Adequate Records)

DEMAND FOR JURY TRIAL
DEMAND FOR PUNITIVE DAMAGES

Plaintiff RACHELLE GULI (“Plaintiff”) alleges as follows:

JURISDICTION AND VENUE

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3 1. This Court has jurisdiction over the subject matter of this civil action pursuant to Title VII
4 of the Civil Rights Act of 1964, 42 U.S.C. section 2000e-16.

5 2. Venue is proper in this judicial district under 42 U.S.C. section 2000e- 5(f) (3), and 5
6 U.S.C. section 7703(b) (2). Plaintiff was employed by the United States Department of Justice in
7 the Northern District of California at the time of her termination, Plaintiff's employment records are
8 maintained by the Department of Justice in this judicial district, and the decisions adverse to
9 Plaintiff's employment that are the subject of the civil action were made in this judicial district.

PARTIES

10 3. Plaintiff Rachelle Guli ("Plaintiff") is a Filipino female who is gay and married. Plaintiff was
11 the Supervisory Information Technology Specialist (Systems Manager) for the Defendant United States
12 Attorney's Office of the Northern District of California ("Defendant" or "USAO"). Plaintiff worked for
13 the USAO from August 10, 2014, to January 8, 2015. Complainant supervised 5 Information
14 Technology Specialists, assisted with projects and insured systems and network operability. Brian
15 Wickett ("Wickett") was plaintiff's supervisor. His position was that of Security Manager. Mr. Wickett
16 was supervised by Mary Cooper, an Administrative Officer.

17 4. Plaintiff is gay. She is married to a woman. In October, 2014, she informed management
18 representatives of her sexual orientation and marital status. Plaintiff is Filipino

19 5. Plaintiff is informed and believes, and thereon alleges, that Defendant was at all times relevant
20 herein the agent, servant, employee, and/or representative of each of the other Defendants, and in doing
21 the acts and things alleged in this complaint was acting within the course and scope of such agency,
22 service, employment and/or representation. Plaintiff is further informed and believes and thereon
23 alleges that Defendant is the employers of the managers and supervisors herein complained of, and
24 supervising over Plaintiff, and therefore Defendant, and each of them, are jointly and severally
25 responsible and liable to Plaintiffs for the damages hereinafter alleged.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

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27 6. Plaintiff filed a timely charge of discrimination with the EEOC. Plaintiff also filed an EEO
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1 complaint with the Department of Justice, which has been investigated. The DOJ has issued a letter
2 giving Plaintiff the right to sue in federal court.

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4 **GENERAL FACTUAL ALLEGATIONS**

5 7. Plaintiff was hired on August 10, 2014 as the new CAN System Manager. Since being hired,
6 Plaintiff worked from 9:00am to 6:00pm every day without taking a lunch period or breaks. Plaintiff
7 brought her lunch in and worked while eating. Plaintiff's supervisor Wickett told Plaintiff on her first
8 week that her scheduled hours were from 9:00am to 6:00pm. Wickett stated on several occasions that
9 Plaintiff's job doesn't have a set a number of hours. Plaintiff complained to Wickett several times about
10 not being allowed to take meal or rest breaks, but Wickett would not respond to her complaints, or
11 otherwise dismissed them.

12 8. After being hired, Plaintiff and Plaintiff's subordinates noticed and made her aware of the
13 difference in treatment she received from her predecessor Smita Patel, who, happened to be in the office
14 on her first week, despite her leaving the position a year and half prior. Plaintiff's supervisor was not
15 providing her with the support he had provided to Smita Patel, his previous Systems Manager.

16 9. The office where Plaintiff worked is located in the "Tenderloin/Little Saigon" part San
17 Francisco, which is a rough neighborhood. It's filled with drug dealers, drug addicts, and homeless
18 people as well as Vietnamese-American businesses and families. Throughout her employment with the
19 Defendant, Plaintiff lived about 3 blocks away from the office. On several occasions, Wickett stated, in
20 front of people, including Plaintiff's subordinates, when referring to the bad things like car robberies,
21 general crimes, and drug deals that occurred, how these people in the neighborhood are "my people."

22 10. During Plaintiff's first few weeks on the job, the supervisor made statements like, "You
23 weren't the best suited for the job, but we had to hire you because of your Vet status and it's a plus that
24 you live nearby."

25 11. On or around Plaintiff's first week on the job, Plaintiff told her Wickett that she was being seen
26 at the VA for her medical care, he told Plaintiff that he hadn't filed for any VA benefits and made her
27 feel like she was wrong for getting care through the VA.

28 12. After a couple of weeks of working there, Plaintiff decided to bring in some personal effects

1 into her office space to include a photo of Plaintiff's wife, Elizabeth. Plaintiff put the photo on her desk
2 and Plaintiff believes that was the first time that her supervisor found out that Plaintiff is married to a
3 woman. After that, Wickett's behavior toward Plaintiff changed from being kind and somewhat
4 responsive, to unavailable.

5 13. Plaintiff had pre-approved scheduled leave on Thursday, September 25 and Friday, September
6 26 because of an out of town wedding that was planned months in advance.

7 14. On September 24, Plaintiff's supervisor Wickett left the office early at approximately 4:00pm-
8 4:10pm, because he was also going to be out of town for those two days.

9 15. At or around 4:45-5:15pm, Plaintiff left the office to go two blocks away to a pharmacy to pick
10 up a prescription. Plaintiff thought it was all right to leave since the pharmacy was close by and she
11 would be returning to work to close out the day prior to her taking leave and going out of town. Due to
12 the workload that day, Plaintiff did not take a lunch break.

13 16. After leaving the office, Wickett sent Plaintiff an email (which Plaintiff received on her
14 iPhone) to give him a call. Plaintiff called Wickett and he asked Plaintiff to assist his supervisor, AO
15 (Mary Cooper) with locating a document in a network drive. Plaintiff never told him she was heading
16 to the pharmacy to pick up a prescription. Plaintiff told him she would help Mary, he told Plaintiff the
17 location of the file Mary Cooper needed assistance with, and then ended the phone conversation.
18 Plaintiff arrived back into the office, and started looking for the location of the file Mary Cooper needed
19 assistance with. Plaintiff couldn't find it. Plaintiff started walking towards Mary's Office to let her
20 know where Wickett told her the file was located, her office door was open but she was not there.
21 Plaintiff proceeded to walk around the premises to look for her. Plaintiff also tried to phone Brian from
22 her office on his cell phone to ask for help, but he did not answer. Plaintiff spoke to Michael Ellis to
23 ask him if he's seen Mary Cooper. Mr. Ellis stated he had not. Eventually Plaintiff saw Mary Cooper
24 leaving the office directly next to hers that belongs to Peggy Hurdle (which was closed when Plaintiff
25 passed by earlier). Mary said she did not need my help after all. Plaintiff went back to my office, and
26 tried to contact Wickett again. He did not answer. Plaintiff then wrote him an email stating that Mary
27 did not need assistance. Plaintiff finally left the office around 6:50-7:00pm, well after her tour of duty
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1 ended.

2 17. Plaintiff was questioned about her whereabouts for September 24th on three separate occasions
3 prior to the meeting with the Human Resources Department and Wickett.

4 18. During the first meeting, which occurred Monday 9/29, Wickett told Plaintiff that people
5 perceive Plaintiff as being on personal devices often and that he does not feel like she is on his team.
6 Plaintiff explained to him that she brought in her personal computer because Plaintiff was trying to get
7 Remote Access on it to function, so Plaintiff can log into the network from home. Also, Plaintiff would
8 bring in her iPad to work because she downloaded into ibooks, the several policies and guides that she
9 needed learn for her job. Plaintiff thought this was an environmentally-friendly way to get the job done.
10 He asked Plaintiff about what happened that day, and Plaintiff told him what she remembered. Plaintiff
11 told him the times she was stating were an estimation and that she wasn't sure exactly when she left and
12 came back. Plaintiff also apologized for her not communicating with him about leaving the office to
13 run a personal errand. Wickett ended the meeting by saying "we're good, please put in annual leave for
14 the time you were away at the pharmacy." He also sent Plaintiff an email reminding her to put a leave
15 request in and Plaintiff responded, letting him know that she had already made the request.

16 19. On Tuesday 9/30, Brian sent Plaintiff an email saying, "Can you tell me how you came up with
17 the times that you submitted?" Plaintiff then told him that she felt like was walking on eggshells, and
18 that he was causing her stress. Plaintiff also stated to him that if he believed she was doing something
19 wrong, please provide guidance. He came to Plaintiff's office and asked her several more of the same
20 questions that he asked Plaintiff the day before, most of the questions focusing on the time that Plaintiff
21 technically wasn't on duty. He also assured Plaintiff he didn't want to seem "accusatory" and that he
22 just wanted to understand what happened that day. During this meeting, he stated that he thought
23 Plaintiff's work hours were from 9:00am to 5:30pm. Plaintiff said to him "that is news to me". She
24 also stated that his actions were not only intimidating, but she also felt he was interrogating her and if
25 Plaintiff had done something wrong, he needs to tell her. He explained that his Security Police
26 background from the Air Force is what's making him dig deeper into incidents. Again, he ended the
27 conversation with "we're good". Plaintiff left his office feeling like the issue was resolved. At this
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1 point, he still hadn't approved Plaintiff's leave.

2 20. By this point, he was cold and closed off to Plaintiff. His door, which was often open, was
3 closed for most of the day and week. He barely spoke to Plaintiff unless it was absolutely necessary.

4 21. On Friday, October 3rd, after Plaintiff sent him an IM about being unable to validate her
5 timesheet (because he didn't approve Plaintiff's leave), he asked Plaintiff to come to his office only to
6 ask the same questions again. This time, he had a typed piece of paper in which he was writing notes.
7 He again ended the conversation with "we're good". He asked Plaintiff to provide him a receipt of the
8 prescription payment from the pharmacy she went to, which Plaintiff provided to him on Saturday
9 morning. Plaintiff asked him about her timesheet and he told Plaintiff not to worry about it. Plaintiff
10 told him that the technique he was using to question her was making Plaintiff feel uneasy and
11 uncomfortable. He didn't respond. At this point, he still had not told Plaintiff that she had done
12 anything wrong.

13 22. The entire day on Monday October 6, he did not say anything to Plaintiff and was in his office
14 with his door closed the entire time. Plaintiff received a notification from HR about her timesheet not
15 being validated, and Plaintiff told HR to consult with her supervisor, Brian Wickett.

16 23. On Tuesday 10/7, after several emails from HR about Plaintiff's timesheet not being validated,
17 Wickett marked Plaintiff as AWOL (Absent without Leave) on her timesheet for an hour and a half and
18 also approved her requested leave for 30 minutes. After listing Plaintiff as AWOL, he sent Plaintiff an
19 email telling her if she had questions, Plaintiff could meet with him and HR on Wednesday to discuss.

20 24. This occurred without Plaintiff's knowing of his justification or having a clear and concise
21 conversation or documentation reflecting that Plaintiff had done anything wrong. Plaintiff requested for
22 him to push the meeting back to Friday, and he agreed.

23 25. On Friday, 10/10 at 2:00 p.m., Plaintiff meet with Wickett and HR regarding him charging her
24 with being AWOL. Wickett immediately started asking Plaintiff again what occurred on September
25 24. Plaintiff interrupted him mid-sentence as he brings up the times Plaintiff was here after her tour of
26 duty ended and Plaintiff requested that we not talk about what occurred after her tour of duty as she was
27 not on compensatory time or AWS. Therefore, Plaintiff was not required to be here after her tour of
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1 duty. He immediately started raising his voice and shuffling around in his chair making Plaintiff feel
2 very threatened and intimidated. Plaintiff also noticed the HR officer move away slightly from him.
3 Plaintiff told him the only time that is relevant in regards what transpired and what Plaintiff is
4 accountable for on that day is the time she departed the office.

5 26. HR and Wickett then started asking Plaintiff why she put in the leave for 30 minutes covering
6 the period of 5:15pm-5:45pm. Plaintiff told both of them that Plaintiff put that leave in for that
7 timeframe because she was told her hours were from 9am to 6pm and Plaintiff thought that period
8 would cover the trip to the pharmacy. Plaintiff told them that she didn't know exactly when she left and
9 that she was only made aware in the meeting with Brian on Tuesday, September 30th that her hours
10 were actually from 9:00am to 5:30pm.

11 27. At this point, Wickett was livid. He pulled out a piece of paper from his notes and started
12 reading it out loud to Plaintiff. It basically said that he is giving Plaintiff seven days to resign and if she
13 doesn't then she will have to deal with his proposed serious discipline for her misconduct. Plaintiff
14 asked him for a copy of that letter. He gave Plaintiff the sheet of paper he read from. The letter never
15 stipulated exactly what Plaintiff did, and was very threatening. It also wasn't written on agency
16 letterhead and it did not have his signature on it. He then asked Plaintiff if she had questions, Plaintiff
17 told him she did. Plaintiff asked him why he kept questioning Plaintiff about what occurred after her
18 tour of duty. He said "because you were supposed to be there." Plaintiff then asked, "was I supposed
19 to be on compensatory time and not know it?" He said "no." Then Plaintiff asked him that if I wasn't
20 on comp time, and he didn't tell me to put in for comp time, why he felt I was required to be there. He
21 didn't answer. He was angry and threw his body to the back of his chair. He was making fists and
22 pounding the table and yelling, "This is ridiculous." Plaintiff asked him if he ever heard her say, "I
23 volunteer to work past my tour of duty." He didn't answer. He then threw an object across the room.
24 Plaintiff was not sure what it was but she heard it fall onto the carpet nearby her. That's when Plaintiff
25 told him that his threatening mannerisms were making her feel uncomfortable and threatened.

26 28. Plaintiff then asked the HR representative, "Is it unlawful, according to OPM, FLSA and
27 Department of Labor guidelines and regulations to make an employee work past their 8 hours of duty,
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1 off-the-clock, if they are not on comp time or an Alternate Work Schedule.” Jeneal responded by
2 saying, “no, it’s not unlawful, it’s expected.” Plaintiff wrote down her answer. Brian then interrupted
3 my next question by yelling “we’re done, I’m not answering any more questions.” Plaintiff then told
4 him that she had more questions to ask and he stated that he didn’t care and for Plaintiff to leave the
5 room. He yelled, “Get out” while pointing to the door. Plaintiff looked at Jeneal and asked her if
6 Plaintiff can ask her more questions later after the meeting, and she said “yes.”

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8 29. After about 15 minutes, Plaintiff received a phone call on her government iPhone from Brian.
9 He ordered Plaintiff to come to her office, and Plaintiff told him she would be right there after Plaintiff
10 attended to another’s employee’s request for help. Plaintiff went to her office and Jeneal and Brian
11 were there and closed the door. They then asked Plaintiff if it’s ok for them to charge Plaintiff’s lunch
12 between 5:15pm and 5:45pm (after my tour of duty ended) and for time Plaintiff was away, they will
13 mark her as AWOL, a total of 45 minutes. Plaintiff told them that it wasn’t her call. Plaintiff then
14 reiterated to them that it was established in the meeting that Plaintiff’s tour of duty on that day was from
15 9am to 5:30pm. They also stated that Plaintiff was allowed to talk to anyone in the office about the
16 meeting that transpired earlier. He then sent an email with the same information.

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18 30. After the email was sent, Plaintiff went to Jeneal’s office and ask her how it’s possible Plaintiff
19 was being charged lunch from 5:15pm to 5:45pm after her tour of duty ended. She said that lunch is
20 overlapping the leave Plaintiff put in originally. Plaintiff told her it was established in the meeting that
21 Plaintiff’s day ended at 5:30pm that day, and that the leave was put in prior to Plaintiff being informed
22 of my actual tour of duty. She said it wasn’t her call to change it and she would have to wait until her
23 meeting with Mary Cooper.

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25 31. For approximately two weeks after the meeting, Wickett made Plaintiff feel uncomfortable,
26 stressed, intimidated and made the work environment very hostile. He continued his psychological
27 assault even after Plaintiff informed him of how he was making her feel. This entire ordeal affected
28 Plaintiff at work and at home. Plaintiff had not been getting adequate sleep and she has since reached
out to a counselor within the Employee Assistance Program (for the stress and anxiety she was feeling)
and was advised to contact EEO and OSC.

1 32. Plaintiff was given a notice of intent to terminate her employment by Wickett and was
2 subsequently terminated on January 8, 2015 because of her race, sex and national origin, her military
3 service, her complaints about Defendants' illegal wage and hour practices, the unfairness of her write-
4 ups, and the harassing and intimidating conduct by Wickett.
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7 **FIRST CLAIM**
8 **(Race, Sex and National Origin Discrimination in Violation of Title VII of the Civil Rights Act of**
9 **1964, 42 U.S.C 2000e., et seq.)**

10 33. Plaintiff realleges and hereby incorporates by reference paragraphs 1-32 as though fully set
11 forth herein.

12 34. Title VII of the U.S.C. prohibits unlawful employment practices by employers. See 42 U.S.C.
13 section 2000 (e) (2) (a)-(d); Title VII applies to federal employment. See 42 U.S.C. section 2000 (e)
14 (16). The Defendant Department of Justice was Plaintiff's employer, as defined by 42 U.S.C. section
15 2000 (e), et seq.

16 35. Plaintiff was an "employee" of Defendant Department of Justice as defined in 42 U.S.C.
17 section 2000 (e)(f).

18 36. By committing the actions alleged herein, Defendant subjected Plaintiff to discrimination
19 based on her (race), (sex), (national origin), in violation of 42 U.S.C., Section 2000e-2, relating to the
20 terms and conditions of her employment, as defined in 42 U.S.C. section 2000e-2(a)(1).

21 WHEREFORE, Plaintiff requests relief, including punitive damages, as more fully set forth below.

22 **SECOND CLAIM**
23 **(Retaliation in Violation of 42 U.S.C, Section 2000e-(3)(a))**
24 **[Against All Defendants]**

25 37. Plaintiff realleges and hereby incorporates by reference paragraphs 1-36 as though fully set
26 forth herein.

27 38. Title VII specifically prohibits retaliation against employees who engage in protected
28 activities. 42 U.S.C. section 2000e(3)(a). Plaintiff complained about discrimination and other unlawful
conduct to her supervisors. As a direct result of her complaints, Defendant subjected her to adverse

1 employment actions, including termination, causing her to suffer damages and emotional distress.

2 WHEREFORE, Plaintiff requests relief, including punitive damages, as more fully set forth below.

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5 **THIRD CLAIM**
6 **(Violations of the Uniformed Services Employment and Reemployment Rights Act, Title 38,**
7 **United States Code, Sections 4301-4333)**
8 **[Against All Defendants]**

9 39. Plaintiff realleges and hereby incorporates by reference paragraphs 1-38, as though fully set
10 forth herein.

11 40. The Uniformed Services Employment and Reemployment Rights Act (“USERRA”), 38
12 U.S.C., Sections 4301-4333 prohibits discrimination against service members in employment. Under
13 the USERRA, any person who is in any manner connected to the United States Uniformed Forces shall
14 not be denied initial employment, reemployment, and retention in employment, promotion or any other
15 benefit of employment by an employer on the basis of that membership or service.

16 41. Defendant discriminated against Plaintiff in the terms and conditions of her employment, and
17 terminated her on the basis of her membership in the United States Uniformed Forces in violation of
18 USERRA.

19 WHEREFORE, Plaintiff requests relief as set forth below.

20 **FOURTH CLAIM**
21 **(Retaliation in Violation of California Labor Code §1102.5 and §98.6)**

22 42. Plaintiff re-alleges and herein incorporates by reference, each and every allegation in
23 paragraphs 1-40.

24 43. At all times during Plaintiff’s tenure with Defendant, and/or DOES 1-41, and each of them,
25 California Labor Code § 1102.5, in relevant part, prohibited an employer from retaliating against an
26 employee for complaining about or refusing to participate in an activity that would result in a violation
27 of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation. At
28 all such times, Labor Code Section 98.6 prohibited an employer from retaliating against any employee
for complaining about any violations of the Labor Code.

1 44. Plaintiff complained about and refused to participate, based on a reasonable belief, in
2 Defendants and each of their unfair labor practices and their efforts to defraud their bank, the IRS and
3 others. Defendant, and each of them, violated California law when they terminated Plaintiff in
4 retaliation for her numerous complaints regarding the illegal conduct to which she was subjected
5 throughout her employment As a direct, proximate, and foreseeable result of Defendant's, and each of
6 their, acts and/or failures to act, as alleged herein, Plaintiff has suffered and continues to suffer
7 substantial losses in earnings and employment benefits, injury to her career and reputation, and extreme
8 and enduring emotional distress including but not limited to humiliation, shock, embarrassment, fear,
9 anxiety and discomfort, all of which amount to Plaintiff's damage which totals in excess of the
10 minimum jurisdiction of this court, the precise amount to be proven at trial.

11 45. Defendant and each of them, committed the acts herein alleged maliciously, fraudulently, and
12 oppressively with the wrongful intention of injuring Plaintiff, and acted with an improper and evil
13 motive amounting to malice, in conscious disregard for Plaintiff's rights and thus an award of exemplary
14 and punitive damages is justified. Further, the actions directed at Plaintiff were carried out by
15 supervising employees acting in a deliberate, callous and intentional manner in order to injure and
16 damage Plaintiff. Plaintiff is therefore entitled to recover and herein prays for punitive damages in an
17 amount sufficient to punish Defendant, and/or DOES 1-50 and each of them, in an amount to be proven
18 in trial.

19 WHEREFORE, Plaintiff prays for judgment, including punitive damages, as more fully set forth
20 below.

21 **FIFTH CLAIM**
22 **VIOLATION OF CALIFORNIA LABOR CODE**
23 **§ 226.7; 8 C.C.R. §§ 11090, et seq. (*Meal Period Violations*)**

24 46. Plaintiff re-alleges and incorporates by reference, each and every allegation in paragraphs 1-
25 45.

26 47. Throughout the statutory period, Plaintiff was regularly scheduled to work, and did work,
27 periods sufficient to require Defendants to provide Plaintiff with a meal period pursuant to the Labor
28 Code and applicable IWC Wage Orders.

1 48. Throughout the statutory period, on a significant portion of work days, Defendants failed to
2 provide Plaintiff with a meal and/or rest breaks in accordance with Labor Code section 226.7 and
3 applicable Industrial Welfare Commission (“IWC”) wage orders.

4 49. As a result of Defendants failure to provide Plaintiff with meal and/or rest periods in
5 accordance with Labor Code section 226.7 and applicable IWC wage orders, Defendants owe Plaintiff
6 and other current and former employees of Defendants one hour of wages per violation and statutory and
7 civil penalties in an amount to be proven at trial.

8 50. These wages were due in accordance with Labor Code section 204. Defendants’ willfully
9 failed to pay these wages when owing.

10 WHEREFORE, Plaintiff prays for judgment as more fully set forth below.

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12 **SIXTH CLAIM**
13 VIOLATION OF CALIFORNIA LABOR CODE §§ 510(A), 201,
14 11010-11130, 1160, ¶3(A), IWC 5-2001
15 FAILURE TO PAY OVERTIME WAGES

16 51. Plaintiff re-alleges and hereby incorporates by reference paragraphs 1-50 as though fully set
17 forth herein.

18 52. Plaintiff was employed by and performed work for Defendant. Defendant intentionally
19 misclassified Plaintiff as exempt and willfully did not pay Plaintiff for all hours worked. DEFENDANT
20 owes Plaintiff wages under the terms of her employment, in an amount to be proven at trial.

21 53. DEFENDANT’s Status as an Employer. Section 2 of the applicable Wage Order defines
22 “employer” as any person who “directly or indirectly, or through an agent or any other person, employs
23 or exercised control over the wages, hours, or working conditions of any person.” California Labor
24 Code § 350 defines “employing” as “hiring, or in any way contracting for, the services of an employee.”
25 DEFENDANT meets this definition with respect to Plaintiff who performed services for DEFENDANT.

26 54. DEFENDANT effectively controlled the employment of Plaintiff and knows or should have
27 known that Plaintiff had been and continued to be routinely underpaid for her labor.

28 55. During all relevant time periods during her employment, Plaintiff spent less than 50% of her
time performing managerial related activities.

1 56. California Labor Code §§ 11010-111430, 1160, ¶3(A) and the applicable Wage Orders provide
 2 that nonexempt employees must receive: “(a) One and one half (1 ½) times [her] regular rate of pay for
 3 all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and
 4 for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and (b)
 5 Double [her] regular rate of pay for all hours worked in excess of 12 hours in any workday and for all
 6 hours wo9rked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.”

7 57. At all times relevant, Defendant was aware of and was under a duty to comply with various
 8 provisions of the California Labor Code and/or Wage Orders issued by the IWC.

9 58. By refusing to compensate Plaintiff for all wages earned, Defendants violated those California
 10 Labor Code and IWC Wage Order provisions, cited herein. Defendants’ violations of those California
 11 Labor Code and IWC Wage Order provisions were willful.

12 59. As a result of DEFENDANT’s misclassification of Plaintiff as exempt, DEFENDANT failed to
 13 provide Plaintiff with overtime and compensation in amounts to be determined at trial, and she is
 14 therefore entitled to recover of such amounts, plus interest thereon, attorneys’ fees, and costs, under
 15 California Labor Code § 1194.

16 WHEREFORE, Plaintiff requests relief as more fully set forth below.

17 **SEVENTH CLAIM**

18 **VIOLATION OF CALIFORNIA LABOR CODE §§ 201, 202, 203, 218, 1194**
 19 **WILLFUL FAILURE TO PAY ALL WAGES UPON SEPARATION**

20 60. Plaintiff re-alleges and hereby incorporates by reference paragraphs 1-59 as though fully set
 21 forth herein.

22 61. Plaintiff was employed by Defendant DEFENDANT, performed work for Defendant
 23 DEFENDANT, and as detailed herein was not paid all wages due. Plaintiff was terminated on or about
 24 January 8, 2015. Since that time Defendant DEFENDANT has willfully continued to fail to pay
 25 Plaintiff for all wages owed her, and consequently, owe Plaintiff thirty days of pay in an amount to be
 26 proven at trial.

27 62. Plaintiff is informed and believes that Defendant’s failure to pay all wages upon separation was
 28 willful. As a consequence of Defendant DEFENDANT’s willful failure to pay all wages upon

1 separation, Defendants are subject to civil and statutory penalties for its conduct directed at Plaintiff.

2 WHEREFORE, Plaintiff requests relief as more fully set forth below.

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4 **EIGHTH CLAIM**
5 VIOLATION OF CALIFORNIA LABOR CODE
6 §§ 226 & 1174 and WAGE ORDER 5-2001
7 FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE
8 STATEMENTS AND MAINTAIN ADEQUATE RECORDS

9 63. Plaintiff re-alleges and hereby incorporates by reference paragraphs 1-62 as though fully set
10 forth herein.

11 64. Pursuant to Labor Code §§ 226 and 1174, and the recordkeeping provisions of Wage Order 5-
12 2001, DEFENDANT is required to maintain an accurate record of each employee's hours of work s each
13 workday for a period of at least three (3) years, and provide each employee with accurate, period wage
14 payments in writing setting forth, amount other things: (a) the dates of labor for which payment of
15 wages is made; (b) the total hours worked for a pay period; (c) the applicable rates of pay for all hours
16 worked; (d) gross and net wages paid, as well as authorized deductions from those wages; and (e) the
17 name and address of the employer.

18 65. DEFENDANT has knowingly failed to comply with California Labor Code §§ 226 and 1174
19 by, among other things, failing to provide accurate itemized wage statement in writing showing all
20 applicable rates in effect during the pay period and the corresponding number of hours worked at each
21 hourly rate by Plaintiff; (b) failing to show the dates of labor for which payments are or were being
22 made; (c) failing to provide complete and/or accurate information concerning deductions that are or have
23 been taking from Plaintiff's wages.

24 66. As a result of DEFENDANT's failure to comply with California Labor Code § 226(a), and
25 pursuant to California Labor Code § 226(e), Plaintiff is entitled to recover the greater of all actual
26 damages or fifty dollars (\$50) for the initial period in which a violation occurred, and on hundred dollars
27 (\$100) for each violation in each subsequent pay period, not exceeding an aggregate penalty of four
28 thousand dollars (\$4,000).

67. Plaintiff is further entitled to an award of costs and reasonable attorneys fees pursuant to
California Labor Code §§ 226(e) and (g).

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REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendants as follows:

1. Back Pay in the amount she would have earned absent discrimination from the time of the adverse action until the date of trial. 42 U.S.C. section 2000(e)-(5)(g).
2. Front Pay to compensate her for the lost compensation she would have earned had she not been subjected to discrimination and the other conduct alleged herein.
3. Costs and reasonable attorney’s fees incurred in this lawsuit with interest thereon pursuant to 42 USC Section 2000e-5(k).
4. Unpaid wages and penalties based on the wage and hour violations.
5. Such other relief that the Court deems just. .

DEMAND FOR JURY TRIAL

Plaintiff Rachelle Guli hereby demand a trial by jury for each and every claim for which she has a right to jury trial.

DATED: July 16, 2015

Law Offices of Daniel Feder

By: _____/s/_____
Daniel Feder
Attorneys for Plaintiff Rachelle Guli